



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

**LONDON N. BREED
MAYOR**

Sent via Electronic Mail

July 27, 2023

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Marlon R. McPherson
[REDACTED]

**SUBJECT: REQUEST FOR A HEARING BY MARLON MCPHERSON ON THEIR
FUTURE EMPLOYMENT RESTRICTION WITH THE MUNICIPAL
TRANSPORTATION AGENCY.**

Dear Marlon McPherson:

The above matter will be considered by the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **August 7, 2023, at 2:00 p.m.** You will receive a separate email invite from a Civil Service Commission staff member to join and participate in the meeting.

The agenda will be posted for your review on the Civil Service Commission's website at www.sf.gov/CivilService under "Meetings" no later than end of day on Wednesday, August 2, 2023. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached to this email.

In the event that you wish to submit any additional documents in support of your appeal, please submit **one hardcopy 3-hole punch, double-sided and numbered at the bottom of the page, to the CSC Office at 25 Van Ness Ave., Suite 720 and email a PDF version** to the Civil Service Commission's email at civilservice@sfgov.org by **5:00 p.m. on Tuesday, August 1, 2023**, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

Attendance by you or an authorized representative is recommended. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

You may contact me at (628) 652-1100 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Jeffrey Tumlin, Municipal Transportation Agency
Kimberly W. Ackerman, Municipal Transportation Agency
Shana Dines, Municipal Transportation Agency
David Garcia, Municipal Transportation Agency
Christine Cayabyab, Municipal Transportation Agency
Commission File
Commissioners' Binder
Chron

NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES

A. Commission Office

The Civil Service Commission office is located at, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. The telephone number is (628) 652-1100. The fax number is (628) 652-1109. The email address is civilservice@sfgov.org and the web address is www.sfgov.org/civilservice/. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. Policy Requiring Written Reports

It is the policy of the Civil Service Commission that except for appeals filed under Civil Service Commission Rule 111A Position-Based Testing, all items appearing on its agenda be supported by a written report prepared by Commission or departmental staff. All documents referred to in any Agenda Document are posted adjacent to the Agenda, or if more than one (1) page in length, available for public inspection and copying at the Civil Service Commission office. Reports from City and County personnel supporting agenda items are submitted in accordance with the procedures established by the Executive Officer. Reports not submitted according to procedures, in the format and quantity required, and by the deadline, will not be calendared.

C. Policy on Written Submissions by Appellants

All written material submitted by appellants to be considered by the Commission in support of an agenda item shall be submitted to the Commission office, no later than 5:00 p.m. on the fourth (4th) business day preceding the Commission meeting for which the item is calendared (ordinarily, on Tuesday). An original copy on 8 1/2-inch X 11 inch paper, three-hole punched on left margin, and page numbered in the bottom center margin, shall be provided. Written material submitted for the Commission's review becomes part of a public record and shall be open for public inspection.

D. Policy on Materials being Considered by the Commission

Copies of all staff reports and materials being considered by the Civil Service Commission are available for public view 72 hours prior to the Civil Service Commission meeting on the Civil Service Commission's website at <https://sf.gov/civilservice> and in its office located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If any materials related to an item on this agenda have been distributed to the Civil Service Commission after distribution of the agenda packet, those materials will be available for public inspection at the Civil Service Commission's during normal office hours (8:00 a.m. to 5:00 p.m. Monday through Friday).

E. Policy and Procedure for Hearings to be Scheduled after 5:00 p.m. and Requests for Postponement

A request to hear an item after 5:00 p.m. should be directed to the Executive Officer as soon as possible following the receipt of notification of an upcoming hearing. Requests may be made by telephone at (628) 652-1100 and confirmed in writing or by fax at (628) 652-1109.

A request for a postponement (continuance) to delay an item to another meeting may be directed to the Commission Executive Officer by telephone or in writing. Before acting, the Executive Officer may refer certain requests to another City official for recommendation. Telephone requests must be confirmed in writing prior to the meeting. Immediately following the "Announcement of Changes" portion of the agenda at the beginning of the meeting, the Commission will consider a request for a postponement that has been previously denied. Appeals filed under Civil Service Commission Rule 111A Position-Based Testing shall be considered on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Department of Human Resources.

F. Policy and Procedure on Hearing Items Out of Order

Requests to hear items out of order are to be directed to the Commission President at the beginning of the agenda. The President will rule on each request. Such requests may be granted with mutual agreement among the affected parties.

G. Procedure for Commission Hearings

All Commission hearings on disputed matters shall conform to the following procedures: The Commission reserves the right to question each party during its presentation and, in its discretion, to modify any time allocations and requirements.

If a matter is severed from the *Consent Agenda* or the *Ratification Agenda*, presentation by the opponent will be for a maximum time limit of five (5) minutes and response by the departmental representative for a maximum time limit of five (5) minutes. Requests by the public to sever items from the [*Consent Agenda* or] *Ratification Agenda* must be provided with justification for the record.

For items on the *Regular Agenda*, presentation by the departmental representative for a maximum time of five (5) minutes and response by the opponent for a maximum time limit of five (5) minutes.

For items on the *Separations Agenda*, presentation by the department followed by the employee or employee's representative shall be for a maximum time limit of ten (10) minutes for each party unless extended by the Commission.

Each presentation shall conform to the following:

1. Opening summary of case (brief overview);
2. Discussion of evidence;
3. Corroborating witnesses, if necessary; and
4. Closing remarks.

The Commission may allocate five (5) minutes for each side to rebut evidence presented by the other side.

H. Policy on Audio Recording of Commission Meetings

As provided in the San Francisco Sunshine Ordinance, all Commission meetings are audio recorded in digital form. These audio recordings of open sessions are available starting on the day after the Commission meeting on the Civil Service Commission website at www.sfgov.org/civilservice/.

I. Speaking before the Civil Service Commission

Speaker cards are not required. The Commission will take public comment on all items appearing on the agenda at the time the item is heard. The Commission will take public comment on matters not on the Agenda, but within the jurisdiction of the Commission during the "Requests to Speak" portion of the regular meeting. Maximum time will be three (3) minutes. A subsequent comment after the three (3) minute period is limited to one (1) minute. The timer shall be in operation during public comment. Upon any specific request by a Commissioner, time may be extended.

J. Public Comment and Due Process

During general public comment, members of the public sometimes wish to address the Civil Service Commission regarding matters that may come before the Commission in its capacity as an adjudicative body. The Commission does not restrict this use of general public comment. To protect the due process rights of parties to its adjudicative proceedings, however, the Commission will not consider, in connection with any adjudicative proceeding, statements made during general public comment. If members of the public have information that they believe to be relevant to a matter that will come before the Commission in its adjudicative capacity, they may wish to address the Commission during the public comment portion of that adjudicative proceeding. The Commission will not consider public comment in connection with an adjudicative proceeding without providing the parties an opportunity to respond.

K. Policy on use of Cell Phones, Pagers and Similar Sound-Producing Electronic Devices at and During Public Meetings

The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Information on Disability Access

The Civil Service Commission normally meets in Room 400 (Fourth Floor) City Hall, 1 Dr. Carlton B. Goodlett Place. However, meetings not held in this room are conducted in the Civic Center area. City Hall is wheelchair accessible. The closest accessible BART station is the Civic Center, located 2 ½ blocks from City Hall. Accessible MUNI lines serving City Hall are 47 Van Ness Avenue, 9 San Bruno and 71 Haight/Noriega, as well as the METRO stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. Accessible curbside parking has been designated at points in the vicinity of City Hall adjacent to Grove Street and Van Ness Avenue.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week. For American Sign Language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the Commission office to make arrangements for the accommodation. Late requests will be honored, if possible.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call our ADA coordinator at (628) 652-1100 or email civilservice@sfgov.org to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

Know your Rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, or to obtain a free copy of the Sunshine Ordinance, contact Victor Young, Administrator of the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689 at (415) 554-7724, by fax: (415) 554-7854, by e-mail: soff@sfgov.org, or on the City's website at www.sfgov.org/bdsupvrs/sunshine.

San Francisco Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3112 and web site <https://sfethics.org/>.

10. Receipt-stamp this form in the ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.

Attachment

CSC-22MTA (9/00)

<p><u>CSC RECEIPT STAMP</u></p>

NOTIFICATIONS

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London Breed, Mayor

Amanda Eaken, Chair
Stephanie Cajina, Vice Chair
Steve Heminger, Director

Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

MEMORANDUM

DATE: July 6, 2023

TO: The Civil Service Commission

THROUGH: Kimberly W. Ackerman *KA*
Chief People Officer, SFMTA

FROM: David Garcia *DG*
Labor Relations Manager, SFMTA

SUBJECT: Appeal of Future Employability Restrictions by Marlon R McPherson – Former 9163 Transit Operator (Register No. 0077-23-7)

BACKGROUND

The San Francisco Municipal Transit Agency (Agency) hired Marlon R McPherson (Appellant) on January 5, 2015, as a Permanent Civil Service (PCS) 9163 Transit Operator. The Agency recommends future work restrictions because the Appellant violated a last chance agreement that he signed because of prior discipline. The agreement allowed the appellant to continue his employment so long as he did not have another altercation or violate any agency policies.

The Agency placed the Appellant on a Last Chance Agreement (LCA) beginning on March 24, 2022, because he was involved in a physical and verbal altercation with a passenger on June 19, 2021. Since then, the Appellant had another altercation with a passenger and ran a redlight on January 21, 2023. The Agency dismissed the Appellant on March 25, 2023 and made a recommendation to restrict his future employability. The Agency recommends canceling his current examinations and eligibility status and precluding the Appellant from employment in any position that requires a class B or BP license for a duration of two years.

On April 13, 2023, the Appellant sent a request for appeal to the Civil Service Commission (CSC). The Appellant wishes to appeal the Agency's two-year employment restrictions because he believes the decision is not fair or just given that he received multiple commendations for the customer service during his nine-year-tenure as a Transit Operator. In accordance with the Civil Service Rules, the Agency submits this staff report for the Commission's review and consideration.



ISSUE

Is it reasonable to preclude the Appellant from future employment with the SFMTA and the CCSF, and to cancel his examination and eligibility status that requires a class B or BP driver's license?

