

**BEFORE THE DART TRIAL BOARD**

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<p>In the matter of</p> <p><b>ELLOMETHA CRADDOX</b> GRIEVANT</p> <p>And</p> <p><b>DALLAS AREA RAPID TRANSIT (DART)</b> EMPLOYER</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>RE: Grievance Nos.: 0926-U-ATU 1722-U-ATU</p>
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**BEFORE:** Ruben R. Armendariz, Trial Board Hearing Officer

**APPEARANCES:**

<b>For Union/Grievant:</b>	Kenneth Day, President - ATU Local 1338 Evalanna Garrett, ATU Representative
<b>For DART:</b>	Peter R. Brannan, Sr. Assistant General Counsel IV Robert Reeves, Senior Manager-South Oak Cliff  Marti Durston, Trial Board Coordinator

**Place of Hearing:** Dallas Area Rapid Transit  
1401 Pacific Avenue  
Dallas, Texas

**Date of Hearing:** August 19, 2010<sup>1</sup>

**Date of Award:** October 21, 2010

<sup>1</sup> The official transcript of the Trial Board Hearing was received on September 15, 2010.

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**DECISION AND AWARD OF  
THE TRIAL BOARD HEARING OFFICER**

**PRELIMINARY**

This matter was heard on August 19, 2010, in Dallas, Texas. The parties to this proceeding agreed the grievance was procedurally and substantively arbitrable and properly before the 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, Hearing Officer citations provided and consideration of the arguments of the parties, this Hearing Officer makes the following findings and renders the following Discussion, Opinion and Award as follows:

**TRIAL BOARD AWARDS SUBMITTED AND CONSIDERED**

Rodney Pratt and DART Case No. 2875-U-ATU  
John C. Scott and DART Case No. 2649-U-ATU  
Bernard Phillips and DART Case No. 2338-U-ATU  
Ernest Dunbar, III and DART Case No. 2536-U-ATU  
Towana Washington and DART Case No. 2751-U-ATU  
Tanganyika Shirley and DART Case No. 2903-U-ATU  
Sharon Starks and DART Case No. 2744-U-ATU  
DeBoss Christian and DART Case No. 2734-U-ATU

**ISSUE**

**Did DART have just cause to discharge Ellometha Craddox, the grievant herein? If not, what should be the appropriate remedy?**

**STATEMENT OF THE CASE**

These are discipline grievances. In 1999, grievant Craddox was hired as a bus operator and was discharged on October 20, 2009<sup>2</sup> for obtaining her 8<sup>th</sup> *loseout* occurrence in violation of TD-27,D.1. In dispute in these grievances is the application of DART's *loseout* policy contained in the Hourly Employment Manual (HEM), TD-27.

<sup>2</sup> All dates are in year 2009 unless notified otherwise.

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DART argues there exists a distinction between an absence occurrence and a *loseout* occurrence. Union argues just cause under Section 8.8.A.2 and 8.8.A.3 of the HEM requires a rule to be reasonable where exigent circumstances exist and should be considered not in a vacuum. DART, on the other hand argues that in the policy there are no excuses for a *loseout* occurrence.

**The Discipline Issued**

On October 6 Manager Joe Carranza, South Oak Cliff (SOC) Bus Operations, placed grievant on administrative leave with pay pending completion of an investigation as to grievant's eighth *loseout* occurrence.

On October 8 Carranza issued grievant a *Notice of Proposed Discharge (NOPD) - Eighth Loseout Occurrence.*

On October 20, Robert S. Reeves, SOC Senior Manager issued grievant a *Notice of Discharge (NOD) - Eighth Loseout Occurrence.* Reeves informed grievant she was being discharged for violating DART provisions of the Hourly Employment Manual (HEM) Supplement, Transportation Department (TD) as follows:

**Section 27. Attendance and Loseout Policy for Bus and Train Operators (Revised Jan. 1, 1998).**

**E.1** Shown below are the actions that will be taken for absence occurrences or *loseouts* accumulated in any 12-month period:

