

**STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN**

**METROPOLITAN COUNCIL –
METRO TRANSIT DIVISION,**

EMPLOYER

and

**AMALGAMATED TRANSIT UNION,
LOCAL 1005,**

UNION

ARBITRATOR’S AWARD

BMS CASE NO. 23-PA-2605

EMPLOYEE DISCHARGE

ARBITRATOR:	Rolland C. Toenges
DATE OF GRIEVANCE:	December 1, 2022
DATE ARBITRATOR NOTIFIED OF SELECTION:	July 11, 2023
DATE OF HEARING:	December 15, 2023
DATE HEARING BRIEFS DUE:	January 24, 2024
DATE HEARING CLOSED:	January 19, 2024
DATE OF AWARD:	February 1, 2024

ADVOCATES**FOR THE EMPLOYER:**

Margaret L. Penland, Attorney
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FOR THE UNION:

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WITNESSES

Earl Surman, Safety Specialist

Abdalla Jibril, Grievant

Robert Brevig, Asst. Transportation Manager

Michael Heuchert, Asst. Director Bus Transp.

Dave Hanson, Deputy Chief of Operations

ISSUE IN DISPUTE

Whether the Grievant, Abdalla Jibril's conduct on October 24, 2022 constituted a violation of the parties' October 14, 2021 Last Chance Agreement?

If not, what is the appropriate remedy?¹

¹ Added to "Issue Statement" by Union.

JURISDICTION

The Arbitrator's authority is established by State Statute, Rules and Regulations of the Minnesota Bureau of Mediation Services and the terms and conditions set forth in the Collective Bargaining Agreement (CBA) between the Parties.²

The hearing record shows that the grievance at issue was duly filed by the Union and processed through the grievance procedure. The grievance not being resolved by the Parties was then advanced to arbitration. There being no procedural or substantive objections raised, the disputed matter is properly before the Arbitrator for resolution.

Article 5, Grievance Procedures of the CBA provides for arbitration of unresolved grievances:

“ARTICLE 5 GRIEVANCE PROCEDURE

Section 4, 2nd Step. . . . If no resolution is reached the dispute may be submitted to arbitration in accordance with Article 13, hereof, and the written request of either party to the Agreement.

² Joint Exhibit #1.

Article 13 of the CBA sets forth arbitration procedure and the Arbitrator's authority:

ARTICLE 13, ARBITRATION PROCEDURES

In the event a dispute or controversy arises under this Agreement which cannot be settled by the parties within thirty (30) days after the dispute or controversy first arises, then Metro Transit or the ATU, whichever is applicable, in accordance with Article 2 or 5 hereof, may request in writing that the dispute or controversy be submitted to arbitration. The state Bureau of Mediation Services shall furnish a list containing the names of seven (7) persons from which the arbitrator shall be selected. Within five (5) days after receipt of such list, the parties shall alternately eliminate one name from the list until only one name remains. The arbitration hearing shall be held within forty-five (45) days from the date the arbitrator is selected.

In making such submission the issue to be arbitrated shall be clearly set forth in writing. The arbitrator's decision shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date the arbitration hearing is completed.

In the event the arbitrator resigns or dies, the method used to obtain said arbitrator shall be employed to obtain a successor.

The parties shall divide the cost of the arbitrator equally.

The parties agree to meet and negotiate no later than July 01, 2011, to explore an expedited arbitration process which will include a permanent arbitration panel. If the parties mutually agree to such process, said process will be used for mutually agreed upon cases.

The Parties selected Rolland C. Toenges as Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The arbitration hearing was conducted in accordance with applicable statutory provisions, Rules and Regulations of the Minnesota Bureau of Mediation Services and the Collective Bargaining Agreement (CBA). The Parties were afforded full opportunity to present evidence, testimony, and argument in support of their respective case. Witnesses were sworn under oath and were subject to direct and cross examination.

No procedural or substantive issues of arbitrability having been raised, the disputed matter is properly before the Arbitrator for resolution.