AUTHORITY AND STANDARDS

The Agency's procedure for dismissal of permanent employees is governed by the Civil Service Commission Rule as set forth below: **(EXHIBIT A)**

Sec. 402.1 **Appointment**

402.1.1 Permanent Civil Service

An appointment made as a result of a certification from an eligible list to a permanent position or to a position declared permanent.

Sec. 414.2 **Permanent Appointment – Definition**

A permanent appointment is an appointment made as a result of certification from an eligible list to a permanent position.

Sec. 422.7 **Procedure for Dismissal of Regular Permanent Employee**

422.7.1 Dismissal of Permanent Employee

A permanent employee who has completed the probationary period may be dismissed for cause upon written charges and after having an opportunity to be heard in her/his own defense.

422.7.2 Notification of Time and Place of Hearing

When the charges are made, the MTA Director of Transportation/Designee shall notify the person in writing of the time and place where the charges will be heard by mailing such statement via certified mail to the employee's last known address. Such hearing shall not be held within five (5) working days of the date on which the notice is mailed. The employee may be represented by counsel or other representatives of the employee's choice.

San Francisco Municipal Railway Rules and Instructions Handbook (EXHIBIT B)

Rule 2.1 Application of Rules



Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

Rule 2.8 Conduct

Rule 2.8.1 Polite, respectful behavior is required of all employees in their dealings with the public, their subordinates and each other.

Rule 2.8.3 Avoid disputes with any person, no matter what the provocation.

Rule 2.9 Alertness

2.9.3 Operators must not engage in unnecessary conversation or otherwise allow themselves to be distracted while operating.

Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:

A. Inattention to Duties

F. Discourteous treatment of the public or other employees of the SF MUNI Railway;

K. Willful abuse of railway property

Rule 2.14 Traffic Laws

2.14.1 Employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco.

2.14.2 Employees shall be familiar with and obey all such laws, ordinances and regulations applicable to their responsibilities, including the signing of traffic citations.

Rule 2.21 Safety

Rule 2.21.1 Operator shall never operate a MUNI vehicle at a speed that is greater than that which is reasonable or prudent, and in no event at a speed that would endanger the safety of persons or property.

Rule 2.21.2 While vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals.



Rule 2.21.15 Employees must be careful to avoid any action or situation that could cause injury to themselves or others.

Rule 2.21.16 Employees must protect their own personal safety, the safety of others, and the safety of equipment and property.

Rule 2.21.17 Employees shall immediately report to proper authorities any emergency or condition that might create a hazard.

Rule 4.12 Operations Control Center Notification

Rule 4.12.1 Operators are to immediately notify OCC when any difficulty occurs which might disrupt the operators' schedule or cause a delay.

Rule 4.19 Stops

4.19.1 All cars and coaches must be brought to a full stop at all places where traffic regulations or safety rules require stops be made.

Rule 4.22 Speed

Rule 4.22.1 Operators, in or out of service, shall at all times operate at a safe speed that is consistent with weather, visibility, road or track conditions, traffic, traffic signal indications, and the indications of ATP system where used.

Rule 4.22.2 Operators must be prepared to stop short of any person, object, or obstruction within their range of vision.

CCSF Employee Handbook (EXHIBIT C)

Policy Regarding the Treatment of Coworkers and Members of the Public

Equitable, Fair, and Respectful Workplace Policy **(EXHIBIT D)**

Last Chance Agreement signed March 24, 2022, which states:

"In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to



implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.” **(EXHIBIT E)**

FINDINGS

On January 5, 2015, the Agency hired the Appellant into the permanent civil service job class, 9163 Transit Operator. **(EXHIBIT F)**

*On June 19, 2021, the Appellant passed up an intending passenger and denied service which the Agency became aware of the situation via Customer Service Complaint (CSC #396374. The Appellant received due process before the Agency imposed discipline in March 2022. **(EXHIBIT G)***

On March 24, 2022, the Agency placed the Appellant on a Last Chance Agreement (LCA) beginning because of the physical and verbal altercation he had with a passenger on June 19, 2021. That day, the Appellant physically moved a pedestrian by driving/pushing them with his bus.

On January 21, 2023, the Appellant used profanity toward a passenger in another verbal altercation. The Appellant was discourteous and unprofessional. **(Exhibit H)**

On January 21, 2023, the Agency received a customer service complaint that detailed the altercation that the Appellant had with a passenger on January 21, 2023. See Customer Service complaint #749771. Coach surveillance video corroborates the complaint and also shows that the Appellant ran a red light.

On March 13, 2023 the Agency issued a Skelly notice proposing that the Appellant be dismissed from his PCS position as a 9163 Transit Operator for violation of the Agency’s conduct and safety rules and the 12-month LCA.

On March 22, 2023, Presidio Division Manager John Sears (Sears) held a skelly meeting so the Appellant could respond to the charges.

On March 24, 2023, Sears issued his Skelly response to sustain the proposed discipline.

On March 25, 2023, the Appellant was dismissed from his position. **(Exhibit I)**

DISCUSSION AND ANALYSIS

The matter of discussion is whether the Appellant, a PCS 9163 Transit Operator with eight years of service should be restricted from any job that requires a Class B or BP drivers’ license for two-years.



As a Transit Operator, the Appellant is held to the highest professional standards while operating a coach. At all times, Transit Operators are required to adhere to CCSF and Agency policies which include but are not limited to the Equitable, Fair, and Respectful Workplace Policy, the Policy Regarding the Treatment of Coworkers and Members of the Public, and several other rules included in the Agency's Rules and Instructions Handbook. The Appellant is expected to be polite and respectful when dealing with the public, their subordinates and each other. The Appellant is expected not to engage in verbal altercations or disputes because such circumstances can lead to delays in service or other harm.

The Appellant failed to treat passengers with dignity and respect on, June 19, 2021. That day, the Appellant failed stop at a designated bus stop, and he did not allow an intending passenger to board. Instead, the Appellant engaged in a verbal altercation with the intending passenger, and even used his coach as a tool to push the intending passenger out of the coach's path of travel. If a passenger was blocking the path of travel, the Appellant should have contacted the Transit Management Center (TMC) to report a hazard as was required.

As a professional operator, the Appellant is responsible for scanning for potential hazards in the interior and exterior of the coach. Operators must not assume actions of others and must continuously scan their surroundings while coach is in motion. When potential hazards are detected, the Appellant was to bring his coach to complete stop. The intending passenger became a hazard when they stood in front of coach. Then the Appellant moved the coach forward into the intending passenger. His actions present a serious risk of bodily harm including the potential for loss of life.

Due to the Appellant's actions on June 19, 2021, the Agency proposed dismissing the Appellant from their position as a 9163 Transit Operator for violation of the Agency's conduct and safety rules. The Appellant's filed a grievance to oppose his dismissal, and his dismissal was reduced to a 30-day suspension and a 12-month Last Chance Agreement signed on March 24, 2022. As part of the agreement, the Appellant agreed:

In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.

On January 21, 2023, the Appellant used vulgar language when he engaged in gross misconduct and ran a red light. The Agency received CSC #749771 stating:



...this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me... He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable.

The investigation of CSC #749771 showed the Appellant used negative, offensive, combative, profanity laden comments such as “Don’t start nothin’ with me man. I was doin’ something. I was doin’ something.”, “Yeah fuck you! Get your ass off my bus matter of fact!”, “You ain’t paid no bus fare so get your ass off!” and “We not going nowhere until you get off my bus!” The Appellant also engaged in inappropriate conduct.

While investigating the CSC #749771 filed on January 21, 2023, it was discovered that the Appellant also violated rules and regulations regarding safe operation of equipment when he ran a red light. This incident was a result of the Appellant’s inattention to duties and negligence by failing to devote his attention to the traffic signals while the vehicle was in motion. This is a major safety violation which jeopardized lives and properties.

The Appellant was aware of the rules governing employee conduct and the requirements of his last chance agreement. The Appellant has been coached, trained, and received several publications on how to properly interact with others throughout his eight-year tenure. The Appellant’s actions violated the policies above resulting in a negative impact on the workplace and were a blatant violation of the last chance agreement he signed. Discourteous and disrespectful treatment of the public and our passengers is unacceptable and will not be tolerated.

CONCLUSION

For the reasons mentioned herein, the SFMTA dismissed the Appellant from his position. The Appellant’s aggressive and inappropriate conduct and disregard for the Agency’s safety rules prompted his dismissal on March 25, 2023.

RECOMMENDATION

Adopt the findings, deny the appeal, and approve the future employability restrictions.



Attachments:

- Exhibit A: Civil Service Rules, Pages 9 – 12
- Exhibit B: San Francisco Municipal Railway Rules and Instructions Handbook, Pages 13 – 23
- Exhibit C: City and County of San Francisco Employee Handbook, Pages 24 – 26
- Exhibit D: Equitable, Fair, and Respectful Workplace Policy, Pages 27 – 29
- Exhibit E: Last Chance Agreement signed March 24, 2022, Pages 30 – 32
- Exhibit F: CCSF Appointment Summary, Pages 33 – 34
- Exhibit G: June 19, 2021 Disciplinary Packet, Pages 35 – 52
- Exhibit H: January 21, 2023 Disciplinary Packet, Pages 53 - 69
- Exhibit I: Dismissal Packet, Pages 70 – 95
- Exhibit J: CSC Letter dated April 18, 2023 – Register No: 0077-23-7, Pages 96 - 110

EXHIBIT A

Rule 402

Definitions

Applicability: Unless otherwise noted, Rule 402 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA).

Unless otherwise required by the context, the words listed below and as used in these Rules have the following meanings:

Sec. 402.1 **Appointment**

402.1.1 **Permanent Civil Service**

An appointment made as a result of a certification from an eligible list to a permanent position or to a position declared permanent.

402.1.2 **Probationary**

Status of civil service employees during a trial period following permanent appointment.

402.1.3 **Temporary Civil Service**

An appointment made to a temporary position as a result of certification from an eligible list.

402.1.4 **Provisional**

An appointment to a permanent or temporary position in the absence of an available eligible or in an emergency which in either case, is time limited as provided elsewhere in these Rules.

1) Non-Civil Service

Section 402.1.4 1) shall apply only to Service-Critical classes of the Municipal Transportation Agency (MTA) represented by the Transport Workers Union (TWU), Locals 200 and 250A.

An appointment to a permanent or temporary position in the absence of an available eligible or in an emergency which, in either case, is time limited to a maximum duration as provided elsewhere in these Rules.