<b>Absence Occurrences</b>	<b>Action Taken</b>
1-3	Informal Counseling
4	1 <sup>st</sup> Written Warning
5	2 <sup>nd</sup> Written Warning
6	3 <sup>rd</sup> Written Warning
7	Decision Making Leave Day/Final Written Warning (DMDL/FWW)
8	Discharge

Reeves informed grievant she was late (*loseout*) to work on October 5 for the eighth time within a twelve (12) month period. She had been previously counseled on prior *loseout* occurrences and informed her performance was unsatisfactory. A review

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of grievant's records revealed she was late (loseout) on the following dates:

Date	Reason Given	Action
12-24-08	No call No Shre report operator call at 620am	Informal
02-16-09	Car was towed	Informal
03-10-09	Overslept/Alarm didn't work.	Informal
03-26-09	Diarrhea/Called late	1 <sup>st</sup> Written Warning
06-01-09	Generated by Sign In Terminal/Stuck in Traffic	2 <sup>nd</sup> Written Warning
08-03-09	No call/No show by report time	3 <sup>rd</sup> Written Warning
09-23-09	Called at 9:22 am, less 30 min before report time	DMDL/FWW
10-05-09	Generated by Sign In Terminal	NOPD

On October 14 a meeting was held in Reeves' office giving grievant the opportunity to reply orally and/or in writing to the NOPD. In attendance at the meeting were grievant, DeBoss Christian ATU - Local 1338 representative and Reeves. During the meeting, grievant and her representative provided the following information:

- There is nothing on the attendance report to indicate grievant had a lose out.
- Grievant was not able to punch in on the third terminal because it was not working, which caused the 8<sup>th</sup> loseout.
- Grievant was having domestic problems and someone had broken into her car, which caused her to get a 7<sup>th</sup> loseout.

Upon review of the information presented Reeves concluded:

- "The attendance report dated 10/05/09 clearly indicates a loseout.
- You never claimed there was anything wrong with the clock or problems with signing in when you met with the manager or subsequent conversations with me.
- Loseouts are not excusable."

Reeves' investigation concluded grievant's discharge shall be effective on October 20.

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### **THE GRIEVANCE PROCESS**

#### **Step 1**

On October 28 a Step 1 grievance (#0926) appeal hearing was held with Reeves, Christian and grievant. On November 28 Reeves issued a Step 1 response and denied the grievance.

#### **Step 2**

On October 30 a Step 2 grievance hearing appeal was held with Tim Newby, Vice President of Bus Operations over grievance #1722 and #0926. Present were grievant, Ricky Booker and Mary Hobbs. On December 30 Newby issued grievant a Step 2 response stating:

Grievant provided the following information at the hearing:

- On September 23 grievant had her seventh (7<sup>th</sup>) *loseout* due to her car being broken into and her tires being cut, and then having to wait for the police to arrive.
- On October 5 grievant had her eighth (8<sup>th</sup>) *loseout* and on October 6 grievant was placed on Administrative Leave with Pay.
- Grievant indicated that when she lost out on October 5 other employees also lost out, because the terminal was malfunctioning, but no signs were posted indicating there was a problem with the terminals.
- The previous *loseout* grievant had was due to her car being towed and drowsiness as a result of allergy medication that caused her to be unable to drive. Grievant also indicated that she had made the South Oak Cliff Division staff aware of this and that she applied for Family Medical Leave Act (FMLA), but was denied FMLA because she had not worked the required number of hours.
- Then on October 20 grievant was discharged by the South Oak Cliff Division management

Newby responded and stated the following:

