

LABOR & EMPLOYMENT

Arbitration Decisions



Labor Arbitration Decision, Santa Clara Valley Transp. Auth., 2019 BL 566127, 2019 BNA LA 193

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OPINION AND AWARD IN ARBITRATION PROCEEDINGS PURSUANT TO A COLLECTIVE
BARGAINING AGREEMENT

In the Matter of a Controversy Between

Santa Clara Valley Transportation Authority, Employer

and

Amalgamated Transit Union Local 265, Union

Bui and Mamre Transfer Probation

December 23, 2019

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Case Summary

LABOR ARBITRATION

SUMMARY

**[1] Return to pre-promotion position - Training/probationary period ▶ 100.08
▶ 100.70 ▶ 111.60 ▶ 100.45** [\[Show Topic Path\]](#)

The Santa Clara Valley Transportation Authority did not violate its CBA with ATU Local 265—which provides that promoted employees shall be on probation for “the period of formal training” and for “180 calendar days” thereafter, and that employees who fail to successfully complete such probation “may be returned to their former classification without loss of seniority”—when it returned two grievants from their fare inspector

positions to their former positions as light rail operators on March 9 and 19, Arbitrator Paul D. Roose ruled. He rejected the union's claim that the training the grievants received does not qualify as "formal training" and found that the preponderance of the evidence established that the grievants' period of formal training ended in September of the prior year and included both classroom and on-the job training. He held that after 180 additional days, their probation period ended on March 22, rendering the first grievant's return to his former position timely by 13 days and the second timely by three days. He allowed the union 30 days to grieve the rate of pay they received during the training period, as the CBA provides for receipt of the higher of the rate of pay for the position for which they are training and their former rate, and neither party had an opportunity to fully present its facts and arguments.

APPEARANCES:

For the Employer: Paul D. Ahn, Senior Assistant Counsel

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Arbitration Panel:

Appointed by the Employer: Sommer Gonzalez, Human Resources Analyst

Santa Clara Valley Transportation Authority

Appointed by the Union: Mark Nevill, Shop Steward

Amalgamated Transit Union Local 265

Neutral: Paul D. Roose, Arbitrator and Mediator

Golden Gate Dispute Resolution

PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was mutually selected as the neutral chair of the arbitration panel. The matter was heard on August 22, 2019 in San Jose, California.

The parties stipulated that the matter was properly before the arbitration panel. The parties also stipulated that the arbitration panel retains jurisdiction over the implementation of the remedy if the panel grants a remedy.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. The parties chose to conclude their presentations by filing written briefs. The briefs were received by the neutral arbitrator on November 18, 2019 and the matter was submitted for decision.

ISSUE

The parties were unable to reach agreement on a stipulation of the issue. They ceded authority to the arbitration panel to formulate the issue as part of the opinion and award. Accordingly, the issue is stated as follows:

Did the Agency violate the CBA when it returned Osion Mamre on March 9, 2018 from his position as a fare inspector to his position as a light rail operator? If so, what is the appropriate remedy?

Did the Agency violate the CBA when it returned Phuc "Fred" Bui on March 19, 2018 from his position as a fare inspector to his position as a light rail operator? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Agreement Between Santa Clara Valley Transportation Authority and Amalgamated Transit Union Division 265 October 1, 2015 through September 30, 2018

Part A — General Provisions

Section 6 — Probation

All employees who are promoted or transferred to a new classification shall be on probation immediately following their date of promotion or transfer for the period of formal training and for 180 calendar days following completion of said training...If such an employee fails to complete such probation successfully, they may be returned to their former classification without loss of seniority.

Section 8 — Change of Classification

.4 Training and Training Lists

c) Employees shall receive the rate of pay for the classification[*2] for[*2] which they are being trained, or their normal rate of pay (whichever is higher), during training for Change of Classification. Pay shall be based on the number of hours normally scheduled to work (e.g. Operators shall receive run pay during training) but overtime hours shall not be received.

FACTS

The Grievants Were Both Light Rail Operators Who Requested and Received Reclassification to Fare Inspector: Grievant Mamre began working at the Agency in 1997.

He worked as a bus operator, a service worker and a light rail operator, a position he held at the time of his transfer. He placed his name on the list to transfer to fare inspector beginning in 2001 and continuously for sixteen years. His name came up on the seniority list and he transferred to fare inspector in 2017.