Rule 414

Appointments

Article I: General Provisions

Applicability: Article I, Rule 414 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA).

Sec. 414.1 **Appointment - General Provisions**

414.1.1 **Report of Appointment**

All appointments shall be authorized by the MTA Director of Transportation/Designee on the prescribed form prior to the appointee's starting date of employment.

414.1.2 **Validation of Appointment**

No appointee may begin working until validation has been issued by the MTA Director of Transportation/Designee.

414.1.3 **Finality of Appointing Officer's Decision**

Except as otherwise provided in these Rules, ordinances, or the Charter, the decision of the MTA Director of Transportation/Designee in all matters regarding appointment within the MTA shall be final.

Sec. 414.2 **Permanent Appointment - Definition**

A permanent appointment is an appointment made as a result of certification from an eligible list to a permanent position.

Sec. 414.3 **Method of Appointment - Permanent Appointment**

Permanent appointments shall be made in the following order of priority:

414.3.1 by the return to duty of a permanent holdover;

414.3.2 by the reinstatement of a promotive probationary employee consistent with the provisions in the Reinstatement Rule governing such employees;

Rule 422

Employee Separation Procedures

Article IV: Dismissal of Permanent Employee

Applicability: Article IV, Rule 422, shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.7 Procedure for Dismissal of Regular Permanent Employee

422.7.1 Dismissal of Permanent Employee

A permanent employee who has completed the probationary period may be dismissed for cause upon written charges and after having an opportunity to be heard in her/his own defense.

422.7.2 Notification of Time and Place of Hearing

When the charges are made, the MTA Director of Transportation/Designee shall notify the person in writing of the time and place where the charges will be heard by mailing such statement via certified mail to the employee's last known address. Such hearing shall not be held within five (5) working days of the date on which the notice is mailed. The employee may be represented by counsel or other representatives of the employee's choice.

422.7.3 Hearing Officer - Sources

The hearing itself, as required by Charter, shall be conducted by a hearing officer under contract to the MTA chosen as follows in each case: From organizations such as the American Arbitration Association or the State Conciliation Service which customarily provide hearing officers; or from a list of qualified hearing officers certified by the Civil Service Commission, which shall be kept current and contain at all times at least three (3) names.

EXHIBIT B

San Francisco Municipal Railway

Rules and Instructions Handbook



2. GENERAL RULES

2.1 Application Of Rules

2.1.1 Employees, whose duties are prescribed by these rules, will be provided with a copy of the San Francisco Municipal Railway Rulebook and Instruction Handbook.

2.1.2 Employees must have a copy of this Rules & Instruction Handbook available for immediate reference.

2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instruction Handbook.

2.1.4 When new rules or amended rules are adopted, employees will be furnished a new page(s), which must be inserted in the rulebook. All revisions to this Rules and Instructions Handbook must be promptly complied with.

2.1.5 Violation of any rule in this Rules and Instructions Handbook is sufficient cause for disciplinary action up to and including dismissal.

2.1.6 If in doubt as to the exact meaning of any rule, bulletin, instruction, order or notice in effect, apply to the proper authorities for explanation.

2.1.7 Adherence to these rules is essential to safety and safety is the primary importance in the performance of duties.

2.1.8 Employees must respond to inspectors or designated management officials' instructions during situations constituting an emergency or a major disruption of service regardless of job classification.

2.2 Bulletins, Orders, and Notices

2.2.1 Written instruction, rules, procedures, bulletins, notices and written and verbal

task for which the property was issued or upon demand by proper authority.

2.7.7 Employees must not duplicate or cause to be duplicated any Railway keys for any person without their supervisor's approval.

2.7.8 Operators must not loan or give any Railway keys to any person without their supervisor's approval.

2.8 Conduct

2.8.1 Polite, respectful behavior is required of all employees in their dealings with the public, their subordinates and each other.

2.8.2 Boisterous, profane or vulgar language is forbidden.

2.8.3 Avoid disputes with any person, no matter what the provocation.

2.8.4 When a passenger presents an invalid transfer or abuses a transfer rule, employees are to courteously request the passenger to retain the invalid transfer and pay the fare and then refer the passenger to the Passenger Service Department.

2.8.5 Politely refer a complainant to the Passenger Service Department if unable to resolve the matter satisfactorily.

2.8.6 Information concerning the business of the Railway is to be given only to properly authorized representatives of the Railway and peace officers in performance of their duties who present proper credentials.

2.8.7 Employees are not to, give presents to their superiors and supervisors are not to accept presents from subordinates.

2.8.21 Knowingly falsifying any report or knowingly entering or causing to be entered any inaccurate, false or improper information on MUNI logs, books, reports, or records is prohibited.

2.9 Alertness

2.9.1 Operators must remain fully alert at all times. Sleeping or assuming an attitude of sleep while on duty is forbidden.

2.9.2 Operators on duty who become ill or otherwise feel they cannot maintain alertness to perform their normal duties must notify OCC or an inspector as soon as possible. Employees whose health becomes impaired to the degree that safety is threatened must notify OCC immediately.

2.9.3 Operators must not engage in unnecessary conversation or otherwise allow themselves to be distracted while operating.

2.9.4 Operators must be alert for hazards or obstructions and must take necessary action to avoid them, regardless of mode of operation.

2.9.5 Operators must remain in active cab seat at all times while vehicle is in motion.

2.10 Medical Issues

2.10.1 Prescribed medicine - Operators taking any prescribed medicine that may affect their judgment or faculties or cause dizziness or any other abnormal reaction must not operate Railway equipment. If there are any questions, operator must contact supervisor and advise of medication and its effects.

2.10.2 Color blindness - Operators must be able to clearly distinguish the colors used in the signage and signal systems.

2.11.6 Employees in uniform, while off duty, must respect their uniform and refrain from the use of intoxicants or show evidence of the use of alcoholic liquor. Frequenting bars or taverns when in uniform is to be avoided.

2.12 Training

2.12.1 Employees must attend training sessions as directed by their supervisors.

2.13 Discipline

2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension or, if appropriate, dismissal.

- A. Inattention to duties;
- B. Incompetence;
- C. Substance Abuse;
- D. Immoral Conduct;
- E. Insubordination;
- F. Discourteous treatment of the public or other employees of the SF MUNI Railway;
- G. Fighting;
- H. Mishandling fares;
- I. Dishonesty;
- J. Abandonment of vehicle;
- K. Willful abuse of railway property.

2.14 Traffic Laws

2.14.1 Employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco.

2.14.2 Employees shall be familiar with and obey all such laws, ordinances, and regulations applicable to their responsibilities, including the signing of traffic citations.

- H. Parking Control Officers (when in full uniform);
- I. Guide, Signal, and Service animals;
- J. Municipal Railway Employees;
- K. Municipal Railway Dependents;
- L. Sisters of Charity;
- M. Special Service.

2.20 Arrests

2.20.1 An employee shall not request the arrest of any person, unless authorized by an Inspector or proper authority, except when employee is robbed, assaulted or in immediate personal danger.

2.20.2 If an arrest is made, immediately report it to OCC. An Accident Report must be made during, or immediately following completion of tour of duty, giving name and star number of arresting officer, and names and addresses of witnesses and person(s) arrested.

2.21 Safety

2.21.1 Operator shall never operate a MUNI vehicle at a speed that is greater than that which is reasonable or prudent, and in no event at a speed that would endanger the safety of persons or property.

2.21.2 While vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals.

2.21.3 Operators, when approaching intersections where right or left turns are to be made, must operate slowly and ensure the right or left signal is activated one hundred feet before commencing the turn and remain in continuous operation while completing the turn.

- 2.21.13** The controller emergency braking position, the deadman handle, the rear door interlock and hill holder, the rollback prevention, or the red emergency stop button must not be used for normal stops. Operators of vehicles that have a deadman handle shall not disable it (this device) in any way.
- 2.21.14** Operators shall not wear colored eyeglasses between the hours of sunset and sunrise while operating any Railway equipment or at any time while in the MUNI Metro subway (including the MUNI Metro switchback) or the Sunset Tunnel.
- 2.21.15** Employees must be careful to avoid any act or situation that could cause injury to themselves or others.
- 2.21.16** Employees must protect their own personal safety, the safety of others, and the safety of equipment and property.
- 2.21.17** Employees shall immediately report to proper authorities any emergency or conditions that might create a hazard.
- 2.21.18** Smoking is prohibited in areas where flammable materials are stored or where batteries are being stored or charged.
- 2.21.19** Employees shall take every precaution to eliminate possible fire hazards.
- 2.21.20** Employees must not introduce into or allow open flames or sparks in areas where there are or may be flammable vapors or concentrations of explosive dust.
- 2.21.21** Employees must become familiar with the location and use of fire alarms and fire devices in all areas and shall keep access to these areas free at all times.
- 2.21.22** Employees must wear safety vests when working on or about the track area.

4.12 Operations Control Center Notification

4.12.1 Operators are to immediately notify OCC when any difficulty occurs which might disrupt the operators' schedule or cause a delay.

4.12.2 Operators must notify OCC immediately of a broken down vehicle failing to move.

4.13 Reports

4.13.1 Operators are to make out Miscellaneous Report forms to report all unusual occurrences, except accidents.

4.14 Required Information

4.14.1 An operator operating more than one car must know the number of cars being operated, the car number, their designation, and their location in the train.

4.15 Stopping For Passengers

4.15.1 Cars and coaches shall stop at all designated stops where passengers are waiting to board or alight between the hours of 6:30 A.M. and 8:30 P.M.

4.15.2 Operators must pull into any properly marked vacant and clear bus zone to allow passengers to board or alight.

4.15.3 If unable to comply with Rule 4.15.1, then the operator is to stop at a safe boarding location and must wait for any intending passengers.

4.15.4 Coaches must be stopped in box zones so that:

- A. Front and rear doors are within one foot of the curb, if not;
- B. Both the front and rear doors are beyond three feet of the curb when other vehicles are parked at curb legally or illegally.

other stopping point where persons are waiting to board;

- B. When coach or electric car is loaded to capacity;
- C. When coach or electric car is disabled;
- D. When transferring motor coaches between garages;
- E. When motor coaches are operating during out of service trips;
- F. When operating Limited Stop and Express trips in areas where stops are not required;
- G. When directed by authorized official.