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- "You were discharged on October 20, 2009 by the South Oak Cliff management for violations of Section TD-27, E.1 of the Hourly Employment Manual (HEM) for having a *Lose-out* on Monday, October 5, 2009; this was your Eighth (8<sup>th</sup>) *Lose-out* within a twelve month period.
- On October 5, 2009, you swiped ID Card on the sign-in-terminal after your scheduled sign-in time, which was 9:45 a.m. During your hearing you indicated that other employees lost out this date because the terminal was malfunctioning, however during my investigation, I found that one employee successfully swiped-in at 9:44 a.m. within the scheduled sign-on time of 9:49 a.m. and then at 9:50 a.m. another employee successfully swiped-in within the scheduled sign-in time of 10:01 a.m.
- Section TD-27 of the Hourly Employment Manual does not identify any conditions that would excuse a *Lose-out*. In consideration of this "no fault" approach to the policy, each employee received multiple opportunities for *Lose-outs* that do not result in disciplinary action, leading up to discharge on the eighth occurrence within 12 months.
- I found that your grievance #0926 was filed untimely, per Section 1.8 of the Hourly Employment Manual (HEM).

Based on my investigation, I have not identified any violations of the Hourly Employment Manual or other DART policies and therefore must deny your grievance and the remedy that you requested."

**Step 3**

On December 28 a Step 3 hearing appeal was held with Frank Jennings, Vice-President - Transportation. Those persons present at the hearing were the grievant, Booker, Christian and Sharon Hamilton.

At the hearing, grievant provided the following information:

**Grievance #0926** You alleged that sign-in terminals at the division are not working properly and you have brought this matter to the attention of management on several occasions. The system is broken and not being fixed. You attempted to sign-in at one of the terminals, but were unable to do so, because it was broke. By the time another terminal was available, you had lost out. Your remedy is to remove the eighth loseout and to be made whole.

**Grievance # 1722** You gave your reason for each loseout as follows:

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- 12-24-08 Overslept because of medication - applied for FMLA but was denied. Reinstatement time was not considered FMLA, request was for intermitting occurrences.
- 02-16-09 Car was towed. Should have been given the benefit of the doubt due to the circumstances.
- 03-10-09 Overslept due to taking medication.
- 03-26-09 You acknowledged that this loseout is legitimate.
- 06-01-09 Two reasons are stated on the absence report-both can't be correct.
- 08-03-09 On medication.
- 09-23-09 Called at 9:17 a.m., but was placed on hold-car had been vandalized.
- 10-05-09 Terminal was not working properly causing you to loseout.

Jennings denied the grievance and responded that he personally reviewed each of grievant's loseouts to ensure they were processed properly and aligned with her version as mentioned during the hearing.

- 12-24-08 Loseout Absence Report states operator called at 6:20 a.m., stated she overslept (no mention of taking any type of medication as stated in the hearing).
- 02-16-09 Telephoned the station office at 5:54:05 a.m. and said "... I'm at my apartment and they have moved my car from the parking space.... At the time called you had lost out and were advised of such by the station Supervisor.
- 03-10-09 You telephoned the station office at 6:15 a.m. and left a voice message, "...my alarm didn't go off," ... There was no mention of you taking any type of medication as stated in the hearing.
- 03-26-09 Telephoned the station office at 6:04:30 a.m. and said "... (can't stay off the toilet"... You were advised of the loseout by the station supervisor.
- 06-01-09 You were due on duty at 6:16 a.m., scheduled to work run 20204. You called the station office at 7:24:52 a.m. and were placed on hold. You called again at 7:26:33 a.m. and were instructed by the station supervisor to report for roll call at 1:00 pm.
- 08-03-09 You called the station office at 6:19:21 a.m. stating "... just woke up....You were instructed to call back at 8:00 a.m. to get an assignment. There was no mention of you taking any type of medication.
- 09-23-09 Same response as cited in grievance #1472. You called the station office at 9:22:22 a.m. after losing out.
- 10-05-09 A review of the sign-in terminal log (from 8:11a.m. until 10:00 a.m.) did not reveal any malfunction of the three terminals.

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**Appeal to the Trial Board Hearing Officer**

This matter was appealed to the Secretary of the DART Trial Board for hearing before a Trial Board Hearing Officer. This Trial Board Hearing Officer was mutually selected to hear this matter and render a decision.

