

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY,
Plaintiff,

v.

LOCAL 600, OPEIU MBTA INSPECTOR'S UNION,

Defendant.

Civil Action No:

COMPLAINT AND APPLICATION TO VACATE ARBITRATION AWARD

Plaintiff, by and through its undersigned counsel, hereby files this Complaint against Defendant and alleges as follows:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff, the Massachusetts Bay Transportation Authority ("MBTA" or "Plaintiff"), pursuant to M.G.L. c. 150C, § 11(a)(3), to vacate a labor arbitration Award issued by Arbitrator John M. Marra ("Arbitrator") pursuant to the collective bargaining agreement between Plaintiff and Defendant, Local 600 OPEIU MBTA Inspector's Union ("Defendant"), a labor organization that represents certain employees (Inspectors, Chief Inspectors, and Coordinating Inspectors) employed by the MBTA.

2. The arbitration giving rise to the Award involved Defendant's challenge to the MBTA's decision to terminate the employment of one of its members, former Chief Inspector and supervisor Patrick Goggin ("Grievant" or "Mr. Goggin"), for committing misconduct in the

performance of his duties – including but not limited to engaging in sexual and racial harassment of his subordinates. Defendant grieved the MBTA’s decision, claiming the MBTA lacked “just cause” to terminate Mr. Goggin.

3. The grievance was presented to the Arbitrator over the course of a three-day hearing, followed by extensive post-hearing briefing by the parties. Following the parties’ presentation of the case, the Arbitrator issued an Award (attached hereto as *Exhibit 1*) in which he found that “whether the evidence is evaluated under a preponderance of the evidence standard or under the more rigorous standard of clear and convincing evidence”, the MBTA had sufficiently proven that Mr. Goggin committed the misconduct for which he had been terminated (i.e., a supervisory employee engaging in sexual and racial harassment), in violation of the MBTA’s rules and policies, and that the MBTA “had just cause to discipline” him.

4. Notwithstanding these findings – including that he confirmed a supervisory employee engaged in sexual and racial harassment – the Arbitrator ordered that the MBTA reinstate Mr. Goggin to his former position or an equivalent position, without back pay.

5. For the reasons described more fully herein, this Court should vacate the Award because, by mitigating the disciplinary sanction and reinstating Mr. Goggin, a culpable, supervisory harasser, the Arbitrator exceeded his authority; the Award violates public policy and is otherwise contrary to law and therefore unenforceable.

PARTIES

6. Plaintiff, MBTA, is a body politic and corporate, and a political subdivision of the Commonwealth established pursuant to G.L. c. 161A, § 2. The MBTA is one of the oldest public transit systems in the United States, and it is the largest transit system in Massachusetts. As a

division of the Massachusetts Department of Transportation, the MBTA provides subway, bus, commuter rail, ferry, and paratransit service to eastern Massachusetts and parts of Rhode Island.

7. Defendant is a labor organization that represents certain groups of MBTA employees, including Chief Inspectors who work in the MBTA heavy rail operation. Defendant maintains a principal place of business at 147 W 4th St, Boston, MA, 02127.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Plaintiff's claims for relief pursuant to M.G.L. c. 150C, § 11 *et seq.*

9. This action satisfies the requirements for a vacatur action under M.G.L. c. 150C, § 11(a)(3) as the Arbitrator exceeded his power and/or rendered an award requiring a person to commit an act or engage in conduct prohibited by state or federal law.

10. This Court has statewide jurisdiction, and therefore, it has personal jurisdiction over Defendant.

11. Venue is proper in this Court pursuant to M.G.L. c. 223, § 1.

ALLEGATIONS OF FACT

12. The MBTA was established pursuant to enabling legislation set forth at M.G.L. c. 161A, *et seq.*

13. The MBTA's enabling legislation, known as "the MBTA Act," provides that its authority shall be governed and its corporate powers exercised by the Massachusetts Bay Transportation Authority board of directors.

14. The Massachusetts legislature, in establishing the MBTA through statutory enactment, conferred upon the MBTA, through its directors, certain duties and authority. It also prescribed certain limitations on that authority.

15. The MBTA's enabling legislation provides, at M.G.L. c.161A, § 25, that the MBTA, through its directors, has authority to bargain collectively with labor organizations representing its employees and to enter into agreements with such organizations relative to wages, salaries, hours, working conditions, the assignment of work schedules and other matters.

16. The MBTA and Defendant are parties to a collective bargaining agreement ("CBA") that governs the terms and conditions of employment of Chief Inspectors employed by the MBTA.

17. The Chief Inspector position, which Mr. Goggin held at all relevant times, is a supervisory one.

18. The CBA includes a procedure for the resolution of disputes arising between the MBTA and the Union as to the meaning and application of any provision of the CBA, whether any such dispute occurs as the result of a complaint by an individual member of the Union or a complaint by the Union.

19. The CBA further provides that grievances not resolved by the parties shall be submitted to final and binding arbitration "insofar as is permitted by law."

20. The CBA provides that its terms are subject to existing and subsequently enacted applicable statutes of the Commonwealth of Massachusetts, including M.G.L. c. 161A, as amended, except where the parties have agreed to benefits that are in excess of, but not inconsistent with, said statutes.

21. The CBA designates those covered by it, including Chief Inspectors, as the MBTA's "first line of supervision" in the Transportation Department, and provides further that "it is their paramount obligation to the Authority to insure safety of operation, maintain transit services, to enforce the Authority's rules and regulations, to insure productivity, to recommend and assist upper management in meting out discipline when warranted and to further carry out their duties and responsibilities as set forth in the Authority's Manual for Inspectors and Starters."

