

Matter of Martinez v MTA N.Y. City Tr.

2022 NY Slip Op 33578(U)

October 18, 2022

Supreme Court, New York County

Docket Number: Index No. 651239/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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In the Matter of the Application of

HARLIN MARTINEZ,

Petitioner,

For a Judgment Pursuant to Article 75 and 78 of the
Civil Practice Law and Rules,

- v -

MTA NEW YORK CITY TRANSIT,

Respondent.
-----XINDEX NO. 651239/2020MOTION DATE 12/10/2020MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 18, 19, 21, 22, 23, 24, 25, 26, 28

were read on this motion to/for

VACATE - AWARD

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements to respondent.

DECISION

This court finds that respondent complied with the disciplinary procedures set forth in the collective bargaining agreement at bar (CAB), comprised of multiple steps, which culminated in final and binding arbitration. See Phillips v Manhattan and Bronx Surface Transit Operating Authority, 132 AD3d 149, 151 (1st Dept 2015). Such procedures included the Step II meeting held on February 4, 2019, followed by final and binding arbitration, yielding the Opinion and Award dated

November 29, 2019 that terminated petitioner's employment as a Bus Maintainer. That such Step II meeting took place is evidenced by the Answer, which is verified by the Assistant Secretary of respondent, a person with knowledge, and states, at paragraph 106 that

"On November 5, 2018, petitioner's Step I hearing was held and the charges and penalty were sustained. Petitioner appealed the decision to Step II. The Step II hearing was held on February 4, 2019 and the charges and penalty were sustained. The Step II Decision was incorrectly identified as a Step III Decision. See Step I Decision, dated November 5, 2018, and Disciplinary Decision, dated February 4, 2019, annexed to the Verified Petition as Exhibit E."

Petitioner's signature on such Disciplinary Decision, which appears below the statement "I do not accept above decision after Step III Meeting and appeal to the Tripartite Arbitration Board" (NYSCEF Document Number 6), corroborates paragraph 106 of the Verified Answer.

With respect to petitioner's argument that he was entitled to a Tripartite Arbitration Board, once again respondent's Disciplinary Decision document form that referenced (see above) "the Tripartite Arbitration Board", which petitioner signed, does not conform with the collective bargaining agreement, as amended by CBA, December 16, 2002- December 15, 2005 Memorandum of Understanding, at ii, and A9, which eliminated the tripartite arbitration panel and substituted "a [single] neutral arbitrator" (NYSCEF Document Number 7, page 23 of 570).

Respondent should revise its document forms, having failed to make such updates, according to its own position, for almost twenty years. However, such failure does not rise to the level of respondent having violated the procedures under the subject CAB. Cf Brown v Popolizio, 166 AD2d 44 (1st Dept 2001) (de novo hearing granted where penalty imposed held to have been violative of agency's own rules and regulations).

The Notice of Examination for Bus Maintainers dated April 24, 2018, which petitioner appends as Exhibit C to his petition (NYSCEF Document No. 18), states in pertinent part "**JOB DESCRIPTION Bus Maintainers - Group B * * *** drive motor vehicles". Therefore, petitioner's contention that he was disciplined for being directed to carry out out-of-title work is belied by such document proffered by petitioner.

The Opinion and Award dated November 29, 2019 that terminated petitioner's employment as a Bus Maintainer was neither arbitrary, nor capricious, as it was grounded upon evidence before the arbitrator of petitioner's gross negligence in operating the tow truck with a damaged lift and his refusal to complete a report of the incident. Such determination was rational, "particularly in view of petitioner's disciplinary record, which included [two] prior [thirty (30) day] suspensions (Monahan v Doherty, 34 AD3d 346, 347 [1st Dept 2006]), for major disciplinary infractions"])), resulting in his being on a "final

warning for gross misconduct" (NYSCEF Document Number 3, pp 7-8).

Debra A. James

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<u>10/18/2022</u>			<u>DEBRA A. JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE