
In re the Arbitration between:

BMS No. 12-PA-0226

City of Edina,

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

International Association of Firefighters,
Local 1275,

Union.

Pursuant to **Article VIII** of the collective bargaining agreement effective January 1, 2010 through December 31, 2012, the parties have brought the above captioned matter to arbitration.

The parties selected James A. Lundberg as the neutral arbitrator from a Minnesota Bureau of Mediation Services list of arbitrators.

The parties stipulated that the matter is properly before the arbitrator and there are no procedural issues.

A grievance was filed on June 19, 2011.

The hearing in the above matter was conducted at the Edina City Hall on November 14, 2011.

The parties gave oral arguments and the record was closed on November 14, 2011.

APPEARANCES:

FOR THE EMPLOYER:

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1380 Corporate Center Curve
Eagan, Minnesota 55121

FOR THE UNION:

Ann E. Walther
206 East Bridge – Riverplace
10 Second Street Northeast
Minneapolis, MN 55413

ISSUE:

Did the City have just cause to discipline Paramedic/Firefighter Dave Ehmler by suspending him for one day for violating the Fire Department's Back-up policy, Department Directive 711.03?

If not, what is the proper remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE XV – DISCIPLINE

15.1 Nothing in the Agreement shall abridge the Employer's right to discipline for just cause, such discipline being subject to the grievance procedure.

15.2 Discipline will be in one or more of the following forms:

- a) oral reprimand
- b) written reprimand
- c) suspension
- d) demotion
- e) discharge

FACTUAL BACKGROUND:

The grievant, Dave Ehmler, has been employed by the City of Edina, Minnesota as a Paramedic/Firefighter, since June of 2009. He was previously employed in the same position by the City of St. Paul, Minnesota. No evidence that grievant has any disciplinary history was submitted at hearing.

At about 11:00 AM on April 23, 2011 Mr. Ehmler rode in the passenger seat of an Ambulance driven by Mr. Michael Hughes, as they responded to an emergency call at 7326 Claredon Drive in Edina, Minnesota. Mr. Hughes is also a Paramedic/Firefighter for the City of Edina. Both Mr. Hughes and Mr. Ehmler are of the same rank in the Fire Department and their duties as driver and passenger on the Ambulance rotate from day to day. Mr. Peter Knaeble was

also a part of the Ambulance crew that responded to the April 23, 2011 emergency call. Mr. Knaeble is an EMT, whose station on the Ambulance during transit was in the back compartment, where he occupied the jump seat.

The same Ambulance crew had been on an earlier run on April 23, 2011. When they returned to the station, the Driver had backed the Ambulance into a parking spot and Mr. Knaeble had worked as “spotter” and helped guide the Ambulance into the parking spot.

As the Ambulance approached the general area of the emergency call, Mr. Hughes realized that the addresses in the neighborhood did not appear to follow a normal sequence of odd numbers on one side and even numbers on the other. He slowed the Ambulance and made a comment regarding his confusion. Mr. Ehmler noticed the address of the emergency call on a mail box and let Mr. Hughes know they had just passed the address of the call.

Mr. Hughes testified that he stopped quickly. He rapidly placed the Ambulance in reverse and backed the Ambulance up the driveway. The Ambulance traveled roughly forty (40) feet onto the driveway and into the bumper of a Volkswagen Jetta that was parked in front of the garage. While the vehicle was being backed up the driveway, a woman was moving across the lawn waving her arms and yelling. The collision caused minor damage to the property owner’s automobile and no damage to the Ambulance. Other than the property damage caused by the collision, the emergency response was successful.

The accident was immediately reported by the Ambulance Driver to his supervisor.

The Edina Fire Department has a rule that requires an Ambulance Driver to have a spotter, when backing an Ambulance. The requirement is necessary, due to the vehicles’ size and significant blind spots caused by solid panels in the rear compartment of the vehicle. The vehicles used by the City as Ambulances are roughly twenty feet long and are of substantial

construction. Anytime an Ambulance collides with a person or property, there is a risk of substantial damage, injury or death.