22. The CBA also contains a Management Rights clause, which provides as follows:

Except as otherwise expressly relinquished or modified by provisions of this Agreement, the Authority retains all rights which it would have in the absence of such agreement. Without limiting the generality of the foregoing and by way of example and not of limitation, such rights include the exclusive right to set its policy; to manage its business in the light of experience, good business judgment and changing conditions; to determine the amount of service to be run at any and all times; to direct the working forces; to determine the number of its employees at any time; to determine the qualifications for, and to select its managerial and/or supervisory forces and all new employees entering the bargaining unit; to make reasonable rules and regulations governing the operation of its business and the conduct of its employees; to determine the work content of jobs; to determine the hourly, daily, and weekly schedules of work; to determine the methods, processes and means of accomplishing work; to enforce discipline for violations of rules and other misconduct; and to suspend or discharge its employees for cause.

23. The MBTA promulgates General Rules of conduct that apply to its employees, including all those represented by Defendant. These General Rules require, among other things, that employees be familiar with and knowledgeable about the rules that apply to them.

24. The General Rules require further that employees treat co-workers with whom they interact in the performance of their duties with courtesy and respect; avoid arguments and exercise patience and self-control under all conditions; refrain from indecent, profane or vulgar

language; refrain from discriminatory treatment of MBTA employees on account of, *inter alia*, race, color and gender; promote zero tolerance for discrimination, harassment and retaliation in the workplace; refrain from committing illegal, immoral or indecent acts, or engaging in any activity whether on or off duty that reflects negatively on the MBTA or participating in activities that have or could have, detrimental job related implications or consequences; refrain from any inappropriate or offensive shouting, whistling, yelling or misconduct while on duty.

25. The MBTA also promulgates and enforces an Anti-Discrimination and Harassment Policy (“ADHP”) which strictly prohibits discrimination and discriminatory harassment based on a person’s legally protected class status. The ADHP prohibits “any” inappropriate and offensive statement or conduct that is either sexual in nature or based on actual or perceived race, color, gender, among other protected characteristics. The ADHP applies to Defendant’s members.

26. All MBTA employees are required to be familiar with and knowledgeable about the rules that apply to them. MBTA policy provides that ignorance of the rules will not be accepted as an excuse for neglecting or failing to adhere to them.

27. Mr. Goggin, served as Chief Inspector on the MBTA Red Line from approximately 2018 until his termination. The catalyst for Mr. Goggin’s discharge was a July 2022 complaint lodged with the MBTA by his subordinate employee, who alleged that she and other Black co-workers had been subjected to discriminatory and inappropriate behavior and harassment by Mr. Goggin on the basis of gender and race.

28. In response to Mr. Goggin’s subordinate’s complaint, the MBTA’s Office of Diversity and Civil Rights (“ODCR”) commenced an investigation into the allegations.

29. After a full and fair investigation, the ODCR determined that Mr. Goggin made an inappropriate comment of a sexual nature about a female subordinate's breasts (i.e., that he stated that he wished to "motorboat" the subordinate's "titties"), and that he treated female employees of color differently than others, holding them to a stricter standards of conduct. In Massachusetts, employers are held strictly liable for sexual harassment committed by supervisors.

30. Based on these determinations, the ODCR concluded that Mr. Goggin violated the MBTA's ADHP, and it recommended that the MBTA review the findings and initiate appropriate disciplinary or corrective action. The MBTA subsequently conducted such a review.

31. Following its review of the ODCR findings that Mr. Goggin, a supervisor, engaged in sexual and racial harassment and in consideration Mr. Goggin's prior disciplinary history – including being disciplined for using condescending and inappropriate language toward a Black female subordinate employee – the MBTA discharged Mr. Goggin.

32. Defendant grieved the MBTA's decision to discharge Mr. Goggin, and following exhaustion of the grievance procedure, it filed for arbitration with the American Arbitration Association.

33. Arbitrator John Marra was appointed, and a hearing was held over the course of three days, on March 1, 2024, October 24, 2024 and December 10, 2024.

34. The Arbitrator framed the issues to be decided as follows: *Did the Employer have just cause to discharge Chief Inspector Patrick Goggin? If not, what shall be the remedy?*

35. Following the hearing and after receiving post-hearing briefs from the parties, the Arbitrator issued his Award, which was delivered to the Parties on May 9, 2025. (The Award was incorrectly dated, May 2, 2025).

36. The Award contains certain factual findings including the following:

a.) that the MBTA “properly conducted an investigation” after learning of the allegations raised about Mr. Goggin’s behavior;

b.) that the MBTA has a zero-tolerance policy that prohibits any inappropriate and offensive statements or conduct that are either sexual in nature or based on race and/or gender;

c.) that Mr. Goggin stated to a female subordinate of color that he wanted to “motorboat” another subordinate female of color’s breasts, as the MBTA had alleged;

d.) that Mr. Goggin treated women, specifically Black women, more strictly than other employees in violation of the Anti-Discrimination and Harassment Policy, as the MBTA had alleged; and,

e.) that the MBTA had just cause to discipline Mr. Goggin.

37. The Arbitrator similarly found that Mr. Goggin and his denials of the inappropriate conduct attributed to him were not credible.

38. The Arbitrator found that Mr. Goggin’s denial of the allegation that he expressed a desire to “motorboat” the breasts of a Black female subordinate to “not ring true,” and he credited the testimony of the witness who heard Mr. Goggin make this statement.

