BEFORE
JOSEPH V. SIMERI
ARBITRATOR

In the Matter of Arbitration:	)	
	)	**FMCS Case No. 11-57839-3**
Between	)	
	)	
FORT WAYNE COMMUNITY SCHOOLS,	)	
	)	**DISCHARGE ADAMS**
And	)	
	)	
IBT/414,	)	

PUBLICATION OF AWARD

Do you consent to the submission of the award in this matter for publication?

(X) Yes ( ) No

If you consent you have the right to notify the arbitrator within 30 days after the date of the award that you revoke your consent.

[signature] 12/12/11

Representative for Fort Wayne Community Schools — Date

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BEFORE
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ARBITRATOR

In the Matter of the Arbitration	)	
	)	**FMCS Case No. 11-57839-3**
Between	)	
	)	
FORT WAYNE COMMUNITY SCHOOLS	)	
	)	**Thomas Adams, Grievant**
And	)	
	)	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 414	)	

ARBITRATION AWARD

This dispute was arbitrated on December 12, 2011 in Fort Wayne, Indiana. The Employer was represented by William L. Sweet, Jr., Esq. The Grievant and the Union were represented by Neil E. Gath, Esq. The Employer and the Union, including the Grievant, presented witnesses and introduced evidence. Post-Hearing Briefs were submitted electronically to the Arbitrator on February 6, 2012. This Award is issued within 30 days from the submission of the Post-Hearing Briefs.

ISSUE

The agreed issue is whether the Grievant, Thomas Adams, was discharged for

just cause. If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Master Contract (Joint Exhibit 1)

ARTICLE II
BOARD AND ADMINISTRATION RIGHTS

The Board and Administration has the responsibility and authority to manage and direct in behalf of the public the operations and activities of the school corporation to the full extent authorized by law. It is understood and agreed that all responsibilities and authority heretofore exercised by the Board and Administration or inherent in the Board and Administration as the body charged by the law with the operation of the School Corporation, are retained solely by the Board and Administration. Such responsibilities and authority of the Board and Administration which are not abridged by this Contract shall include, but are not limited to, the right to:

1. Direct the work of its employees;
2. Establish policy;
3. Hire, promote, demote, transfer, assign, and retain employees;
4. Suspend or discharge its employees in accord with applicable law;
5. Maintain efficiency of public operations;
6. Relieve its employees from duties because of lack of work or other legitimate reason; and
7. Take actions necessary to carry out the mission of the public agency as provided by law.

ARTICLE III
EMPLOYEE AND UNION RIGHTS AND RESPONSIBILITIES

E. Notice of Discipline

1. When Discipline is to be issued, both the employee and union will be notified

in advance. The employee may or may not choose to have union representation present when discipline is issued. An employee may respond in writing to any discipline or anything derogatory in nature placed in an employee's personnel file. The employee will sign the discipline to indicate an awareness of the discipline. Refusal to sign the discipline will not affect its validity.

Whenever practicable, discipline will be recommended in writing within ten (10) school days of the conduct giving rise to the discipline, but no later than ten (10) school days after the employer's having knowledge of the conduct. Either the employer or the union can extend this time limit an additional ten (10) school days. This timing does not apply to situations involving the Safety Guidelines policy or pending criminal proceedings.

Discipline for minor infractions will not be considered for purposes of the Employee Standard Practices' progressive discipline policy after twenty-four (24) months have passed without another minor infraction. Major infractions need not follow progressive discipline and may be considered no matter how old for purposes of future discipline.