The hearing record consists of argument, testimony of five witnesses, over 20 exhibits, and a video in evidence, plus post hearing briefs.

The Parties elected to file post hearing briefs due January 24, 2024. The hearing record was closed upon receipt of the post hearing briefs.

BACKGROUND

Metro Transit (EMPLOYER) provides public transportation services throughout the seven county Minneapolis/St. Paul Metropolitan area. Transportation modes include buses, light rail, and commuter rail. Metro Transit employs some 3, 200 employees, including 1,500 bus operators. Metro Transit has a comprehensive system of maintenance and overhaul facilities located throughout the Metropolitan area. Metro Transit's Engineering and Facilities department is responsible for the sustainability, capital planning, construction, and maintenance of its public facilities and support facilities. It does so through a combination of full-time staff and contractors. Metro Transit provides service to seven counties and 90 cities within the Twin Cities area covering 907 square miles. Bus operations provide over 50 million rides per year on over 120 different routes.

Amalgamated Transit Union (ATU), Local 1005 (UNION) is the Certified Exclusive Representative of some 2,000 Metro Transit employees, including bus operators, light rail operators, and mechanics in the Twin City area, The Employer and Union are parties to a Collective Bargaining Agreement (CBA) that includes a grievance and arbitration procedure for the resolution of disputes.

The instant disputes arose from the discharge of Grievant, Abdalla Jibril, Bus Operator. Discharge of the Grievant is based on violation of Grievant's Last

Chance Agreement³. The Last Chance Agreement provides discharge of the Grievant for one additional chargeable operator driving violation during its three (3) year term.

EXHIBITS

Employer Exhibit:

1. Collective Bargaining Agreement, August 1, 2020, to July 31, 2023.
2. Notice of Discharge of Abdalla Jibril, 11/25, 2022.
3. Amalgamated Transit Union, Local 1005 Grievance on behalf of Abdalla Jibril, 12/1/2022.
4. Metro Transit's Step 1 Grievance Response, 12/19/2022.
5. Metro Transit's Step 2 Grievance Response, 2/14/2023.
6. Amalgamated Transit Union, Local 1005 letter moving the Grievance to arbitration, 3/2/2023.
7. Letter to Arbitrator Rolland Toenges regarding scheduling of Grievance Arbitration hearing, 8/16/2023.
8. Position Description for Safety Specialist, 5/28/2021.
9. Metro Transit Bus Operations – Operator Rule Book and Guide, 1/1/2022.

1. ³ The "Last Chance Agreement" is included in Employer Exhibit #11, pages 52-54.

10. Customer Relations Complaint received 10/25/2022.
11. Disclosure Packet for Abdalla Jibril, 12/13/2022, including “Last Chance Agreement.”
12. Video of October 24, 2022. Accident involving Abdalla Jibril.
13. Bus Operator Training Manual – Chapter 10: On the Road.
14. Bus Operator Training Manual – Chapter 12: Handling special situations.
15. Metro Transit Standard Operating Procedures #12 – Intersections – Traveling Straight Ahead, 9/1/2021.
16. The Smith System Keys to Safety.
17. Human Resources Policy 5-1, Employee Conduct Policy, 2/22/2017.
18. Human Resources Policy 6-1d, Operator Performance – Bus Operators Procedure, 8/13/2005.
19. Safety Specialist Safety Conference Notice and Corrective Action Plan, 11/2/2022.
20. (not entered on record)
21. (not entered on record)
22. Dave Hanson Notes regarding review of October 24, 2022 Accident involving Abdalla Jibril.
23. Affidavit of Steve McLaird, 12/6/2022.⁴

⁴ Not admitted into evidence, Union objection, author not available for cross examination.

POSITION OF THE PARTIES

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

The Grievant is in violation of the 10/14/21, Last Chance Agreement.

The Last Chance Agreement was violated on 10/24/22, when the Grievant caused a bus passenger to fall with injury.

The Grievant was hired 7/22/2018.

The Grievant had his first violation on 2/21, when failing to stop at a railroad crossing.