The Fire Chief met with the grievant and Mr. Hughes on April 25, 2011 to review the accident. He determined that the Ambulance had been backed by Mr. Hughes without the assistance of a spotter in violation of *Fire Department Directive No. 711.03*. In an effort to reduce accidents involving Ambulances while backing up, the Fire Department recently determined that discipline should be imposed upon any Paramedic/Firefighters who failed to follow the rule requiring a spotter, while backing an Ambulance. Mr. Hughes and Mr. Ehmiller were given one day suspensions for failing to follow *Fire Department Directive No. 711.03*. Mr. Hughes did not grieve the discipline. Mr. Ehmiller grieved the discipline on June 19, 2011.

In 2001 Captain Forseth was given a written reprimand for violating the spotter policy. The 2001 incident involved misperception on the part of the spotter, which resulted in damage while an Ambulance was being backed into the parking garage at the station.

In 2004 an Ambulance Driver and the Paramedic/Firefighter riding with him were suspended for one day following a collision with the garage door and the Ambulance. In the 2004 incident the spotter failed to get out of the vehicle at the station, when the Ambulance was being backed into a parking place.

SUMMARY OF EMPLOYER'S POSITION:

The grievant knew that a spotter is always required to assist an Ambulance while it is backing into position. The policy is clear and employees have been informed of the policy from time to time. In fact, earlier in the day on April 23, 2011 the same crew successfully guided the Ambulance into a parking position that it needed to back into at the station, using a spotter.

It is important that the workforce know and understand that the considerations behind **Rule 711.03** are important safety considerations including risks of serious bodily harm, possible death and property damage. The Employer believes that the imposition of discipline for violation of **Rule 711.03** is necessary to impress upon the workforce the serious nature of the policy and prevent future violations of the policy.

The Employer has enforced **Rule 711.03** in the past and has made it clear that violation of the rule will result in discipline. The discipline of a driver and spotter, who violated the policy in 2004, was the same, a one day suspension, as the discipline imposed upon Mr. Hughes and Mr. Ehmiller for the April 23, 2011 incident.

Mr. Ehmiller clearly violated **Rule 711.03** in a situation where a backing Ambulance had limited visibility. While Mr. Ehmiller claims the Driver stopped quickly and backed up rapidly, the grievant made no response to the Driver's action. He could at a minimum have told the Driver to stop, while he got out of the vehicle to act as spotter. Instead, Mr. Ehmiller was focused on tasks involving the laptop computer in his compartment, which did not have to be completed until later. Mr. Ehmiller was aware of the fact that the Ambulance had passed the mail box of the address from which the emergency call had originated. According to Mr. Hughes, the back-up alarm on the Ambulance sounded. Even if Mr. Ehmiller had no opportunity to jump out of the cab, he did have ample opportunity to tell the Driver to stop in order to give a spotter time to get into position.

The grievant was disciplined at the same level as Mr. Hughes and at the same level as other Paramedic/Firefighters under the same conditions. The Employer treated Mr. Ehmiller even handedly by imposing the same discipline on him as it imposed on others under the same circumstances.

The Employer argues that it had just cause to impose a one day suspension on the grievant and the suspension should be upheld.

SUMMARY OF UNION'S POSITION:

An employee should not be disciplined for failing to follow a policy that, under the circumstances, he could not possibly have followed. On April 23, 2011 the Driver stopped the Ambulance in response to grievant informing him that they had just passed the address they sought. The Driver acted quickly. He stopped the Ambulance. He put the Ambulance into reverse and backed the Ambulance up the driveway. The entire sequence of events took perhaps four to five seconds. The grievant simply had no time to react. He could not have exited the Ambulance under the circumstances and positioned himself as spotter.

Mr. Hughes says that he made a mistake and reacted to a somewhat confusing situation. He did not fault Mr. Ehmiller for not positioning himself as spotter, since he acted so fast that Mr. Ehmiller could not react to his actions.

Mr. Ehmiller testified that the Ambulance was positioned close to the driveway and he did not anticipate that the Driver would back the vehicle into the driveway. Mr. Ehmiller was expecting to get out of the vehicle and move the stretcher up the driveway.

While the distance that the Ambulance backed up and the rate of speed of the Ambulance is disputed, the Arbitrator should rely upon the testimony of the people who were at the site. Mr. Hughes and Mr. Ehmiller both testified that the vehicle was stopped and backed quickly, leaving little or no time to react. Also, the distance covered by the Ambulance was roughly from the mail box to the point of collision. Under the circumstances, the grievant had little or no time to react and could not possibly have positioned himself as spotter for the Ambulance. The grievant should not be disciplined for failing to act, when he could not possibly have acted.