4.18 Standing Load Line

4.18.1 Operator is prohibited from moving a coach or electric car when passengers are standing in front of the designated standing load line.

4.19 Stops

4.19.1 All cars and coaches must be brought to a full stop at all places where traffic regulations or safety rules require stops be made.

4.20 Federal Law Requires Compliance with the Americans with Disabilities Act

4.20.1 Operators must **always** announce stops, at least at transfer points with other fixed routes, major intersections and destination points, all MUNI Metro stations in the subway, and at intervals along a route sufficient to permit individuals to be oriented to their location.

4.20.2 Operators must announce their route and destination to blind or vision impaired passengers at all stops served by multiple lines or destinations.

4.20.3 Operators must announce any stops at the request of any passenger.

- 4.20.4** Operators must lower the kneeler on kneeler-equipped vehicles at any time requested and at stops where the kneelers use would aid passengers in boarding.
- 4.20.5** Operators must make the wheelchair lift available to anyone requesting it, wheelchair user or standing passenger, on vehicles so equipped.
- 4.20.6** Operator must aid passengers in wheelchairs with lifting seats and the securement systems upon the request of the passenger.
- 4.20.7** Operator must ask passengers to yield seats in the securement area for wheelchair users.
- 4.20.8** Operators must request passengers to yield the forward seats to persons with disabilities and seniors.
- 4.20.9** Operators must allow persons traveling with respiratory or portable oxygen supply to board and ride any revenue vehicle.
- 4.21** **Unauthorized Stops**
- 4.21.1** Operator must not stop for passengers or employees at any station, platform, or bus stop location(s) unless authorized by OCC.
- 4.22** **Speed**
- 4.22.1** Operators, in or out of service, shall at all times operate at a safe speed that is consistent with weather, visibility, road or track conditions, traffic, traffic signal indications, and the indications of ATP system where used.
- 4.22.2** Operators must be prepared to stop short of any person, object, or obstruction within range of their vision.
- 4.22.3** Operators must have their train under control at all times and must not exceed the prescribed speed in either surface or subway operations. Operators must be aware of

EXHIBIT C

Employee Handbook

City and County of San Francisco



Mayor London N. Breed

Carol Isen
Human Resources Director

or privileged information obtained by virtue of your office or employment for non-business purposes, and you may not use that information to advance the financial or other private interest of yourself or others.

- For a period of one (1) year after you leave City employment, you may not contact your former department on behalf of any person for the purpose of influencing a governmental decision. You also may not work for or receive compensation from any party to a City contract if, within the previous twelve (12) months, you were personally and substantially involved in the City's award of that contract. For other post-employment restrictions, please visit www.sfethics.org.
- Depending on your level of decision-making authority, you may be required to file a statement of economic interests. For a list of those employees who are required to file these statements, and instructions on how to do so, contact your supervisor.

The San Francisco Ethics Commission investigates violations of these rules and other improper government activities. If you are aware of any such violations or activities, or if you have any questions concerning the ethics rules for City employees, contact the Ethics Commission at (415) 252-3100. All complaints will be kept confidential to the extent permitted by law.

Policy Regarding the Treatment of Co-Workers and Members of the Public

City policy requires employees to treat co-workers and members of the public with courtesy and respect. City employees and managers are responsible for maintaining a safe and productive workplace which is free from inappropriate workplace behavior.

Smoke-Free Workplace

Smoking is not permitted in City offices, or within 20 feet of entrances, exits, or operable windows of public buildings.

Drug-Free Workplace

You may not manufacture, distribute, dispense, possess, use or be under the influence of alcohol or illegal drugs in workplace. This prohibition includes prescription drugs used improperly (e.g., those not prescribed for the user). Any violation of this policy may be grounds for discipline up to and including dismissal.

If you perform activities in your job that are funded by a federal grant, you must notify your department head of any drug convictions for violation of drug laws that took place in the workplace within five days of any such conviction. Employees in certain safety-sensitive positions, or in positions where testing is required by federal law, may be required to submit to periodic drug tests. All employees may be required to submit to drug testing under certain circumstances consistent with federal, state, and local laws and applicable collective bargaining agreements.

EXHIBIT D



Equitable, Fair, and Respectful Workplace Policy

The City and County of San Francisco (City) is committed to promoting and maintaining a safe and healthy working environment where every individual is treated with civility, dignity, and respect. To this end, it is the policy of the City to provide a workplace where each employee has the right to work in a positive, professional, and mutually respectful atmosphere free from Disrespectful Behavior (defined below). This Equitable, Fair and Respectful Workplace Policy (Respect Policy) sets forth many of the City's values, supplements and is in addition to the City's current policies prohibiting discrimination, harassment and retaliation and prohibiting violence and threats of violence.

All City employees and City officers play a role in contributing to a truly welcoming, safe, and inclusive working environment that encourages mutual respect and promotes civil and collaborative relationships with the public and among staff, at all levels. The diversity of our employees – the wide range of backgrounds, ideas and lived experiences they bring to City employment – enriches our workplace and enhances our work. To promote and sustain a workplace where all employees and members of the public are treated with respect and dignity, and where employees feel welcomed and valued for who they are and what they can contribute, each City employee is expected to abide by the values and standards below and in this Respect Policy generally of interpersonal behavior, communication, and professionalism:

- Work honestly, earnestly, collegially and collaboratively with employees and others;
- Listen to and value the views and opinions of others, particularly when they differ from your own;
- Abide by all rules, regulations, policies, and laws and promptly bring concerns about potential violations to your supervisor or departmental Human Resources personnel.

All City employees and City officers have a responsibility to set a positive example and must refrain from engaging in Disrespectful Behavior, whether deliberate or unintentional. The City will not tolerate Disrespectful Behavior in any City workplace, and seeks to intervene at the earliest sign or stage of Disrespectful Behavior to correct that misconduct and prevent its reoccurrence. Any employee or officer who violates this policy will be subject to disciplinary actions up to and including termination.

Disrespectful Behavior is defined as discourteous, rude, impolite, or offensive words, gestures or other behavior that may devalue and undermine a person and their dignity or self-esteem or creates an intimidating, hostile, abusive or offensive environment. Examples of Disrespectful Behavior can include, but are not limited to, the following:

- **Bullying**: bullying is a pattern of repeated behavior that a reasonable person would find hostile, offensive, intimidating, oppressive, subjugating, threatening, and unrelated to the City's legitimate business interests.

Bullying behavior may take many forms including physical, verbal, or written acts or behaviors. Workplace bullying often involves repeated abuse or misuse of power. A single physical, verbal, or written act or behavior generally will not constitute bullying unless especially severe and egregious but could nonetheless violate this Respect Policy;

- **Hostility**: yelling, interpersonal hostility or spiteful conduct, that is deliberate or repeated and/or causes harm to the targeted person's or persons' mental or physical wellbeing, safety, or economic status. This includes physical intimidation, unwanted touching, or isolation;

- Belittling conduct: name calling; playing “pranks” on a person; making fun of someone or telling jokes at their expense; taking, vandalizing, or otherwise damaging a person’s personal or work property; and spreading false information or rumors about someone; seeking submission or misuse of power, authority, rank, status, or other privilege
- Microaggressions: statements, actions, or incidents regarded as indirect or subtle invalidation, insult, irritant, disregard, prejudice, and/or discrimination against members of a marginalized group such as those having actual or perceived unequal power across economic, political, social and cultural dimensions. Microaggressions can harm someone or unfairly advantage others;
- Intimidation: using threatening or abusive language, profanity or language that is intended to be, or is perceived by others to be, demeaning, berating, belittling, rude, threatening, intimidating, coercive, hostile or offensive;
- Violence: throwing tools, office equipment, or other objects as an expression of frustration or anger or implying that one will act with violence as a method of influencing the actions of others;
- Sabotage: intentionally interfering with a process of work or otherwise undermining a person’s work.
- Invasive use of technology: using social media or other technology, to harass or bully, using statements, photographs, video, or audio that could reasonably viewed as malicious, obscene, threatening or intimidating.

Communication is nuanced and Interpersonal conflict is a normal part of work and life. Maintaining a respectful workplace relies on effective and respectful communication, patience, professionalism and understanding.

All City employees and City officers shall sign an acknowledgement of receipt and compliance with this Respect Policy.

Management’s Responsibilities

Department appointing officers, managers and supervisors must lead by example by creating and maintaining a workplace that demonstrates respect and professionalism and follows the tenets of this Respect Policy. They must respond to Disrespectful Behavior in their respective workplaces including Disrespectful Behavior by vendors, consultants or members of the public. Each city department is required to ensure that all employees receive the accompanying and required training concerning this Policy. When any employee reports that Disrespectful Behavior has occurred, human resources, managers and supervisors must treat the complaint seriously. Management should follow the guidance on managing interpersonal conflict in the workplace and contact their human resources representative for guidance on handling these kinds of situations. Human Resources must provide support to managers and supervisors upon request for guidance on conflict resolution strategies. Any appointing officer, human resources official, manager or supervisor who observes or otherwise becomes aware of Disrespectful Behavior, has a duty to take appropriate and immediate corrective and preventative action to ensure the workplace is safe for all employees. Departments shall communicate to employees that Disrespectful Behavior will not be tolerated, condoned, or ignored and there are appropriate consequences for violations of the Respect Policy. The City will provide support to its department managers or supervisors with implementation of the Respect Policy.

Training

The City will provide:

1. Mandatory training for all employees and City officers on the policy and strategies for maintaining a respectful workplace
2. Training on conflict management for managers, supervisors, and HR Professionals
3. Ongoing learning and development options on effective communication and interpersonal relationships

EXHIBIT E



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

LAST CHANCE AGREEMENT **For 9163 Marlon McPherson**

This Last Chance Agreement (“AGREEMENT”) is entered into between the San Francisco Municipal Transportation Agency (“SFMTA”), TWU, Local 250-A (9163) (“UNION”) and Marlon McPherson (“MCPHERSON”), who is a Transit Operator, Job Code 9163.

MCPHERSON was recommended for dismissal by Romarr Pitcher, Division Manager, Woods Division, due to violations of the San Francisco Municipal Railway Rules and Instructions Handbook’s safety & procedures, and misconduct.

As per the Step-2 decision rendered, SFMTA has reduced MCPHERSON’s dismissal pending and instead enters into this AGREEMENT with MCPHERSON. As such, MCPHERSON and his representatives voluntarily agree to the conditions listed below, each of which is an essential and material term of this AGREEMENT.