39. The Arbitrator also expressly credited the testimony of witnesses who testified that Mr. Goggin would make obscene gestures at work, and that he would “cross the line” by referencing his penis size, make other comments of a sexual nature, and refer to women as “bitches.” In addressing Mr. Goggin’s claim that the sponsors of this testimony were untruthful and conspiring to have him terminated, the Arbitrator expressly found that the evidence did not support such an assertion.

40. The Arbitrator further found that Mr. Goggin, as a Chief Inspector, held a “position of significant responsibility” and that “his actions fell short of the high standards expected of someone in that role.”

41. The Arbitrator found that Mr. Goggin “failed to acknowledge his misconduct and showed no remorse or recognition of his inappropriate conduct.”

42. Despite reaching factual and credibility findings that Mr. Goggin committed the misconduct for which he was terminated including, *inter alia*, racial and sexual harassment, that the MBTA had just cause to discipline Mr. Goggin, and that his testimony denying the misconduct was unremorseful and not credible, the Arbitrator determined that the “penalty of discharge is too severe and not appropriate,” and therefore, reduced the discharge penalty to a time-served suspension, without backpay. The Arbitrator further ordered that the MBTA reinstate a known harasser to his former supervisory position, or to an equivalent position.

43. In support of his finding that the discharge penalty was too severe, the Arbitrator stated that there was “no evidence in the record that [Mr. Goggin] was ever informed by management that his behavior was considered inappropriate and offensive and that if it continued his job was in jeopardy.” The Arbitrator’s observation was erroneous as the record indeed contained evidence that in October 2020, Mr. Goggin was issued a written warning for his role in a confrontation with a Black female subordinate. Specifically, Mr. Goggin told the subordinate that she was “getting [her] ass back on” a train, and in response to the subordinate’s statement that she needed to visit to the restroom at work, Mr. Goggin replied, “[d]o you need me to wipe it for you?”

44. The October 2020 written warning was entered into evidence at the arbitration as a joint exhibit 16. At the time of the discipline, Mr. Goggin was warned that “[a]ny further violations of Authority Policies and Rules will result in more severe and progressive discipline up to an including a recommendation for discharge.”

45. The Arbitrator, in a separate section of the Award, discussed both this incident and the ensuing written warning issued to Mr. Goggin on account of his role in the verbal confrontation.

46. The arbitral record contains additional evidence that Mr. Goggin was informed by the MBTA that the kinds of behavior for which he was disciplined were considered inappropriate and that if it continued, it could result in termination of employment.

COUNT I

The Arbitrator Exceeded His Power in Contravention of M.G.L. c. 150C, §11 (a)(3)

47. Plaintiff re-asserts and re-alleges all of the allegations contained in Paragraph 1 through 46 above as if fully set forth at length herein.

48. Both Massachusetts law, M.G.L. c. 151B *et seq.*, and federal law, 42 U.S.C. § 2000e, support a dominant and well-defined public policy against sexual and racial discrimination (including discriminatory harassment) in the workplace, particularly where the perpetrator is a supervisor which imposes strict liability on employers. As a public employer, the MBTA has an affirmative legal duty to prevent and effectively respond to discriminatory workplace harassment.

49. The misconduct for which Mr. Goggin was terminated was integral to his supervisory role as a Chief Inspector of the MBTA. As the Arbitrator found, Mr. Goggin, as Chief Inspector, held a position of significant responsibility. The ADHP imposes a responsibility upon all MBTA employees to be familiar with and knowledgeable about its contents, as well as to review the policy annually and to participate in training regarding it. In addition, the MBTA's supervisory personnel are required to strictly enforce the ADHP's terms.

50. The Arbitrator's Award reinstating Mr. Goggin to his former supervisory position or an equivalent one violates the strong public policy against workplace discrimination and discriminatory harassment.

51. Implementation of the Arbitrator's reinstatement remedy would require the MBTA to countenance Mr. Goggin's return to duty, in a supervisory capacity, with the powers of that position, in the face of his proven and unremorseful discriminatory and inappropriate treatment of Black women employees within his supervisory sphere.

52. By concluding that even though there was just cause to discipline Mr. Goggin for his proven and unremorseful violations of the MBTA's anti-discrimination policies and other rules of behavioral conduct, Mr. Goggin should be reinstated to his supervisory position, the Arbitrator has fashioned a remedy that is inconsistent with the MBTA's legal obligations to take prompt and effective measures to effectively correct and address discriminatory harassment.

53. The Award's order requiring the MBTA to reinstate Mr. Goggin, a supervisor who was found to have testified falsely at arbitration, who was found to have made a highly inappropriate remark of a sexual nature about a female subordinate's, who was found to have treated female subordinate employees of color differently in the exercise of his supervisory responsibilities, and who showed no remorse or recognition of his conduct, offends public policy. The Award ordering reinstatement of Mr. Goggin should therefore be vacated.

CONCLUSION

WHEREFORE, the Plaintiff respectfully requests that the Court vacate the arbitration Award and furnish such further relief that the Court may order.

Respectfully submitted,

THE MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
By Its Attorneys

Dated: June 9, 2025

/s/ Joseph P. Sassi

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EXHIBIT 1

AMERICAN ARBITRATION ASSOCIATION
LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration between)
Local 600, MBTA Inspectors Union,)
Union) Case No. 01-23-0003-0324
and)
Massachusetts Bay Transportation Authority,) Date Issued: May 2, 2025
Employer)

Grievance: Discharge of Patrick Goggin

A hearing in this matter was held on March 1, 2024, October 24, 2024, and December 10, 2024, at the offices of the American Arbitration Association in Boston, MA, before Arbitrator John M. Marra. The hearing was conducted under the rules and auspices of the American Arbitration Association. Post-hearing briefs were submitted by each party.

