
In the Matter of the Arbitration

between

Amalgamated Transit Union, Local 1342

and

Niagara Frontier Transit Metro Systems, Inc.

(Issac Howard)

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* OPINION
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* AWARD
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BEFORE:
Ronald E. Kowalski, Ph.D.
Arbitrator

APPEARANCES

For the Company

Wayne R. Gradl, Esq.
David Rugg

Attorney for the Company
Manager of Bus Maintenance

For the Union

Terry M. Sugrue, Esq.
Isaac Howard

Attorney for the Union
Grievant

A hearing on the above-referenced matter took place in Buffalo, New York on October 24, 2014 before the Undersigned who had been appointed as Arbitrator in accordance with the parties' Collective Bargaining Agreement. The

parties were in all respects accorded a full and fair hearing including the right to present oral and written evidence and to examine and cross-examine witnesses. Briefs were submitted to the Arbitrator as agreed by the parties.

ISSUE

The parties were unable to stipulate to the issue in this matter. The Arbitrator would frame the issue as follows:

Was the Grievant suspension of thirty-four days justified under the September 5, 2008 Negotiated Policy Concerning the Requirements in the event of a Suspension, Revocation or Restriction of a New York State Driver's License?

If not what shall the remedy be?

BACKGROUND FACTS

The grievant, Isaac Howard, is a Mechanical Booker with the Niagara Frontier Transit Metro System (hereafter "Company"). Since September 2008 there has been a negotiated and agreed upon policy concerning an employee's obligation to ensure that his or her Commercial Driver's License (CDL) remains in good standing and provides for potential disciplinary action if there is a suspension or revocation of the CDL. (Joint Exhibit 2). Mr. Howard was employed in a position that required a CDL.

At the beginning of 2014 Mr. Howard changed insurance companies. In filling out the paperwork his insurance agent incorrectly put down that his old policy had been cancelled 12/31/13 and the new policy became effective 1/1/2014, in effect showing a one day lapse of insurance coverage. On March of 2014 Mr. Howard received a letter from the Department of Motor Vehicles (DMV) office in Albany stating his records showed a lapse in coverage and stating his license plates and registration would be indefinitely suspended effective March 31, 2014 and that if he failed to turn in the plates his license would be suspended. Mr. Howard took the letter to his insurance agent who discovered the earlier error. A new Accord was prepared by his agent clarifying there was no lapse in insurance which Mr. Howard signed on March 24, 2014. (Union Exhibit 1) The agent then called the prior insurance carrier to inform them of the error. Mr. Howard's agent followed up on March 25, 2014 with an e-mail to the old carrier with the new Accord. The old carrier acknowledged receipt of the Accord on March 25, 2014. However, apparently the old carrier did not provide the corrected insurance information to the DMV prior to March 31, 2014 and Mr. Howard's CDL was suspended.

On April 3, 2014 the personnel who monitors the status of employee drivers licenses for the Company notified the Maintenance Department management that Mr. Howard's CDL had been suspended. (Company Exhibit 2) The knowledge of

the suspension was the result of the License Event Notification System (LENS) to which the Company belongs which reports license actions taken against employees. (Company Exhibit 3) The LENS record indicated that Mr. Howard's license was still suspended as of April 4, 2014 (Company Exhibit 2). Manager David Rugg notified the grievant he could not work because of the suspension and that he would be subject to a 30 day suspension pursuant to the Negotiated Policy. The Grievant's insurance agent did confirm that his CDL was suspended as of April 4, 2014 that but the problem had been remedied. The Grievant was suspended by the Company for 30 days plus four days the LENS records indicated his CDL was suspended.

On April 15, 2014 the Amalgamated Transit Union Local 1342 (hereafter "Union) filed a grievance. The grievance was pursued through the contractually provided procedures to this arbitration.

RELEVANT CONTRACT PROVISIONS

The relevant contract provisions are found in the Negotiated Policy Concerning the Requirements in Event of a Suspension, Revocation or Restriction of a New York State Driver's License and Section 11-1 of the Collective Bargaining Agreement as follows:

Section 11-1

Powers of promotions, and of demotions, discharge, suspension and other discipline, shall be vested in the Company, but the justification therefor may constitute a grievance to be adjusted as hereinafter provided.

Discipline for Suspension, Revocation or Restriction of an Employee's License

An Employee who has been issued or mailed a notice by the DMV, a court, a Traffic Adjudication Bureau, a law enforcement officer, etc. that a license action will be taken on a specific date in the future unless the Employee complies with stated conditions by a deadline date and who fails to comply with the conditions, but who does not yet have notice that his or her license has been suspended, will be suspended from work without pay for the length of the period his or her license was suspended, revoked or restricted PLUS thirty (30) calendar days. In addition, during the suspension called for by the prior sentence, an employee may bid, if eligible under the applicable terms and conditions of Section 10 of the Collective Bargaining Agreement (Section 10.13 through 10.13.3 if to a different department), on any open position in the bargaining units for which he/she is fully qualified to perform. It is understood that if an employee is awarded such an open position, the employee will assume the position after the suspension if fully served.

If the license is not fully restored during such suspension, and if the employee has not been awarded such an open position, as described above, or the employee is removed from such position, the Employee's employment will be terminated. However, if that occurs, and if the terminated Employee's license is fully restored within

thirteen (13) months of the original license action, the Employee will be reinstated with full seniority.

Only DMV errors that can be substantiated by the Employee will prompt a reconsideration of a disciplinary action.