**RELEVANT DART HEM POLICIES AT ISSUE**

Found in Attachment A and incorporated in this Award.

**POSITION OF DART**

DART argues they had just cause to issue grievant a Notice of Discharge.

DART argues that in the transportation business, it is very important for DART to be on schedule/time with the public they serve. An absence occurrence and a loseout are governed by the TD-27. An absence occurrence can be charged or not charged. A *loseout* is a time target. An employee is required to show up for work so that the bus they are assigned to can pull out on schedule to meet the public. If an employee cannot make it to work, the employee is required to call in thirty-minutes in advance. If the employee fails to call in thirty-minutes in advance, it is considered a no-fault "loseout." The public depends on a bus operator to be timely and on schedule for they to meet their expectations to be at work on time or some other time required event. This is the way DART maintains schedules to get the buses out. DART has a long and established practice in the application of *loseouts*. In a rolling twelve-month period, a bus operator has an opportunity to miss work seven (7) times. When a "loseout" occurs, a relief bus driver is assigned to the original bus driver's route. All the grievant had to do was to notify DART thirty minutes in advance, "I can't come in." And as long as that call was made in time, it would not be a loseout.

DART argues grievant received her eighth *loseout* on October 5 that caused her discharge.

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DART argues the Union's argument over FMLA protection should be afforded to grievant does not apply to an Employer's reporting procedures for bus operators. Moreover, issues involving FMLA at this late juncture are simply untimely. A *loseout* is just a requirement to call in and report; and therefore, FMLA is not applicable.

DART requests the grievance appeals be denied.

**POSITION OF UNION**

UNION argues DART did not have just cause to issue grievant a Notice of Discharge. DART is in violation of Section 8.8.A.2<sup>3</sup> and 8.8.A.3<sup>4</sup> of the HEM.

Union argues DART has the burden of proof. There are seven tests of just cause. DART cannot take the position a *loseout* is a *loseout* because the concept of just cause requires DART to establish grievant was guilty of what she is being accused of committing. DART has to consider the circumstances and the reasonableness of their rule. Union argues the rule is unreasonable. Grievant is being charged with a *loseout* on October 5 where the evidence reveals grievant drove her assigned bus route, thus grievant did not lose out. Union argues that it is common in the workplace for employees swipe in at terminal to be coded as reporting to work on time. On October 5 grievant attempted to swipe in for work several times but the terminals were malfunctioning. These malfunctioning terminals are a common occurrence and issue at work.

Union argues that on September 23 grievant called in at 9:22 a.m. and reported

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<sup>3</sup> Section 8.8.A.2 of the HEM states the following: Present individual grievance and appeals asserting that the grievant has been adversely affected by a violation, misinterpretation, or inequitable application of an existing law, ordinance, resolution, policy, rule, or regulation as it applies to the conditions of employment, or regarding disciplinary action without just cause other than those involving discharge or demotion.

<sup>4</sup> Section 8.8.A.3 of the HEM states the following: Present other individual grievance or appeals regarding disciplinary action without just cause resulting in discharge or demotion of the grievant.

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that her car had been vandalized. Grievant received a 7<sup>th</sup> loseout and filed a grievance when DART charged her with that absence. Before that grievance made it through the process, grievant experienced the 8<sup>th</sup> loseout dated October 5. Both 7<sup>th</sup> and 8<sup>th</sup> loseouts were addressed at Step 2 by Newby and at Step 3 by Jennings in the grievance procedure.

Union argues grievant had filed for FMLA and had been certified for FMLA. Grievant's physician indicated here would be times she would not be able to work due to her medical condition. Union requests the Hearing Officer to look at the absences included in the discharge of March 10 and absence of June 1. Grievant informed her supervisor that these absences were related to her medical condition and should be protected under FMLA.

Union requests grievant's appeal be sustained and grievant reinstated to her former position and made whole with respect to wages and benefits.

