In the Matter of the Arbitration Between	:	
Amalgamated Transit Union, Local 1342, Union,	:	
- and -	:	**OPINION AND AWARD**
Niagara Frontier Transit Metro System, Inc., Employer.	:	
(Jorge Torres termination)	:	

BEFORE: Lise Gelernter, Arbitrator[1]
HEARING DATE: October 13, 2015

APPEARANCES:

For the Union:
Terry M. Sugrue, Esq.
Reden & Sugrue, LLP
135 Delaware Avenue, Suite 410
Buffalo, New York 14202

For the Employer:
Wayne R. Gradl, Esq.
Niagara Frontier Transit Metro System, Inc.
181 Ellicott Street
Buffalo, New York 14203

CASE OVERVIEW

Niagara Frontier Transit Metro System, Inc. (NFT or Company) operates a public transit system in the City of Buffalo and its neighboring communities. The Amalgamated Transit Union, Local 1342 (ATU or Union) represents rail and bus operators, and mechanics, among other employees, including the grievant in this case, Jorge Torres. Mr. Torres had been a bus driver for the NFT for about one year when the NFT discharged him on June 2, 2015 for violating Company rules by driving a bus on May 16, 2015 while failing to have a valid New York State license "Class B" license. Jt. Exs. 5 and 6. New York State had suspended Mr.

[1]By an e-mail dated July 20, 2015, the parties informed me that they had selected me as the arbitrator in this case. The hearing was held on October 13, 2015 at the NFT Metro offices, 181 Ellicott Street, Buffalo, New York. Both parties had a full opportunity to make opening arguments, examine and cross-examine witnesses and introduce evidence. In lieu of closing arguments, the parties agreed to submit closing briefs, which were mailed by November 9, 2015.

Torres' license on May 16, 2015 for failing to answer a ticket he had received in February, 2015 for a violation concerning tinted glass in his personal vehicle. Jt. Ex. 19; Jt. Ex. 8. The Union contends that Mr. Torres did not receive the April 23, 2015 "Notice of Impending Driver License Suspension & Conviction" the Department of Motor Vehicles (DMV) sent, Jt. Ex. 8, and was not aware that his license was suspended at the time he drove the bus. However, when he found out about the suspension he corrected the problem as soon as he could by paying the fine for the violation. Since he did not intend to drive without a valid license the Employer did not have just cause to fire Mr. Torres, according to the Union, particularly when employees in similar situations have been suspended for 30 days rather than being terminated.

ISSUES TO BE RESOLVED

The parties could not agree on the issue I should resolve and requested that I do so after hearing the evidence presented. Based on the evidence presented and the parties' arguments, the issues to be resolved are:

> Was the Company justified in terminating Jorge Torres pursuant to Section 11-1[2] of the parties' collective bargaining agreement?
>
> If not, what shall the remedy be?

EVIDENCE PRESENTED

There is no dispute about the basic facts in this case. The parties disagree over the application of the Company's rules and policies to Mr. Torres' actions.

The Company's rules. The Company's "Performance Improvement Guidelines," or PIGS, which it negotiated with the Union and issued on January 18, 2000, provide in relevant part:

[2]Section 11-1 authorizes the Company to impose discipline, "but the justification therefor may constitute a grievance." Jt. Ex. 1.

THE FOLLOWING ACTIONS WILL RESULT IN TERMINATION OF EMPLOYMENT

1.10 Failure to properly notify Metro of the know suspension, revocation or restriction of a driver's license, or operating a Metro Vehicle while a driver's license is known to be suspended, revoked or restricted.

Jt. Ex. 3. In addition, Company Rule 1.10.5 requires operators (drivers) to possess "a valid New York State drivers license." Union Ex. 3.