POSITIONS OF THE PARTIES

Company

The Company argues it did not violate the Collective Bargaining Agreement including the Negotiated Policy that addresses CDL suspensions when it suspended the Grievant, Isaac Howard, for 34 days. The Grievant's license was suspended from March 31, 2014 to April 5, 2014 and the policy provides that will result in a suspension of 30 days plus the time of the suspension.

The Company contends that it was informed by way of LENS that the Grievant's CDL had lapsed into suspension on March 31, 2014. This notification took place on April 3, 2014. (Company Exhibit 2) Manager David Rugg then appropriately informed the Grievant he could not work because he had a suspended CDL and that he would be subject to a 30 day suspension plus the number of days of suspension under the Negotiated Policy. Mr. Rugg reviewed the LENS record and confirmed that the Grievant's license was still suspended as of April 4, 2014.

(Company Exhibit 2) He spoke to the Grievant's insurance agent who confirmed the suspension but assured the situation was remedied and the suspension would be lifted. There was therefore a clear suspension of his license which was a violation of the Negotiated Policy.

The Union has argued throughout the grievance procedure that there never was a suspension, however, the LENS record and DMV records clearly showed there was a suspension that was later rescinded. The documentation provided by the Grievant to the Company prior to the arbitration hearing at which new additional documentation was presented only indicated the Grievant's license did lapse into suspension on March 31, 2014. The new documentation presented at the arbitration hearing was not given to the Company prior to the decision to suspend the Grievant.

The Company therefore submits it was justified under the Negotiated Policy in suspending the Grievant for 34 days. The Company requests the Arbitrator deny the grievance in its entirety.

Union

The Union argues the Company has failed to justify imposing a 34 day suspension without pay on Mr. Howard. The Company was aware Mr. Howard's license suspension was made in error through no fault on his part.

The Negotiated Policy does provide that a suspension of 30 days shall be imposed if the CDL is suspended by a DMV action because of failure to comply with a condition and deadlines set out by the DMV. However, the same Policy further states that “DMV errors that can be substantiated by the Employee will prompt a reconsideration of disciplinary action”. It was clearly an error on DMV part to suspend the Grievant’s license as it was a mistaken judgment based on incorrect facts. There had been no lapse in insurance coverage but the DMV had been incorrectly informed there was such a lapse. The DMV would never have suspended Mr. Howard’s license had they known that fact and they rescinded the suspension as soon as they received the correct information. Mr. Rugg was made aware of the error before the decision to suspend Mr. Howard and should not have done so given the error.

The Company’s decision therefore ignored the requirement in the Negotiated Policy that requires a prompt reconsideration of a disciplinary action if there was a DMV error. The decision to discipline Mr. Howard was also not justified under the Parties Agreement as is required given it arose based on an error and not an act of Mr. Howard. The Union requests the grievance be sustained and Mr. Howard be made whole for the 34 day suspension as remedy.

OPINION

The issue before the Arbitrator in the instant matter is both a question of contract interpretation and discipline. The facts are not in dispute in the instant case. The Company has argued that DMV records clearly show Mr. Howard's license was suspended from March 31, 2014 to April 5, 2014 and hence his 34 day suspension was justified under the Negotiated Policy concerning suspension and revocation of an employee's CDL. The Union has argued the license was not really suspended as it was an error on the part of the DMV based on incorrect information and the suspension was rescinded. The Negotiated Policy also provides that such error should result in a reconsideration of any discipline. The Arbitrator is of the opinion the evidence and testimony adduced at the hearing supports in part the Union's claim but not its entirety.

The initial Union argument pursued through the grievance procedure and partially raised at the arbitration hearing that the Grievant's license was not really suspended is when all the DMV records were examined seen to not be true. There was clearly a suspension on March 31, 2014 that was eventually rescinded on April 5, 2014 of Mr. Howard's CDL. It is also equally clear from the testimony and evidence that the suspension of his license arose out of an error on the part of his insurance agent who incorrectly listed dates of insurance coverage which were

submitted to the DMV that showed a lapse in coverage. To the extent there was a suspension of his license the Company could suspend Mr. Howard for 34 days under the provisions of the Negotiated Policy Concerning the Requirements in Event of a Suspension, Revocation or Restriction of a New York State Driver's License. The Company also had only an indication from the insurance agent of what might have happened at the time it went forwarded under the Negotiated Policy to impose its suspension of Mr. Howard. Union Exhibit 1, 2 and 3 were not before the Company at the time.

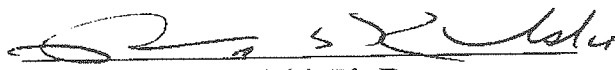
However, the Negotiated Policy does provide that a "DMV error that can be substantiated by the Employee will prompt a reconsideration of a disciplinary action". There is no time limitation on when this reconsideration can take place in the Policy. Hence, given the facts now in evidence as of the arbitration reconsideration would be appropriate and is not time barred.

For the reasons set forth above the Arbitrator would therefore adjudge the Company did not violate the Negotiated Policy at the time it suspended the Grievant for 34 days but given the facts in evidence concerning an error the Company is required to reconsider that disciplinary action under the provisions of the Policy which decision would be subject to review under the grievance procedure.

AWARD

The Company did not violate the Negotiated Policy Concerning the Requirements in the event of a Suspension, Revocation or Restriction of a New York State Driver's License at the time it suspended the Grievant for 34 days. Given the facts in evidence the Company is required to reconsider that disciplinary action under the provisions of the Policy and the resulting determination remains subject to review under the grievance procedure.

1/13/15
Date


Ronald E. Kowalski, Ph.D.
Arbitrator

State of New York)
) SS:
County of Onondaga)

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

1/13/15

