

ARBITRATION

Kansas City Area Transportation Authority and Amalgamated Transit Union Local 1287

Arbitration case: No. 130114 - 00754 (FMCS)

Grievance: No. 2012-T30 Dated October 31, 2012,
Byron Anderson, Discharge

Date & Location of Hearing: March 20, 2013
Breen Building, KCATA
18th & Forrest Streets
Kansas City, MO

Arbitrator: Charles F. James, Jr.

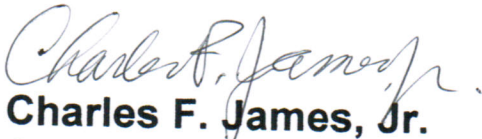
June 1, 2013

ISSUE & AWARD OF ARBITRATOR

ISSUE: Did the Authority (Kansas City Area Transportation Authority) have just cause to discharge the grievant, Byron Anderson? If not, what is the remedy?

AWARD OF ARBITRATOR

**Grievance No. 2012-T30 Dated October 31, 2012,
Byron Anderson, Discharge, is denied.**


Charles F. James, Jr.
Arbitrator

June 1, 2013

ATTENDING THE HEARING

KCATA was represented by Mr. Jeffrey M. Place, Attorney at Law, Littler, Mendelson, PC, 1201 Walnut Street, Suite 1450, Kansas City, Missouri. Witnesses for KCATA were Gaylord Salisbury, Tommie Hill, and Robert Garcia. Ms. Fern Kohler, Deputy General Manager, KCATA represented the Administration on the arbitration panel.

The Union was represented by Scott A. Raisher, Attorney at Law, Jolley Walsh Hurley Raisher & Aubry, P.C., 204 W. Linwood Blvd., Kansas City, MO 64111. Witness for the Union was the Grievant, Byron Anderson. Appearing for the Union were Jacqueline Elmore and Freddy Ersery. Mr. Jonathan P. Walker, Sr., President/Business Agent, Local 1287, Amalgamated Transit Union represented the Union on the arbitration panel.

SUMMARY OF THE DISPUTE

An accident involving a KCATA bus and a pedestrian occurred in downtown Kansas City, MO on October 21, 2012, a Sunday. The operator of the bus was Byron Anderson, the grievant. The bus was stopped at an intersection (Wyandotte and 12th Streets), waiting for the electric traffic signal to turn green. When the light turned green, he (Anderson) began the process of initiating a left turn with the bus. Making a left turn involved crossing a pedestrian walk-way, access to which was controlled by a walk-light. When the traffic signal for the bus turned green, the walk light for the pedestrian walk-way became lighted. A pedestrian, on seeing the walk light, entered the walk-way. Mr. Anderson's bus then struck the pedestrian causing him to fall backward, hitting the pavement with his head. The pedestrian, at his request, was taken to a medical facility by ambulance after complaining of dizziness. KCATA

subsequently determined, on investigation, that the accident was avoidable and "major." Mr. Anderson was discharged. The Union grieved, claiming the punishment was too severe.

LIST OF EXHIBITS

All exhibits were jointly declared by the advocates to be Joint.

1. The Agreement, Local 1287, Amalgamated Transit Union and Kansas City (MO) Area Transportation Authority, effective beginning March 19, 2008, with termination to be determined
2. Remediation & Discipline Policy
3. Operating Rules and Discipline Code
4. Occurrence Report
5. Road Supervisor Accident Report
6. Poice Report
7. Video of Accident (DVD)

8. Avoidable Accident Analysis
9. Medical Bill from Hospital
10. Discharge Notice
11. Grievance
12. 3rd Step Letter
13. Accident 1, 2010
14. Accident 2, 2010
15. Accident, 2008
16. Accident, 2007
17. New Hire Training
18. Driving Theory
19. Attendance Roster
20. Operator Driving Performance
21. Instructor Observations
22. Pedestrian Accident (Herbst), 2004
23. Pedestrian Accident (Wallace), 2010

DISCUSSION AND THE DECISION

The parties jointly agreed to an Issue for this arbitration case which is as follows:

Did the Authority (Kansas City Area Transportation Authority) have just cause to discharge the Grievant, Byron Anderson? If not, what shall be the remedy?

All witnesses were sworn.