The suspension of Mr. Torres' license. There is no dispute that, as a bus driver, Mr. Torres was required to have a valid Class "B" license, that his license had been suspended on May 16, 2015 and that he drove a bus for the NFT that day. T-Torres;[3] T-LaScala; Jt. Exs. 19-21. However, Mr. Torres testified that he did not know his license was suspended and had never received the April 23, 2015 "Notice of Impending Driver License Suspension & Conviction" that warned him that his "license . . . to drive in New York State will be suspended effective 05/15/15 for failure to appear to answer the traffic ticket you received for TINTED GLASS in BUFFALO." Jt. Ex. 8. Although he received the original ticket for the tinted glass violation in February 2015, he had not answered it as instructed on the ticket even though there was a warning at the bottom of the ticket that stated "FAILURE TO ANSWER WILL RESULT IN THE SUSPENSION OF YOUR LICENSE." Co. Ex. 1; T-Torres. Mr. Torres did not know why he never received the April 23 notice, as there was no mistake about his address or any other apparent irregularities. T-Torres.

Mr. Torres said he found out his license was suspended when Buffalo Police Officer Labby pulled him over on May 18 around 4:30 p.m. and told him that his license had been suspended due to failing to answer the earlier ticket. Mr. Torres tried to pay the fine that day,

[3] A "T-" followed by a last name indicates that the testimony of the person with that last name provided some or all of the information described.

but the closest DMV office was closed when he got there. T-Torres. He went to DMV the next day (May 19) when it opened at 8:30 a.m. and paid the amount he owed. Union Ex. 5. He testified that he tried to call his supervisors just after he paid the fine, but that they called him first.

The suspension and termination of Mr. Torres. William Lobuzzetta, the Superintendent of Transportation Services for the NFT, testified that his office receives "LENS" notices from DMV, which are automatic electronic notifications concerning employees' license actions. DMV sent LENS notices on May 15 and 16 that Mr. Torres' license was suspended as of May 16. Jt. Exs. 19, 20. On or around May 18, 2015, he notified Joseph LaScala, the Transportation Supervisor for the Frontier Station (Mr. Torres' station), and Mr. McDermott, the Operations Manager at Frontier (Mr. LaScala's boss), who then met with Louis Giardina, the Company's Labor Relations Director. They decided to suspend Mr. Torres pending termination. T-Lobuzzetta; T-LaScala.

Mr. Torres, accompanied by a union representative, met with Mr. McDermott and Mr. LaScala on May 20, 2015, at which time he had an opportunity to explain that he had not been aware his license was suspended. T-Torres; Jt. Ex. 6. However, on June 2, 2015, the Company decided to terminate him because, according to Christopher Antholzner, the Senior Operations Manager and Mr. McDermott's boss, a September 2008 Agreement negotiated with the Union has a presumption of receipt of any DMV notice of pending suspension, that Mr. Torres had not proven why or how he did not receive the notice, and that he therefore knew or should have known his license was suspended.

Negotiated policy. The Company and the Union had agreed on a policy in September 2008 that concerned "The Requirements in Event of a Suspension, Revocation or Restriction of a

New York State Drivers' [sic] License." Jt. Ex. 4 (2008 Agreement). That policy provides, in relevant part:

> Employees who are required as part of their job to have a valid drivers' license must notify the Company immediately upon suspension, revocation or restriction of his or her driver's license. . . .
>
> The Employee's duty to notify the Company is triggered whenever he or she is aware that an action is being taken or has been taken to suspend, revoke or restrict . . . the Employee's license (a "license action"). An Employee is considered to have notice of a license action upon the **earliest** of any of the following events:
>
> 1. The Employee receives actual notice that his/her license is or has been suspended . . .
>
> 2. The DMV, a court, a Traffic Adjudication Bureau, a law enforcement officer, etc. has issued or mailed a notice or ticket/summons to the Employee that his/her license will be suspended on a specific date in the future unless he or she complies with the stated conditions (e.g. the Operator is required to pay a fine . . .) and the Employee fails to comply with all stated conditions by the deadline date [footnote omitted]; OR
>
> 3. If the DMV, a court, a Traffic Adjudication Bureau, etc. mails a notice of a license action to the address on file for the Employee with DMV, the court, etc. or as it appears on the Employee's license, upon actual receipt of that notice by the Employee or upon presumed notice (see italicized Note below), whichever occurs first.
>
> *NOTE: In all cases where the first notice to the Employee is based on a mailing, there will be a presumption that the Employee has received that notice by the seventh (7th) calendar day following the date of the notice. After that time, it will be the Employee's burden to prove that he or she did not receive the notice.*

The policy also provides for disciplinary actions in the event of a license revocation or suspension. It states:

> A. An Employee who **does** immediately notify the Company of a license action will be suspended for thirty (30) calendar days from the license action or until his or her license is fully restored, whichever occurs first. In addition, consistent with past practice, during the thirty (30) calendar day suspension, such employee who **does** immediately notify the Company of a license action may bid if eligible . . . on any open position in the bargaining units for which he/she is fully qualified to perform. . . If the license is not fully restored within thirty (30) calendar days of the license action, 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.

