IN THE MATTER OF ARBITRATION BETWEEN

KANSAS CITY AREA TRANSPORTATION AUTHORITY

AND

AMALGAMATED TRANSIT UNION
LOCAL NO. 1287

GRIEVANT: DORA HURD

FMCS NO: 07-02306

DECISION OF ARBITRATOR

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In accordance with the provisions of the Collective Bargaining Agreement between the parties, Kansas City Area Transportation Authority, hereinafter called the "Company," and Amalgamated Transit Union, Local No. 1287, hereinafter called the "Union," Geoffrey L. Pratte was selected as impartial arbitrator to decide a dispute between the parties.

A hearing was held in Kansas City, Missouri on May 23, 2007. The Company was represented by the Honorable Jeffrey M. Place, Attorney at Law, and the Union was represented by the Honorable Scott A. Raisher, Attorney at Law. Vigorous presentations were made by both parties and post-hearing briefs were filed.

GRIEVANCE

By her grievance filed on February 2, 2007, the Grievant complained that she had been discharged without just cause and demanded to be reinstated and made whole.

CONTRACT PROVISIONS

Among the provisions of the Contract which are most relevant to this dispute are the following:

ARTICLE I
General Provisions

Section 1.12. Management - Discipline.

* * *

(b) The Union further recognizes that the power of discipline is vested exclusively in the Authority, and it will not attempt to interfere with or limit the Authority in the discharge or discipline of its employees for just cause; subject, however, to the right of any employee to whom this Agreement is applicable and who many be discharged or disciplined, to present as a grievance, for action in accordance with the grievance procedure hereinafter in Section 1.13 set forth, the question whether he has been discharged or disciplined for just cause;...

* * *

(e) Warning slips may remain in an employee's file but shall not be considered after (12) months for the purpose of progressive discipline, but may be considered in reviewing the employee's record only for determining whether moderation of discipline is warranted.

Section 1.13. Grievances.

* * *

9. If, as concerns any grievance presented, the decision of the immediate superior official, Superintendent, Lead Foreman, Manager or the Director when none of the others exist, the Department Director or Arbitration Board, or any of them, shall sustain the position of the employee, the latter shall be awarded such remedy as the Arbitrator shall determine, less any interim earnings or unemployment compensation.

Also relevant to this matter are the following provisions from the Company's Manual of Instruction, Operating Rules and Discipline Code:

SECTION VIII - ATA DISCIPLINE CODE

. . . Whenever disciplinary action is contemplated, the supervisor should consider the employee's total record and work history before determining the penalty. It is most important that supervisors review the entire work record and determine whether a particular violation is an isolated instance in an otherwise good work record or is indicative of a continuing pattern of violations.

In addition, the following Work Rule from the same manual is also relevant:

* * *

5. OBSERVING THE LAW

* * *

5.3. Carrying or displaying a weapon on Authority property while on duty is prohibited.

First Offense: Discharge

ISSUE

Did the Company have just cause to discharge the Grievant, and if not, what should the remedy be?

STATEMENT OF FACTS

The Company operates a system of mass transit in the Kansas City area, using over two hundred buses daily and employing some five hundred bus operators. As acknowledged in its representative's opening statement, it is keenly aware that it operates in some poor areas and serves some people with mental problems or dubious character. In its approximately fifty-six thousand runs a year, there has been an average of twenty-one assaults yearly on bus operators (an operator has a .036 per cent chance of being assaulted). Some assaults are serious in nature, whereas some are merely offensive, such as verbal threats or spitting. Certain of the assaults are unverifiable, and some of these may be fraudulent. The Company believes assaults cannot be prevented totally. At night the Company operates from thirty to forty buses, with most of these in areas of concern.

For a long time the Company has had a publicized rule that employees, including bus operators, may not carry a weapon on Company property, including buses, with discharge being the punishment for a first offense. After the state of Missouri passed a law permitting the carrying of concealed weapons with a permit, the Company reconsidered its rule and reaffirmed it, sending out a bulletin to this effect with all paychecks in October, 2003. The Union does not at all dispute the fact that the rule is well known.