The parties agree as follows:

1. In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.
2. In lieu of consideration of dismissal, MCPHERSON agrees to serve a suspension from March 19, 2022, to April 18, 2022.
3. MCPHERSON and the UNION waive all rights to any administrative proceeding, including the grievance process, in the event SFMTA decides to move to dismissal during that twelve (12) month period. The dismissal recommendation will be subject only to a review by the Director of Transportation.
4. MCPHERSON also agrees to undergo any retraining(s), at the recommendation of Transit Management, tailored towards the safety, reporting, and customer service interactions lapses which initially led to his dismissal recommendation.
5. MCPHERSON acknowledges that he freely and voluntarily enters into this AGREEMENT and that he understands each and every provision set forth herein. MCPHERSON further certifies that he understands the waiver set forth in



paragraph 3 above and recognizes that it is a total waiver of all rights to challenge through the grievance process, any decision by SFMTA to recommend dismissal during the twelve (12) months following his signature on this AGREEMENT. MCPHERSON further acknowledges that he has had an opportunity to consult with a UNION representative prior to the execution of this AGREEMENT, and that he has done so.

- 6. The parties agree that this LAST CHANCE AGREEMENT shall not be used as a precedent in any other grievance or litigation proceeding.

DATE: [redacted] March 24, 2022
KIMBERLY W. ACKERMAN, Director, SFMTA Human Resources

DATE: [redacted] MARR PITCHER, Manager, Transit Division

DATE: [redacted] PETE WILSON, Vice President, TWU-250A (9163)

DATE: [redacted] MARLON MCPHERSON, Transit Operator (9163)

- Cc: Leda Rozier & Emily Williams, Transit Administration
- Roger Marengo, TWU-250A (9163)
- Pete Wilson, TWU-250A (9163)
- Loree Woods-Bowman, TWU-250A (9163)
- Romarr Pitcher, Transit Manager, Woods Division
- Aaron Beckwith, Employee/Labor Relations
- Personnel File

EXHIBIT F

CCSF Job Appointment Summary

Marlon R McPherson Emp ID [REDACTED] Empl Record 0

Personalize | Find | View All | [Icons] First 1-3 of 3 Last

Eff Date	Appt Date	Action	Description	Payroll Status	Job Code	Union Code	Empl Class	Exmpt Cat	Full/Part Time	Elig List #	Rank	POS #	Dept Sen Date	Dept	Location	Cert Date	Ctywd Snty Date	Company Seniority Date	Vacation Anniversary Date	Sick Anniversary Date
03/25/2023	01/05/2015	TER	Dismissal of Permanent Employee	Terminated	9163	253	PCS	NA	F	M00073	169.00	01129578	12/23/2014	MTA	MTA006	12/23/2014	12/23/2014	01/05/2015	01/05/2015	01/05/2015
07/01/2017	01/05/2015	POS	Position Data Update	Active	9163	253	PCS	NA	F	M00073	169.00	01129578	12/23/2014	MTA	MTA001	12/23/2014	12/23/2014			
01/05/2015	01/05/2015	HIR	New Hire	Active	9163	253	PCS	NA	F	M00073	169.00	01129578	12/23/2014	MTA	MTA001	12/23/2014	12/23/2014			

Save Return to Search Notify

EXHIBIT G



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

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paragraph 3 above and recognizes that it is a total waiver of all rights to challenge through the grievance process, any decision by SFMTA to recommend dismissal during the twelve (12) months following his signature on this AGREEMENT. MCPHERSON further acknowledges that he has had an opportunity to consult with a UNION representative prior to the execution of this AGREEMENT, and that he has done so.

6. The parties agree that this LAST CHANCE AGREEMENT shall not be used as a precedent in any other grievance or litigation proceeding.

DATE: Kimberly Ackerman March 24, 2022
KIMBERLY W. ACKERMAN, Director, SFMTA Human Resources

DATE: [Signature] HNEUR
FOR ROMARR PITCHER, Manager, Transit Division

DATE: [Signature]
PETE WILSON, Vice President, TWU-250A (9163)

DATE: Marlon McPherson
MARLON MCPHERSON, Transit Operator (9163)

Cc: Leda Rozier & Emily Williams, Transit Administration
Roger Marengo, TWU-250A (9163)
Pete Wilson, TWU-250A (9163)
Loree Woods-Bowman, TWU-250A (9163)
Romarr Pitcher, Transit Manager, Woods Division
Aaron Beckwith, Employee/Labor Relations
Personnel File



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

January 21, 2022

Pete Wilson, Vice-President
Transport Workers' Local 250-A
1508 Fillmore St., Suite 211
San Francisco, CA 94115

RE: Step 2 Decision – McPherson, Marlon (5916) – 067-21-WD

Dear Mr. Wilson,

On December 1, 2021, in accordance with the Transport Workers' Union (TWU / Union) Local 250-A, (Class 9163) current Memorandum of Understanding (MOU), a Step-2 Hearing was held at One South Van Ness (via MS Teams), San Francisco, CA 94103. The grievance was filed to question the Agency's proposed dismissal of Operator Marlon McPherson (MCPHERSON) for a Customer Service Complaint (CSC) and DriveCam event with an attempted patron on June 19, 2021.

Present at the hearing were:

Pete Wilson	Union Representative, TWU Local 250-A
Loree Woods-Bowman	Union Chair, TWU Local 250-A
Marlon McPherson	9163, Transit Operator
Romarr Pitcher	Transit Manager
Paul Pina	Transit Manager
Christine Cayabyab	Sr. HR Analyst, Employee/Labor Relations
Aaron Beckwith	HR Analyst/Step-2 Hearing Officer

Background:

On June 19, 2021, MCPHERSON was operating Coach 8837, N-Judah rubber tire bus, inbound towards Ferry Building when an incident with a patron occurred outside the coach. CSC [REDACTED] was filed by the attempted patron.

Upon review of the video, the Agency found that MCPHERSON had engaged in a verbal altercation with the pedestrian/patron which culminated in a situation where MCPHERSON used his coach to physically move the pedestrian away from the coach. MCPHERSON did not notify the Transit Management Center (TMC) about this event.

Union's / Operator's Position:

Operator MCPHERSON and the Union made the following points in response to the Agency's proposed disciplinary action:



- This Coach clearly had the “Drop-Off Only” placard displayed in its front window and this was pointed out to the attempting patron;
- Further, since Drop Off Only, MCPHERSON properly did not service the stop in question (concrete island on Market St.) but instead operated to the right of the stop and the intending patron should not have attempted to intercept the Coach at a non-bus stop;
- Operator MCPHERSON has continually taken and accepted full responsibility for their missteps; while not an excuse per se, MCPHERSON had been struggling with Covid-related stressors that day in particular, including a very ill spousal partner and recent death in the family, and as such was not in a perfect state to ideally handle the dispute with this patron;
- This patron has had prior altercations with Operator MCPHERSON and it was felt that they instigated this dispute as part of their pattern of being disruptive with MCPHERSON;
- The Union questioned whether the Agency had attempted to contact this patron who filed the CSC, as prescribed in the parties’ MOU;
- MCPHERSON reiterated that they take complete responsibility and fully acknowledge and understand the severity of their misconduct. MCPHERSON has been actively receiving assistance from a variety of employee-resources including the Employee Assistance Program and other Kaiser-related program(s);
- MCPHERSON and the Union requested a resumption of a 90-day probationary period as a 9163 Transit Operator and a ten (10)-day suspension in lieu of the proposed dismissal;
- MCPHERSON truly loves his job, he and his family rely on this income stream and its medical benefits

Agency’s Position:

There was no violation of the parties MOU at section 222 regarding CSCs, specifically the telephone conference with the complainant and offering the Operator and Union chairperson the opportunity to listen and submit suggested questions to the Division Manager.

There is no dispute that Operator MCPHERSON clearly violated the cited safety and conduct rules as alleged: mainly, the discourteous interaction with the pedestrian, the safety breach in attempting to use the motor coach to physically move the pedestrian out of the roadway, and the failure to even report the incident to TMC, as was required.

Despite the fact that MCPHERSON’s coach was displaying the Drop-Off Only placard (notifying intending passengers that the Coach is at capacity per Covid-19 guidelines), MCPHERSON still should have serviced/approached the regular boarding island on Market St. instead of operating to the side and away from the island.

As noted in the case documents, MCPHERSON’s misconduct rose to a severe safety hazard and realistically could have resulted in serious bodily injury, and even death, to the patron.



Step 2 decision:

After listening to all arguments and reviewing all facts brought forth, including reviews of the video footage in this matter, it is found that the Agency did not violate section 19.8 Customer Service Complaints (§220-223). Section 222 reads in part,

“If the Division Manager or Assistant Manager determines that a customer service complaint may have merit and an investigation is necessary, the Division Manager or Assistant Manager or designee will discuss the CSC with the TWU Local 250A Division Chairperson. ... As one element of any investigation of a customer service complaint, the Division Manager or Assistant Manager shall schedule a telephone conference with the complainant and shall offer the Operator and the TWU Local 250A Chairperson the opportunity to listen and submit suggested questions to the Division Manager or Assistant Manager while the Division Manager or Assistant Manager asks the complainant questions.” (emphasis added.)

In this instance, and in the vast majority of CSC instances, the Division Manager almost always has sufficient information to render either a “No Merit” determination, or, if the audio and video are conclusive, to substantiate the CSC. During the term of this current MOU (July 1, 2019 – June 30, 2022), the Agency and Union’s have consistently behaved and worked in this fashion (i.e., only when the Division Manager requires additional information from the complaining patron to properly assess the CSC would a conference call be scheduled per above.)

As to the merits, again, there is no dispute that MCPHERSON committed the serious misconduct as alleged.

MCPHERSON has average-length tenure as a 9163 Transit Operator, reaching seven (7) years of service in January 2022. In that time, MCPHERSON’s disciplinary record is insignificant and does not reflect any prior, similar instances of such safety violations or altercations.

There is found no violation of the parties MOU and as such, the grievance is denied.


MCPHERSON was found credible and sincerely remorseful when he spoke on his own behalf. Operator MCPHERSON owns and takes responsibility for their misconduct. When asked if they would have done anything differently if given the chance, MCPHERSON said they would have taken a moment to gather and calm themselves, would have waited for as long as it took for the patron to vacate the traffic lane (instead of releasing the brake pedal which caused the coach to crawl forward), and would have immediately reported the matter to the TMC.