The Grievant in March of 2021, hit a child on a bicycle and failed to report the matter to the Control Center.

Although the Grievant was terminated May of 2021, he was allowed to continue work, subject to a Last Chance Agreement, dated October 14, 2021, to continue in effect until October 14, 2024.

Terms and conditions of the Last Chance Agreement, provide that Grievant could not have more than two chargeable accidents during life of the Agreement.

The Last Chance Agreement further provided that, should the Grievant be in violation, it would result in immediate termination to be considered just and merited.

On April 3, 2022, the Grievant was involved in his first chargeable accident under the Last Chance Agreement, which involved hitting an orange construction barrier causing damage to the bus.

The April 3, 2022 accident was investigated by a Safety Specialists and found to be a chargeable accident, meaning it was preventable.

The Grievant was issued a Disciplinary Notice "Record of Warning" on April 11, 2022.

The Grievant did not grieve the April 11 2022 Disciplinary Notice.

On October 24, 2022, the Grievant was involved in his second chargeable accident under the Last Chance Agreement, which involved application of the bus brakes suddenly and forcefully, causing a passenger to fall and suffer injury.

The need to apply the brakes suddenly and forcefully was caused by the Grievant failing to be prepare for a traffic light change, which is a violation of operation guidelines and training ("expect the unexpected").

A pedestrian was at the crosswalk with the bus traveling beyond the marked crosswalk before stopping.

The injured passenger had left her seat in the rear of the bus and signaled to get off the bus.

The sudden stop forced the passenger off balance and catapult forward off toward the front of the bus, hitting forward seats.

The passengers' fall was so violent that other passengers expressed concern about her wellbeing.

The Grievant failed to properly report the incident to the Control Center as is required.

The accident became known to management when the mother of the injured passenger called in to report it the following day.

The Safety Specialist found that the accident was caused by failure of the Grievant to follow bus operation guidelines and training.

Termination of the Grievant is just and merited under terms and conditions of the Last Chance Agreement.

The Last Chance Agreement is enforceable.

The Arbitrator's role in the Last Chance Agreement is limited to determining whether the Grievant violated its terms.

The record clearly supports termination of the grievant.

The Grievant was intensively and repeatedly trained in the proper procedure for approaching an intersection, including Chapter 10 of the Bus Operator Training Manual and Intersection SOP.

The evidence does not support blaming the passenger for the fall, which was due to the Grievant's irresponsible driving.

The passenger was simply preparing to depart the bus and could not be expected to anticipate being launched forward crashing into seats.

For all of the above reasons, the Employer respectfully requests that the Arbitrator deny the grievance in its entirety.

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

The Grievant, Abdalla Jibril, was wrongfully terminated from his job as a bus operator.

Even with the Last Chane Agreement, the Grievant is entitled to due process.

Whether the Grievant is totally responsible for fall of the passenger falling is the question to be answered, for if he was not responsible, he should not be terminated.

The bus route the Grievant was travelling on October 24, 2022 was a route he was very familiar with having driven this route many times before.

The street was wet as it had rained that day, but the air was clear and only a few passengers were in the bus.

One of the passengers was sitting in the rear toward the back of the bus.

The bus was traveling north on Nicollet Avenue toward American Boulevard, which is a straight line with stop lights every few blocks visible ahead for some distance.

When an operator approaches a “stale”⁵ green stop light they are not required to stop but are to cover the brake with their foot prepared to stop if the light changes to yellow.

The Safety Inspectors report of what happened is not what happened at all, as is shown in the video.

⁵ A “stale” green light is a light that has been green for some time.

The Grievant is accused of not slowing down, but he was slowing down as can be observed in the video.

The Grievant was slowing down and had placed his foot over the brake pedal as he approached the intersection.

The bus speed is not accurately recorded as the system only records one data point every 5 seconds.

The bus camera system will record the speed for 5 seconds, even after the bus has slowed down.

Even after the bus has come to a complete stop, the speed indicator shows 26 mile per hour.

