BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS, CHAUFFEURS AND HELPERS UNION NO. 43	Case 36 No. 48979 A-5052
and	
TAYLOR ENTERPRISES, INC.	

Appearances:
Mr. Charles Schwanke, President, Teamsters Local No. 43, appearing on behalf
Mr. Jack Taylor, Transit Manager, appearing on behalf of the Company.

ARBITRATION AWARD

The Company and Union above are parties to a 1990-93 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested the Wisconsin Employment Relations Commission to appoint an arbitrator to resolve the discharge grievance of Patricia Sigrist.

The undersigned was appointed and held a hearing on April 21, 1993, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, and neither party filed a brief.

ISSUES:

Did the Company violate the collective bargaining agreement when it discharged Patricia Sigrist?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS:

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ARTICLE 9. Posted Rules

It is agreed between the parties hereto that any Employer posted rules that have been approved by the Union must be observed by the employees. All present employees shall be given a copy of such rules and new drivers shall be given a copy of such rules upon hiring.

The following rules and regulations as set forth and the penalties to be charged for the violations of these rules are placed into effect so that all employees may know what duties are required of them in the general conduct of the Employer's business. Discipline imposed under these rules and regulations must be imposed within ten (10) working days for minor violations and must be imposed immediately for major violations. Any grievance resulting from discipline of any of the violations must be filed with the Employer within five

(5) working days of the violation.

1. ACCIDENTS

(a)	Major chargeable, Subject to immediate discharge. (See explanatory note #1)	
(b)	Minor chargeable (See explanatory note #2)	First Offense- reprimand (written)
		Second Offense- 1 day layoff
		Third Offense- 3 days layoff
		Fourth Offense- subject to immediate discharge

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EXPLANATORY NOTES:

1. Item 1a. Incidents which become the basis for use of this rule must involve personal injury or loss of three thousand five hundred dollars (3,500.00) or more

. . .

The Employer and the Union agree that the Employer has the right to discipline any employee for violation of any of the above rules and regulations up to and including the maximum penalty. Further, the Employer and the Union agree that any penalty or lack of penalty assessed by the Employer will not be considered a precedent or act as a waiver on any other violation of the above rules and regulations.

ARTICLE 14. Management Rights

The Employer possesses the sole right to operate the mass transit system and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this agreement and the past practices in the departments covered by the terms of this agreement, unless such practices are modified by this agreement or by the Employer under rights conferred upon it by this agreement or the work rules established by the Employer. These rights which are normally exercised by the Employer include but are not limited to the following:

1. To direct all operations of the transit system.
2. To hire, promote, transfer, assign and retain employees in their position with the transit system and to suspend, demote, discharge and take other disciplinary action against employees for just cause.

. . .

In addition to the management rights listed above, the powers of authority which the Employer has not officially abridged, delegated or modified by this agreement are retained by the Employer. The Union recognizes the exclusive right of the Employer to establish reasonable work rules.

The Union and the employees agree that they will not attempt to abridge these management rights and the Employer agrees that he will not use these management rights to interfere with rights established under this agreement. Nothing in this agreement shall be construed as imposing an obligation upon the Employer to consult or negotiate with the Union concerning the above areas of discretion and policy.

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ARTICLE 25. ARBITRATION

In the event that the employer and the Union cannot mutually agree to a settlement of any unresolved controversy which may arise concerning any matter or the interpretation of this Agreement, such unresolved controversy shall be reduced to writing and shall be referred to the Wisconsin Employment Relations Commission to have an arbitrator appointed for settlement.

The filing fee required by the Wisconsin Employment Relations Commission for arbitration shall be split equally between the Union and the Employer.

The Employer and the Union agree that the decision of the arbitration committee shall be final and binding upon both parties. The Employer and the Union agree that Union membership shall not be a matter subject to arbitration.

. . .

FACTS:

Grievant Patricia Sigrist had worked for the Company for five years as a bus driver in the Racine City bus system when she was discharged, after an accident which occurred on March 9, 1993. There is no dispute that until this accident, the grievant had a good work record.

The accident occurred at the corner of LaSalle and Hamilton Streets in Racine. The grievant's bus was proceeding north on LaSalle Street and came to a stop sign at Hamilton. Whether or not the grievant came to a full stop at the stop sign is disputed. But there is no dispute that upon proceeding past the stop sign, the bus collided with a car which was proceeding eastbound on Hamilton Street. The car was damaged and "wrapped around" the front bumper of the bus, and the police investigation resulted in a citation to the grievant for failing to yield the right-of-way to the other motorist. Four bus passengers complained of bodily injuries as a result of the collision, were removed from the bus on stretchers, and were transported by the Racine Rescue Squad to local hospitals for examination and treatment. All were released the

same day.

Manager Jack Taylor investigated the bus accident, and spoke to all of the passengers who claimed injury, as well as the driver of the other vehicle. By letter dated March 12, Taylor discharged the grievant for failing to give a satisfactory explanation for the accident and for causing an accident involving injury.

The Company presented statements and cards describing the accident by several of the passengers; those which gave details stated that the accident was the grievant's fault. The Company called one passenger, Robert Schade, as a witness. Schade testified that the bus made a "jerky stop", in which it did not stop fully, at the corner of LaSalle and Hamilton, and continued to move as it turned. Schade testified that he saw the car before the bus hit it, that in his opinion the accident was the bus driver's fault, and that he was injured by having his knees and head bounced against the seat in front of him and the back of his own seat, when the bus bounced back and forth in the collision.

The Union presented written statements from two bus passengers who were not injured, and who alleged that the grievant had stopped the bus at the intersection and that each witness did not see the car before it hit the bus. Neither of these two witnesses testified.