To give an extremely brief synopsis of the incident underlying this matter, the Grievant, who had a valid permit for a concealed

weapon, on her run in January 31, 2007 brought with her a pistol because she had been harassed and assaulted by the same passenger several times since November, 2006. He did not appear on her shift that day, and she forgot to remove the gun from beneath her operator's chair when she left. When the gun was found she was discharged on February 1, 2007. This short summary is given here simply to provide a framework for the more important details following.

The Grievant began working for the Company in mid-1993 and evidently has a generally good work record, having received ten awards for good driving. She has a valid permit for carrying a concealed weapon.

During cold weather months she operates a run along 39th Street in Kansas City, a high crime area; the run is from 2:10 P.M. to 12:30 A.M. She bids on a run for a period of months, and was on this run from October through December, 2006, and then had bid again for January through March, 2007. Although she had encountered abusive customers before, she had never had a steady problem with one particular customer.

In November, 2006 a male passenger asked the Grievant for money at a stop. When she refused he threw a beer can at her and hit her leg, but without any physical damage. She called the dispatcher to report the incident, but the passenger had already left. She did not think of doing a written report, nor did the dispatcher suggest she do so. Evidently shortly after this initial

incident she bid again for this run for the following quarter.

On December 27, 2006 the same passenger boarded the bus wearing a hooded sweatshirt and dark glasses, so that she did not recognize him. When he tried to reboard her bus later on that run she realized who he was and refused him entry. The following day he was at one of her stops and she again refused to let him board. He spit at her and ran away. She called dispatch, which sent a road supervisor. His report indicates the Grievant had previously complained about the man. When the supervisor arrived the Grievant realized the spit was on her coat; she testified she had suggested the supervisor have the spit tested for DNA to determine an identity, but this was not done. She also saw the man on December 29, but he ran away; she did call this in to dispatch which sent a supervisor to check. This supervisor believed matters were getting serious.

She said the man appeared always to be high and wore dirty, dark clothes, at times seeming to wear one set of clothes under another to change disguises. He would point at her and mimic for her to pick up a phone, realizing she would try to call when she noticed him. She began to carry two cell phones, not wishing to rely solely on the bus radio. A female passenger told her that the man looked like someone who once had followed her home at night from the bus, and another person told her the man was a known rapist.

On January 2, 2006 she called the dispatcher to report she had

seen the man at a stop, but he was not then trying to board the bus. Later that day she filled out a Form 288 report describing her encounters with the man. The man was arrested for urinating in public after she reported him to the police during her run. (It is a little uncertain when this arrest took place, but it probably occurred early on January 3.) When the Grievant showed up to talk to the police they could not do anything about the assaults because she had not filled out timely reports about the beer can or spitting incidents. When she tried to fill out a complaint she could not because she did not know the man's name.

After she identified the man in a police lineup, an officer suggested she seek an Ex Parte Order of Protection under Missouri's Adult Abuse Act because the man had been stalking her. She obtained the order, but by the time she got back to the police station the man had already been released. She missed the scheduled follow-up date for the hearing on this original Ex Parte Order because she thought it was to be one day later; on January 9 she did obtain a second order. On January 8 she had seen the man again; and the police arrested him for trespassing, but did not serve him with the order.

On January 10 another operator, who was aware of the situation, noticed the man at one of the stops on the Grievant's run and called her; she called dispatch, which notified the police. The police could do nothing, however, because the man was not actually around the Grievant and could not be found when they

arrived.