2. Safety violations governed by the Safety Guidelines shall stand alone outside the discipline progression.

ARTICLE VI
GRIEVANCE PROCEDURE

B. Procedure

4. Step Three

a. If the grievance remains unresolved or if no disposition has been made within the time period, the grievance may be submitted to arbitration before an impartial arbitrator. If the aggrieved party is desirous of carrying the grievance to arbitration, the grievance shall be referred to the Union.

b. The Union shall submit its intent to arbitrate the grievance, in writing, to Employee Relations within 30 calendar days. Within fourteen (14) calendar days following the notification of intent to

arbitrate, the parties shall meet and mutually decide if the grievance hearing should be expedited. The Union, upon written notice to Employee Relations, shall submit the grievance to arbitration under, and in accordance with, the rules of the Federal Mediation and Conciliation Service (FMCS) within seven (7) calendar days of the end of the fourteen (14) day meeting period.

c. If both parties (Union and the Board) agree, the hearing may be expedited.

d. If the Federal Mediation Conciliation Service hearing is not to be expedited, the parties shall request the Federal Mediation Conciliation Service to submit a panel of seven (7) impartial arbitrators. The parties shall strike alternately names from the list and the remaining panel member shall be the arbitrator selected by the parties.

e. Either party may request no less than twenty-one (21) calendar days prior to the arbitration hearing a conference which shall be scheduled by agreement of the parties not less than seven (7) calendar days prior to the arbitration hearing, the purpose of which shall be:

(i) To stipulate to as many facts as possible;
(ii) To identify which facts and/or issues remain unresolved;
(iii) To exchange lists of witnesses, the nature of their testimony, and exhibits;
(iv) To resolve the grievance, if possible, at this conference.

Neither party shall be permitted to assert in the arbitration hearing any grounds or to introduce into evidence any testimony or exhibits not disclosed to the other party at this conference.

f. The decision of the arbitrator shall be binding on both parties.

g. The fee and expenses of the arbitrator shall be shared by the

parties and all other costs incurred by either party shall be paid by that party.

ARTICLE VIII
PROBATION AND SENIORITY AND CONTINUITY OF SERVICE

C. Continuous Service Broken and Seniority Lost

Continuous service shall be broken, seniority lost, and employment terminated whenever the employee:

1. Quits, resigns, retires, is discharged for just cause, or dies.

2. Is absent from work for more than three (3) consecutive days without authorization or notification.

3. Is absent from work because of personal illness or accident and fails to keep the Fort Wayne Community Schools notified monthly, stating the probable date of return to work.

4. Is absent from work without satisfactory explanation beyond the period of "leave of absence" granted by Fort Wayne Community Schools.

5. Fails to accept and/or report to work within fourteen (14) calendar days after receipt of a written notice of recall to work after a department layoff, given by the Board by certified mail and addressed to the employee at the last address appearing on the records of the Board. The Board's letter shall be considered as received if it is returned and marked "no forwarding address."

6. Employee fails to notify the Employer of his intent to return from layoff within seven (7) days of notice or fails to return within one (1) week of notice to return.

7. Individuals on layoff and who, at the time of layoff, had at least one (1) year of seniority and had been laid off in excess of twenty-four (24) months or length of service, whichever is greater, following layoff.

8. Employee is discovered working during regular working hours while on

worker's compensation disability leave of absence after having refused light duty work from FWCS.

ARTICLE XX
RESPONSIBILITIES AND DUTIES

B. Drivers' Duties

1. Safely operate school bus equipment and transport students to and from destinations.

FACTS

Thomas Adams ("Mr. Adams") has been working as a school bus driver for this Employer since December 2002. In January 2006, the Employer terminated Mr. Adams for alleged performance issues. That termination was reduced to a 40-day unpaid suspension by an arbitrator.

After he served his unpaid suspension, Mr. Adams returned to work and worked without incident until May 5, 2011. On that morning, Mr. Adams was operating a school bus at the corner of Cook Road and Westfield Road in Fort Wayne. This intersection is controlled by stop signs. As fate would have it, at the same intersection, and at the same time, two of Mr. Adams' supervisors, Michael Fuller, the Supervisor of Driver Operations, and Judy Land, the Manager of Work Transportation, were in an automobile. Mr. Fuller saw the bus driven by Mr. Adams slow, but not come to a complete stop at the stop sign. Ms. Land saw Mr. Adams roll

through the stop sign and turn left in front of her vehicle. Both Mr. Fuller and Ms. Land reported the incident to Mr. Adams' supervisor.