In consideration of the totality of the circumstances, including review for consistency of prior Operator discipline for safety related misconduct, it is found that a reduction from the proposed dismissal to a thirty (30)-day suspension combined with a twelve (12)-month Last Chance



Agreement (LCA), is reasonable and appropriate. The Agency, Union, and MCPHERSON will draft and sign this LCA, the effective date being MCPHERSON's return to platform revenue service after having served the above 30-day suspension . All involved are extremely fortunate that this matter did not result in actual injury, or death.

Recommended by:



MCPHERSON
Step-2 Hearing Officer



Kimberly W. Ackerman
Chief People Officer

CC: Leda Rozier, Transit
Emily Williams, Transit
Loree Woods-Bowman, TWU-250A
Christine Cayabyab, HR/ELR
Chron File

Christine Cayabyab, ELR
Doris Kang, ELR
Romarr Pitcher, Woods Division
Paul Pina, Woods Division
Discipline database



TRANSPORT WORKERS UNION OF AMERICA

LOCAL 250A AFL-CIO

1508 FILLMORE ST. #211 ~ SAN FRANCISCO, CA. 94115

(415) 922-9495 www.twusf.org

ROGER MARENCO
PRESIDENT

PETER WILSON
EXECUTIVE VICE PRESIDENT

MICHAEL DENNIS
SECRETARY TREASURER

VERTRINA Z. DAVIS
RECORDING SECRETARY

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LOREE WOODS-BOWMAN
RAMON GALDAMEZ

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GEE JEUNG
KEVIN DAVIS
JUAN COLEMAN
ANTHONY BALLESTER
ALLAN NASAIRE
LUKE JONES


August 23rd, 2021

NO: 062-21-WD

**San Francisco Municipal Transportation Agency
1 South Van Ness
San Francisco, CA 94103**

Dear Employee Labor Relations,

**We would like to request a Step-2 for Marlon McPherson,
Cap # [REDACTED], from Woods Division.**

Sincerely 
**Pete Wilson
Executive Vice President
TWU Local 250A**



WOODS DIVISION

1001 22ND Street
San Francisco, CA 94107

Mail # 1238

Date: July 27, 2021

To: Marlon McPherson # [REDACTED]

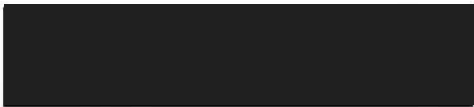
From: Romarr Pitcher

Acting Manager, Woods Division

**Re: Grievance Response (Safety & Conduct on 06.19.21) – Marlon McPherson # [REDACTED] –
Dated 06/14/21**

Management’s Reply: Operator stated that he had a past incident with intending passenger in which the passenger used racist language towards him, but operator did not report incident to TMC. If what operator stated was valid, it does not reduce the seriousness of what transpired on 06.19.21. Operator feel the recommended termination is too harsh and would desire 90 days probation along with a 10 day suspension as discipline. Operator decided to disregard a bus stop, not board a passenger, engage in a verbal altercation, physically push passenger out direction of travel with coach, and not contact TMC. These actions could have resulted in serious consequences. Due to the nature of this incident and the seriousness of the violations in question, the right recommendation was proposed. So based on all the facts, this grievance is denied.

Regards,



Romarr Pitcher
Acting Division Manager
Woods Division

TRANSPORT WORKERS UNION - LOCAL 250-A
GRIEVANCE FORM

Step 1

Employee's Name Marlon McPherson Date 7-27-21

Classification 9163 Cap No. [REDACTED] or [REDACTED] Badge No. [REDACTED] Division woods

NATURE OF GRIEVANCE: passenger complaint I would not
let person on the bus, for racist language
toward me in the past, discipline to harsh.

RULE VIOLATION: CSC# [REDACTED] conduct and safety

SETTLEMENT DESIRED: 90 days probation and 10 days
suspension

[REDACTED]
(Signature of Employee)

[REDACTED]
(Signature of Representative)

MANAGEMENT'S REPLY: DENIED.

7/28/2021
(Date)

[REDACTED]
(Signature of Management Rep.)

9174 MANAGER IV (ACTING)
(Title)



WOODS DIVISION

1001 22ND Street
San Francisco, CA 94107

July 14, 2021

Mail # 1166

Skelly Decision

McPherson, Marlon # [REDACTED]
9163 Transit Operators

SUBJECT: Notice of Recommended Disciplinary Action
Skelly Hearing Officer Decision – Conduct & Safety (CSC # [REDACTED]) on 06.19.21

Dear Marlon McPherson,

You received a Skelly letter proposing that you be terminated from your position as a 9163 Transit Operator for Conduct and Safety (CSC # [REDACTED]) on 06.19.21

Hearing:

A hearing was scheduled for Wednesday July 14, 2021 at 11:00am. Present for this hearing were you, Romarr Pitcher, and your union representative Loree Woods-Bowman.

Operator Comments:

Operator stated that he is sorry the whole situation happened. Operator mentioned that he is going through personal issues at home and this situation does not reflect who he is as an operator and person. Operator feels that termination is excessive and would like a chance to improve and provide for his family.

Union's Comments:

Your union representative Loree Woods-Bowman stated that the agency should take all factors under consideration before making a final determination.

Hearing Officer's Decision:

As a Transit Operator, you are held to the highest standard as a professional while operating the coach. Operators are supposed to be polite and respectful when dealing with the public, their subordinated and each other and not engage in unnecessary conversation that can cause a dispute, a delay in service or a situation that can result in harm to self or others. Furthermore, Operators are responsible for scanning for potential hazards in the interior and exterior of coach. Operators must not assume actions of others and must continuously scan while coach is in motion. When potential hazards are detected, operator is to bring coach to complete stop. The pedestrian in question was a hazard in front of coach, and operator decided to move coach forward into the pedestrian creating a major safety issue. This safety issue could have resulted in serious bodily harm up to a possible fatality. After listening to you, the union representative, reviewing the evidence and discussing the incidents, I have decided to sustain the recommendation for termination from your position as a 9163 Transit Operator.



Right of Appeal:

You may appeal this action within Five (5) days of receiving this notice of Recommended Disciplinary Action, in accordance with Article 22 of the 2020- 2022 MOU between TWU Local 250A and the San Francisco Municipal Transportation Agency.

You have the right to be represented in your appeal by your Union Representative, or other Representative of your choice.

This decision will not be implied as a precedent for any pending or future disciplinary action that may be perceived as similar in nature, by either MUNI Management or Union Local 250-A.

Regards,



Romarr Pitcher
Acting Division Manager
Woods Division



WOODS DIVISION

1001 22ND Street
San Francisco, CA 94107

July 12, 2021

Skelly Meeting

Mail # 1160

McPherson, Marlon # [REDACTED]

9163 Transit Operator

SUBJECT: Proposed Recommended Termination for Conduct and Safety (CSC # [REDACTED]) on 06.19.21.

Dear Marlon McPherson:

This is to advise you of the recommendation that you be dismissed from your position as a 9163 Transit Operator.

This action is based on the following charges:

San Francisco Municipal Railway Rules and Instructions Handbook

Rule 2 General Rules

Rule 2.1 Application of Rules

Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

2.8 Conduct

2.8.1 Polite, respectful behavior is required of all employees in their dealings with the public, their subordinates and each other.

2.8.3 Avoid disputes with any person, no matter what the provocation.

2.9.3 Operators must not engage in unnecessary conversation or otherwise allow themselves to be distracted while operating



Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:

- A. Inattention to Duties
- K. Willful abuse of railway property

Rule 2.14 Traffic Laws

Rule 2.14.1 Employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco.

Rule 2.14.2 Employees shall be familiar with and obey all such laws, ordinances and regulations applicable to their responsibilities, including the signing of traffic citations.

Rule 2.21 Safety

Rule 2.21.1 Operator shall never operate a MUNI vehicle at a speed that is greater than that which is reasonable or prudent, and in no event at a speed that would endanger the safety of persons or property.

Rule 2.21.2 While vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals.

Rule 2.21.15 Employees must be careful to avoid any action or situation that could cause injury to themselves or others.

Rule 2.21.16 Employees must protect their own personal safety, the safety of others, and the safety of equipment and property.

Rule 2.21.17 Employees shall immediately report to proper authorities any emergency or condition that might create a hazard.

Rule 4.12 Operations Control Center Notification

Rule 4.12.1 Operators are to immediately notify OCC when any difficulty occurs which might disrupt the operators' schedule or cause a delay.



Rule 4.22 Speed

Rule 4.22.2 Operators must be prepared to stop short of any person, object, or obstruction within their range of vision.

The Facts Upon Which These Charges Are Based

Drive Cam:

On June 19, 2021, while operating Coach 8837, you received a Customer Service Complaint (CSC # [REDACTED]) regarding a conduct and safety issue. You were observed via video engaging in verbal altercation with pedestrian that led to a safety situation in which you used your coach to physically move pedestrian from your direction of travel. TMC was not notified.