Grievant Bui was hired at the Agency in 2012. He worked as a bus operator and was working as a light rail operator at the time of his transfer to fare inspector in 2017. He testified as follows:

I put in for a change of class. I took the test, and I was notified I passed the test and put on a waiting list. I was called...by seniority order.

The Grievants Were Transferred to Fare Inspector Effective August 14, 2017: Both Grievants began their training to be fare inspectors on the same date — August 14, 2017. They were the only two fare inspectors in the training class. They reported to a classroom for training.

Transportation Supervisor Ronald Freeman was the lead trainer, with supervisor Cesar Jimenez filling in at times.¹ Mr. Freeman handed the Grievants a document on the first day of training titled "Course Outline." The document given to the Grievants was not in evidence at the arbitration hearing, but an instructor's version of the document was in evidence. Mr. Freeman testified about the differences between the instructor's version and the ones handed out to the Grievants:

The course outline is pretty much — is exactly the same of what they received, except there's more detail...for the instructor when he's giving the class.

Like the first day, it says, "Start with class introductions." And something they would have, it would be ..."class introductions." I wouldn't also put bullet point "Instructor shares his or her background."

The instructor's manual shows an eight-week course. Week one includes classroom time subjects and "Fare Inspector Ride-Along" on each day. Classroom topics include "Introduction to Fare Enforcement," "Introduction to Daily Logs," and "Tour of Protective Services."

Week two includes additional classroom topics, including "Introduction to Citations," "Introduction to Fare Inspector Report Writing," and "Radio Codes and Phonetic Alphabet Test." Three additional ride-alongs are scheduled for week two.

Week three includes a TVM (ticket vending machine) test, "Proof of Payment" test, and more ride-alongs.

Week four introduces the HCR3 (hand-held Clipper card reader). It also includes the following entry:

Start Fare Inspection

- Trainees[*3] will[*3] be instructed to enforce fare in VTA trains;
- Trainees will use HCR3s and enter data in FEAT daily
- Instructor will monitor trainees and provide feedback through process.

Monitored fare inspection by the trainees continued for the remainder of week four. Each day beginning with day two of week four also has the following entry:

- Review and discuss their Fare Inspection from the previous day;
- Open discussion about their experience.

Day three of week four also has "Radio Codes & Phonetic Alphabet Test." This entry is repeated on week five day one and week six day five.

Weeks five and six include fare inspection, fare inspection classroom scenarios, and classroom review of fare inspection experiences. Week six day two includes a section on "Testifying in Court."

Week seven lists only "California Peace Officers Standards and Training 832 Penal Code Course." Week eight lists only "graduation & pictures" and "VTA Transit Patrol ride-along."²

The Grievants Received Classroom and On-the-Job Training as Fare Inspectors from August 14 Through September 22, 2017:

The following exchange took place on direct examination of Mr. Freeman by Employer's counsel:

Q: And how long was the classroom instruction?

A: It was probably for like a total of nearly three weeks.

Q: Okay. And how long were those sessions?

A: Some days it could be three hours, some days it could be a whole day.

Q: Okay. When it was less than a whole day, what did you do during the remainder of the day?

A: We could be out in the field observing fare inspectors doing fare enforcement. Just kind of learning, see how they operate in the field.

Q: Okay. And then you mentioned that the second component was out in the field. At that point, were they out in the field all the time, or can you tell us what was going on during that portion of the program?

A: Yeah. So that point, basically they were out in the field observing — oh, excuse me, conducting fare enforcement. They were being evaluated for writing citations, customer service, use of their equipment. How they interact with customers, ensuring that they follow policies and procedures related to VTA and fare enforcement...

Q: Okay. And just to be clear, were you part of that portion of the program?

A: Yes...I was there training the trainees and instructing them and evaluating them and providing feedback...They were not allowed to be out in the field doing the training process without a supervisor of fare enforcement.

Two-page documents titled "Protective Services Fare Inspector Checklist" for each Grievant were part of the arbitration record. They consist of a list of items received by the trainee and the date received. Both forms were filled out by Supervisor Freeman. Each Grievant signed his respective form on 9/21/17 over the phrase "date completed."

Supervisor Freeman marked several items on the lists as being received on 9/22/17, after the date the Grievants signed the checklists.

Both checklists show the Grievants received the fare inspector badge on 9/21/17. Mr. [*4] Freeman stated that [*4] was the date he issued the Grievants their badges. Grievant Mamre recalled the following:

I believe I received my badge before September 21st. We finished training early. We didn't go six weeks, so he gave us badge early, we started writing citations early. And then...within a week of having the badge, we were out there paired up with other fare inspectors.