On January 26 a somewhat bizarre series of events occurred. Around 4:00 P.M. the Grievant reported seeing the man walking at 39th Street and Troost and called dispatch for a supervisor and the police, since she had her Ex Parte Order with her so the police could serve him. (He evidently had not been served with the second order.) During a series of calls between the Grievant and dispatch and between dispatch and the police, a logistical problem became apparent of having the police converge on a target who was moving from place to place and also have the Grievant with her papers present at the same time. In the meantime the Grievant had phoned her husband, who arrived with at least one friend and found the man at a bus shelter. Her husband and the friend blocked the man from getting onto two successive buses; it was now an hour after her first call to dispatch. A supervisor arrived forty minutes after being dispatched but did not at first see the man until the Grievant's husband approached him and pointed the man out; the man tried to leave and the Grievant's husband and friend physically restrained him. The Grievant arrived and got out of her bus, and she said the man ran to her, and a general mêlée ensued in the middle of the street. The police arrived and handcuffed the man, but the papers the Grievant had with her were not sufficiently complete for the police to serve him (she had only the initial cover page), and they let him go. The Grievant at her own request was relieved from duty to return to her home and pick up the rest

of the papers she had. Later that night she again noticed the man a little before midnight and called the police, who finally were able to serve him with the Ex Parte Order.

On January 30 she was told the man had been seen along her route and she called her husband. He found the man, and they had an argument, with the individual supposedly telling her husband he would "get" her. Her husband reported this to her.

On January 31 she brought her pistol, a 9 mm semi-automatic, and placed it under her seat. She felt threatened and believed the Company was not helping her. At the end of her shift she forgot the gun. Nothing had happened that night, and she had no purse. She realized later that she had left it, but it had already been discovered. At the hearing she explained she had brought the gun that night to defend herself in whatever way needed should he attack her.

She agreed she had made a mistake in bringing the gun, but she had thought that all she could do was report events to supervisors, and that did not seem to help. No one had told her that she could have sought a transfer to another route, and she thought she was locked into her present route because of her bid for January through March.

Mr. Tommie Hill, who had been with the Company for twenty-one years, had been an operator and then a road supervisor, monitoring and responding to incidents on the buses, including problem passengers. He had become a senior road supervisor in 2005. He

was familiar with the Grievant's problems with the passenger. He claimed she had never used the term "stalking" or the phrase "he said he'd get me." He did not view her reports as involving serious harm, and said that each time she reported a problem a supervisor had been sent, and at times a supervisor had followed her bus, although always in a white Impala clearly marked as being a "Metro" vehicle. He had encouraged her to obtain a restraining order, and the Company had assisted the police in serving the order on this individual through a supervisor locating him and telling the police where he was. Such an order would allow the police to arrest the man even if he were not acting in a violent manner against the Grievant, but it could not keep him from simply being on 39th Street. During this time the Company had had him arrested for urinating and trespassing at a stop, but Hill did not think the Company could have done anything more. In hindsight he acknowledged that he could have had one of the Company's three "secret riders" placed on her bus. He also agreed that normally an operator was supposed to complete a three-month bid and he had not known if the Grievant could transfer because of unusual circumstances. He did not speak with her about this, nor did he talk to Bob Kohler, the Director of Bus Operations, about the matter.

Hill noted that whenever a supervisor followed her the man never showed up. He did not believe a secret rider would have helped or that the problem had been serious enough to justify use

of a secret rider, because he had never heard her say the man had threatened her explicitly.

When Hill learned the pistol had been found on the Grievant's bus, he agreed that discharge was appropriate. The rule was clear, and the circumstances did not justify its violation. He did not review her file because her previous record was not in issue.

Kohler stated the rule against weapons had to be enforced because not to do so would only promote violence; arming employees would escalate violence and lead to rolling gun battles, possibly causing injury to innocent passengers. For this basic reason he even was opposed to permitting operators to carry mace. The rule had been established by the Board of Commissioners which oversaw the Company, and he and all employees were bound by it. He had made the ultimate decision to discharge the Grievant in February, 2007; he did not view the circumstances as warranting carrying a gun, which might discharge accidently or be taken away from the operator by the passenger.

