

BEFORE THE DART TRIAL BOARD

In the matter of

ANGELA GONZALEZ
Grievant

And

DALLAS AREA RAPID TRANSIT
Employer/DART

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) **RE: Grievance No: 3011 - U - ATU**
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BEFORE:

Ruben R. Armendariz, Trial Board Hearing Officer

APPEARANCES:

For the Grievant:

Kenneth Day, President/Bus. Agent, ATU Local 1338
Ms. Evelana "Chris" Garrett, ATU Representative

For the Employer:

Tammy Barrow, Assistant General Counsel IV
Linda Brooks, Senior Manager, Transit Center Services

Marty Durston, Trial Board Coordinator

Place of Hearing:

Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas

Date of Hearing:

November 11, 2010¹

Date of Award:

February 3, 2011

¹ The transcript of the Trial Board Hearing conducted on November 11, 2010 was received by the undersigned on December 15, 2010.

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DISCUSSION, OPINION AND AWARD

This matter was heard on November 11, 2010 in Dallas, Texas.

The parties to this proceeding agreed the grievance is procedurally and substantively arbitrable and properly before the Trial Board Hearing Officer. They were afforded full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing on the issues. Based on the entire record, my observation of the witnesses, after examination of all the exhibits, Trial Board Hearing Officer citations provided and consideration of the arguments of the parties, the Hearing Officer makes the following findings and renders the following Discussion, Opinion and Award as follows:

ISSUE

Did DART have just cause to discharge Angela Gonzalez, the grievant herein? If not, what should be the appropriate remedy?

STATEMENT OF THE CASE

This is a discharge grievance. Grievant was issued a Notice of Discharge (NOH) - Unsatisfactory Attendance on January 12, 2010. The NOH cited grievant violated the Standard Operating Procedure (Publication Number 04-028109) 13.0 Sign in Procedures and Section 8.3 Unacceptable Conduct, (A) Unsatisfactory Attendance of the Hourly Employment Manual (HEM) and the Supplemental HEM - Station Monitor, Section 3, Attendance, (H) Discipline for Tardiness.

Grievant began her employment with DART in April 2004 as a Station Monitor servicing bus and rail stations. Grievant's position required her to work independently and to assist customers with route information, and to handle customer complaints. Station Monitors are considered tardy if they are not at their assigned workstation at their assigned report time. They can call in and notify their supervisor or they can use

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their computer to swipe their card to clock in, and their reporting time as scheduled is registered into the Trapeze system. However, if they are late, the Trapeze system is set up to record one minute prior to a Station Monitor's scheduled reporting time, to block out a certain color and report that a certain Station Monitor is absent and has not reported in for work as scheduled. The Trapeze system then notifies supervision that a station is not manned. Grievant's assigned report time is 5:00 a.m.

Under DART's Supplemental HEM - Station Monitor (SM), a liberal tardiness policy is provided to Station Monitors. And each year beginning with January 1st, their tardiness record is wiped clean, and they begin a new 12-month period. If however, a Station Monitor receives nine (9) tardiness occurrences within a calendar year, they are subject to discharge. The first three tardies, the employee does not receive any corrective discipline. On the fourth tardy, the employee receives a verbal notification through e-mail. On the fifth tardy, the employee receives a documentation of counseling. On the sixth tardy, the employee receives a written warning. On the seventh tardy, the employee receives a final written warning. On the eighth tardy, the employee receives a one-day suspension and on the ninth tardy, the employee is subject to discharge.

Grievant's work record reveals the following tardies:

1. 2/20/09 clocked in late 18 minutes.
2. 4/24/09 clocked in late 1 minute.
3. 5/28/09 running late 46 minutes.
4. 9/16/09 running late 23 minutes, receives e-mail notification.
5. 10/08/09 running late 51 minutes, receives Documentation of Counseling 10/15/09.
6. 10/15/09 running late 53 minutes, receives written warning 10/22/09.
7. 10/23/09 running late 25 minutes, receives Final Written Warning 10/29/09.
8. 12/4/09 running late 38 minutes, receives 1 day suspension 12/09/09.
9. 12/23/09 running late 37 minutes, subject to discharge.

Grievant filed a grievance protesting her discharge. It was processed through the various steps of the grievance procedure and remained unresolved. It was then

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submitted to the Hearing Officer for decision.

POSITION OF DART

DART argues they had just cause to discharge grievant for violating the Hourly Employment Manual (HEM), Section 8.3A, unsatisfactory attendance, and the Station Monitor Supplement, Section 3H, discipline for tardies by accumulating nine (9) tardy occurrences in a twelve month period.

DART argues the tardiness policy is a very liberal policy. Every January 1st a station monitor absentee record is wiped clean. Grievant received her 8th occurrence on December 4, 2009, and received a one-day suspension on December 9, 2009. Grievant then obtained her 9th occurrence on December 23, 2009. Consequently, grievant was subject to discharge for a 9th occurrence and was subsequently discharged.

DART requests the grievance be denied in its entirety.