The record shows that the Grievant applied the brakes within $\frac{3}{4}$ of a second after the light changed, almost twice as fast as the generally accepted reaction time.

The claim that the Grievant was responsible for the passenger fall is demonstrably false.

There were several factors that caused the passengers fall that were beyond the control of the Grievant.

The passenger was sitting in rear of the bus talking on her cellphone.

At the time the Grievant applied the brakes, the passenger was standing up with her back toward the front of the bus talking on her cellphone and not holding on to anything.

The passenger was doing the worst thing she could be doing on a bus and that is why she fell.

There are hand holds everywhere on the bus for when standing up on a bus you must be holding on to something or you are going to fall.

The Grievant was not responsible for the passenger falling and should not have been terminated.

Although the Last Chance Agreement calls for termination, for an additional accident within a three-year period, it also expressly provides discretion to depart from the policy based on mitigating and aggravating factors.

The Union respectfully requests that the Grievance be sustained, and the Arbitrator order Metro Transit to immediately reinstate the Grievant with a full make whole, including, but not limited to back pay, lost benefits, and any other terms necessary to place the Grievant in the position that he would have been in had Metro Transit not unjustly terminated him; and remove all references to the discharge from Jibril's work history and employment record.

DISCUSSION

The Grievant was hired as a Bus Operator on July 2, 2018. Although the record shows a number of violations concerning the Grievant, the matter at issue in the instant case is whether an incident on October 24, 2022, involving the Grievant constitutes a violation of the Parties Last Chance Agreement⁶ The Last Chance Agreement originated as an alternative to termination of the Grievant based on violations occurring up to that time. The Last Chance Agreement provided for continuation of employment over the following three years, subject to Grievant having no more than two violations during that time. The Grievant was charged with a first violation under the Last Chance Agreement, which was not challenged.

The Grievant was charged with a second violation under the Last Chance Agreement based on an incident occurring October 24, 2022. In this recent incident the grievant was charged with failing to follow bus operations procedures, resulting in a passenger falling with injury. Bus operational monitors, in addition to recording mechanical functions, include a video providing detailed audio and visual information concerning the incident.

The violation of bus operational procedures charged is that the Grievant failed to prepare for a change of the green traffic signal, which required an overly abrupt

⁵ Employer Exhibit #11, pages 52-54.

hard braking stop to avoid entering the intersection on a stop light.⁷ The abrupt stop resulted in a passenger losing balance and being violently careened five seat rows forward.⁸ The passenger's fall was stopped when hitting the floor and seats forward in the bus. Other passengers observing the incident expressed concern for the fallen passenger's well-being.

The bus onboard video shows the passengers position the moment the bus was hard braked to an abrupt stop. The video shows the passenger seated in the articulation (rear) area of the bus.⁹ The video shows the passenger get up from her seat, move forward in the aisle, look out the side window, and then pull the departure cord to signal intent to get off the bus.¹⁰ The passenger held the grab bar with her left hand, then turned toward her seat. After letting go of the grab bar and before reaching her seat, the hard abrupt braking¹¹ of the bus caused the passenger to lose balance. The passenger flew forward in the aisle, eventually stopped by seats forward in the bus. The passenger's injuries received from the fall as scrapped and bruised arms, including pain in back and shoulders.

The Grievant failed to report the incident as is required. However, the passengers mother contacted Metro Transit the following day regarding the incident which

⁷ When the bus was finally stopped it had passed over the intersection crosswalk. A pedestrian was standing at the crosswalk waiting to cross. The pedestrian needed to walk around the front of the bus when crossing.

⁸ The bus video indicates the bus was traveling some 26-28 miles per hour, when a short distance from the intersection, when the Grievant applied brake.

⁹ The bus at issue is a tandem (two section) bus referred to as "articulated." The area where the two sections of the bus are joined is the articulation area.

¹⁰ It was necessary for the passenger to leave seat, as there was no departure signal cord where she was seated.

