
In Re the Arbitration between:

BMS File No. 14-PA-1301

Metropolitan Council (Metro Transit),

Employer,

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

and

Transit Managers and Supervisors Association,

Union.

- Pursuant to **Article 6** and **Article 7** of the collective bargaining agreement effective January 1, 2014 through December 31, 2015 the parties have brought the above captioned matter to arbitration.
- The parties selected James A. Lundberg as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- The parties stipulated that they have no procedural issues and the grievance was timely submitted and is properly before the arbitrator for a final and binding determination.
- The grievance was submitted on April 8, 2014.
- The arbitration hearing was conducted on November 17, 2014.
- The parties gave oral arguments at the end of the hearing and the record was closed.

APPEARANCES:

FOR THE EMPLOYER:

Andrew Parker, Esq.
123 North Third Street #888
Minneapolis, MN 55401

FOR THE UNION:

Ronald Rollins, Esq.
4747 Chicago Avenue South, Suite 3C
Minneapolis, MN 55407

ISSUE:

Whether the Employer had just cause to discharge the grievant Nate Hanson? If not, what is the proper remedy?

FACTUAL BACKGROUND:

The Employer operates the bus, light rail and commuter rail system for the seven county Minneapolis-St. Paul Metropolitan area.

The grievant, Nate Hanson, was employed by the Metropolitan Council as a Rail Transit Supervisor in July of 2013. Mr. Hanson was an experienced railroad professional, who left Canada Pacific Railroad for a position with Metro Transit. Mr. Hanson successfully completed his six-month probation with Metro Transit. The grievant was assigned to work as a Transit Supervisor on the Green Line light rail between the cities of Minneapolis and St. Paul. As Mr. Hanson ended his probation in January of 2014, the Green Line was near completion. In January 2014, contractors, various public agencies and a Metro Transit crew conducted final tests to prepare the Green Line for customer service.

On the night of January 14 -15, 2014 Mr. Hanson was assigned to oversee vibration testing on the Green Line, where it passes through the University of Minnesota. Two three-car trains were used for the tests. Hanson's role on the January 14 -15 night shift was "Employee in Charge", "EIC." Mr. Hanson, in the capacity of EIC, was responsible for the operation of the rail cars, the safe movement of rail cars down the track, the safety of all employees who were working and the safety of the public.

The vibration testing through the University of Minnesota (between the West Bank and Stadium Village) was completed at approximately 4:30 AM on January 15, 2014. The final objective of the shift's crew on January 15th was to deliver the trains to the St. Paul depot. A significant amount of snow had recently fallen in the area and multiple grade crossings on the route had hard packed piles of snow that needed to be removed in order for the trains to move safely down the track. In order to safely move the two trains from the University to the St. Paul Depot, Mr. Hanson and the crew needed to be certain that the rails along the route were clear of obstructions and properly aligned.

The trains were traveling in tandem along the route and both trains lost power at the "Fairview Station". MT-1 was on the Northern track and MT-2 was on the Southern track. When the trains were powered up they proceeded to the "Snelling Station". Mr. Hanson went in advance of the trains to confirm that the switches¹ were set so the tracks were aligned and the trains continue moving parallel on their respective tracks.

MT-1, the first train through the Pascal Interlocking, which is adjacent to the Snelling Station, "trailed a switch", meaning the train derailed. The train derailed because the switch was not in line. The switch was incorrectly set to allow the trains to move from one track to the other, rather than to allow the train to continue moving on the same track. MT-2, the second train was running slightly behind train one and was notified of the problem by the MT-1 operator. The operator of MT-2

¹ Switches have two positions, normal and reversed. A switch in normal holds the rails so that a passing train will stay on the same track. A switch in reverse adjusts the tracks so that a passing train will move from one track to another.

was able to stop the second train within a few feet of the switch. If MT-2 had reached the switch, it would have moved onto the same track as MT-1 resulting in a collision.

Review of the situation on January 15, 2014 established that the switches at the Pascal Interlock were in “reverse” position rather than “normal”. In order for the trains to proceed in tandem on the tracks, as intended, the switches had to be in the normal position. While no collision occurred and the trains were able to continue on to the St. Paul depot, “trailing a switch” is considered a very serious event on a rail system. Consequently, Mr. Hanson was required to make a incident report together with a report that discussed the tests being done that night. In the test report the grievant also described the incident.

In the reports created shortly after the incident Mr. Hanson made the following statement:

The Pascal turnouts had, less than 15 min. prior, been inspected and confirmed to be lined, locked and checked for 1-1 and 2-2 movements by me. It should be noted that the West turnout switch heaters appeared not to be functioning and the points² had been swept with a broom in the final inspection by me. Upon this inspection, both switches on the west turnout were lined for mainline movements.