Kohler and the Union's president had talked about security for bus operators because of assaults, including forming a security committee and arranging for an increased security presence, such as a private force or a police presence on buses. Starting about four weeks before this hearing [evidently in late April, or a little more than two and a half months after the Grievant's discharge], police had been stationed at 39th and Troost, which Kohler agreed was a rough neighborhood. In addition police officers now rode

buses at night randomly, and the Company was planning to expand this program. He stated this program was not a result of the Grievant's discharge, and that there had been officers along 39th Street before to create visibility, although no more than four officers had been around at any given time. It had taken some coordination to provide for police riders.

A part-time bus operator for the Company, Michelleton Elbert, had worked for the Company for eleven years. For sixteen years she was also a juvenile officer, working with juvenile delinquents and youth with mental problems. She testified that she had been assaulted twice by passengers, the last being a year before the hearing. On this occasion a passenger who smelled of drugs kept getting closer to her and became belligerent. When she asked him to get off, he first threatened her and then hit her with his fist when she called the dispatcher. As he threw a second punch at her, another passenger shoved him off the bus, whereupon he busted out windows on the bus. When a supervisor arrived, he did not express any sympathy but only asked her what she expected him to do. She lost teeth from the blow, and yet this supervisor actually wrote her up for the incident, and Hill gave her a verbal warning also because she and the supervisor had gotten into an argument. Hill agreed the supervisor had been rude to her; accordingly, Hill disciplined the supervisor as well. On an earlier incident she had been hit by a passenger, and a judge told the assailant not to ride a bus she was driving; a dispatcher, however, told her she would be

suspended if she refused this passenger. She had obtained a restraining order against this passenger but had not provided a copy to the Company, thinking the Company knew about the order. At the second assault she was told that if she gave the Company a copy of a restraining order, the Company would "go from there."

Claiming that the Company's expressed concern had not been translated into action, she believed operators had to be protected and should be allowed at least to carry mace, which postal workers were allowed to carry and which would give an operator time. When she went to look for a juvenile in connection with her job as a juvenile officer, she was allowed to carry mace and a gun. Although a person who had been maced might still come back, so might a person who had been served with a restraining order. Other passengers could be in danger if an operator were attacked while a bus was moving. Hill agreed it had taken a supervisor seven minutes to respond to the second assault on Elbert and that two supervisors had not treated her appropriately.

POSITIONS OF THE PARTIES

The **COMPANY**'s arguments may be summarized as follows:

1. The Company had just cause to terminate the Grievant.

   A. The rule prohibiting the possession of weapons in its workplace is reasonable. The Company has taken adequate steps to provide for the safety of its

operators; other arbitrators have upheld such a rule.

B. The Grievant was clearly aware of the rule but chose to violate it.

C. The Company has consistently enforced its rule and has discharged one operator for using a small pen knife in an altercation with a passenger. The fact some maintenance workers carry small knives and screwdrivers as tools for their work does not amount to a violation of the rule.

D. Discharge is appropriate, and there should be no "second chance." The risks are too great. Leniency will send a mixed signal to other employees.

2. The Grievant's problem with the passenger did not justify her violation of the rule concerning weapons.

A. Nothing indicated he posed a serious threat to her, and her fear was irrational.

B. In fact, the Grievant is responsible for escalating matters by her conduct and that of her husband and friends; it was the passenger who was the victim at the end of the affair.

C. Her statement that she took the gun probably to "pistol-whip" the passenger indicates a lack of fear on her part.

D. Arbitrators have held that dangerous circumstances do not justify violating a rule against weapons in the workplace; a gun battle on a public vehicle could be disastrous.

3. The Company's actions were more than adequate to protect the Grievant.

A. Supervisors followed her bus, assisted in having the passenger arrested, and assisted in the Grievant obtaining a protective order.

B. The passenger had a clear right to be in the area, and he did not pose a serious threat to the Grievant.

C. The Company's failure to offer the Grievant a transfer to another route or to place a secret rider on her bus was justified by the facts known to it; the Grievant had not disclosed to the Company that the man had threatened to "get her" or that she had heard he had followed other passengers home or was a "known rapist."

4. The Union's dissatisfaction with the rule prohibiting weapons can be addressed through bargaining; it does not justify violation of the rule.