The Employer presented a videotape showing Mr. Adams' operating his school bus on that morning. Contrary to what Mr. Fuller and Ms. Land thought they saw, the videotape demonstrated that Mr. Adams did stop at the intersection, briefly, but he did stop. Mr. Fuller also testified that Ms. Land, the driver of the vehicle in which Mr. Fuller was riding, honked her horn at Mr. Adam's school bus at the time of the incident. The sound track on the video did not demonstrate any sound. In its Post-Hearing Brief, the Employer acknowledged that it is no longer relying on the May 5, 2011 stop sign incident as support for its decision to terminate Mr. Adams' employment.

But this is not the end of the story. The very next day, May 6, 2011, Ms. Land was standing at the front area of the Employer's North Transportation Area when she was met by Jim Smith, a school bus driver and also a member of the Teamsters Union bargaining unit. Mr. Smith was upset to the point of trembling. He reported a driving incident involving Mr. Adams that Mr. Smith witnessed. He then prepared a written statement, which reads as follows:

> As I was exiting the Northrop High School bus parking lot at 7:19 a.m., Mr. Tom Adams, in Bus 270, abruptly veered to his left into my northbound lane to avoid rear-ending an auto in front of him (southbound). If I hadn't stopped at the yield sign, I am sure we would

> have crashed head-on. Shaken up, I proceeded to NTC. Tom approached me in the office and said 'I am sorry, if I hadn't veered to the left, I would have hit that car, I'm sorry.'
>
> Sincerely,
> James W. Smith
> Bus 218
>
> PS He approached me again in the bus lot to apologize. I said to him 'Tom, you should never veer to the left.' His response, 'I had to, or I'd hit the car.' My response, 'Tom, you were driving too fast' and he said, 'Oh, whatever.'

Mr. Smith has worked for the Employer as a school bus driver for about 20 years. He has held positions involving the training of other drivers. Mr. Smith's opinion is that what happened that morning was a "highly dangerous situation". In addition to driving around the stopped car into the oncoming lane, Mr. Adams crossed a double yellow line on the road between two southbound lanes and the northbound lane. Once Mr. Adams stopped, his bus was between six and eight feet from the bus Mr. Smith was driving.

The Employer conducted an investigation of the May 6, 2011 incident. A meeting was held on May 12, 2011 among Elza Bearyman, the Employer's Supervisor of Driver Operations, Mr. Adams, and Mr. Adams' Union Representative, James Hansel. Mr. Adams told Mr. Bearyman that both lanes going into Northrop High School were blocked. Mr. Adams again confirmed he was following behind a white

Honda Accord, when that vehicle slammed on its brakes, causing Mr. Adams to swerve to avoid hitting that car.

We are blessed with a video from the recorder on Mr. Adams' bus. The video does not support Mr. Adams' version that an automobile stopped suddenly in front of Mr. Adams' bus, thus requiring Mr. Adams to swerve into the oncoming lane of traffic to avoid hitting the rear of that automobile. In fact, the recording shows that as Mr. Adams turned into the Northrop High School entrance, he was in the right-hand lane. It appeared that Mr. Adams put his left arm out of the bus window to signal to the traffic in the left lane that Mr. Adams wanted to merge into the left lane. A passing vehicle did not allow Mr. Adams to make that movement. Mr. Adams yelled out of his bus window at that driver "are you blind?" One of the students on the bus is heard to say to Mr. Adams, "You need to be more patient." Another of the students on the bus loudly stated, "Just let me off of this bus." Once Mr. Adams merged into the left lane, the traffic in front of him came to a stop. There was no sudden stop by the traffic ahead of Mr. Adams requiring him to swerve or drive into the oncoming lane. Mr. Adams simply drove his bus over a double yellow line into the northbound lane.