B. An Employee who has been issued or mailed a notice by the DMV . . . 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. [Bidding for other open positions, as provided in paragraph A, is available, along with termination if a license has not been restored within 13 months of the original license action].

* * * *

D. An Employee who has notice of a license action as defined above and who does **not** immediately notify the Company will be terminated with **no** opportunity for reinstatement. The above does not preclude the Union or the affected employee from filing a grievance under the Collective Bargaining Agreement.

Jt. Ex. 4.

History and application of the 2008 Agreement. Vincent Crehan, the President and Business Agent for the Union, testified that he negotiated the 2008 Agreement with the Company as part of the settlement of three pending grievances, two of which involved the termination of drivers David Palmer and Robert Johnson for driving with suspended licenses. On the first day of the arbitration hearing for the two drivers, the Union and Company settled those cases; part of the settlement was the 2008 Agreement. T-Crehan. One of the things the Agreement addressed, Mr. Crehan testified, was the problem of drivers not receiving the notices that DMV mailed concerning the imminent suspension of their licenses.

In 2007, Mr. Palmer had been issued the same form letter Mr. Torres received concerning an "impending driver license suspension and conviction," and had driven for the NFT with a

suspended license. T-Crehan; Union Ex. 1. The Buffalo DMV had issued to Mr. Johnson a similar notice in 2007, and he also drove while his license was suspended. T-Crehan; Union Ex. 2. However, as part of the settlement of these cases, both drivers returned to work under the 2008 Agreement. T-Crehan. Mr. Crehan also claimed that the Company had not terminated anyone after the 2008 Agreement for driving with a suspended license if he or she had not received the DMV notice warning of an impending license suspension or revocation.

According to Mr. Crehan, the 2008 Agreement, read in conjunction with the PIGS, means that unless an employee intentionally fails to notify the Company about a suspended license, he or she should not be terminated. The only discipline available for unintentionally driving with a suspended license is the 30-day suspension authorized by the 2008 Agreement, augmented by the number of days the license was suspended (30-day "plus" suspension). Mr. Crehan was not able to clarify how the 2008 Agreement's presumption of license action notice after seven days worked with the rest of the 2008 Agreement, particularly paragraph D, which permits the Company to terminate an employee who "has notice of a license action . . .and who does **not** immediately notify the Company." Jt. Ex. 4 at 6. He contended that the notice sent to Mr. Torres in Joint Exhibit 8, which warned about a future suspension, was not covered by paragraph D, even though the 2008 Agreement requires an employee to notify the Company about any "license action," which the policy states occurs whenever "an action is being taken or has been taken to suspend, revoke or restrict . . . the Employee's license." Jt. Ex. 4 at 2.

Mr. Crehan claimed that if an employee receives a ticket, the 2008 Agreement means that if he or she never receives the notice sent out after the ticket remains unpaid that warns of a future license suspension, that the Company cannot impose greater than the 30-day "plus" permitted by paragraph B of the discipline section of the 2008 Agreement. He also testified that

the Company's disciplinary practice showed that the Company had the same understanding. He used the examples of several drivers and mechanics who were disciplined pursuant to the 2008 Agreement. Albert Moore, an NFT driver, was the first person to whom the Company applied 2008 Agreement, according to Mr. Crehan. The DMV had suspended his license in March 2009 due to a dishonored check he used to pay a fine that was due. Jt. Ex. 14. When he worked for a day while his license was suspended, the Company suspended him for 31 days due to a "[v]iolation of license agreement between Company and Union dated September 5, 2008." *Id*. Although DMV could not produce a copy of the warning letter it had sent to Mr. Moore, DMV stated in a letter to the Company that it had sent Mr. Moore a letter on February 20, 2009 warning him that his license would be suspended in 30 days. *Id*. The Disciplinary Notice for Mr. Moore did not charge him specifically for driving for the Company with a suspended license, but Mr. Crehan said he drove for a day with the suspended license, which is why the Company imposed a 31-day suspension.