Appearances for the Parties: Daniel Fogarty, Esq.
for the Union
Joseph Sassi, Esq.
for the Employer

ISSUE

Did the Employer have just cause to discharge Chief Inspector Patrick Goggin?

If not, what shall be the remedy?

RELEVANT CONTRACTUAL PROVISIONS

Article 5 - Management Rights Clause

Except as otherwise expressly relinquished or modified by provisions of this Agreement, the Authority retains all rights which it would have in the absence of such agreement. Without limiting the generality of the foregoing and by way of example and not of limitation, such rights include the exclusive right to set its policy; to manage its business in the light of experience, good business judgment and changing conditions; to determine the amount of service to be run at any and all times; to direct the working forces; to determine the number of its employees at any time; to determine the qualifications for, and to select its managerial and/or supervisory forces and all new employees entering the bargaining unit; to make reasonable rules and regulations governing the operation of its business and the conduct of its employees; to determine the work content of jobs; to determine the hourly, daily, and weekly schedules of work; to determine the work content of jobs; to determine the hourly, daily, and weekly schedules of work; to determine the methods, processes and means of accomplishing work; to enforce discipline for violations of rules and other misconduct; and to suspend or discharge its employees for cause.

Article 8 - No Discrimination

There shall be no discrimination because of the race, color, religious creed, national origin, sex, age, marital status, handicap, sexual preference, transgendered, ancestry of any individual, or veteran status. The Parties further agree to abide by the Authority's Affirmative Action and Equal Opportunity Plans, to the extent it is not in conflict with this Agreement.

Article 11 - First Line Supervisor's Responsibility

The members of the bargaining unit understand that, as the Authority's first line of supervision in the Transportation Department, it is their paramount obligation to the Authority to insure safety of operation, maintain transit services, to enforce the Authority's rules and regulations, to insure productivity, to recommend and assist upper management in meting out discipline when warranted and to further carry out their

duties and responsibilities as set forth in the Authority's Manual for Inspectors and Starters.

MBTA General Rules

General Rule 4 - Courtesy and Professional Conduct

- A. Each employee must actively project a professional image by treating all customers and co-workers with whom he/she interacts in the performance of his/her duties with courtesy and respect.
- B. Each employee must avoid arguments and exercise patience and self-control under all conditions.
- C. Each employee must not make threatening gestures, engage in physical or verbal intimidation, nor use loud, uncivil, indecent, profane, or vulgar language, even under the greatest provocation.
- D. Each employee will use tolerance and patience when interacting with customers, and must demonstrate a calm, friendly, unbiased, and helpful attitude towards any member of the public or fellow employee who contacts them for information or help.
- E. Each employee must respect the confidentiality of their fellow employees.
- F. Each employee must seek assistance from the appropriate Operations Control Center (OCC) Dispatcher, if he/she is unfamiliar with a point of interest, so that accurate directions are given to customers.
- G. Employees using the service should not occupy a seat if there is none available for all customers to use.
- H. Each employee must provide proper MBTA identification (i.e., employee number) upon the request of a customer and/or supervisory Official at any time and in such manner as not to give offense.
- I. Discriminatory treatment of any person using the services of the Authority or any Authority employee, on account of that person's race, color, religion, gender, sexual preference, age, national origin, ancestry or disability, will subject the employee to severe disciplinary action in accordance with the EEO Policy accessible on the Authority's internal intranet page, at <http://intranet.mbtacom>, or available at your Supervisor/Superintendent's office.
- J. Each employee must promote zero tolerance for discrimination, harassment and retaliation in the workplace.

General Rule 13 - Prohibited Acts

- A. The following acts are prohibited.
2. Committing illegal, immoral or indecent acts, or engaging in any activity, whether on or off duty, that reflects negatively on the Authority or participating in activities that have, or could have, detrimental job related implications or consequences.
20. Any inappropriate or offensive shouting, whistling, yelling or misconduct while on duty.

Office of Diversity & Civil Rights

POLICY/PROCEDURES

IV. Zero Tolerance

The aforementioned prohibited forms of conduct under this policy are not limited to conduct that meets a strict legal definition of severity and pervasiveness. To the contrary, this policy prohibits **any** inappropriate and offensive statement or conduct that is either sexual in nature or based on actual or perceived race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identify, veteran status or other legally protected status.

FACTS

The Massachusetts Bay Transportation Authority (“Employer” or “MBTA”) and Local 600, OPEIU MBTA Inspector’s Union (“Union”) are parties to a collective bargaining agreement (“CBA” or “Agreement”) effective from July 1, 2023 to June 30, 2027. The MBTA provides subway, bus, commuter rail, and ferry, service to eastern Massachusetts.

The Union is the sole and exclusive bargaining representative of a bargaining unit consisting of all Inspectors, Chief Inspectors, and Coordinating Inspectors. The Heavy Rail operation at the MBTA includes the Blue Line, Red Line and Orange Line.

Jobs in the Heavy Rail include; motorperson¹, inspectors, chief inspectors, train starters, supervisors, superintendents and division chiefs. The Chief Inspector is a front line supervisor who oversees the terminus locations on the various lines of the Heavy Rail system. On the Red Line, the terminus locations are Alewife, Ashmont and Braintree. The role of the Chief Inspector includes, among other things, ensuring that motorpersons sign in to work at the beginning of the shift, are fit for duty and can safely operate a train, and are wearing the proper uniform.

The Chief Inspector-Red Line job posting summarizes the position as follows:

“The Chief Inspector - Red Line will assist in all aspects of the management of the entire Red Line, including mobile response to incidents and emergencies, making schedules and headway adjustments in the field as needed, and managing crews.”