Grievant Bui recalled that he received his badge "maybe two weeks in, three weeks in." Grievant Bui stated that a supervisor was sometimes present when he worked on the trains during his training period, but only a "minority of time."

Daily Activity Logs for both Grievants were in the arbitration record. The log sheets are designed to account for the time spent by each fare inspector on a workday. For Grievant Mamre, the logs are dated 9/1/17 through 9/21/17. They show him issuing passenger citations on 9/1, 9/5, 9/6, 9/8, 9/12, 9/19 and 9/20.³

The logs for Grievant Bui range from 9/1/17 through 9/21/17. They show him issuing passenger citations on 9/6, 9/7, 9/8, 9/11, 9/14, 9/19 and 9/21.

Grievant Mamre testified that, by September 1, he had his own citation book and signed citations. He testified that he began to write his own citations after three weeks of training, as follows:

Initially, we went out with different fare inspectors, and we were supposed to write the citation and have them sign it. And then there came some kind of issue with that. So we spent the next couple of days in the classroom. And then after that, that's when we... were called into the cubicle and handed our badges and said that we can write tickets now.

Grievant Bui recalls writing and signing his own citations after a "few weeks" as a fare inspector.

Mr. Freeman testified that the Grievants were not allowed to conduct fare enforcement activities during their training period, including issuing citations, unless accompanied by a supervisor.

Mark Nevill is a fare inspector for the Agency and shop steward for the Union. He testified that he worked alongside Grievant Mamre during the Grievant's training period. He stated that he observed Grievant Mamre signing his own citations and he believed this was wrong, based on his own training from four years earlier. He brought this to the attention of upper management but did not get a response.

On cross-examination, Mr. Nevill conceded that he was not paired with Grievant Mamre during September 2017.

Supervisor Freeman testified that, at the end of the six-week training program, the Grievants received a certificate of completion. A photograph of the Grievants with supervisor Freeman, supervisor Jimenez and other individuals was in evidence at the arbitration hearing. The photograph shows the Grievants holding their completion certificates. Mr. Freeman testified that the photograph was taken at a potluck lunch / completion ceremony on September 27th, 2017.

For his part, Grievant Bui recalls attending the potluck, but does not recall receiving a completion certificate[*5] or having a photograph taken.

Grievant[*5] Mamre testified that the first time he received a completion certificate was at a grievance hearing after he was released as fare inspector. As for the photograph, the following exchange took place on direct examination:

Q: Did you ever pose for a photograph with the people that we see in Employer 4, to your recollection?

A: No to my recollection. You know, I'm unusually built, so it's clearly me. But yeah, I don't recall taking the picture with this group.

Grievant Bui Filed a Paycheck Investigation Request on September 1, 2017 Claiming Light Rail Operator Run Pay While in Training as a Fare Inspector: Grievant Bui testified as follows:

So when I receive my first paycheck...when I become a fare inspector, the pay was less than I normally would be working as a light rail operator. So I know from the previous training when I was at bus to go to light rail, that [they] would pay the run pay. Basically, the run pay...I would be doing if I was being operator.

Grievant Bui filled in and filed a request on a standard Agency form entitled "VTA Paycheck Investigation Request." The filled-in form states, in relevant part:

I was paid fare inspector wages at 34.42 per hour for a 40 hours week, but my run pay me 44 + hour per week. I was paid 64 @ 34.42 hours. I think I should have been paid 73 hr. @ 33.62.

Supervisor Freeman responded and denied the request, as follows:

The paycheck for 9/1/17 would only have pay from 8/14/17 - 8/27/17. You were officially a Fare Inspector as of 8/14/17 and therefore not entitled to Operator pay rates per the ATU VTA contract.

Grievant Bui then wrote an update on the form in response to the denial and resubmitted it. It reads as follows:

9/7/17 update: per contract, since I am still in training for 8-weeks I should get my run pay. I am not officially fare inspector until training is complete.

Grievant Bui stated that his supervisor Ramirez talked to him after he resubmitted the form and told him that "no one in the past have been paid this salary, this run pay. No fare inspector in the past get that run pay."