On May 7, 2012, Vincent Montanari, a mechanic,[4] was "[s]uspended for one day plus thirty as per section B of the discipline portion of the [2008 Agreement] policy." Jt. Ex. 17; T-Crehan. His license had expired and he had worked for one day after it expired. *Id*. Thomas Lloyd, a mechanic, served a 31-day suspension starting on October 20, 2012, when his license expired and he continued working. Jt. Ex. 16. His Disciplinary Notice also stated: "[s]uspended for one day plus thirty as per section B of the discipline portion of the [2008 Agreement] policy." *Id*. On July 17, 2013, the Company suspended Martrice Parks, a driver, for 30 days, when her license was suspended for failing to pay a fine. Jt. Ex. 18. She had not driven while her license was suspended because she was not working at the time. *Id*.; T-Crehan.

[4]Mechanics are required to have a valid Commercial Driver's License (CDL).

The NFT suspended H. Scott, a driver, for 31 days starting on January 30, 2014, due to the suspension of his license for failing to pay a fine. Jt. Ex. 15. The Company noted that his suspension was "per company negotiated license policy dated September 5, 2008." *Id*. As was true for Mr. Moore, although Mr. Scott had driven for one day with a suspended license, his Disciplinary Notice did not charge him specifically for driving during the suspension of his license.

Mr. Crehan also pointed to the 2014 case of Isaac Howard, a mechanic. DMV had suspended his license for failing to maintain liability insurance coverage on his personal car. Jt. Ex. 9. The NFT disciplined him for working while having a suspended license; the discipline was: "Suspended for 4 days plus thirty as per section B of the discipline portion of the [2008 Agreement]."Jt. Ex. 10.

The Union had grieved that suspension because the lapse in insurance coverage turned out to have been caused by an insurance agent's error, not because Mr. Howard failed to maintain his insurance. Jt. Ex. 13 at 9-10. Ronald Kowalski, the arbitrator who heard the grievance dispute, upheld the 34-day suspension under the terms of the September 2008 Agreement because his license had, in fact, been suspended, but required the Company to reconsider the discipline under a different section of the 2008 Agreement after Mr. Howard was able to show that the suspension was not his fault. *Id.* at 10. In its brief for the arbitrator, the Company had stated that it had imposed the 34-day suspension pursuant to "Section B of the Negotiated Policy [or 2008 Agreement]." Jt. Ex. 11 at 3. The Company's brief also stated that under the 2008 Agreement, "[w]here an employee's CDL[5] is allowed to lapse into a state of

[5]CDL refers to a commercial drivers' license.

suspension, the agreed-on consequence is a 30 calendar days suspension, plus the number of days the CDL was suspended." Jt. Ex. 11 at 4. The Company also stated:

> This negotiated Policy [the 2008 Agreement] addresses what happens when an employee required to have a CDL loses it, sets a time limit for regaining the license, and most relevant for present purposes, prescribes a disciplinary suspension of 30 days, plus the number of days an employee has allowed his or her CDL to lapse into suspension for cases where an employee does properly address a "license action" and a suspension ensues.

Jt. Ex. 11 at 6.

DISCUSSION

The PIGS and the 2008 Agreement must be read in conjunction with each other to the extent possible, since the Union and the Company agree that both policy statements are currently in effect.[6] The dispute in this case comes down to determining: 1) when the Company can terminate a driver for failing to notify the Company of a suspended license or driving with a suspended license, as allowed by PIGS 1.10 and paragraph D of the discipline section of the 2008 Agreement; and 2) when the Company is limited to a 30-day "plus" suspension pursuant to paragraph B of the discipline section of the 2008 Agreement. The Union argued that PIGS 1.10 and paragraph D of the 2008 Agreement do not apply to Mr. Torres, because it requires a knowing or intentional failure to notify the Company of a license suspension or intentionally driving with a suspended license. Because the Company found out about the same time that Mr. Torres did that his license had been suspended, he did not intentionally fail to provide the required notification and he should not have been terminated, the Union maintains.