5. The grievance should be denied.

The UNION's arguments may be summarized as follows:

1. Because of the seriousness of discharge, the Company has the burden of proving just cause, which includes proof not only that a grievant committed an offense, but that discharge was the appropriate remedy.

2. Arbitrators have the duty and the authority to set aside a discharge if the discharge is unduly severe or unreasonable under the circumstances, including all mitigating circumstances; consideration should be given to whether a lesser penalty will serve the employer's purpose. It is not simply the seriousness of the offense, but also the total picture which must be considered. Chief among mitigating circumstances are an employee's length of service and good work record.

3. Here the Company considered only the seriousness of the Grievant's offense and not any mitigating circumstances.

   A. The Grievant had almost fourteen years of service, had received ten Distinguished Driver's awards, and had had no prior discipline. Her misconduct at issue was an anomaly in a very good history of employment. Nothing suggests she is an incorrigible employee.

   B. Additionally, other mitigating circumstances are present.

i. She faced a real risk of imminent assault. The man obviously was intent on harassing her, and other passengers aware of him told her that he was dangerous. He kept coming back, despite being arrested, having a restraining order against him, and being "whooped" by the Grievant's husband.

ii. Only after the fact did the Company acknowledge it could have transferred her or had a secret rider on her bus; the Company bears some responsibility.

4. The Company clearly failed to consider the Grievant's work record, even though Section 1.12 of the Agreement implies that a review of an employee's entire record will be considered. Additionally, Section VIII of the Manual of Instruction/Transportation Rules mandates that before determining a penalty, a supervisor is to consider an employee's total record and work history.

5. The Company's failure to advise the Grievant of available options requires the discharge to be set aside.

A. The Grievant from the beginning reported matters to the dispatcher, cooperated with supervisors, and when told to document the problem did so at once.

B. She did not act inappropriately in not allowing the man to ride her bus following the incident with the

beer can; no supervisor reprimanded her for this; and Hill told her she did not have to let him ride.

C. She had dealt directly with supervisors and Mr. Hill, the Senior Road Supervisor; no one told her she should go further up the chain of command to Mr. Kohler.

D. The discharge of another operator for using a pen knife in a fight with a passenger is clearly distinguishable because she clearly violated an operating rule by not contacting the dispatcher.

E. Hill acknowledged he understood the Grievant believed she was in a stressful situation, and Supervisor Lincoln concluded in a report that things were getting serious. Despite this, Hill himself did not bring the matter to the attention of Mr. Kohler, did not make further inquiries of the Grievant about her concerns, or advise her of options available to her, such as a transfer or a secret rider.

6. No evidence warrants the Company's alleged concern that it could not enforce its rule had it not discharged the Grievant or if the arbitrator set aside the discharge.

7. The bus operators do not believe the Company is all that concerned for their safety.

A. Elbert, who had been seriously beaten by a passenger, testified to this and said things needed to change.

B. The Union's members voted to take this matter to arbitration, evidencing their frustration over the Company's lack of concern.

C. Kohler admitted the Union's president had complained about lack of security for operators.

D. The Company has now started a program of putting police officers randomly on buses at night in certain areas, including the Grievant's run--a laudable first step.

8. The grievance should be sustained and the Grievant reinstated and made whole.

DISCUSSION

Initially the Arbitrator wishes to set out certain factors as firmly established:

1. The rule itself prohibiting possession of weapons in the Company's workplace is reasonable, and nothing in this decision should be taken as an indication it should be changed;

2. The rule is well known;

3. The Grievant violated the rule, and did so knowingly.

These above factors alone, however, are not enough to base a decision upon here. The Company clearly has just cause for discipline; the trickier question is whether discharge was appropriate in this particular matter. The Arbitrator finds that it was excessive here, despite the gravity of the offense, for the following reasons.

It is evident that, in making its decision to terminate the Grievant, the Company considered only the gravity of the offense. Mr. Hill admitted he looked only at the seriousness of the matter, and there is no evidence that Mr. Kohler considered anything more than this either.