Geoff Holland was the Agency's Hearing Officer in the grievance procedure on the instant case.⁴ In his April 26, 2018 Hearing Decision, he refers to an email sent from the Agency's Employee Relations Manager Suzy Choi-Lee to Union President Terry Russell on April 23, 2018.⁵ Mr. Holland alleges that Ms. Choi-Lee was "incorrectly interpreting and applying the intent of the language from the CBA." He writes:

...this particular section [Part A Section 8.4(c)] of the CBA is not applicable in Mr. Bui or Mr. Mamre's particular situation. Ms. Choi-Lee attempts to insinuate that the type of training that an employee participates in, impacts the type of pay they receive. In this section of the CBA, the language is clear. Once Mr. Bui and Mr. Mamre accepted their promotion to the classification of Fare Inspector, they were no longer eligible to this section. Part A, Section 8.4(c)[*6] of the CBA is specifically pertinent to Change of Classification situations where[*6] employees train for another position prior to actually accepting an offer to that position. In Mr. Bui and Mr. Mamre's case, since they had both accepted offers for the position of Fare Inspector, they would no longer be eligible to receive any other type of pay...

Both Grievants Were Notified on January 17, 2018 That Their Probation Period Would End on March 22, 2018: Grievant Mamre received an email with a subject line "Re: Last Day of Fare Enforcement Probation" from Mr. Freeman that read "Osion, Your last day of probation is March 22, 2018." Mr. Mamre did not respond.

Grievant Bui received an email from Mr. Freeman with the same subject line that read "Fred, Your last day of probation is March 22, 2018." Grievant Bui responded ten minutes later with an email stating "Thank you sir. It is good to know."

Grievant Mamre Was Released from Probation on March 9, 2018 and Returned to His Position of Light Rail Operator: By letter with a subject "Probationary Release" he was informed that he was to report to Guadalupe Division on Monday March 12, 2018. The letter gave no reason.⁶

March 9, 2018 is 207 calendar days after August 14, 2017. It is 168 calendar days after September 22, 2017.

Grievant Bui Was Released from Probation on March 19, 2018 and Returned to His Position of Light Rail Operator: By letter with a subject "Probationary Release" he was informed that he was to report to Guadalupe Division on Monday March 19, 2018. The letter gave no reason.

March 19, 2018 is 217 calendar days after August 14, 2017. It is 178 calendar days after September 22, 2017.

The Union Filed a Grievance Claiming that Both Grievants Were Improperly Released After Their Probation Periods Had Ended: The grievance alleged a violation of Part A, Section 6 of the CBA. The remedy sought was to return the Grievants to the Fare Inspector classification, make the Grievants whole for lost wages, and cease violating the terms of the CBA, past practice and policy and procedures.

It is that grievance that is now properly before the arbitration panel.

The Union argues that the training received by the Grievants as fare inspectors does not qualify as "formal training" as per the CBA. There is no formal certification for fare inspectors. The grievants spent most of their time in the field during the training period. Since no formal training took place, the probation period for the Grievants ended on February 10, 2018. The Grievants were improperly released after the completion of their probation periods.

The Union contends that the denial of Grievant Bui's "run pay" grievance shows that VTA considered him a fare inspector from the first day of transfer. "VTA cannot have it both ways," the Union asserts in its closing brief. "If he was not eligible for run pay, then he was not in training. If he had been in training, VTA would have been contractually obligated to pay him."

The Union argues[*7] that the "graduation ceremony" has little significance in determining the outcome[*7] of this case. The Grievants had received their fare inspector badges weeks earlier. "The purported ceremony did not result in a material change in the grievants' professional authorizations," the Union brief states.

The Union asserts that the emails to the Grievants notifying them of the end of their probation period are irrelevant. No evidence exists that the Union was aware of these emails.

The Union requests that the grievance be granted and that the Grievants be returned to fare inspector as non-probationary employees.

EMPLOYER'S POSITION

The Employer contends that the Union has not met its burden to show that the CBA has been violated in this case. The evidence is that the Grievants were in a six-week formal training program. Grievant Bui admits as much in his "run pay" claim. The Union did not produce citations to back up its claim that the Grievants were writing citations on their own.

The Employer argues that the Section 8.4 "run pay" claim is outside the scope of this grievance. The Union has forfeited any opportunity to contest the denial of run pay based on the CBA's grievance time limits. Even if it has not been forfeited, "an administrative error in calculating Grievant Bui's pay during his training period cannot be a legitimate basis to undermine the proper imposition of the 180-day probationary period for Grievants in this case," the Employer's brief states. "Even assuming arguendo that VTA miscalculated Bui's pay while he was a Fare Inspector trainee, no legitimate basis exists to void the proper imposition of the 180-day probationary period for the Grievants in this case," the Employer writes.