An arbitrator's decision process for this case must comply with the collective bargaining agreement (CBA) between Local 1287 Amalgamated Transit Union and Kansas City Area Transportation Authority (KCATA), effective March 19, 2008, and effective to the date of expiration on "...any succeeding December 31 by serving a written notice to that effect upon the other party..."(Section 1.7,CBA, p.7) Section 1.13, Grievances, paragraph 7 states, in part, "...the Arbitration Board shall confine its decision to the issue or issues so presented; and no such Arbitration Board shall be

authorized to deal with wage, hours of service or working condition controversies of a general nature but shall be limited to considering and acting upon individual grievances..."

The grievant, Byron Anderson, a full-time bus driver for the Company, KCATA, had a traffic accident in mid-town Kansas City in the afternoon of October 21, 2012; it was Sunday and traffic was light. It was established at the Hearing that general visibility was not a problem as weather conditions were excellent. The grievant, who was operating the bus, had stopped the vehicle at an intersection with a traffic light and the light was red. When the traffic light flashed the appropriate signal for the bus to move forward, the driver initiated the process of making a left-turn. Simultaneously, a pedestrian who had been waiting for his "walk" light to be displayed stepped off the curb and began walking across the street when his light permitted. The bus, then, according to bus cameras, appeared to strike the pedestrian (in addition

to the visible evidence provided by the cameras, a thump was audible on the DVD) knocking him to the ground; the pedestrian was able to stand and walked to a nearby fire hydrant where he sat. It appeared he had no cuts or abrasions and no blood loss was observed by the cameras or by the driver (grievant); however, according to the police report (Ex6), the pedestrian claimed to feel dizzy and requested an ambulance which was provided. The pedestrian was Yoon Suk, a citizen of Korea. The grievant testified that the pedestrian was correctly obeying the traffic signals as the walk-light was lit as he, the pedestrian, was walking across the street; this was confirmed by the DVD. The incident was investigated, according to Company procedure, by Company personnel and, as a result, the grievant was discharged. The Company's position is expressed in the Company's statement, "...in light of Grievant's failure to meet this most basic duty of care (to yield to pedestrians both in and not in crosswalks) it would

be grossly irresponsible to put Grievant back behind the wheel of a bus." (from Company Brief). The Union contends that the grievant committed a serious error but discharge under the circumstances is too severe as a penalty for this grievant.

The grievant has been a KCATA employee in the capacity of bus driver for approximately nine years. He has primarily served on the "extra board," operating busses in many if not all of the metro areas where KCATA provides service. He was trained by KCATA and, according to testimony, KCATA provided short refresher instruction and periodic checks on fulfillment of required service, both on a recurring basis. The grievant has had four instances of errors as a driver but none were of a serious nature or brought about rider, pedestrian or any personnel endangerment. The parties appear to agree that the grievant is aware he made a serious mistake and that he is remorseful.

Hill, Garcia and Salisbury testified for Company. Testimony presented suggest all to be substantially experienced persons in transportation administration for a company committed to providing bus service for people in an urban area; Hill and Salisbury were initially employed as bus operators, each for several years (Hill 7 years, Salisbury 10 years). Hill and Garcia had no avoidable accidents as bus operators. All three now have responsible positions in the operation of the Company. Salisbury and Hill carried out the post-accident review and analysis; having been determined an avoidable accident, they classified it as a major accident. (Accident classifications are minor, moderate and major.)

The police report (Ex6) establishes that traffic was 2-way, road alignment was straight and level, road condition was dry, weather clear, road surface was asphalt, and vision of the operator was not obstructed. The last page of the PR was devoted to a verbal description of the accident; in this segment, the report says, "He (pedestrian) stated that when

the bus neared him he moved backwards, and fell, striking the back of his head against the curb." (Differs from other reports, curb versus pavement). The report continues, "PED #1 stated he was unsure if the bus actually struck him or not...PED #1 complained of dizziness and was transported to TMC via KCFD EMS."

In the analysis of the accident (referred to earlier), the accident was determined by KCATA personnel as a major accident; this classification came about as a part of this analysis, concluding that a "disabling accident" had occurred. As the Union pointed out, there is no official definition provided for the expression, "disabling accident."