Materials Upon Which Charges are Based

The following materials, attached hereto, provide the written evidentiary basis for the charges and proposed recommendations:

- Discipline Tracking (Employee History) Records**

LASTNAME	FIRSTNAME	Date of Violation	Violations	Violation Comments	Action
McPherson	Marlon	5/15/2021	Schedules - Ahead of Schedule	12 min ahead	3. Caution & Reinstruct
McPherson	Marlon	5/9/2021	Operating Rules	Radio Check	3. Caution & Reinstruct
McPherson	Marlon	5/8/2021	WMO #2		5. Written Warning
McPherson	Marlon	3/28/2021	WMO #1		3. Caution & Reinstruct
McPherson	Marlon	1/7/2021	CSC - Pass Ups		No merit per LR
McPherson	Marlon	12/30/2020	AWOL #1 (in 8 months)		6. Suspension
2 McPherson	Marlon	9/2/2020	Attendance	20 days absent in the last 12 months	Attendance - B1 (Counseling)
McPherson	Marlon	8/27/2020	Accident - Avoidable/Preventable	While in motion coach came in contact with a parked car	5. Written Warning
2 McPherson	Marlon	8/9/2020	Late for Work #1 (in 5 months)	Report time 5:17 am Called dispatch 5:41 am - woke up late	3. Caution & Reinstruct
McPherson	Marlon	3/18/2020	Schedules - Ahead of Schedule	5 minutes ahead of schedule	3. Caution & Reinstruct
McPherson	Marlon	3/6/2020	Attendance	20 days in prior year	Attendance - C (Sick Leave Restriction)
McPherson	Marlon	2/1/2020	CSC - Commendation	PSR # [REDACTED] - Patron wanted to compliment driver for his driving skills and his concern	Commendation
McPherson	Marlon	12/14/2019	CSC - Commendation	PSR # [REDACTED] - "very good job" and thinks about the safety of passengers	Commendation

- Customer Service Complaint (CSC # [REDACTED])**



Basis for Recommendation/Conclusions

You are required to adhere to all rules and regulations regarding safe operation of equipment. This incident was a result of your inattention to duties and conduct by approaching location at improper location. Operator's should not engage in unnecessary conversation with public and video shows that operator engaged in a verbal altercation with pedestrian and did not contact TMC during the situation. When operator received a red signal with pedestrian in front of coach, operator decided to move his coach forward, making contact with the pedestrian to move him out the pathway of the coach which is a major safety violation. Operator again did not contact TMC and left scene. Therefore, based on the above, you are recommended to be terminated from your position as a 9163 operator.

Right of Response

You have the right to provide a response to this proposed recommendation. Your response may be written or oral. **A meeting is scheduled for July 14, 2021 at 11:00 am at Woods Division.** This stage of the process is your opportunity to respond to the charges and proposed recommended action. This is not a formal hearing and therefore there is no examination of witnesses nor a court reporter or transcript of the process.

You are entitled to bring a representative of your choosing with you to the meeting. Your Union representative is Loree Woods-Bowman.

If you choose to respond in writing, your written response should be directed to **Romarr Pitcher** and must be received no later than July 14, 2021 at 11:00 am.

If you fail to appear as scheduled or respond in writing, the disciplinary process will proceed.

Sincerely,



Romarr Pitcher
Acting Manager
Woods Division

cc: Labor Relations
Division Union Chairperson
Operator's File



**NOTICE TO REPORT TO THE DIVISION FOR AN INVESTIGATIVE
CONFERENCE**

DATE: 07/02/2021

MAIL #: 1114

NAME: Marlon McPherson ID# 4942

You are to report to the Division Manager's Office at 2:00pm on July 12, 2021 for the following reason(s):

Re: Muni Customer Service Complaint Case # [REDACTED]

Your union representative has been notified. However, it is your responsibility to coordinate with your union for representation prior to this meeting. If you fail to secure a representative, the hearing will not be cancelled, and we will proceed.

If you have any questions, concerns or need further information, please do not hesitate to contact your union representative or myself.

YOU ARE HEREBY NOTIFIED THAT A CONFERENCE HAS BEEN SCHEDULED ON THE ABOVE DATE.

If you have signed for your mail with the Dispatcher and are not available at the scheduled appointment time, please check with your union chair to reschedule.

*****NOTE: At every conference, you are subject to an attendance evaluation.**

SIGNED: _____

A large black rectangular redaction box covers the signature of the Transit Division Manager.

Transit Division Manager

CC: Division Union Chairperson
Dispatch
Operator

Muni Customer Service Case Details

Feedback Details		
Case Number	Status	ADA Status
██████	Item under investigation	Non-ADA
Case Type	Feedback is about	Feedback specifics
Complaint	Pass ups, denial of service or staff inattention	Passed up while waiting at stop
Line or Route and Direction		Vehicle Number
N Judah Inbound to Downtown		8837
Incident Details		
Where did this happen?	Date	Time
MARKET ST at GOUGH ST	06/19/2021	06:30 AM
What happened?		
<p>I am furious. This is the only bus that's available at 6:30am on a Saturday. I was literally standing right in front of the bus, almost got hit and he just drove right by me. He went into the far right lane instead of stopping at the island. I asked if he was stopping and he kept saying 'drop off only'. It's 6:30 in the morning, why is it drop off only when there's only one bus every 15 minutes? And why show the bus is coming in 1 minute if they're not picking up passengers? I want someone from SFMTA to call me as soon as they get in the office. This is far from resolved. I want the drivers contact info because I am pressing charges and there are several witnesses who will back up my claim. This is the second weekend in a row this happened. That is why I stood in front of the bus but he didn't care, he just drove right through me.</p>		
Operator Details		
Operator Name	Operator ID	
Marlon McPherson	██████	

EXHIBIT H



PRESIDIO DIVISION

2610 Geary Boulevard
San Francisco, CA 94115

London Breed, Mayor

Amanda Eaken, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 24, 2023

MAIL # 23 - 2538

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Skelly Officer Decision – Red-Light and Conduct Violation on 1/21/2023 in Violation of Last Chance Agreement on 3/24/2022.

Dear Operator McPherson,

On March 13, 2023, you received a notice recommending that you be dismissed from your position as a 9163 Transit Operator for a red-light and conduct violation occurring on January 21, 2023, in violation of Last Chance Agreement signed on 3/24/2022.

Skelly Meeting:

A meeting was held on Wednesday, March 22, 2023, at 10:00 am and Karl Cato was your Union Representative.

Operator’s Comments:

The operator does not dispute the red-light violation. The operator states that the verbal altercation was prompted by the passenger and his “verbal” response was defensive. The operator states further that he followed procedures in notifying TMC and delivered the passenger safely to his destination. The operator also stated that his Last Chance Agreement was premised on physical conduct.

Union’s Comments:

The union argues that the operator was never afforded the opportunity for re-training (regarding customer service interactions) following the Last Chance Agreement.

Hearing Officer’s Comments:

The operator has the sole responsibility to ensure adherence to all traffic laws, and safety requires rigorous enforcement of traffic laws to ensure public safety. The operator failed to stop at a red-light, and in doing so placed passengers, pedestrians, and other drivers at risk of injury. The operator does not dispute the red-light violation. The operator was also involved in a verbal altercation with a passenger and argues that his actions were a defensive response to the passenger’s conduct. In both instances, the operator clearly violated the Last Chance Agreement he signed on 3/24/2022. Item (1) of the Agreement clearly states that violating “any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations...at any time within a twelve (12) month period following his signature to this Agreement, SFMTA shall retain the right to find McPherson in breach of this Agreement and may move to implement dismissal of McPherson from employment as a 9163 Transit Operator. Item (3) of the Agreement also



clearly states that, “McPherson and the Union waive all rights to any administrative proceedings, including the grievance process, in the event SFMTA decides to move to dismissal during that twelve (12) month period. The dismissal recommendation will be subject only to a review by the Director of Transportation. The operator signed the Agreement on 3/24/2022 and it is therefore binding.

Hearing Officer’s Decision:

After reviewing the evidence and discussing the incident, the proposed recommendation for dismissal is sustained.

Right of Appeal:

You have waived all rights to any administrative proceedings, including the grievance process. The sustained decision is subject only to a review by the Director of Transportation.

This decision will not be implied as a precedent for any pending or future disciplinary action that may be perceived as similar in nature, by either MUNI Management or Union Local 250-A.

Sincerely,



John Sears III
Operations Manager (Acting)
Presidio Division

cc: HR, Union, EE File



WOODS DIVISION

1001 22nd Street
San Francisco, CA 94107

London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 13, 2023

Skelly Meeting

Mail #23 - 2394

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Proposed Recommended Dismissal for a Red-Light Violation

Dear Operator McPherson:

This is to advise you that I am proposing to recommend that you be dismissed from your position as a 9163 Transit Operator.

This action is based on the following charges:

San Francisco Municipal Railway Rules and Instructions Handbook

Rule 2 General Rules

Rule 2.1 Application of Rules

Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:
A. Inattention to Duties

Rule 2.14 Traffic Laws

2.14.1 Employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco.

2.14.2 Employees shall be familiar with and obey all such laws, ordinances and regulations applicable to their responsibilities, including the signing of traffic citations.



Rule 2.21 Safety

- Rule 2.21.1 Operator shall never operate a MUNI vehicle at a speed that is greater than that which is reasonable or prudent, and in no event at a speed that would endanger the safety of persons or property.
- Rule 2.21.2 While vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals.
- Rule 2.21.15 Employees must be careful to avoid any action or situation that could cause injury to themselves or others.
- Rule 2.21.16 Employees must protect their own personal safety, the safety of others, and the safety of equipment and property.

Rule 4.19 Stops

- 4.19.1 All cars and coaches must be brought to a full stop at all places where traffic regulations or safety rules require stops be made.

Rule 4.22 Speed

- Rule 4.22.1 Operators, in or out of service, shall at all times operate at a safe speed that is consistent with weather, visibility, road or track conditions, traffic, traffic signal indications, and the indications of ATP system where used.

Last Chance Agreement signed 3/24/22 which states:

“In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.”

The Facts Upon Which These Charges Are Based

On **January 21, 2023**, you were operating Coach 8723 on the 29 Line, Run 102. While investigating Customer Service Complaint (CSC) # [REDACTED], and reviewing the associated video, you are seen running a red light at 19th Ave., and Winston Ave.

An Investigative Conference was held on Friday, February 24, 2023, at 6:15 am. The operator was represented by Karl Cato. The operator said he did not realize that the light had turned red.



Materials Upon Which Charges are Based

The following materials, attached hereto, provide the written evidentiary basis for the charges and proposed recommendations:

- Discipline Tracking (Employee History) Records
- Video from Coach #8723 on 1/21/23 at approximately 12:28 pm.
- Last Chance Agreement dated 3/24/22

Basis for Recommendation/Conclusions

You are required to adhere to all rules and regulations regarding safe operation of equipment. This incident was a result of your inattention to duties and negligence by failing to devote your attention to the traffic signals while the vehicle was in motion. This is a major safety violation which jeopardized lives and properties.

Therefore, based on the above, you are recommended to be dismissed.

Right of Response

You have the right to provide a response to this proposed recommendation. Your response may be written or oral. **A meeting is scheduled for Monday, March 20, 2023 at 10:00 AM at Woods Division.** This stage of the process is your opportunity to respond to the charges and proposed recommended action. This is not a formal hearing and therefore there is no examination of witnesses nor a court reporter or transcript of the process.

You are entitled to bring a representative of your choosing with you to the meeting. Your Union representative is Karl Cato.