**DISCUSSION AND OPINION**

In matters of discipline and discharge, DART has the burden of proof.<sup>5</sup>

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<sup>5</sup> 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 Union/Grievant.

Union/Grievant 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. Union/Grievant may also present evidence of mitigating circumstances that would compel this Hearing Officer to reduce or rescind the discipline.

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DART argued grievant's discharge was for just cause. Union argued DART did not have just cause to discharge grievant.

The Hearing Officer finds DART's *loseout* policy provides for corrective and progressive discipline and is based on the number of *loseout* occurrences an Operator has obtained within a rolling 12-month period. It is also a no-fault policy. The purpose of the policy is to provide the station office with enough notice so that it can call in a relief operator if the scheduled operator fails to appear for work. The buses operate on schedule and customers are dependent on these schedules being prompt. Union argued in this proceeding that exigent circumstances existed and were not considered in the application of discipline meted out through the *loseout* policy and is unreasonable.

Under HEM's TD-27, a *loseout* may also be an absence occurrence but not necessarily so. DART's *loseout* policy is no-fault absentee control policy. The cause or reason for the *loseout* is not a factor that is considered; there are no excuses allowed. A "*loseout is a loseout is a loseout.*" The only exceptions to charging *loseouts* are when DART has made an administrative error.

Union argued all of grievant's *loseout* occurrences are subject to review by the Hearing Officer under a "just cause" theory. The Hearing Officer finds this argument with respect to the first six *loseout* occurrences are untimely. Additionally, Union argued that FMLA trumps TD-27. While this is true, the Hearing Officer finds FMLA does not protect employees in circumstances involving reporting to work as required under TD-27, D.1, (*loseout* occurrences).

The Hearing Officer finds only two *loseout* occurrences are in dispute - September 23 and October 5 and both have been properly grieved herein.

**The September 23 Loseout**

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Carranza testified that when grievant received her 7<sup>th</sup> loseout occurrence on September 23<sup>rd</sup> she was given a decision-making leave day (DMLD) in accord with TD-27. Grievant testified she was scheduled to report for duty at 9:45 a.m. In order for grievant to avoid a loseout occurrence, grievant had to notify the station office before 9:15 a.m. According to grievant's testimony, she called the station office at 9:15 a.m. and reported that her car had been vandalized and broken into and needed to get it reported to the police. When she called the station office, she was placed on "hold" that lasted 5-6 minutes. The station office supervisor returned to the phone and grievant was told she had obtained a *loseout* occurrence. Grievant's phone call was recorded received at 9:22 a.m. and was within the thirty-minute period, not outside the thirty-minute period to avoid a *loseout* occurrence. Grievant later obtained a police report and attempted to give it to Carranza to support her story but he said it did not matter nor did she need to provide it. Thus, grievant accrued the 7<sup>th</sup> loseout occurrence. Grievant stated that if not for the break-in to her car she would have reported to work thirty minutes before her scheduled sign on. Nevertheless, grievant was assessed a loseout occurrence. Record evidence revealed grievant reported to duty and was assigned to her regular scheduled route. Union, argued grievant did not have a loseout.

The Hearing Officer finds that TD-27, D.1, specifically states,

"A loseout is recorded when an Operator does not report to work and fails to notify the station office or designated management official at least 30 minutes prior to the scheduled report time."

Here, grievant said she timely called in at 9:15 a.m., thirty minutes prior to her scheduled sign on but the record evidence revealed she called in at 9:22 a.m. According to DART's policy, as DART applies it to all operators, there can be no excuse for not calling in thirty-minutes prior to an operators scheduled sign on. DART's

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"Trapeze" software immediately determined when the operators swipe their card, if they have a loseout occurrence or not. DART argued the loseout policy is very liberal, equally applied and employees are given several opportunities (8) in a twelve-month rolling period before discharge. Thus, the policy is corrective and progressive.

The Hearing Officer however, finds that just cause requires a rule to be reasonable. Here, grievant had an exigent circumstance that precluded her from notifying the station office at least thirty-minutes prior to her scheduled report time.