At the hearing, under oath, Mr. Adams, having seen the video of the May 6, 2011, abandoned his version of the suddenly stopping white Honda Accord. Mr.

Adams admitted his statement about the sudden stopping of the white car which caused him to drive into the oncoming lane of traffic was untruthful.

> Q: You made up this piece about the white car doing a panic stop in front of you.
>
> A: At this point I'll say yes. I was trying to make Mr. Smith.... I was trying to understand his point, and I, obviously I made a mistake.
>
> (Tr. p.112, ll 10-14).

During the Employer's investigation of this incident, Mr. Bearyman decided to examine the May 2011 GPS reports from the bus driven by Mr. Adams. This was done even though no one reported that Mr. Adams had been driving his bus at an excessive speed on May 5, 2011, or May 6, 2011, or at any other time. Based on the GPS reports, the Employer believed it uncovered numerous times when Mr. Adams exceeded the speed limit from May 2, 2011 through May 17, 2011.

Mr. Adams was suspended without pay on May 24, 2011. He was fired, effective June 7, 2011. The reasons given by the Employer are numerous. They are specified in the June 7, 2011 Termination Notice to Mr. Adams:

1. Violation of Work Rules for Classified Employees, specifically,

   - #36 - Engaging in any unauthorized action or making any unauthorized statement that might place the school corporation in violation of state or federal law.
   - #37 - Any statement, action, or conduct not in the best interests of the

school corporation.

2. Violation of School Bus Driver's Handbook – Safety Tips, pg. #23 and Traffic Law, pg #48:

- Never Speed
- Drive with patience and alertness
- According to Indiana Code 20-9.1-5-10, "No school bus shall be operated at a speed greater than (60) miles per hour on a federal or state highway (including interstate highways) or greater than forty (40) miles per hour on any county or township highways." If a posted speed limit is lower than the absolute limits set by law, the posted speed limit shall be observed.

3. Violation of State of Indiana Statutes:

- Page 37, section IC9-21-8-52, Reckless driving; offense, (A) A person who operates a vehicle and who recklessly: (1) drives at such an unreasonably high rate of speed or at such an unreasonably low rate of speed under the circumstance as to: (A) endanger the safety or the property of others.

4. Violation of Employee Code of Ethics:

- "Make the well-being of students the fundamental value in all decision making and actions."
- "Make reasonable efforts to protect students from conditions harmful to learning or to health and safety."
- "Fulfill all responsibilities with honesty, truthfulness and integrity."
- "Conduct ourselves in ways that foster and encourage openness, accountability and personal responsibility."

ANALYSIS

At the arbitration hearing, the Employer based its justification for firing Mr. Adams on the following:

1. The May 5, 2011 stop sign incident;

2. The May 6, 2011 crossing the double yellow line and improper lane usage incident; and

3. Numerous instances of alleged speeding from May 2, 2011 through May 17, 2011.

The video from Mr. Adams' school bus does not support the alleged violation of the incident involving the stop sign on May 5, 2011. The Employer acknowledges in its Post-Hearing Brief that it is no longer relying on that incident in support of its decision to part ways with Mr. Adams.

With respect to the alleged incidents of speeding, there are no witnesses to any speeding and there are no traffic citations issued to Mr. Adams for any speeding. Mr. Adams' operation of his school bus at allegedly unsafe speeds was never an issue until the Employer, on its own initiative, decided to look at the GPS reports. There is no Employer policy providing for monitoring of GPS reports applicable to all bus drivers. At least none was offered in evidence. I am not convinced concerning the accuracy of the GPS records, and certainly not convinced of their probative value to a degree

that would support significant disciplinary action. In fact, it seems reliance on these alleged speeding incidents by the Employer is an attempt to "pile on." A properly baked cake does not need a special frosting.