Assist in the management of a workforce by ensuring the fair and consistent application and strict adherence to the rules, regulations, collective bargaining agreements (if applicable) and policies of the Authority including the EEO Anti-Discrimination and Anti-Harassment and Anti-Retaliation policies.

On July 28, 2022, Asheleigh Jackman, a Red Line Motorperson reported a complaint to the Red Line Superintendent’s Office alleging inappropriate behavior and harassment by the Grievant on the basis of gender and race. The Superintendent referred the matter to the Employer’s Office of Diversity and Civil Rights (“ODCR”). The ODCR conducted an investigation regarding the complaint.² On July 29, 2022, the Grievant was placed on paid administrative leave pending the outcome of the investigation.

¹ Motorpersons operate the heavy rail trains.

² The MBTA hired Compliance Plus, a human resource consulting company to conduct the workplace investigation.

Ms. Jackman reported that a co-worker, Jennie Alexandre, told her that the Grievant said he wanted to “motorboat”³ her breasts. After Ms. Jackman was told what “motorboat” meant, she was disgusted and uncomfortable. Ms. Jackman alleged the Grievant had been engaging in harassing and retaliatory conduct since she filed a complaint against him in 2017⁴. In 2019, Ms. Jackman filed a complaint that the Grievant was retaliating against her. She stated he said, “If he didn’t like someone, he’d make them do all their work.” The 2019 complaint was investigated by ODCR and the ODCR’s conclusion was there was insufficient evidence to establish retaliation in violation of the Anti-Discrimination and Harassment Prevention (“AD/HP”) Policy.

The Grievant denied making any statements about Ms. Jackman’s body. The investigation concluded that it was more likely than not that the Grievant made a comment about Ms. Jackman’s breasts to Ms. Alexandre. The investigation concluded that the Grievant made a sexual comment about Ms. Jackman, and that such action violated the Zero Tolerance provision in the AD/HP Policy.

A second allegation made by Ms. Jackman was that the Grievant holds her and other women of color to stricter standards in the workplace. Two supervisory employees, James Baggett and Kevin Connolly, noted they received more complaints and serious allegations about the Grievant from women of color than from other employees. Corey Klass, a motorperson, stated that he observed the Grievant speaking to others in a disrespectful or inappropriate manner and was aware that the

³ The Grievant testified as to his understanding of the term “motorboat”, “It’s when you put your face up to woman’s breasts and make a noise.” The Grievant denied making any statement about Ms. Jackman’s breasts.

⁴ In 2017, Ms. Jackman submitted a written statement in which she alleged the Grievant referred to her as an “angry Black woman.” It was determined by the ODCR that the 2017 complaint was not a civil rights matter.

Grievant had ongoing issues with Hispanic and Black employees. Bob Barclay, motorperson and union representative, reported receiving multiple complaints regarding the Grievant from female employees.

The investigation report concluded with the following:

It is possible that these observations are the result of unconscious rather than intentional behavior on the Grievant's part. However, several witnesses, including supervisors, stated the Grievant's conduct was more condescending, sarcastic and disrespectful towards women of color than other employees. Therefore, the report found a violation of the AD/HP policy.

The investigation report recommended the matter be referred to the Corrective Action Committee to review the finding of the investigation and initiate appropriate disciplinary or corrective action. The report stated any corrective or disciplinary action should include a re-training component requiring the Grievant to attend AD/HP and Diversity training. The report also recommended addressing issues raised regarding the Grievant's professionalism and behavior towards his co-workers and subordinates and initiate appropriate disciplinary or corrective action. On September 24, 2022, the investigation report with recommendation was submitted and forwarded to the MBTA's Corrective Action Committee.⁵

Tarik Choqri-Hamrani, Superintendent of the Red Line from February, 2022 to December, 2023, testified that the grounds for the Grievant's termination was based on the ODCR investigation. He submitted the recommendation for discharge memorandum on January 13, 2023. According to Mr. Choqri-Hamrani, the recommendation to discharge the Grievant was limited to what was contained in the investigation report. The Grievant's prior disciplinary record included a written warning

⁵ The committee consists of representatives from labor relations, human resources and ODCR.

on October 30, 2020 for using condescending and inappropriate language towards operators.

On September 30, 2022, the Grievant was issued a seventy (70) day suspension pending discharge. On October 17, 2022, the Union filed a grievance stating the Grievant was unjustly given a seventy (70) day suspension pending discharge.

On June 9, 2023, the Employer discharged Patrick Goggin from his Chief Inspector position. The letter of discharge to the Grievant, states the following:

Dear Mr. Goggin:

Please be advised that, effective on the date of this letter, you are hereby discharged from the employ of the Massachusetts Bay Transportation Authority for the following reasons:

1. Violation of the Authority's Policy and Procedures for the Prevention of Discrimination, Harassment and Retaliation in the Workplace, the Equal Employment Opportunity Policy, the Rules for Operations Employees, General Rule #4, Courtesy and Professional Conduct, General Rule #13 (A)(2), Prohibited Acts, Committing illegal, immoral or indecent acts, or engaging in any activity, whether on or off duty, that reflects negatively on the Authority or participating in activities that have, or could have, detrimental job related implications or consequences, and General Rule 313 (A)(20), Prohibited Acts, Any inappropriate or offensive shouting, whistling, yelling, or misconduct while on duty.

Specifically, during the course of an investigation that was conducted by the Office of Diversity and Civil Rights it was determined that you had made an inappropriate comment of a sexual nature while at work to a Red Line Motorperson. Further, it was determined that you treated women of color differently than other employees, holding them to a stricter standard of conduct.