Arbitrators have long held, however, that in assessing an appropriate penalty for an offense--even a very serious one--mitigating circumstances must be taken into account. Here none were, neither the Grievant's length of service, almost fourteen years, nor her evidently good work record. There was no evidence presented whatsoever that she had in the past presented problems for the Company which required serious discipline against her. As the Union points out, the Grievant's behavior on January 31, 2007 was an anomaly, something entirely out of line with her previous work record.

This leads to another important mitigating factor, the fact that there was more that the Company could have done to help the Grievant. Mr. Hill admitted he could have had a Company "secret rider" placed on the Grievant's bus, but then offered his belief

that it would not have helped, without explaining why he believed it would not have helped. If it would not have helped, then one wonders why, shortly before this hearing, the Company decided to start a program in which police officers randomly rode buses at night. Would not something like this have helped the Grievant?

Additionally, the Company could have looked into a transfer for the Grievant. The Arbitrator is not at all persuaded by the claim that the Company had no cause to believe the situation was serious enough to warrant further action on its part. On December 29, 2006, an investigating supervisor had concluded matters were getting serious. The Company also was aware that the Grievant had obtained two restraining orders against the passenger because a judge (or possibly two judges) had concluded she had provided sufficient initial evidence that he was stalking her. Does the Company honestly believe this is a trifling matter? Mr. Hill admitted the Grievant was under considerable stress, but claims he was never told by her that the man had threatened he would "get" her. In view of the series of events leading up to January 31, 2007, was that really necessary? On January 26 a supervisor had witnessed an incident in which the man had run towards the Grievant and a fracas had ensued in the street. It is difficult to understand why the Company did not believe the matter was serious enough to warrant more action on its part to protect its employee. To claim that her fear was "irrational" and that she was responsible for escalating matters is simply not persuasive. The

fact she may have intended to use her gun to "pistol-whip" the stalker does not indicate a lack of fear on her part; she had to go on her run, and evidently believed, misguidedly, she would be better prepared to attend to her own safety with the gun rather than without any help.

The Company has furnished this Arbitrator with six decisions by other arbitrators who have upheld discharge for violation of similar no-weapons rules. Four of these involve transit companies. All of them merit consideration here, if only to point out some important distinctions.

In Transit Authority of River City, 79 LA 508 (Staudter, 1982), the discharge of a short-term bus operator whose service record was not good was upheld after she took a pistol from her side pocket and fired it into the ground after she had been slapped by an unruly passenger. Arbitrator Staudter referred to a slightly earlier decision by Arbitrator Volz, who had converted a discharge for violating a no-weapons rule to a suspension without pay for an employee who had a long and good record. In the present case, the Grievant has a long and good work record.

In San Diego Trolley, 112 LA 323 (Prayzich, 1999), discharge was upheld for a three-year employee who had been making threats. The factual differences between that case and the present one do not need explanation.

In Johnston America Corp., 116 LA 868 (Franckiewicz, 2001), discharge was upheld for a worker who had brought a stun gun to

work for the alleged purpose of defending himself against a co-worker. Because the grievant there had refused to identify the allegedly threatening co-worker, the arbitrator gave no weight to the grievant's claim of self-defense.

In Metropolitan Transit Authority, 81 LA 655 (Dale, 1982), the grievant had a gun in his possession and actually shot a motorist during an altercation. The grievant claimed he had redeemed the gun that day from a pawn shop and had left it in his grip, discovering it a few hours into his route and concealing it until his shift was complete; the arbitrator assumed his story to be true, but nevertheless a bit suspect. The arbitrator found him to have violated a known rule which had been strictly enforced by discharges of ten employees in a period of six years. In the last paragraph, however, Arbitrator Dale noted pointedly that the grievant was not a long service employee and that his prior work record was "cloudy," so that there were no mitigating factors which would provide a basis for a lesser penalty. The inference here is obviously that a long and good service record might justify a lesser penalty.