We are left, then, with the May 6, 2011 incident. What happened on that morning is no longer disputed. Mr. Adams was operating a school bus, transporting special-needs children. He was stopped in the right lane of traffic. He did not want to be in that lane. He signaled his intention to move into the left lane, but a motorist already in that lane did not give him an opening. Mr. Adams' response was not patience. It was agitation. It was not defensive driving. It was offensive driving. He yelled, "are you blind?" at the driver of the vehicle who showed him no courtesy. A student on the bus, here a student teaching the teacher, said to Mr. Adams, "You need to be more patient." Another student said, "Let me off of this bus." Mr. Adams, tired of waiting for traffic to clear, crossed over a double yellow line to make his turn. In doing so, he came within 6 to 8 feet of colliding with a school bus driven by James Smith, a co-worker and Teamster Union member. Mr. Smith was so upset by the incident it caused him to tremble and he felt obliged to report it to a supervisor and to make a written report.

This case is not about a school bus driver who may speed when driving. This case is not about a school bus driver who could have stopped a little longer at a stop

sign one morning. This case is about Mr. Adams' temperament and judgment on May 6, 2011. Mr. Adams does not drive a milk truck. He drives a school bus, carrying under his protection, priceless cargo. It may not be uncommon for drivers to become upset, even angry at other drivers who fail to exhibit common courtesy. But Mr. Adams, when driving his school bus carrying special-needs children, is not just another driver. He must, like Caesar's wife, be above reproach. True, there was no accident. True, there was no personal injury and no property damage. But there could have been. Mr. Adams allowed impatience to conquer safety.

I am deeply troubled by Mr. Adams' lack of forthrightness about this incident. Mr. Adams made up a story about a vehicle that suddenly stopped in front of him, allegedly leaving him no alternative but to switch lanes to avoid a collision. He repeated this untruth during the investigative meeting. His unwillingness to tell the truth until the arbitration hearing tells me two significant things. First, he must have viewed his actions on that morning as serious, warranting grave discipline. Next, he refused to accept responsibility for his actions until the arbitration hearing, and even then, grudgingly.

FINDINGS

The Employer presented a litany of rule violations to support its decision to fire

Mr. Adams. First, it referred to "Work Rules for Classified Employees" #36 and #37. Work Rule #36 prohibits the "Engaging in any unauthorized action or making any unauthorized statement that might place the school corporation in violation of state or federal law." I find that the May 6, 2011 incident did not violate Work Rule #36.

Next, Work Rule #37 prohibits "Any statement, action or conduct, not in the best interest of the school corporation." Certainly, it could be argued that Mr. Adams' decision making on May 6, 2011 was not in the best interest of the school corporation. But reliance on this Work Rule, which could mean almost anything to anybody under any circumstance, is not helpful. I find it does not provide a basis for discipline in this case.

Mr. Adams was charged violating Indiana Statute found at IC 9-21-8-52. That statute requires driving at an unreasonably high rate of speed, or at an unreasonably low rate of speed. By definition, Mr. Adams did not violate Indiana's reckless driving statute on May 6, 2011.

Next, Mr. Adams was charged with a violation of the School Bus Driver's Handbook - Safety Tips, at page 23 and Traffic Law, at page 48. One of the Safety Tips prohibits speeding. I have already discussed the speeding charges. I find that the Employer has not met its burden of proof with respect to those charges. The School Bus Driver's Handbook does require, however, that a school bus driver drive with

patience and alertness. I find that on May 6, 2011, Mr. Adams did not drive with patience and alertness.

Finally, the Employer charged Mr. Adams for violation of certain provisions of its Employee Code of Ethics. Here, Mr. Adams, falls woefully short. A school bus driver is required to "Make the well being of students the fundamental value in all decision making and actions." I find Mr. Adams did not do that on May 6, 2011. A school bus driver is required to "Make reasonable efforts to protect students from conditions harmful to ... safety." I find Mr. Adams did not do that on May 6, 2011. A school bus driver is required to fulfill all of his responsibilities with "honesty, truthfulness and integrity." I find Mr. Adams did not do that on May 6, 2011. Mr. Adams was not honest or truthful when he made up the story about the white Honda on May 6, 2011. He was not honest or truthful when he again affirmed the phony story during the Employer's formal investigation. Telling the truth at the arbitration hearing, after viewing the video, is admitting to stealing cookies when shown a photo of your hand in the cookie jar.