2. Your prior record.

On July 6, 2023, the Union filed a demand for arbitration with the American Arbitration Association.

POSITIONS OF THE PARTIES

Summary of the Union's Arguments

The Union argues that the Employer has the burden of proof in this just cause case. The Employer must prove by more than just a preponderance of the evidence, the typical standard in labor arbitration. The Union contends that the appropriate quantum of proof in the instant case is "clear and convincing evidence." The Employer alleged conduct by the Grievant involving "moral turpitude or social stigma," therefore, the higher standard of proof is appropriate.

The Union contends the Employer has failed to prove the Grievant made a sexual comment about Ms. Jackman by clear and convincing evidence. The Union asserts that Ms. Jackman's statement was not consistent with Ms. Alexandre. Ms. Jackman told ODCR that Ms. Alexandre told her the Grievant said he wanted to touch Ms. Jackman's breasts. However, at the hearing, Ms. Jackman testified that Ms. Alexandre specifically used the word "motorboat" when she told Ms. Jackman about the comment. The Union argues that Ms. Jackman's version of what was said was inconsistent and undermines her credibility.

Further, Ms. Jackman's delay in reporting the allegation further undermines her credibility. Ms. Jackman was aware of the alleged comment five years before she reported it to the MBTA. The delay in bringing the allegations has prejudiced the Grievant's ability to offer a specific denial. The Union alleges Ms. Jackman and Ms. Alexandre are close friends and socialize outside of work. According to the Union, the two co-workers had motive to advance false allegations against the Grievant. The

Union further argues that even if the Employer has proven the Grievant made the inappropriate comment, the violation would not be enough to terminate the Grievant.

The Union contends that the Employer has not proven that the Grievant discriminated against women of color by clear and convincing evidence. The Union argues that the allegations made by Ms. Jackman, Ms. Alexandre and Ms. Bates are unreliable. The Union maintains that the MBTA did not produce sufficient evidence to establish that the Grievant treated women of color differently than other employees. The Union contends that the Employer based its conclusion on the opinions of Mr. Connolly, Mr. Baggett, Mr. Klass and Mr. Barclay. The MBTA did not call Connolly, Baggett, Klass or Barclay to testify at the arbitration hearing. Relying solely on the summary of their statements in the investigation report. Their statements were based on statements of other people. The Union asserts that the MBTA made no effort to assess the Grievant's treatment of the workforce that reported to him to determine if he treated women of color differently.

The Union concludes that the MBTA's decision to terminate the Grievant was not supported by just cause. The Union requests the arbitrator sustain the grievance and order the MBTA to reinstate the Grievant to his former position and that he be made whole.

Summary of the Employer's Arguments

The Employer argues that the just cause standard requires a showing that "the employer did not act arbitrarily, capriciously, discriminatorily, or make a decision not based on fact." The question to be answered is whether a reasonable person taking into account all the circumstances would find justification for the employer's decision to

take disciplinary action. The Employer argues that a discharge for just cause does not require absolute proof the employee committed the offense. The Employer contends that its determination to discharge the Grievant was based on a fair and thorough investigation and that the penalty of discharge was appropriate and in line with the seriousness of the offenses, his supervisory position and his prior work record.

The Employer argues that the evidence has shown that the Grievant made sexually inappropriate remarks about Ms. Jackman's breasts. The Employer further argues that the Grievant's self-serving and unsupported denials should not outweigh the specific and impactful accounts of the Employer's witnesses. Accordingly, the Employer contends that it is more likely than not that the Grievant made the objectionable comments about Ms. Jackman's breasts. The Grievant's carriage in the workplace was routinely unprofessional and he displayed a consistent propensity to cross the line with his off-color racial and sexualized comments.

The second basis for the Grievant's discharge is that he violated the AD/HP by treating women of color more strictly than their white counterparts. The Employer contends that the Grievant held women of color to more exacting standards than others and treated them disrespectfully and unprofessionally. Supervisor James Baggett and Division Chief Kevin Connolly confirmed having received more complaints from women of color regarding the Grievant than other employees. Motorperson Corey Klass, stated the Grievant mostly had issues with Black and Hispanic women. The ODCR's investigation described the Grievant's treatment of these women as "condescending", "sarcastic" and "disrespectful." The Employer contends that the Grievant's discriminatory treatment of Black women is powerful and voluminous. There is no

evidence that the Grievant displayed similar offensive conduct to any white or male employee at work. The Employer argues that a preponderance of the evidence supports its conclusion that the Grievant violated the AD/HP and the cited General Rules by treating subordinate women of color more strictly than their white counterparts, and treating them disrespectfully and unprofessionally. Accordingly, the specification must be sustained.

Regarding the degree of the penalty in this matter, the Union argues the arbitrator should follow the generally accepted rule in arbitration that the Employer's penalty should be afforded deference and not be disturbed. The Employer contends that based on the serious nature of the Grievant's misconduct, his prior disciplinary record and his refusal to accept responsibility for his actions, the arbitrator should not disturb the penalty. The penalty of discharge in this matter is reasonable under the circumstances.

The Employer cites the AD/HP that the MBTA "believes that everyone should be treated with respect and dignity and supports the right to work in an environment that is free from discrimination, all forms of harassment, including sexual harassment, and retaliation." The Grievant violated the trust the MBTA placed in him and therefore, the penalty of discharge was appropriate under the circumstances.

The Employer concludes that it did not act arbitrarily, capriciously or discriminatorily when it discharged the Grievant. Therefore, the Employer requests that the arbitrator conclude there was just cause to terminate the Grievant and deny the grievance.