The Union's primary target in the defense was the determination that a "disabling accident" had occurred. In the Union brief, the expression, "disabling injury," was said to be the "linchpin" of this case (if not "disabling," the analysis generates less than 24 points). The Union exuberantly proclaimed that there was no evidence of injury,

no cuts, no abrasions, no bumps on the head, no blood, etc. therefore there was no proof of disabling injury. In testimony, KCATA agreed that there were no overt indications of injury of the kind specified by the Union but KCATA was not in agreement that the situation could be completely assessed in that manner. In the Company brief, it was stated that, "Yoon's (pedestrian's) dizziness and uncertainty about what had happened to him are observable symptoms of a closed-head injury...The Union apparently takes the position that since Yoon could possibly have limped on down the street, dizzy and confused, he was not "disabled."...Yoon needed to go to the hospital, and that is what he did....KCATA correctly concluded that Yoon experienced a "disabling" injury." (KCATA Brief, p. 11)

I am not entirely convinced that this "disabling injury" issue is the "linchpin" for this case if Ex2, p.2 was considered. But my role here as arbitrator for this case is not to ask or try to specify what should have been done in accordance with my

understanding of the collection of Company rules and guidelines, but, bound by the CBA and the law, to evaluate the action taken by the Company against Byron Anderson and make a determination of whether or not the Company had just cause to discharge him. Since there is no definition provided of "disabling injury," and this could possibly be the key to the solution for the case (and may be the only way to a solution), the arbitrator, after hearing argument on both sides, is obligated to find or create an appropriate definition for that expression **as it is used in this case.**

As a child, I was walking with my Father on a concrete walkway on a street in a small town we were visiting. A passing truck snagged an overhead cable; it came down and wrapped around both of my legs, sharply pulling my legs from under me. My head hit the concrete walkway. I was dragged a bit but only my clothes and a knuckle or two reflected any damage. (The truck miraculously stopped.) I was taken to our physician's office just down the street.

(Actually, I walked.) On examination, he felt I might have a concussion but said hospital tests were necessary and signed for admission to the local hospital. I still remember the painful headache. I was released two days later. The hospital physicians said it was likely a mild concussion and added that I should avoid strenuous play activities for some specified time. I suffered no further problems. As a late teenager, a very close friend, my age, fell from a vehicle in a freak accident, hitting his head on pavement. Three days later after hospital personnel had informed his family he would likely be released later in the day, he suddenly entered into a coma and died an hour or less later. (This occurred in Barnes Hospital, considered by many to be one of the nation's best.) Neither he nor I had any abrasions, cuts, or any evidence of skin breakage, bumps on the head or other overt signs of injury. (My friend's Mother repeated to me many times over the years how, on arriving at the hospital an hour or so after the accident, carefully examining,

visually and tactilely, (like a Mother would do) my friend's head, finding no sign of injury.) The pedestrian in this case, age 59, was knocked down by the collision with the moving bus and, as a result, hit his head on the pavement. (Ex6)

According to witnesses, there was no evidence of injury.

The pedestrian requested medical attention. He was taken to an emergency room and checked for concussion. (Total C/T scan/head, Ex9). No test results have been reported.

As stated previously, the pedestrian requested medical attention. That, to me, seems like rational behavior considering the circumstances. I am convinced the pedestrian believed he had evidence, classical evidence, of a possible concussion. But was his injury disabling?

In my judgment, any injury or accumulation of traumatic experiences as a result of an accident which brings about clear need for care or creates in the minds of the individual affected, and/or the caregivers, the opinion that medical examination of the individual is justified, causing that

person's activities and/or behavior for some significant period of time to be altered, creates a disabling incident. It is my judgment that this provides a fair, reasonable and intended definition for this expression. Accordingly, I am of the conviction that Mr. Yoon experienced a disabling accident. His actions and dizziness following the incident and the characteristics of the accident (a seemingly jarring blow to the head) made it persuasive he had reasons to believe medical examination might be needed and he requested it.

His ride in the ambulance was certainly not a part of his plan for that day and I doubt anyone is going to suggest that his itinerary for that day included a health-facility visit.

I wish to turn now to Ex3, Manual of Instruction, Operating Rules and Discipline Code. On p. 1, paragraph 1, "Where You Fit In," it is stated, "...we expect you to be responsible for the safety and welfare of the general public and conduct yourself in a professional manner at **ALL** times on duty."