On January 23, 2014 Mr. Hanson completed a third report wherein he recited the same facts.

² A point is a moveable part of rail about 20 feet long.

Since the Green Line was still being tested, management was uncertain whether the video surveillance equipment used to monitor the line was operating at the Pascal Interlock on January 15, 2014. However, a video of the site prior to and including the incident was recovered. The video shows Mr. Hanson leaving his vehicle and going to the tracks. It does not show him take a position that would allow examination the switch alignment. Dark areas on the track indicate that the heaters were working and Mr. Hanson clearly did not sweep the points with a broom. Management also checked an electronics report, which showed that the switches at the Pascal Interlocking were in the reverse position for an extended period of time leading up to the incident. The electronics report and the video of Mr. Hanson's movements on January 15, 2014 directly contradicted Mr. Hanson's incident reports.

An investigative interview³ of Mr. Hanson was conducted. During the interview, Mr. Hanson described his actions on January 15, 2014 and drew a diagram of the Pascal Interlocking to illustrate his actions that morning. Incorporated into the drawing was a pedestrian crossing, the location of the Snelling Station and Pascal Street. All of the features in the drawing accurately reflect their relative positions at the Pascal Interlocking.

A *Loudermill*⁴ hearing was conducted on February 3, 2014. At the *Loudermill* hearing Mr. Hanson was shown the video of his movements at the Pascal Interlocking. After he viewed the video, Mr. Hanson said that it had been a long night

³ Mr. Hanson had union representation.

⁴ No due process challenge is raised in this grievance.

and he did not recall whether he had taken the steps described in his report at the Raymond Interlocking or the Pascal Interlocking.

The Employer pulled the video from the Raymond Interlocking but the camera was not focused on an area where Mr. Hanson may have examined and swept the tracks.

By written notice dated February 10, 2014 Nate Hanson was discharged from his employment with Metro Transit. The notice cites the following grounds for discharge:

Violation of Metropolitan Council Policy 4-6 Employee Conduct and Metropolitan Council Procedure 4-6a Code of Ethics.

The Employer submits that Mr. Hanson violated the “Unethical Behavior provision of Policy 4-6, which says:

*Unethical behavior may include, but is not limited to conflict of interest acceptance of gifts or favors, **falsification or misrepresentation of information**⁵, inappropriate use of confidential information, fraud and engaging in prohibited political activities.*

The Employer also contends that Mr. Hanson violated Code of Ethics 4-6a, part B, which says:

Falsification or Misrepresentation of Information

No employee or applicant for employment may intentionally provide information he/she knows to be false to the council, its employees or agents, or members of the public.

⁵ Emphasis added.

Mr. Hanson's discharge was grieved by written notice dated April 8, 2014. The parties were unable to resolve the dispute through the grievance procedure and brought the matter to arbitration for a final and binding determination.

SUMMARY OF EMPLOYER'S POSITION:

The grievant was discharged for falsifying reports he prepared and submitted over a significant event that occurred, while he was the Employee in Charge. The work that grievant was doing on the night of February 14 and 15, 2014 was critical to the operation of the Green Line. The Employer needed to rely upon the accuracy of the incident report in order to determine what happened at the Pascal Interlocking and what, if anything, needed to be done to correct the problem. Instead of submitting an accurate report about the occurrence, the grievant provided a detailed description of actions he did not take. The grievant produced multiple detailed but false reports, which were completely discredited by the video of grievant's movements at the Pascal Interlocking on January 15, 2014 and the electronics report that shows that the switches at Pascal were in reverse for an extended period of time before the incident.

The direct evidence demonstrates that Mr. Hanson did not examine the rails at the Pascal Interlocking to determine whether they were in line, when he appeared at the site twenty-five minutes before the train trailed the switch. Mr. Hanson positioned himself some distance from the rails and could not properly observe the position of the rails from his vantage point. Mr. Hanson said that he swept the points but the video does not confirm that he swept the points.

In the investigatory interview Mr. Hanson drew a diagram of the Pascal Interlocking to illustrate his actions on January 15th. The diagram accurately positioned the streets, the pedestrian crossing and the rail configuration at the Pascal Interlocking. The diagram does not resemble the Raymond Interlocking, which Hanson claimed he confused with Pascal at the *Loudermill* hearing. The Employer also notes that the Raymond Interlocking comes before the Fairview Station where the trains lost power. In his report the grievant specifically described events that took place after the trains lost power at the Fairview Station.

The Employer proved that the grievant falsified his reports about the January 15, 2014 incident.

The Employer has consistently discharged employees for the offense of dishonesty. The Employer submitted fifteen (15) arbitration awards wherein employees have been discharged for dishonesty. While the collective bargaining agreement provides for the use of progressive discipline, dishonesty has consistently been treated as an offense so egregious that discharge is the only appropriate remedy.