POSITION OF GRIEVANT

Union argues DART did not have just cause to discharge grievant. Union argues that Supervisor Washington failed to counsel or correct grievant's behavior in obtaining tardiness occurrences. Supervisor Washington only informed grievant "that's the policy, that's just the way it is," and did not consider any reasonable excuse grievant may have had to explain the reasons for her tardiness. Supervisor Washington never bothered to sit down with the grievant privately and discuss her situation.

Union argues it is incumbent upon supervision to counsel an employee. Grievant was never counseled and is a failure of due process. Supervisor Washington failed to correct grievant's behavior and thus failed in management's obligations under the HEM.

Union argues grievant filed a grievance and attempted to explain to Assistant Vice President Jerry Reynolds the circumstances with her mother and reasons for her tardiness to no avail.

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Union requests grievant be reinstated and to be made whole.

DISCUSSION and OPINION

In matters of discipline and discharge, DART has the burden of proof.²

Record evidence revealed grievant violated DART's Hourly Employment Manual (HEM), specifically Section 8.3 Unacceptable Conduct (Revised 10/1/02) and the HEM Supplement - Station Monitor (SM). The SM provides for Discipline for Tardiness.

- *Tardy 1 through 3 occurrence = no action
- *4th Tardy occurrence 9/16/09 = Verbal notification (email is sufficient) -9/16/09
- *5th Tardy occurrence 10/8/09 = Documentation of Counseling = 10/15/09
- *6th Tardy occurrence 10/15/09 = Written Warning = 10/22/09
- *7th Tardy occurrence 10/23/09 = Final Written Warning = 10/29/09
- *8th Tardy occurrence 12/4/09 = Suspension without pay (1 day, 12/09/09)
- *9th Tardy occurrence 12/23/09 = Subject to Discharge 12/23/09

Record evidence revealed grievant was assessed the above corrective and progressive discipline. At the hearing grievant admitted all of the above infractions. The only excuse provided was that grievant was taking care of her ailing mother and that Supervisor Washington was insensitive. While the Hearing Officer commends grievant on her taking care of an ailing parent, the Hearing Officer must make a determination as to whether DART management had just cause to discharge her for Unsatisfactory

² The standard of proof necessary may require this Hearing Officer to consider one of three evidentiary recognized standards of proof; (1) the preponderance of evidence, (2) clear and convincing evidence, or (3) beyond a reasonable doubt. In order to determine which standard of proof should be incorporated depends upon the specific facts and circumstances that gave rise to the grievance at hand. In this grievance, this Hearing Officer has determined that the standard of proof necessary for DART to meet its' burden of proof is "the preponderance of evidence." In order to establish just cause, DART must show that there was a rule, regulation, policy or instruction; that the grievant was given notice of the rule, regulation, policy or instruction; that the grievant was given notice of the consequences for violating the rule, regulation, policy or instruction; and that the grievant did, in fact, violate the rule, regulation, policy or instruction. DART must also establish that prior to the issuance of the discipline, it conducted a complete investigation. Once it has established a prima facie case, the burden then shifts to the Grievant/Union. The Grievant/Union may seek to establish that the grievant was denied certain due process rights such as notice of the rule, regulation, policy or instruction; or notice of the consequences for violating the rule, regulation, policy or instruction. It may also seek to establish that the facts relied upon by DART are not correct or that a complete investigation was not conducted prior to the issuance of the discipline. The Grievant/Union may also present evidence of mitigating circumstances that would compel the Hearing Officer to reduce or rescind the discipline.

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Attendance. Union argued grievant was not afforded due process. The record evidence however revealed grievant was given due process. Grievant was fully aware of the Supplemental HEM - Station Monitor policy regarding tardiness and the consequences for violating the rule. The Hearing Officer finds DART's tardiness policy is very liberal. On January 1st of each year all station monitors tardiness records are wiped clean and commence a new twelve-month period. Grievant accumulated the 4th tardy through the 9th tardy from September through December 2009. Management counseled her regarding her tardiness and she was fully aware of the consequences for obtaining additional occurrences within a twelve-month period. Union argued other employees received breaks on tardiness. Record evidence revealed grievant also received breaks on tardiness as well.

No evidence of disparate treatment or mitigating circumstances was presented to the Hearing Officer that would compel a reduction of the discipline issued by DART. Under these circumstances, it is the Opinion of the Hearing Officer that DART has met its burden of proof and thus, had just cause to discharge grievant.

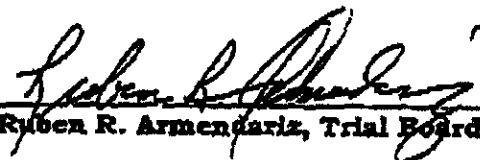
Accordingly, the Hearing Officer issues the following Award.

THE AWARD³

For the reasons stated above, this grievance is DENIED.

Issued at San Antonio, Texas, the 3rd day of February 2010.

For the Trial Board:



Ruben R. Armendariz, Trial Board Hearing Officer

³ Section 8.9.J of the HEM.