DECISION

At the outset of this decision, I would like to thank the representatives of the parties for the detailed and professional manner in which they presented their respective positions.

Just Cause

It is well established in arbitral jurisprudence that the Employer has the burden to prove that the Grievant committed the wrongdoing for which he has been charged and that the discipline imposed was appropriate and fair. The essence of just cause is that the employer must have some demonstrable reason for imposing discipline. The Grievant was charged with two offenses; making an inappropriate comment of a sexual nature, while at work, regarding a Red Line Motorperson and treating women of color differently than other employees by holding them to a stricter standard of conduct.

Incident regarding Asheleigh Jackman

Jennie Alexandre, motorperson, testified that she worked with the Grievant for years. She described his interaction with co-workers as being unprofessional. She stated that although the work environment at the MBTA is similar to a construction type environment, the Grievant would often cross the line and make employees feel uncomfortable at work. Ms. Alexandre described an incident where she was signing in to work and Asheleigh Jackman, a motorperson and co-worker, was walking by and the Grievant said to Ms. Alexandre that he wanted to “motorboat” the breasts of Ms. Jackman. At some later point, Ms. Alexandre told her co-worker and friend, Ms. Jackman, what the Grievant had said regarding her body. Ms. Jackman testified that after learning what motorboat meant, she was disgusted and made uncomfortable by

the Grievant's comment. She stated that she was fearful and uncomfortable being near the Grievant. The Grievant testified that he never made any statements regarding Ms. Jackman's body. He stated that Ms. Alexandre was not telling the truth when she testified that he told her that he would like to motorboat Ms. Jackman's breasts.

In assessing credibility, the arbitrator must evaluate the past behavior and statements of the individuals to determine their capacity for truthfulness. In this case, the Grievant has an incentive to deny the allegation in that he stands to lose something in this case, his job. It is reasonable to expect a person charged with an offense to deny the allegations. The Grievant may have been embarrassed to admit publicly he made the statement regarding Ms. Jackman's body. However, his denial did not ring true. Conversely, Ms. Alexandre had nothing to gain or lose by testifying and revealing what the Grievant said to her, while at work. She was a credible witness whose testimony was consistent with other statements she made regarding the Grievant's behavior at work. It is reasonable to conclude that the Grievant's sexually inappropriate comment made Ms. Jackman feel uncomfortable and affected her ability to perform her job. Ms. Jackman testified that she was upset by the Grievant's presence and attempted to avoid him. The Employer has a zero tolerance policy that prohibits **any** inappropriate and offensive statement or conduct that is either sexual in nature or based on race and/or gender. After reviewing and considering the evidence regarding this allegation, I am satisfied that the Grievant did in fact say to Ms. Alexandre that he wanted to motorboat Ms. Jackman's breasts.

The Grievant's treatment of women of color

Catherine Bates, a part-time motorperson, testified that the Grievant would make sexual comments in her presence. He discussed the size of his penis and how he liked Black women. Further, he would discuss his sexual activity. Specifically, he discussed a sexual encounter he had with a former colleague of Ms. Bates. She also described a situation in which she arrived at Alewife station at the end of her shift and she went into the Grievant's office and asked who was taking the train. The Grievant said "you're getting your ass back on it." When Ms. Bates said no, she wasn't, and told him she was going to the bathroom, the Grievant said, "do you need me to wipe it for you?" She said when she returned the Grievant started yelling at her in front of other employees. According to Ms. Bates she felt embarrassed and disrespected. Both the Grievant and Ms. Bates were disciplined for this confrontation.

Ms. Bates testified that the Grievant would talk differently with male employees than female employees. His body language was different when he spoke to female employees, specifically Black women. She described another incident in which the Grievant yelled at her for failing to sign in to work. The Grievant was on the train platform with the sign in clipboard. She stated that she took the clipboard and signed in. Ms. Bates testified that the Grievant started yelling at her, so she dropped the clipboard and went to get on the train. The Grievant reported that Ms. Bates threw the clipboard at him. Ms. Bates stated that the Grievant started to pick on her after that incident. She testified that she never heard him yell at a male employee.

Ms. Alexandre testified that the Grievant would make obscene gestures at work and would often cross the line in statements he would make at work. She said he would

reference his penis size while at work. He would make other comments of a sexual nature in front of her. She described one occasion in which the Grievant referred to a number of women in the office as “bitches,” which resulted in a verbal confrontation between Ms. Alexandre and the Grievant.

The Grievant firmly denied all allegations and behaviors attributed to him by Ms. Bates, Ms. Jackman, and Ms. Alexandre.⁶ He claimed that the three were conspiring to have him terminated, asserting that none of their statements were truthful. He further alleged that they were friends and sought his removal to eliminate an obstacle to being held accountable for their own actions. The evidence in this case does not support the Grievant’s assertion regarding the motives of Ms. Bates, Ms. Jackman and Ms. Alexandre.

Investigation Report

There can be no doubt that the Employer properly conducted an investigation after learning of the allegations raised against the Grievant. The investigation report included statements from other MBTA employees. James Baggett, Superintendent of Heavy Rail Operations, stated that it is the job of the Chief Inspector to ensure that motorpersons sign in to work. However, he noted that the Grievant “is generally over the top. He’s right technically about signing in, but I don’t think he’s fair and consistent with everybody. I can’t say I witnessed it directly, but it sure seems it with all the issues arising, in my opinion, certain people are under the microscope...As supervisor, I receive all the complaints. I have never had complaints from men or other races similar to the ones from CP (Ms. Jackman) and Catherine Bates.” Mr. Baggett and Kevin Connolly, Division Chief of Rail Operations, stated they received more complaints and

⁶ Ms. Bates, Ms. Jackman and Ms. Alexandre are all Black women.

serious allegations regarding the Grievant from women of color than other employees. Motorman Corey Klass stated the Grievant is a “jackass intentionally” to everyone and “feels like he can speak to people however he wants.” He added that most of the issues regarding the Grievant were raised by women of color. Bob Barclay, a union representative, reported that the grievances he received were all from women, and all of the women, except one, was Black. He had not heard of any complaints from men. Mr. Barclay stated many female employees refused to write complaints for fear of retaliation by the Grievant.