It is undisputed that at the time of the accident the bus was not on its proper route. In her Driver Accident Report, the grievant wrote concerning this that the reason the bus was at LaSalle and Hamilton was: "I had Route 1 before Route 4. I momentarily forgot I was on Route 4 and I passed my turn at State and Douglas. I continued up State Street to LaSalle so I could take Hamilton back to Douglas and get back on my Route."

On April 22, 1993 Attorney Michael Piontek, attorney for the grievant in the traffic citation matter, wrote to the grievant to advise that shortly after the arbitration hearing on April 21, the City Attorney's office dismissed the charge at the pre-trial conference. The grievant, on April 26, wrote to this Arbitrator requesting that this action be considered in the record. The matter was referred to the Union and Company for their positions, and the Union requested that the dismissal be considered, while the Company argued that admission of post-hearing evidence was improper, in part because this would not allow for rebuttal.

THE UNION'S POSITION:

The Union contends that the grievant has a good record marred by a single accident, and that while the accident was unfortunate, discharge was too severe a penalty in the circumstances. The Union points to a document signed by some 30 drivers supporting the grievant and claiming that an act of discrimination was taking place in the Company's discharge of the grievant. The Union indicates that the employes' argument is based on the fact that the grievant was laid off during the summer and received unemployment compensation benefits over the Employer's objection. The Union requests that the grievant be reinstated and made whole for lost pay and benefits.

THE COMPANY'S POSITION:

The Company contends that the grievant represents a safety problem and that even though she "had some good traits" it cannot last long in business if the public knew Taylor put this driver back on the street. The Company argues that the statement by 30 drivers should be discounted, on the ground that there are 68 drivers employed by the Company. The Company argues that the discharge should be sustained.

DISCUSSION:

Two issues must be disposed of immediately. The first, the statement from other employes that they felt the grievant was being discriminated against, stands without any proof in the record that it is true. No witness testified, nor is there any other evidence, to the effect that there was anything resembling discriminatory conduct or that other employes who have had accidents have been treated more leniently by the Company.

A second item which has less relevance to this proceeding then it might first appear is the City Attorney's dismissal of the police citation against the grievant. I read this collective bargaining agreement as not incorporating any outside standards of whether or not the grievant was culpable for an accident; the case must stand or fall based on the evidence presented in this arbitration proceeding. It is standard practice in arbitration to hold that other forums in which related issues may arise have their own standards of proof and their own concerns, and such collateral actions do not dispose of the merits of an arbitration case unless the collective bargaining agreement itself supplies some reason why the results of another proceeding should be given weight. Here, the only possible basis for such a finding is in the use of the phrase "chargeable accident". Arguably, "changeable" could refer to a police charge of negligent driving. However, the term "chargeable" is routinely used in labor relations to indicate general fault for an accident or event, not to trigger the use of standards external to the labor relations process for making the decision as to whether there is fault or not. In this particular Agreement, this is underlined by the fact that Article 9, which specifies under "Accidents" that a "major chargeable accident" is "subject to immediate discharge", also specifies that discipline "must be imposed immediately for major violations". It is clear that this would be an impossibility if the disposition of a police charge had to be known before it was known whether the accident was chargeable or not in that sense. I conclude that this is clear evidence that the word "chargeable" refers to general fault, and not legally chargeable conduct. Accordingly, the disposition of the police citation is irrelevant to the merits of this dispute.

In this instance, I cannot find that the Company unfairly concluded that the grievant was at general fault in the accident which occurred. Most of the hearsay statements were to the effect that the grievant did not fully stop at the stop sign. The only passenger who appeared as a witness testified to the same effect. The grievant herself, in her testimony, did not specifically allege that the accident was the fault of the other driver. And the testimony by retired Police Officer Donald LaFave to the effect that the police diagram had to be wrong and that the bus passenger witnesses were arguably biased (because they might have something to gain from claiming injury at the hands of the bus system) must be viewed in the light of his undisputed close friendship with the grievant. I conclude that the Company sustained its burden of demonstrating that the grievant was at general fault in the incident involved. Similarly, I conclude that the Company has demonstrated that the incident was "major" within the meaning of Article 9 of the collective bargaining agreement. While the exact dollar amount of liability on the part of the bus system was not clear at the hearing, the reference to injury in the definition of "major chargeable" in explanatory note 1 of Article 9 does not specify that the injury be of near-fatal proportions. Four passengers claimed injury, and were taken seriously enough by the Racine authorities that they were taken to hospitals for examination. There is nothing in the record to contradict Taylor's statement that when he followed up on these witnesses, several either told him that he would have to speak to their attorneys or indicated some continuing muscle, back or neck strains.

It is unfortunate that a single incident of this kind should occur, and it is not a condemnation of the grievant in her overall employment that it did.

But I serve here as an arbitrator under a collective bargaining agreement, and not as an independent judge of the grievant's merits as an employe. I am therefore bound by the limitations expressed in the collective bargaining agreement. In this instance, I cannot ignore the last (unnumbered) explanatory note of Article 9, which states "the Employer and the Union agree that the Employer has the right to discipline any employe for violation of any of the above rules and regulations up to and including the maximum penalty." Arguably, some employers would not consider a single accident of these proportions to deserve the maximum penalty allowable under the contract. But this Company did. Having found that the accident is both "major", within the terms the parties have agreed upon, and "chargeable" to the grievant, within the terms the parties have agreed upon, I cannot find that the Company lacked the right to impose discharge for this rule violation without doing violence to the clear language of the contract, which gives the Company the right to impose that penalty.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Company did not violate the collective bargaining agreement by discharging Patricia Sigrist.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 26th day of May, 1993.

By _____
Christopher Honeyman, Arbitrator