I do not think it seriously disputed that "...the examination of the penalty as it relates to the offense is an element of the just cause concept." *Inman Container Corp.* 91 LA 545 (Howell 1988). This is a difficult case, but not in finding that discipline should be imposed. What is difficult to decide is whether Mr. Adams should lose his

job, a job which he has held for 11 years, a job which he has performed capably for the last five years.

Mr. Adams' work record must be weighed. *Grand River Rubber & Plastic Co.*, 116 LA 1434 (Cohen 2002). This is the second time the Employer has fired Mr. Adams. The first time was in 2006 and the firing was reduced to a 40-day unpaid suspension by an arbitrator. I do not have the benefit of that arbitrator's opinion to know the facts and circumstances supporting that decision. The Employer's Disciplinary Report for that incident, admitted into evidence, describes "alleged inappropriate behavior while operating a school bus." It then lists a number of items, including cell phone use while operating a school bus, tailgating cars, trying to force them to move out of the way, intentional reckless driving, tailgating cars, trying to force them out of the way, and reading while operating a school bus. But there is no way for me to know which of those allegations actually occurred or were proven. Nevertheless, a 40-day unpaid suspension is major. The Contract states "Major infractions need not follow progressive discipline and may be considered no matter how old for purposes of future discipline." The 40-day unpaid suspension demonstrates Mr. Adams had significant job performance issues, at least in 2006. Now, unfortunately, this past May, he again exhibited lack of judgment and impatience, placing his wards at risk, and then compounded it with untruthfulness.

The Employer submits its discharge of Mr. Adams should be sustained. The Union submits Mr. Adams' discharge should be overturned and Mr. Adams should be reinstated with full back pay, seniority and all other benefits. If this were a case involving only Mr. Adams, it would not be unreasonable to order reinstatement, but without back pay, in the hope that the significant time Mr. Adams has already been out of work, would have a cathartic affect on his judgment and work performance.

But this case is not just about Mr. Adams. The paramount concern must be the safety of the special-needs children who ride on the bus with Mr. Adams every day. The May 6, 2011 incident could have resulted in injury to person, or damage to property. It did not have to occur if Mr. Adams was patient, courteous, thoughtful, and made the well-being of students the touchstone in his decision making and actions. The Employer's principal concern must be the safety of the students whom it serves "in loco parentis." The Union's concern is to represent Mr. Adams, which it has done ably. My concern is to render a decision that is just. What is just is not always easy. I must determine whether the Employer's decision to permanently remove Mr. Adams from its workforce was unreasonable. Stated another way, would most reasonable employers operating a public school bus system charged with safely transporting special-needs children reach the same decision under the same or similar circumstances? In answering that question, I have weighed the facts surrounding the

May 6, 2011 incident; the truthfulness of Mr. Adams; the work record of Mr. Adams, both before and after the May 6, 2011 incident; and the paramount interest of the Employer in maintaining safe transportation for its students. Based upon all of those considerations, the answer is yes. Thus, I must make the following

AWARD

1. The grievance is denied. The discharge of Mr. Thomas Adams is sustained.

2. Within 30 days from the date of this Award, the School Corporation must provide to Mr. Adams, on school letterhead, a neutral letter of reference setting forth only Mr. Adams' name, the beginning and ending dates of his employment, his job title and job duties, and his rate of pay.

3. The Arbitrator retains jurisdiction over this case for implementation of the remedy.

4. The Employer and the Union must pay the Arbitrator his fee and expenses as provided in the Collective Bargaining Agreement between the parties.

Dated: February 29, 2012

s/Joseph V. Simeri

_____

Joseph V. Simeri, Arbitrator