In another case involving the same company at 75 LA 571 (1980), Arbitrator Marcus was faced with a situation where a brother of a driver whose bus had broken down at night in a bad section of the town and who was waiting a long time for a tow truck to arrive brought him a gun from the driver's home. Later, and while still waiting, the now armed driver was approached in a

threatening manner by three males. The driver shot and killed one of them, who turned out to be unarmed. Arbitrator Marcus agreed that the company had failed to provide a safe work environment, but found no basis for setting aside the discharge in this tragic case, noting that a death had occurred. In the present case, the situation fortunately did not go to such an extreme. If it had, the factor of a death might easily dictate another result.

The sixth case cited by the Company here is difficult for the present Arbitrator to accept. In Marathon Petroleum, 93 LA 1082 (Marlatt, 1989), the employee had accidentally left some alcohol and a gun in his car after leaving a family gathering; the car was simply parked on the company lot, and there was no evidence the employee consumed any of the alcohol at work or had any intention of using the gun at work. The arbitrator upheld the discharge, stating he was unaware of any case setting aside the discharge of an employee for violating the no-weapon rule, that he could make no distinctions between innocent forgetfulness and an evil intent, and that life was unfair. All the present Arbitrator can say in regard to this opinion by a highly respected arbitrator is that he would disagree and side with Arbitrator Volz, whose opinion as referred to above by Arbitrator Staudtner was evidently unpublished. This Arbitrator notes, however, that there evidently had been at least one previous reported case in which discharge for violation of a no-weapons rule had been converted to a lesser penalty before the decision cited above of Arbitrator Marlatt. In Ross-Meehan

Foundaries, 55 LA 1078 (King, 1970), discharge was modified to a suspension because of peculiar circumstances. Additionally, recent decisions have involved conversion to a lesser penalty when the company had been lax in enforcing a no-weapons rule. See cases cited in footnotes in How Arbitration Works, Elkouri and Elkouri, 6th ed., Ruben (2003), pp. 1168-69.

In summary, the Arbitrator believes that the no-weapons rule, even if it is reasonable and important, need not invariably require discharge for its violation; several arbitrators have allowed the use of mitigating circumstances to warrant a reduction of the penalty.

So it is here--the discharge is too severe under the particular circumstances. That said, some severe discipline is nevertheless required. The Grievant herself as well as her Union acknowledge she made a serious mistake. The discharge is modified to a long-term suspension without pay but also without any reduction in seniority rights.

The Arbitrator is well aware and appreciative of the Company's concern that a decision like this one will hamper the Company's enforcement of the rule. All he can say in reply is that he firmly believes, as do other arbitrators, that the rule is reasonable, often necessary, and should be enforced, and that he would probably sanction discharge in most cases that might be brought before him. In the present case, however, the Grievant's long and good work record alone are enough to require a reduction of the penalty, even

apart from the Company's failure to take additional steps to help her. Those particular circumstances may not be present in other violations of this rule.

The Arbitrator has noted again that the Grievant's work record is sufficient by itself to mitigate the penalty. He does not want to appear to be highly critical of the Company supervisors, but knows that things set in print often appear to be harsher than intended. Mr. Kohler was obviously faced with a situation suddenly without having had prior knowledge of the developing circumstances. His concern over the importance of the rule is understandable, and his willingness to undertake steps to improve safety for bus operators is evidence of his good intent. Mr. Hill, although he could have done more, impresses the Arbitrator--based upon the testimony--as having the sincere respect of operators and as being concerned for them; and that respect should not be diminished by this decision.

At the conclusion of the hearing the Arbitrator mentioned to the parties that he has been impressed by the skill of their respective representatives, not only in the present matter but in previous matters as well. He only wishes to add now that his respect has been deepened by the well-researched and sharply reasoned briefs supplied by them here.

AWARD

For the reasons started above, the grievance is partly sustained in that the discharge is converted to a suspension without pay, but without loss of seniority rights.

Geoffrey L. Pratte, Arbitrator

Dated: August 23, 2007.