[6]The PIGS applies only to "operators" and therefore does not apply to mechanics. However, since Mr. Torres is an operator and the PIGS and 2008 Agreement are applicable, and the Company charged Mr. Torres with a PIGS violation, I must consider both policies.

The Company argues that the 2008 Agreement's presumption of notice to an employee seven days after a "license action" is mailed means that Mr. Torres knew that his license would be suspended on or after May 15. Therefore, Mr. Torres knowingly failed to notify the Company about his license suspension and knowingly drove for a day with a suspended license. Therefore, paragraph D of the 2008 Agreement applies and the Company must terminate him. The Company distinguished the prior operator and mechanic cases involving suspended licenses by noting that unlike Mr. Torres' case, none of the disciplinary notices in the other cases charged the employee with a violation of the PIGS 1.10 or driving while the employee's license was suspended. Moreover, the Company argued, mechanics with suspended licenses are in a different situation than operators since mechanics do not drive NFT equipment on public streets and do not transport passengers.

It is not clear from their texts how or when PIGS 1.10 and paragraphs B and D of the 2008 Agreement apply in the case of an operator driving with a suspended license. The 2008 Agreement states that an employee is presumed to have notice of a "license action" within seven days of a mailed notice by any agency, including DMV. It is at that point that the employee's "duty to notify the Company is triggered" unless he or she can prove she never got the notice. Jt. Ex. 4 at 2, 3. PIGS 1.10 allows for termination of an employee for a failure to notify of a "known suspension, revocation or restriction of a driver's license." Jt. Ex. 3 at 3 (emphasis added). Is the presumed notice in the 2008 Agreement the same as a "known" suspension? Moreover, in Mr. Torres' case, is the presumption of notice of a future suspension the same thing as a "known" suspension? To further complicate things, paragraph D of the 2008 Agreement provides for termination for any employee "who has notice of a license action . . .and who does **not** immediately notify the Company." Jt. Ex. 4 at 6. Paragraph D does not require a "known"

suspension, as PIGS 1.10 does. Moreover, since the 2008 Agreement has a seven-day presumption of receipt of a notice concerning a license suspension, it would appear that any employee who is mailed a notice of future suspension and fails to notify the Company would be terminated. But that conflicts with paragraph B, which specifically addresses notices of future suspensions and provides for the 30-day "plus" suspension penalty.

Paragraph B of the discipline section of the 2008 Agreement deals with DMV notices "that a license action will be taken on a specific date in the future" unless an employee fails to comply with the notice's conditions. Jt. Ex. 4 at 5. That is the type of notice DMV mailed to Mr. Torres after he failed to pay his fine or appear to contest the ticket he received. Jt. Ex. 8. PIGS 1.10 does not address specifically notices of future suspensions, nor does paragraph D of the 2008 Agreement. The seven-day notice presumption in the 2008 Agreement also does not specifically deal with notices of future suspensions. It contemplates a "license action," which is when "an action is being taken or has been taken to suspend . . . the Employee's license." Jt. Ex. 4 at 2. It is not clear if "is being taken" encompasses the concept of notices of future suspensions, especially since paragraph B in the same document has specific language about future actions. The Union argues that paragraph B deals with the situation in which an employee is presumed, under the seven-day rule, to have received notice of a future suspension. Paragraph B imposes a 30-day "plus" suspension in contemplation of an employee not being able to meet the burden of proof to show that he or she actually did not receive the notice, according to the Union.

Given the gaps, ambiguities and conflicts that arise when reading PIGS 1.10 and paragraphs B and D of the 2008 Agreement together, I can look to the parties' practice to shed light on what the parties meant when they negotiated those policies. Kenneth May, ed., *Elkouri*