(The emphasis is contained in the written document.) On p. 2, paragraph 5, "Operator's Responsibilities," it is stated, "The operator is in charge of the bus and of the passengers and is held responsible: (a) For the safe operation of the vehicle..." On p. 19, paragraph 8, "Traffic Laws," it is stated, "Each operator is responsible for the operation of his/her bus according to the traffic rules and regulations of the communities served by ATA, as well as the rules and regulations of states of Kansas and Missouri..." On p. 21, paragraph 30, "Attention to Duty," it is stated, "An operator must not permit anything to divert his/her attention from the safe and proper performance of his/her duty... On p. 23, paragraph 34, "Pedestrian," it is stated, "Yield the right of way to pedestrians crossing the street, regardless of whether it is a marked crosswalk or in the center of the block where there is no crosswalk. When a pedestrian is crossing the street, drive with caution and practice defensive driving habits..." On p. 33, "Accidents," it is stated, "KCATA

recognizes that public confidence and support depend upon the safe operation of our coaches,...**THE SAFE OPERATION OF OUR COACHES IS KCATA'S HIGHEST PRIORITY.** (Emphasis added) A major accident impacts the confidence and support of the general public...Avoidable accidents are considered major infractions. Major infractions could result in discharge unless KCATA determines that there are unusual circumstances in which other actions may be appropriate...If an operator has a major accident or has accumulated enough points to have reached 24 or more points in a rolling 12-month year, the operator will be subject to discharge." In Ex 3, there are several other statements that refer to the importance of safety in the operation of KCATA. On p. 34, at the top of the page, it states, "The safe operation of our coaches is KCATA's highest priority." And so on. I believe my point has been made concerning the consistency of the KCATA literature about the importance of safety in the operation of the buses or coaches. Clearly,

KCATA's highest priority, safety, is extended to all persons involved in KCATA's sphere of influence, and, because of these quoted comments, it is equally clear that pedestrians are as important in this sphere as any group of persons and that the bus driver has a full measure of responsibility for safety.

The grievant has demonstrated skill as a bus driver and the Company has conceded this to be officially true pointing to the results of the several on-going checks of various kinds. However, I am persuaded the grievant's error in this instance was an extremely serious one: He drove the bus that collided with a pedestrian; that alone is serious. In addition, an electrical signal was violated when the operator drove across a cross-walk when the crossing light was lit and a pedestrian was crossing the street fully within the crosswalk. The Union based their case on the issue of a disabling accident; as indicated earlier, the Union contended that, because there was no evidence of physical injury and no

hospital report of injury, there was no hard evidence to support the conclusion of disabling. I reject this contention. Concussion is truly a condition about which there should be great concern if one has experienced a blow to the head, particularly a blow such as that experienced by the pedestrian. It is not uncommon for there to be no signs of a problem after the blow to the head has occurred (except possibly a headache). Having suffered such a blow, a person should immediately seek medical assistance. In this case, such assistance meant giving up time for an ambulance ride, enduring tests and treatment at a medical facility and, under the best of circumstances, losing all or most of a person's plans for a day. I believe that to be disabling, consistent with the definition provided earlier in this discussion.

It is my judgment that the investigation into the accident was reasonable and fair in that there was considerable attention given to each phase of the investigation and it was

conducted by personnel experienced in safety and accident review. I found no reason to claim unfairness or impropriety in the evaluations performed by the administrative staff assigned to this accident review. The rules and procedures plus administration's policy positions were in place and appear to have been adequately communicated. The Union's brief described the accident as unfortunate and regrettable. I believe this describes how everyone dealing with this case (including the arbitrator) feels about it. But decisions must be made in the instance of serious accidents which I believe this to be. In my review of the situation, trying to consider as many perspectives on this accident as I could find along with associated rules and policies plus the procedures for enforcement, I am persuaded that the KCATA Administration acted within its responsibilities as management, and that, considering the circumstances, they made a decision which I believe was within their authority and appropriately justified.

It is my judgment and I so rule that KCATA did have just cause to discharge the grievant, Byron Anderson.

Accordingly, **Grievance Number 2012-TR30 dated October 31, 2012, Mr. Byron Anderson, is denied.**

Charles F. James, Jr.
Arbitrator

June 1, 2013