Grievant provided documentary proof that her car was vandalized. Carranza refused to consider it because of their enforcement of a steadfast application of the rule i.e., failure to notify the station office at least 30 minutes prior to her scheduled report time. Thus, there are no excuses for a loseout occurrence. Moreover, record evidence revealed grievant reported for duty and worked her assigned and scheduled route. According to TD-27, D.1, a loseout occurs when an operator does not report to work. Here, grievant reported to work and worked but grievant failed to notify the station office at least 30 minutes prior to her scheduled report time. The "loseout" rule contains two conditions that must be met in order to have a loseout occurrence: the operator fails to notify management at least 30 minutes before sign on that the operator would not be coming to work. Grievant met one of two conditions of TD-27, D.1, when she failed to timely notify the station office. But grievant did report for work and worked her assigned route. Thus, grievant should not have been issued a loseout. According to DART's interpretation of the rule, if an employee missed the reporting requirement, the employee met both conditions. The Hearing Officer finds the rule is a reasonable rule but has been misapplied. The rule is clear and not ambiguous. Grievant did not violate both conditions of the rule. In order to find grievant violated the rule, she must violate both conditions of the established rule.

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Grievant violated one condition, thus, grievant cannot be assessed a loseout occurrence (7<sup>th</sup>) for violating one of two conditions.

It is therefore, the Opinion of the Hearing Officer that grievant should not have been issued a loseout occurrence (No. 7) when in fact she worked her assigned route. It is therefore Ordered the 7<sup>th</sup> loseout occurrence be rescinded.

**The October 5 Loseout**

Record evidence (DX-1) revealed operators who swiped their card before the scheduled sign (within 30 minutes) on (October 5) swiped in successfully. Grievant swiped in at 9:46 a.m., one minute after the sign in time of 9:45 a.m. Thus, grievant obtained her 8<sup>th</sup> loseout occurrence. When grievant arrived to the terminal she was one minute late and the computer (Software package "Trapeze") generated the loseout. There are three sign in terminals (SOC3, SOC2, SOC1) and the operators have a card they swipe. All of the terminals were working properly. Normally, the operators swipe their card four or five minutes early or up to twenty minutes early except at the number three terminal. The number three terminal is for relief operators that are going to relieve and they can swipe in an hour early. Grievant's reporting time is 9:45 a.m. and on October 5 grievant signed in at 9:46 a.m. at Terminal 2. Carranza spoke with Frank Mathews, Supervisor of the SOC station office about the October 5 loseout. Mathews said grievant had called in before and that she was running late and when she arrived she swiped in late. Carranza stated that even if you are late to work, you can work the same assigned run. This can happen when there are no other bus operators on roll call. Grievant did work her run on that day. Carranza stated they do not accept any excuses for a loseout. Reeves corroborated this statement. Carranza stated that he was at work but was not present at the station office on October 5 at 9:45 a.m. Carranza agreed that he had heard operators complain that the terminal

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did not work and that they had to swipe more than once.

Here, the Hearing Officer finds grievant called the Station Office at 9:44 a.m. and spoke to Matthews to report that she was coming in to work. Matthews corroborates grievant's testimony. Matthews informed grievant it was 9:44 a.m. Although, grievant had not swiped her card, she did provide Matthews notice although untimely that she was reporting for work. Upon entering the station office where Matthews and the terminal is located, grievant swiped her card. The Trapez software declared grievant having swiped after the sign in time at 9:46 a.m., one minute after 9:45 a.m. Grievant argued that it took several swipes before the terminal accepted her card. Grievant was scheduled to sign in at 9:45 a.m. Grievant was told to go ahead and work her assigned route. Thus, grievant worked her assigned bus route and did not loseout.