and Elkouri, How Arbitration Works at 12-20 (7th ed. 2012) ("when faced with ambiguous language, most arbitrators rely exclusively on the parties' manifestation of intent as show through past practice and custom."). In addition, "for purposes of interpreting ambiguous language, relatively few past instances have been required to establish a binding practice," and the "past practice need not be absolutely uniform." *Id*. at 12-23. The evidence of the Company's prior treatment of drivers and mechanics under similar circumstances is instructive. After the 2008 Agreement, the Company imposed the 30-day "plus" suspension outlined in paragraph B in each case of a driver or mechanic who failed to notify the Company of a suspended license, and in the case of drivers, who drove with a suspended license. *See* Jt. Exs. 10, 13-18. There was not evidence in all those prior cases of the mailing of a pre-suspension notification and not all involved tickets for infractions,[7] but they all involved employees who failed to notify the Company of a license suspension that they should have known would occur in the future and which the employee could have remedied with the payment of a fine or other fee. Therefore, it appears that the Company understood the 2008 Agreement to mean that paragraph B and the 30-day "plus" suspension applied if the Company learned of curable license suspensions from DMV rather than from the employees.[8]

This is consistent with the text of paragraph B of the 2008 Agreement. Jt. Ex. 4 at 5-6. Further, this interpretation is not inconsistent with PIGS 1.10, which requires termination only in the case of a "known suspension." Jt. Ex. 3 at 3 (emphasis added). A "known" suspension can be understood to mean a suspension for which an employee has actual contemporaneous notice,

[7]One case involved a suspension due to the expiration of a license, and one case involved a failure to maintain liability insurance.

[8]It should be noted that none of the cases discussed in this award, including Mr. Torres' case, involved serious safety violations; if they had, the Company would have presumably had additional grounds for discipline.

unlike the employee in paragraph B of the 2008 Agreement. In addition, paragraph D of the 2008 Agreement must be meant to address a situation that is different than the one described in paragraph B; otherwise, one of the paragraphs would have been superfluous.

In Mr. Torres' case, his misconduct meets the terms of the 30-day "plus" suspension of paragraph B. He was "mailed a notice by the DMV" that his license was going to be suspended if he didn't pay a fine by a certain date. He failed "to comply with the conditions," but did not "yet have notice that his . . .license ha[d] been suspended" at the time the DMV notified the Company. Therefore, termination, as permitted in paragraph D and in PIGS 1.10, is not appropriate in this case.

The fact that the Company did not charge anyone in the prior paragraph B cases with driving for the Company with a suspended license does not change the meaning or applicability of paragraph B in Mr. Torres' case. Drivers Palmer and Johnson, whose grievances led to the 2008 Agreement, and drivers Lloyd, Scott and Moore all drove with suspended licenses for at least a day, as was true for Mr. Torres. The Company disciplined the prior drivers for the same misconduct as Mr. Torres, even if it did not describe it in the same manner in their Disciplinary Notices.

The Company is understandably concerned about employees who ignore tickets for actual violations, who know that failing to pay the fines due will result in the suspension of their licenses and who nonetheless don't pay the fine and go to work in jobs that require a valid license. In Mr. Torres' case, he did not provide any justification for ignoring the ticket in the first place. He knew, upon receiving the ticket, that he would lose his license, at least temporarily, if he did not pay his fine. As a driver required to hold a valid license, he should have done whatever was necessary at the time he received the ticket to avoid the suspension of

his license. Yet, he did nothing. Failing to receive the follow-up notice reminding him that his license would be suspended is no excuse for not taking care of the ticket at the time he received it.

Therefore, there is no question that some discipline is appropriate. However, paragraph B of the 2008 Agreement, as it has been applied, limits the Company's options in Mr. Torres' case to a 30-day "plus" suspension. Since a month-long suspension is a real financial blow, this policy still serves one of the goals of discipline under the just cause doctrine – correcting inappropriate behavior. *See Elkouri* at 15-41.[9] Most employees who lose a month's pay will not repeat the same mistake twice. Since there was no evidence that Mr. Torres' performance as a bus driver was lacking, this policy allows the Company to keep an otherwise productive employee while requiring him to pay a serious price for his misconduct.

Paragraph B of the 2008 Agreement provides for a 30-day suspension plus the "length of the period [the employee's] license was suspended." Jt. Ex. 4 at 6. Because Mr. Torres' license was suspended for three days (May 16, 17 and 18) before he paid the fine that was due and his license was restored on May 19, the appropriate discipline is a 33-day suspension pursuant to the terms of paragraph B.