The Agency asks the arbitration panel to deny the grievance in its entirety.

DISCUSSION

The Issue in this Matter is Whether the Grievants Were in a Formal Training Program from August 14 Through September 22, 2017: The contract language in this instance is straightforward. Unit members "transferred to a new classification...shall be on probation immediately following their date of promotion or transfer for the period of formal training and for 180 calendar days following completion of said training." If they do not successfully complete probation, they may be "returned to their former classification."

It is undisputed that both Grievants transferred from light rail operator to fare inspector and hence began a 180-day probation period. In common labor relations parlance, a probation period is a trial period. Management is not held to the just cause standard embedded in CBAs for the duration of that period.

The Union is not contesting, in this matter, the right of the Employer to return the Grievants to their former positions of light rail operator while on probation as fare inspectors. The Union is objecting to the Employer assertion that the Grievants were on

probation at the time they were returned to their prior positions. The[*8] dispute hinges on the notion of a "period of formal training" specified in the CBA. The task of[*8] the arbitration panel is to determine whether the Grievants were in a training program during their first six weeks as fare inspectors.

While the Record is Mixed, the Preponderance of the Evidence is That the Grievants Were in a Formal Training Program after They Transferred to Fare Inspector: The Agency produced an eight-week training course outline. The supervisor testified that he employed that outline. The Union disputed that the Grievants were provided with this outline.

However, Grievant Bui referred to the training period in his pay claim. On September 7, he wrote "I am still in training for 8-weeks." This appears to have been his understanding at that time, three weeks into his reclassification to fare inspector.

Management should have kept better records and asked the employees to sign for documents received. They did not. However, the daily logs kept by the Grievants roughly align with the contention of the supervisor — that the Grievants spent part of each day in the classroom during their first three weeks. The remainder of those days they spent riding along with fare inspectors in the field.

The Union then makes a potentially serious claim that the Grievants, after three weeks, operated essentially as regular fare inspectors. As evidence, they provided testimony from the Grievants and daily logs showing citations and warnings issued by the Grievants. The testimony from the Grievants on these activities lacked specificity. Dates, times, and fare inspector partners were missing from their testimony.

The Employer witness countered with the assertion that the Grievants were not writing and signing their own citations during this timeframe. The Agency argued that the Union should have produced copies of the actual issued citations to prove its point. The undersigned neutral arbitrator agrees that the burden on this important evidentiary dispute rests on the Union. The Union either had to produce the citations or show that it had requested same and the Employer had not cooperated in the information request. The Union did not do so.

The signed receipts by the Grievants of a "Protective Services Fare Inspector Checklist" on September 21, 2017 is also notable. While not representing conclusive proof of training, it reinforces the Employer contention that the Grievants' fare inspector training concluded on that date.

Much was made of whether a graduation ceremony with completion certificates took place on September 27, 2017. This ceremony, whether it took place or not, does not prove the underlying issue of what duties were performed by the Grievants during the last three weeks of their purported training program.

However, it must be noted that the Grievants asserted that they did not recall such a ceremony or receipt of certificates, even after being confronted with a crystal-clear photograph of[*9] the ceremony at the arbitration hearing. This failure to acknowledge this potentially important event in the timeline of the[*9] dispute does not help their cause. It undermines their overall credibility as reliable witnesses on the entire matter before the arbitration panel. It undermines their testimony on the critical issue of what duties they were performing in the latter weeks of their training period.

A "period of formal training" does not just consist of classroom training. It can also include field training. What distinguishes training in the field from journey-level work in the field is the presence or absence of a trainer or supervisor. Witness testimony on this issue diverged. Supervisor Freeman claimed that he or another supervisor was always with the trainees while they were in the field. Both Grievants claimed that they often worked without supervision during those three weeks.

The burden of proof in this allegation of contract violation rests on the Union. To make its case, it must offer documentary support for its contention, or corroborating testimony. Sufficient evidence along these lines was not in the record.

The Failure of the Grievants or the Union to Contest the Probationary End Date in January Undermines the Union's Case: The record includes emails received by each Grievant notifying them of the end date of their probation period. These emails were sent by their supervisor and received by the Grievants two months before the end of their probation periods.

In the view of the undersigned neutral, management should have been more explicit with the Grievants about the duration of the probation period when it first decided that the formal training period was six weeks. While not required by the CBA, management might have avoided disputes had it also notified the Union of this end-of-probation date.