Again, the Hearing Officer finds DART misapplied the loseout rule. Grievant in fact, notified Mathews by phone that she was reporting for work. Under these circumstances, the Hearing Officer finds grievant did not violate both rule conditions for her to receive a loseout occurrence (8<sup>th</sup>). According to management's interpretation of the rule, if an employee missed the reporting requirement by late swiping their computer card at the terminal, the employee met both conditions and received a loseout occurrence, i.e, the employee failed to report to work by not notifying the station office at least 30 minutes prior to the scheduled report time. Obviously, these are not the facts here. In this case, grievant notified Mathews on October 5, reported for work, albeit one minute late but did show up for work and performed her assigned scheduled route.

It is therefore, the Hearing Officer's Opinion that if the employee reports to work albeit late but is assigned by the station office to the same assigned scheduled route,

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the employee does not violate both conditions of the rule and thus, should not receive a loseout. Therefore, grievant should not be penalized and receive a loseout occurrence. The sole purpose of the loseout rule is to provide management a thirty-minute notice opportunity to find a relief operator and assign the relief the absent operator's assigned route in order to timely meet their schedule to the public they serve. Here, on both the 7<sup>th</sup> and 8<sup>th</sup> loseout incident, grievant was late to work, no relief driver was required and she was able to provide timely service to the public.

The record evidence revealed DART is solely applying tardiness as the rule in a loseout occurrence. It is the Opinion of the Hearing Officer that in order for an operator to have a loseout occurrence two conditions must be met: (1) when Operators fail to report to work, and (2) fail to notify the station office or designated management official at least 30 minutes prior to the scheduled report time.

Additionally, in DART Case 2734-U-ATU (DeBoss Christian), Hearing officer Ruben Campos found a disparate application of the rule and stated,

"The Hearing Officer acknowledges the sound reasons for the loseout policy and the necessity for its strict and uniform enforcement in order to meet the needs of the riding public. However, the undisputed evidence herein further shows at least two occasions involving other employees on which the supervisors at issue exercised discretion to either charge a loseout or to eliminate one from a driver's record...."

Under these circumstances, it is the Hearing Officer's finding DART did not have just cause to discharge grievant or to issue grievant Loseout occurrence #7 and #8. Further, the Hearing Officer hereby Orders DART to rescind grievant's loseout occurrence #7 and #8 from grievant's file and all of DART records. Grievant is hereby reinstated to her former position and shall be made whole with respect to wages and benefits minus any interim earnings.

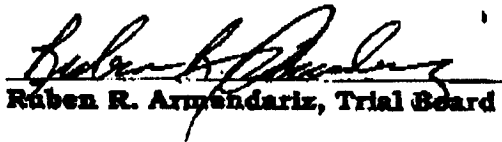
**Ellometha Craddock and Dallas Area Rapid Transit  
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**THE AWARD\***

For the reasons stated above, the grievances are sustained.

Issued at San Antonio, Texas, the 21<sup>st</sup> day of October 2010.

For the Trial Board:



**Ruben R. Armandariz, Trial Board Hearing Officer**

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\* Section 8.9.J of the HEM.