¹¹ The position of the passenger and moment of abrupt braking can be determined by the onboard audio and video.

caused her daughter's injury. The incident came to the attention of the Safety Inspector when following up on the customer complaint.

The Grievant failed to report the incident as is required when a passenger falls. The Grievant denies being aware of the incident involving the passenger, even though other passengers were audibly expressing concern for the fallen passenger's wellbeing.

There is no dispute that the Grievant is to be terminated for an additional chargeable (preventable) accident under the Last Chance Agreement. The only issue is whether the incident on October 24, 2022 was preventable .

FINDINGS

The Grievant was in violation of bus operation procedures and training by failing to prepare for a change in the traffic light signal, allowing the bus to stop in an orderly and timely manner.

There is no evidence of extenuating circumstances, such as climatic conditions,¹² limited visibility, mechanical malfunction, unfamiliar conditions, or health condition of the Grievant.

¹² The street was wet from an earlier rain, but there was no evidence it contributed to the hard braked abrupt stop.

The bus route (heading north on Nicollet Avenue, Bloomington) was a route very familiar to the grievant, having traveled this route many times before.

The Grievant having considerable experience operating the bus would have had full knowledge of its stopping capabilities, including time and distance.

It is axiomatic that, absent extenuating circumstances, the need for an abrupt hard braking stop was due to the Grievant failing to be prepared for change in the traffic signal.

The argument that the traffic light was not clearly visible¹³ until near the intersection is why the Grievant should have slowed down earlier and be prepared for it to be yellow or red.

The Grievant was alerted that a stop was approaching, even before the traffic light turned yellow (17:54:31.94). The passenger had pulled the departure cord some four (4) seconds earlier (17:54: 28.11).¹⁴ The Grievant applied his brake (17:54:32.75), nearly five (5) seconds after the departure cord was pulled.¹⁵

The only matter at issue in the instant proceedings is whether the incident involving the Grievant on October 24, 2022 constitutes a violation (chargeable/preventable accident). Evidence supports the affirmative. Accordingly, the Last

¹³ The Union argues the traffic light was not visible until getting near. Employer argues the traffic light could be seen from a considerable distance.

¹⁴ The passenger was requesting a stop just past the intersection, which was announced on the bus audio system.

¹⁵ Source: Union Brief @ pages 11 & 25.

Chance Agreement provides for termination of the Grievant to be just and merited.

The passenger was not complicit in fall and injury. The passenger was preparing to depart the bus in a normal manner, unaware of the sudden abrupt stop.

Had the bus stopped properly, the passenger would not have been subject to the sudden and substantial force resulting in her fall and injury.

Although the injured passenger would have been more secure if seated , as were the other passengers, she was preparing for departure (pulling the departure cord), which required standing in the aisle.¹⁶

The sudden hard braking occurred the moment injured passenger had removed left hand from grab bar and before reaching the seat.

Metro Transit's emphasis on safety is warranted and essential to the welfare of passengers, pedestrians, operators, and other motorists.

The Grievant was provided extensive training given bus operators, including periodic review and retraining.

¹⁶ The record shows it was necessary for the passenger to get up from her seat and go forward in the bus aisle to access the departure cord.

The Arbitrator is mindful of his authority, which requires strict adherence to the terms and conditions of the Last Chance Agreement.ⁱ

AWARD

The Grievance is denied.

The incident at issue was preventable, calling for termination of the Grievant as just and merited under terms of the Parties Last Chance Agreement.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they have presented their respective cases. It has been a privilege to be of assistance in resolving the grievance matter.

Issued this 1st day of February, 2024, at Edina, Minnesota.

ROLLAND C. TOENGES, ARBITRATOR

CC: BMS

ⁱ Last Chance Agreement (Employer Exhibit #11, pages 52-54) provides: "If Mr. Jibril's grievance issue submitted to Arbitration the jurisdiction of the Arbitrator is limited to determining whether Mr. Jibril was in violation this agreement. All parties agree that the Arbitrator shall not have jurisdiction to modify the discharge penalty in the event such a violation is found."