The Union asks that the grievance be upheld and the discipline rescinded.

OPINION:

There is no question that Edina Paramedic/Firefighters are required to assist an Ambulance Driver by spotting for the Driver, as he/she backs an Ambulance. **Rule 711.03** clearly imposes a duty to spot for a Driver and it is very clear that the grievant on April 23, 2011 knew he or another passenger in the Ambulance needed to act as spotter, when the Ambulance driven by Mr. Hughes backed up. Given the relative positions of Mr. Ehmiller and Mr. Knaeble within the Ambulance, Mr. Ehmiller clearly was the individual who needed to assume the position of spotter. He sat next to the Driver and could readily communicate with the Driver, as the Ambulance was backed into position. However, Mr. Ehmiller did not act as spotter, while the Ambulance moved in reverse in violation of **Rule 711.03**.

Mr. Hughes, a credible witness who admitted that his conduct was in violation of **Rule 711.03**, said he did not give Mr. Ehmiller any warning that he intended to back the Ambulance into the driveway. He also testified that he stopped quickly and changed directions rapidly. While the reverse alarm sounded, Mr. Hughes indicated that Mr. Ehmiller had little or no opportunity to act.

Rule 711.03 does not contemplate a Paramedic/Firefighter in the passenger seat departing from the Ambulance, while it is in motion. The situation described by Mr. Hughes and Mr. Ehmiller is one where Mr. Ehmiller had no time to safely open the Ambulance door and step to the rear of the vehicle to act as spotter. In fact, the description of the scene strongly suggests that it may have been dangerous for Mr. Ehmiller to simply have opened the Ambulance door, as the reverse alarm sounded. On the other hand, there is no reasonable explanation given for Mr. Ehmiller's failure to ask Mr. Hughes to stop the vehicle in order for a spotter to set up behind the

Ambulance. While Mr. Ehmler had too little time to get into position, as a spotter, he surely did have enough time to alert Mr. Hughes to the need for a spotter, as the Ambulance began to move.

The April 23, 2011 situation is unlike the other disciplinary circumstances, because the 2001 and 2004 disciplines were imposed in response to accidents that occurred at a Fire Station, where spotting an Ambulance that is backing into a parking place is part of an Ambulance crew's routine. On April 23, 2011, Mr. Ehmler had a reasonable expectation that the Ambulance would either remain at the end of the driveway or the Driver would ask him to get out and spot, while he backed the vehicle. When the Ambulance started to move in reverse, Mr. Ehmler should have told the Driver to stop, while he move into a spotter's position. Mr. Ehmler's failure to speak was not the same as the failure of an Ambulance passenger to fail to act as spotter at a Fire Station, where the role is part of the established routine. However, Mr. Ehmler's failure to tell the Driver to stop was unacceptable.

Given how quickly the Ambulance Driver stopped and reversed directions of the vehicle on April 23, 2011, it would be unfair to impose the same level of discipline upon Mr. Ehmler as the degree of discipline imposed on Mr. Hughes. A one day suspension is harsh discipline and is not consistent, if the degree of misconduct by Mr. Ehmler is compared to the degree of misconduct by Mr. Hughes. Nevertheless, Mr. Ehmler should have told Hughes to stop. Since the Employer has made it clear to employees that they will be disciplined for violating **Rule 711.03**, some degree of discipline is appropriate.

In this situation the Employer established by a preponderance of the credible evidence that it had just cause to discipline the grievant. However, a one day suspension is too severe, given the nature of Mr. Ehmler's error and how quickly the situation developed. In this case, the one day suspension of Mr. Ehmler should be reduced to a written warning that informs him

that he had a duty to alert Mr. Hughes that he needed a spotter on April 23, 2011. Mr. Ehmiller should be given back pay for the one day that he was suspended.

AWARD:

The Employer had just cause to discipline the grievant for his failure to act on April 23, 2011 in violation of Rule 711.03.

The one day suspension imposed on the grievant was too severe.

The one day suspension should be reduced to a written warning informing the grievant of his duty as a crew member to alert an Ambulance Driver of the need for a spotter, when backing an Ambulance.

Grievant shall receive one day of back pay at the rate he was to have been paid on the date of suspension.

Dated: November 21, 2011

James A. Lundberg, Arbitrator