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**ATTACHMENT A**

**HEM Supplement - Transportation Department (TD)**

**TD 27 Attendance and Lossout Policy (Revised January 1, 1998)**

- A. This policy supersedes the Operations Department Attendance Policy established May 3, 1993.
- B. **Definitions**
- (1) Absence Occurrence - An Operator is not available for scheduled/assigned work assignment and has not received prior approval. (See Section 27.B.10.)
  - (2) Absence Without Approved Leave (AWOL) - An Operator does not report to work at the scheduled assigned report time or takes leave without approval from the division supervisor or manager.
  - (3) Approved Union Business - Pre-approved absence to conduct business on behalf of the Union. The request must be submitted for approval to the Station Supervisor before 11:00 a.m. the day before the absence. Emergency requests must be approved by the Senior Manager or designee.
  - (4) Decision Making Leave Day (DMLD) - A paid Administrative Leave day given to an Operator in lieu of disciplinary action. It is designed to allow Operators time off to decide on their future at DART. Operators who accumulate seven absence occurrences or seven lossouts in a 12-month period will receive a final written warning with a corrective action period from their immediate supervisor. Upon return to work they are required to provide their immediate supervisor with a written plan of action for improving their attendance for a period not less than 90 calendar days. The pay status of an Operator who fails to submit the written plan of action will be changed to Leave Without Pay.
  - (5) Emergency Medical Leave - A valid emergency requiring immediate treatment by a medical physician involving an Operator or an immediate family member residing in the Operator's household.
  - (6) Excessive Absenteeism - 20 or more lost work days within a 12-month period, exclusive of approved absences, will be considered excessive absenteeism and result in an Operator being reviewed for discharge. An Operator with excessive absenteeism will be subject to discharge based on a review of the Operator's job record.
  - (7) Hospitalized - Confined to an accredited hospital or medical institution under the care of an authorizing physician.
  - (8) Job Abandonment - Operators who are absent without

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authorization for three consecutive work days will be subject to discharge.

- (9) Leave Without Pay (LWOP) - The pay status of Operators who are absent but have no paid leave to cover the days of absence will be LWOP.
- (10) Prearranged Absence - Absences which have received prior approval from division management in accordance with established procedures. Requests must be submitted for approval to the Station Manager before 11:00 a.m. the day before the absence. Emergency requests must be approved by the division Manager or Senior Manager. The pay status of Operators who need to be absent but have no paid leave to cover the days of absence will be LWOP. No absence occurrence will be charged in this instance.

**C. Attendance Procedure**

- (1) Upon implementation of this policy on January 1, 1998, the number of absence occurrences for each Operator will be zero. The attendance record of employees who transfer to the position of Operator will be converted to the equivalent step in this policy on the date of the transfer.
- (2) Operators must call daily when absent. Operators who will be absent without prior approval must call their immediate supervisor (or the designated management official) at least 30 minutes prior to their regularly scheduled work time, or be considered absent without approved leave (AWOL). After the initial report, Operators are required to call the Station Office before 11:00 a.m. on each day of absence. The exceptions are vacation, rescheduled holidays, union business, military leave, death leave, hospitalization, and jury duty.
- (3) Each of the following absences will be charged as one absence occurrence.
  - a. An absence due to an injury or illness of an Operator that does not qualify through Section 27.C. (4) below.
  - b. An absence due to an injury or illness of an immediate family member residing in the Operator's household that does not qualify through Section 27.C. (4) below.
  - c. An absence without approved leave.
- (4) An absence for any purpose shown below will not be classified as an absence occurrence if the corresponding condition is met:

Purpose	Condition to be Met
Approved union business	Meet definition guidelines of approved union business. [See

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Court/D ART related Court subpoena Family and Medical Leave Act Substance abuse rehabilitation Rescheduled holiday Short-term disability	Follow proper procedure outlined in the Hourly Employment Manual
Bereavement leave Jury duty Military leave	Provide validating documentation.
Emergency medical leave Hospitalization Prearranged doctor's	Provide medical statement from treating physician.
Workers' Compensation	Obtain approval of claim from Risk Management. *

\* Unless ruled compensable by Texas Workers' Compensation Commission.

**D. Loseout Procedure**

- (1) A loseout is recorded when an Operator does not report to work and fails to notify the station office or designated management official at least 30 minutes prior to the scheduled report time;
- (2) An Operator who loses out and then does not follow instructions to report at a later time that day will be charged with a second loseout that same day.
- (3) Pay for work performed after receiving a loseout will be limited to actual time worked.
- (4) If an Operator fails to report to work or to notify the Station Office before 11:00 a.m. (if loseout occurred in the AM) or within two hours after the last PM pull out (if loseout occurred after 11:00 AM), the incident will be recorded as an absence occurrence in addition to a loseout. (Each division will have the last PM pull out time posted.)

**E. Corrective Action**

- (1) Shown below are the actions that will be taken for absence occurrences or loseouts accumulated in any 12-month period.