The Union has strongly argued that the Employer’s case is based on the investigation report which contains unreliable hearsay evidence. The Union makes a compelling case that the arbitrator should not rely on the hearsay evidence. However, in the interest of a fair result, arbitrators may consider hearsay evidence in order to obtain the most complete view of the facts. In *Sanders v. United States Postal Service*, 801 F.2nd 1328, 1331 (Fed. Cir.1986), the court described the necessity of assessing the weight of hearsay, stating that “administrative decisions based on hearsay must be evaluated on a case-by-case basis to determine if the hearsay is inherently truthful and more credible than the evidence offered against it.”

In the instant case, the Employer’s investigative report contains hearsay evidence. However, the statements of the witnesses included in the investigative report were corroborated by the testimony of Ms. Bates, Ms. Alexandre and Ms. Jackman. Their testimony, along with witness accounts detailed in the investigation report, supports the conclusion that the Grievant enforced rules more strictly toward women, particularly Black women. The hearsay statements alone would have been insufficient to

support a conclusion that the Grievant treated women differently. The weight applied to investigative evidence increases if additional evidence corroborative of the investigatory evidence is introduced at hearing. See *Dakota Cty. v. Human Servs. Supervisors Ass'n*, 131 Lab. Arb. Rep. (BNA) 1776 (2013). The witness testimony corroborates the statements contained in the investigative report.

The Grievant denied all the statements and behavior attributed to him. However, the Grievant's testimony comes into direct conflict with the sworn testimony of other witnesses in this case. I credit the testimony of Ms. Bates, Ms. Alexandre and Ms. Jackman regarding the Grievant's behavior. These witnesses had first-hand knowledge of the Grievant's statements and actions at the workplace.

Accordingly, I conclude that the Grievant treated women, specifically Black women, more strictly than other employees in violation of the Anti-Discrimination and Harassment Policy. I find the Employer had just cause to discipline the Grievant. I reach this conclusion whether the evidence is evaluated under a preponderance of the evidence standard or under the more rigorous standard of clear and convincing evidence. The Employer produced sufficient evidence to find that the Grievant committed the misconduct and violated the rules and policies of the Employer, warranting discipline.

Level of Discipline

Since I have concluded that the Employer had just cause to discipline the Grievant, the question now is whether the termination that was imposed on the Grievant was justified. As a general rule, arbitrator's should not substitute their judgment for that

of the Employer. However, this does not mean that the arbitrator is limited to determining whether the employee has committed a wrongful act. Just cause has long been held to extend beyond a finding of whether alleged wrongdoing has occurred, but also to whether the degree of the penalty imposed by the employer was appropriate.

In many disciplinary cases, the reasonableness of the penalty imposed on an employee rather than the existence of proper cause for disciplining him is the question an arbitrator must decide...In disciplinary cases generally, therefore, most arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe, under all the circumstances of the situation. This right is deemed to be inherent in the arbitrator's power...*Elkouri and Elkouri, How Arbitration Works, Vol. 5, p. 913*

In evaluating the Grievant's conduct in this case, it is important to recognize that he holds a position of significant responsibility as Chief Inspector. His actions fell short of the high standards expected of someone in that role. Further, the Grievant failed to acknowledge his misconduct and showed no remorse or recognition of his inappropriate conduct. However, the penalty of discharge is too severe and not appropriate in this case. I fully understand the seriousness of reducing the penalty in this matter and do not take it lightly. I have taken into account the Grievant's work history and length of service. He was employed by the Employer for approximately nine years and earned several promotions during that time. There is no evidence in the record that the Grievant was ever informed by management that his behavior was considered inappropriate and offensive and that if it continued his job was in jeopardy. Prior to imposing a penalty as severe as termination, the Employer was required to provide the Grievant with some notice regarding the severity of the situation and that he must correct his behavior or he would lose his job. Further, I have given weight to the recommendation contained in the investigation report. The report recommended that

any corrective or disciplinary action should include a re-training component. (emphasis added). Despite the testimony of Judy Kalisker, who drafted the investigation report, it is hard to accept that the report would contain such language if she genuinely believed termination was warranted. Further, the Grievant's prior disciplinary record is limited to a written warning. Applying the just cause standard requires a reduction in the penalty in this case.

After careful consideration of all the evidence, and based on the totality of the circumstances, the appropriate remedy is that the Grievant be reinstated to his former position or an equivalent position. The reinstatement shall be without back pay. The termination of the Grievant shall be reduced to a time served suspension. The Employer may require the Grievant to attend any training it deems appropriate prior to his reinstatement.

AWARD

The Employer had just cause to take disciplinary action against the Grievant, Patrick Goggin.

The discharge of the Grievant shall be reduced to a time served suspension. The Grievant shall be reinstated to his former position or an equivalent position. The Employer may require the Grievant to complete any training it considers appropriate before being reinstated.

I shall retain jurisdiction for 30 days to resolve any disputes that may arise concerning compliance with this award.

Date: May 2, 2025

/s/ John M. Marra
John M. Marra