Nonetheless, the supervisor did give the Grievants a forewarning, in writing, about the duration of probation. If the Grievants did not agree with this date, they could have contacted the Union at that time and registered a concern. They apparently did not.

Grievant Bui, especially, demonstrated his knowledge of the CBA when he filed the "run pay" claim. He showed he was aware of the concept of a "training period" as part of the probation period. By not objecting to the end-of-probation date when it was first communicated to him, he tacitly acceded to the date. This omission undermines the Grievants' standing to grieve the eventual release when it occurred within the timeframe already spelled out in the January email.

The Probation Period for the Grievants ended on March 22, 2018, not on February 10 as the Union Contends: The preponderance of the evidence is that the "period of formal training" for the Grievants ended on September 22, 2017. 180 calendar days after September 22 is March 22, 2018. That was the end of the transfer probation period for both Grievants.

As such, both grievants were released[*10] from their fare inspector positions within their probation periods. Grievant Mamre was released thirteen days before the end[*10] of his probation period. Grievant Bui was released three days before the end of his probation period. Both were returned to their prior positions as light rail operators, without loss of seniority, as the CBA requires.

The Union Must Be Provided an Opportunity to Grieve the Grievants' Rate of Pay Now that the Existence of a Formal Training Period Has Been Established: This award establishes with finality that the Grievants were in a training period from August 14, 2017 through September 22, 2017. This finding is the basis for answering the question posed in the issue as stated above. The Agency did not violate the CBA when it returned the Grievants to their positions as light rail operators in March 2018.

Now that the existence of a formal training period has been confirmed by the arbitration panel, the issue of pay rate during the training period must be re-opened. The undersigned neutral agrees with the Union's characterization of the Employer's position on training pay that it is trying to "have it both ways."

When Grievant Bui filed his pay claim in September 2017, supervisor Freeman denied the claim, stating that Grievant Bui was "officially a Fare Inspector as of 8/14/17." This management response, on its face, contradicts the position taken by the Agency in this grievance — that the Grievants were inspectors-in-training for the first six weeks. The denial of Grievant Bui's claim appears to be inconsistent with the CBA language in Part A Section 8 about pay during a training period.

Hearing officer Holland's response to the Union in the probation release grievance further confuses the issue. He seems to be claiming that a fare inspector training period existed but somehow reclassification from light rail operator to fare inspector was not covered in 8.4.

The undersigned neutral arbitrator considered simply ordering the Agency to pay the Grievants for the fare inspector training period in accordance with section 8.4. However, neither party had an opportunity to fully and fairly present its facts and arguments on the issue of "run pay" and how it applies to the instant case.

Therefore, the award includes an order to the Employer to allow an extension of the grievance time limits. If the Agency has not agreed to apply the language of Section 8.4 to pay the Grievants for the period August 14, 2017 through September 22, 2017 within thirty days after receipt of this award, the Union may file a grievance and it shall be considered timely by the Employer.

AWARD

1. The Agency did not violate the CBA when it returned Osion Mamre on March 9, 2018 from his position as a fare inspector to his position as a light rail operator.

2. The Agency did not violate the CBA when it returned Phuc "Fred" Bui on March 19, 2018 from his position as a fare inspector to his position as a light rail operator.
3. The Union is granted thirty[*11] days from receipt of this arbitration award to file a grievance over the rate of pay received by the Grievants during the period[*11] of August 14, 2017 and September 22, 2017.
4. The arbitration panel retains jurisdiction over the implementation of the remedy.

Paul D. Roose, Neutral Arbitrator

Date: December 23, 2019

I Dissent from the Decision

Mark Nevill, Union-Appointed Arbitrator

I Concur with the Decision

Sommer Gonzalez, Agency-Appointed Arbitrator

fn 1 Mr. Jimenez did not testify at the hearing.

fn 2 The record is not clear, but apparently the POST course and patrol ride-along did not take place.

fn 3 No copies of passenger citations were in the record at the arbitration hearing.

fn 4 Mr. Holland did not testify at the arbitration hearing.

fn 5 Ms. Choi-Lee and Mr. Russell did not testify at the arbitration hearing. The April 23 email was also not in the record.

fn 6 The Union's case in this matter rests solely on the issue of the release date. Accordingly, the neutral arbitrator asked the parties not to present evidence of the grievants' job performance while working as a fare inspector. The parties complied with the request, and the record is therefore devoid of any evidence on work performance.