The grievant was a short-term employee. On January 15, 2014 he was only a couple of weeks past his probationary period. There were no mitigating facts for the Employer to consider, when evaluating the degree of discipline to impose upon the grievant.

The Employer asks that the grievance be denied and the discharge upheld.

SUMMARY OF UNION'S POSITION:

The Union submits that Mr. Hanson was tired in the early hours of January 15, 2014, when the MT-1 train trailed a switch at the Pascal Interlocking. He was not familiar with the line and mistakenly confused the actions he took at the Raymond Interlocking with his actions at the Pascal Interlocking. Mr. Hanson was discharged for being dishonest, when he simply was mistaken.

The switches at both the Raymond Interlocking and the Pascal Interlocking are similarly configured. It is easy to understand how the grievant confused the two sites.

The Employer did not produce video of what took place at the Raymond Interlocking. The Employer did not treat Mr. Hanson fairly in failing to provide the video from the Raymond Interlocking.

There is audio evidence of a MnDot employee saying that he had checked the switches and they were lined. The Employer did not take the audio evidence into consideration.

In this case the Employer rushed to judgment. They assumed that the grievant lied about what happened at a time when he was very tired, was working in an unfamiliar area and became confused. The grievant did get out onto the tracks at the Pascal Interlocking. He had his broom and pick with him and brushed some snow. He came close enough to the tracks to determine whether the rails were lined. In fact, Mr. Hanson made a mistake but he did not lie to his employer.

The grievant did not falsely report over the January 15, 2014 incident. He simply made some mistakes due to fatigue and a lack of familiarity with the Green

Line configuration. The Employer did not prove that the grievant was dishonest. The grievance should be upheld and the grievant returned to work with full back pay and benefits.

OPINION:

The evidence in this case weighs heavily in support of the Employer's position. The grievant prepared a series of incident reports that gave detailed descriptions of actions that Mr. Hanson did not take at the Pascal Interlocking on January 15, 2014. The video from that night does not show Mr. Hanson sweeping the points nor does it show Mr. Hanson positioning himself so that he could reasonably determine whether tracks were lined properly.

Significant in assessing whether Mr. Hanson carefully examined the rails at the Pascal Interlocking is the fact that the gap would be one quarter of an inch between dark colored rails on a dark night. Mr. Hanson viewed the rails from a distance and at an angle and without the aid of a flashlight. There is simply no credible evidence that Mr. Hanson followed appropriate procedures to assure that the trains would pass safely through the Pascal Interlocking on January 15, 2014 and there is no credible evidence that he prepared reports that accurately described his actions on January 15, 2014 at the Pascal Interlocking.

The video evidence demonstrates that the grievant did not examine the rails, did not sweep the points and did not observe that the rail heaters were off. In fact, the snow is melted off the rails where heaters, if they were working, would have melted the snow from the rails. Mr. Hanson's actions were documented by the video and cannot be seen sweeping the points. Moreover, any observations he made of the

rails was clearly inadequate and made from a position and distance that could not yield reliable results.

In addition to the video evidence, the electronic data from the Pascal Interlocking shows that the switch was in reverse for an extended period of time before the incident. The electronic data directly contradicts specific information contained in grievant's reports.

During the investigatory interview Mr. Hanson illustrated his statement with a drawing of the Pascal Interlocking. He accurately incorporated a pedestrian crossing and accurately placed the correct streets and stations at Pascal. Since there is no pedestrian crossing at the Raymond Interlocking, the claim that Mr. Hanson confused the Pascal Interlocking with the Raymond Interlocking is not credible.

Based upon all of the evidence submitted in this case the arbitrator finds that Mr. Hanson did submit false reports regarding the January 15, 2014 incident and he gave false information to the Employer during the investigation of the incident.

The Employer has a long history of discharging employees for dishonest conduct. There is no evidence that suggests that the Employer imposed too harsh a penalty under the circumstance. Moreover, there is no evidence of any mitigating facts that were not considered by the Employer or mitigating facts that were not given appropriate weight in determining the appropriate penalty.

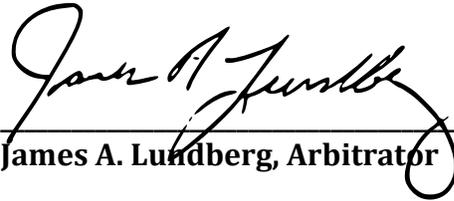
The grievant was discharged for just cause.

AWARD:

- 1. The arbitrator finds that the Employer had just cause to discharge the grievant.***

2. The grievance is hereby denied and the discharge is upheld.

Dated: November 26, 2014.


James A. Lundberg, Arbitrator