Since there was no evidence that Mr. Torres or any of the other employees disciplined pursuant to paragraph B ever repeated the same type of behavior or had other disciplinary problems, this award does not address whether the 30-day "plus" suspension is applicable to repeat offenders or employees who have engaged in other misconduct. It should be noted that the progressive discipline concept that is part of the just cause doctrine would ordinarily allow an

[9]The CBA in this case appears to incorporate just cause principles by requiring "justification" for discipline. Jt. Ex. 1, §11-1.

employer to impose progressively stringent discipline when an employee does not learn from his or her mistakes. *Elkouri* at 15-40 - 15-41.

AWARD

The grievance is granted. The penalty of termination was not justified. The appropriate penalty for Mr. Torres driving with a suspended license is a 33-day suspension without pay, pursuant to paragraph B of the disciplinary section of the 2008 Agreement. To the extent the grievant has been suspended for longer than 33 days, pursuant to Section 11-3.9 of the CBA, the Company shall provide back pay and restore all other privileges and seniority that would have accrued had Mr. Torres not been suspended for more than 33 days. Any earnings Mr. Torres received while he was suspended for more than 33 days shall be deducted from any back pay owed by the Company.

This arbitrator shall retain jurisdiction over this case for 60 days from the date of this award for the sole purpose of resolving any dispute concerning the implementation of the award.

December 21, 2015
Amherst, New York

_____
Lise Gelernter, Arbitrator

Acknowledgment and affirmation

I, Lise Gelernter, do hereby affirm upon my oath as an arbitrator that I am the individual described in and who executed the foregoing instrument, which is my Award, which was issued on December 21, 2015.

Amherst, New York

_____
Lise Gelernter, Arbitrator

APPENDIX

WITNESSES

For the Employer:	
William Lobuzzetta	Superintendent of Transportation Services, NFT Metro
Louis Giardina	Manager, Labor Relations, NFTA
Joseph LaScala	Transportation Supervisor
Christopher Antholzner	Senior Operations Manager, NFTA
For the Union:	
Vince Crehan	President, Business Agent, ATU Local 1342
Jorge Torres	Grievant

EXHIBITS

Joint Exhibit 1	Collective Bargaining Agreement
Joint Exhibit 2	Grievance Package
Joint Exhibit 3	Performance Improvement Guidelines, 1/18/2000
Joint Exhibit 4	September 2008 Agreement, 9/5/2008
Joint Exhibit 5	Disciplinary Notice – Suspension – J. Torres, 5/20/15
Joint Exhibit 6	Disciplinary Notice – Termination – J. Torres, 6/2/15
Joint Exhibit 7	Hiring letter and orientation – J. Torres, 2/6/14, 3/3/14
Joint Exhibit 8	DMV Notice of Impending License Suspension - J. Torres, 4/23/15
Joint Exhibit 9	DMV Suspension Order – I. Howard, 3/18/14
Joint Exhibit 10	Disciplinary Notice – Suspension – I. Howard, 3/31/14
Joint Exhibit 11	Employer's Post-Hearing Brief re: I. Howard, 12/2/14
Joint Exhibit 12	Union's Post-Hearing Brief re: I. Howard, 12/3/14
Joint Exhibit 13	Arbitration award re: I. Howard, 1/13/15
Joint Exhibit 14	Disciplinary package – A. Moore, 2009
Joint Exhibit 15	Disciplinary Notice – Suspension – H. Scott, 1/30/14
Joint Exhibit 16	Disciplinary Package – T. Lloyd, 2012
Joint Exhibit 17	Disciplinary Package – V. Montanari, 2012
Joint Exhibit 18	Disciplinary Package – M. Parks, 2013
Joint Exhibit 19	DMV LENS Notice re: J. Torres, 5/15/15
Joint Exhibit 20	DMV LENS Notice re: J. Torres, 5/16/15
Joint Exhibit 21	Daily Record of Operators, 5/16/15
Company Exhibit 1	Uniform Traffic Summons
Union Exhibit 1	DMV Notice of Impending License Suspension – D. Palmer, 9/20/07
Union Exhibit 2	Buffalo DMV Notice – R. Johnson, 9/20/07
Union Exhibit 3	NFT Metro Rules for Bus Transportation and Maintenance Employees
Union Exhibit 4	Handwritten note from Police Officer Labby
Union Exhibit 5	Payment receipt, 5/19/15