If you choose to respond in writing, your written response should be directed to **Teresa Scism** and must be received no later than Monday, March 20, 2023.

If you fail to appear as scheduled or respond in writing, the disciplinary process will proceed.

Sincerely,



Teresa Scism
Operations Manager
Woods Division



cc: Labor Relations
Division Union Chairperson
Operator's File

Muni Customer Service Case Details

Feedback Details		
Case Number	Status	ADA Status
██████	Pending Division investigation	Non-ADA
Case Type	Feedback is about	Feedback specifics
Complaint	Discourteous or unprofessional employee	Verbal or physical disagreement
Line or Route and Direction		Vehicle Number
29 Sunset Inbound to The Presidio		8723
Incident Details		
Where did this happen?	Date	Time
LAKE MERCED BLVD at WINSTON DR	01/21/2023	02:30 PM
What happened?		
<p>"I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable."</p>		
Operator Details		
Operator Name	Operator ID	
Marlon McPherson	██████	

Woods Division Discipline Tracking Form

[REDACTED]
McPherson
Marlon

Date	Violation	Violation Comment	Action	Action Comment	Rule Violation
1 1/19/2023	Operating Rules	Defect Card not properly completed	2. Conferenced	Defect Card Audit Letter Issued	
2 1/5/2023	CSC - Commendation	CSC #740339 - please see CSC for full narrative	Commendation		
3 10/30/2022	CSC - Commendation	CSC #701987 - please see CSC for full narrative	Commendation		
4 6/9/2021	CSC - Other	Off Route	3. Caution & Reinstruct		
5 5/15/2021	Schedules - Ahead of Schedule	12 min ahead	3. Caution & Reinstruct		
6 5/9/2021	Operating Rules	Radio Check	3. Caution & Reinstruct		
7 5/8/2021	WMO #2		5. Written Warning		

Thursday, February 16, 2023

#Name?



WOODS DIVISION

1001 22nd Street
San Francisco, CA 94107

London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 13, 2023

Skelly Meeting

Mail #23 - 2393

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Proposed Recommended Dismissal for a Conduct Violation

Dear Operator McPherson:

This is to advise you that I am proposing to recommend that you be dismissed from your position as a 9163 Transit Operator for a verbal altercation with a passenger that took place on January 21, 2023.

This action is based on the following charges:

San Francisco Municipal Railway Rules and Instructions Handbook

Rule 2 General Rules

Rule 2.1 Application of Rules

Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

Rule 2.8 Conduct

Rule 2.8.1 Polite, respectful behavior is required of all employees in their dealings with the public, their subordinates and each other.

Rule 2.8.3 Avoid disputes with any person, no matter what the provocation.

Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:

A. Inattention to Duties

F. Discourteous treatment of the public or other employees of the SF MUNI Railway;

Last Chance Agreement signed March 24, 2022, which states:



Last Chance Agreement signed March 24, 2022, which states:

“In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.”

The Facts Upon Which These Charges Are Based

On **January 21, 2023**, you were operating Coach 8723, on the 29 Line, Run 102. A Customer Service Complaint (CSC) [REDACTED], was filed and the passenger stated, “I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable.”

Upon review of the associated video, we confirmed this verbal altercation did take place and you used profanity when communicating with the passenger. Specifically, the incident unfolded as follows:

You stopped Coach 8723, and the customer knocked on the door at which you yelled, “Wait a minute!” Then exclaimed, “Wait!” Once the passenger who was agitated and was on his personal cell phone boarded the coach there was an exchange to which you responded “Don't start nothin' with me man. I was doin' something. I was doin' something.” The passenger in a loud voice said he was, on the phone with your people, or words to that effect. At that time, you said “Yeah fuck you! Get your ass off my bus matter of fact!” You continued arguing with the passenger and told him, “You ain't paid no bus fare so get your ass off!” Rather than discontinue engaging in shouting, arguing, and escalating the situation, you refused to provide your information when asked for your name and or identification and said, “We not going nowhere until you get off my bus!”



Inquiry/Investigation

An investigative conference was scheduled for **February 21, 2023**. The operator was represented by Karl Cato. The operator stated he was reading his paddle when he arrived at the bus stop, was confused as to where his leader was and did not open the doors right away. This upset the passenger and he started yelling at the operator. The operator responded back as a mode of self-defense.

At all times, you are required to adhere to City and County of San Francisco (CCSF) and SFMTA policies which include but are not limited to the Equitable, Fair, and Respectful Workplace Policy, the Policy Regarding the Treatment of Coworkers and Members of the Public. You did not treat the customer with dignity and respect. As an employee, used vulgar language when you engaged in gross misconduct. You used overtly negative, offensive, combative, profanity-laden comments and engaged in dangerously inappropriate conduct. You were aware of the rules governing your conduct and the requirements of your last chance agreement. You have been coached, trained, and received several publications on how to properly interact with others.

Based on the information available, it was determined that you did not get in the customer's face, nor did you almost put your hand on him during the interaction. Those allegations made in the complaint were not sustained.

However, your actions and statements violated various policies. Your behavior was very concerning and egregious. In complete disregard for the Agency's attempt to make you a successful employee, you demonstrated misconduct which violated the aforementioned policies resulting in a negative impact on the workplace. Your actions were a flagrant violation of the last chance agreement you signed. You are a threat to yourself and/or others and it makes sense to terminate.

Materials Upon Which Charges are Based

The following materials, attached hereto, provide the written evidentiary basis for the charges and proposed recommendations:

- Equitable, Fair, and Respectful Workplace Policy
- Policy Regarding the Treatment of Coworkers and Members of the Public
- Discipline Tracking (Employee History) Records
- CSC # [REDACTED] and associated video
- Last Chance Agreement signed March 24, 2022

Basis for Recommendation/Conclusions

Discourteous and disrespectful treatment of the public and our passengers is unacceptable and will not be tolerated.



Right of Response

You have the right to provide a response to this proposed recommendation. Your response may be written or oral. **A meeting is scheduled for Monday, March 20, 2023 at 10:00 AM at Woods Division).** This stage of the process is your opportunity to respond to the charges and proposed recommended action. This is not a formal hearing and therefore there is no examination of witnesses nor a court reporter or transcript of the process.

You are entitled to bring a representative of your choosing with you to the meeting. Your Union representative is Karl Cato.

If you choose to respond in writing, your written response should be directed to **Teresa Scism** and must be received no later than Monday, March 20, 2023.

If you fail to appear as scheduled or respond in writing, the disciplinary process will proceed.

Sincerely,



Teresa Scism
Operations Manager
Woods Division

cc: Labor Relations
Division Union Chairperson
Operator's File

Muni Customer Service Case Details

Feedback Details		
Case Number	Status	ADA Status
██████	Pending Division investigation	Non-ADA
Case Type	Feedback is about	Feedback specifics
Complaint	Discourteous or unprofessional employee	Verbal or physical disagreement
Line or Route and Direction		Vehicle Number
29 Sunset Inbound to The Presidio		8723
Incident Details		
Where did this happen?	Date	Time
LAKE MERCED BLVD at WINSTON DR	01/21/2023	02:30 PM
What happened?		
<p>"I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable."</p>		
Operator Details		
Operator Name	Operator ID	
Marlon McPherson	██████	

Woods Division Discipline Tracking Form

[REDACTED] **McPherson** **Marlon**

Date	Violation	Violation Comment	Action	Action Comment	Rule Violation
1 1/19/2023	Operating Rules	Defect Card not properly completed	2. Conferenced	Defect Card Audit Letter Issued	
2 1/5/2023	CSC - Commendation	CSC # [REDACTED] - please see CSC for full narrative	Commendation		
3 10/30/2022	CSC - Commendation	CSC # [REDACTED] - please see CSC for full narrative	Commendation		
4 6/9/2021	CSC - Other	Off Route	3. Caution & Reinstruct		
5 5/15/2021	Schedules - Ahead of Schedule	12 min ahead	3. Caution & Reinstruct		
6 5/9/2021	Operating Rules	Radio Check	3. Caution & Reinstruct		
7 5/8/2021	WMO #2		5. Written Warning		

Thursday, February 16, 2023

#Name?



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

LAST CHANCE AGREEMENT **For 9163 Marlon McPherson**

This Last Chance Agreement (“AGREEMENT”) is entered into between the San Francisco Municipal Transportation Agency (“SFMTA”), TWU, Local 250-A (9163) (“UNION”) and Marlon McPherson (“MCPHERSON”), who is a Transit Operator, Job Code 9163.

MCPHERSON was recommended for dismissal by Romarr Pitcher, Division Manager, Woods Division, due to violations of the San Francisco Municipal Railway Rules and Instructions Handbook’s safety & procedures, and misconduct.

As per the Step-2 decision rendered, SFMTA has reduced MCPHERSON’s dismissal pending and instead enters into this AGREEMENT with MCPHERSON. As such, MCPHERSON and his representatives voluntarily agree to the conditions listed below, each of which is an essential and material term of this AGREEMENT.

The parties agree as follows:

1. In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.
2. In lieu of consideration of dismissal, MCPHERSON agrees to serve a suspension from March 19, 2022, to April 18, 2022.
3. MCPHERSON and the UNION waive all rights to any administrative proceeding, including the grievance process, in the event SFMTA decides to move to dismissal during that twelve (12) month period. The dismissal recommendation will be subject only to a review by the Director of Transportation.
4. MCPHERSON also agrees to undergo any retraining(s), at the recommendation of Transit Management, tailored towards the safety, reporting, and customer service interactions lapses which initially led to his dismissal recommendation.
5. MCPHERSON acknowledges that he freely and voluntarily enters into this AGREEMENT and that he understands each and every provision set forth herein. MCPHERSON further certifies that he understands the waiver set forth in



paragraph 3 above and recognizes that it is a total waiver of all rights to challenge through the grievance process, any decision by SFMTA to recommend dismissal during the twelve (12) months following his signature on this AGREEMENT. MCPHERSON further acknowledges that he has had an opportunity to consult with a UNION representative prior to the execution of this AGREEMENT, and that he has done so.

6. The parties agree that this LAST CHANCE AGREEMENT shall not be used as a precedent in any other grievance or litigation proceeding.

DATE: [REDACTED] March 24, 2022
KIMBERLY W. ACKERMAN, Director, SFMTA Human Resources

DATE: [REDACTED] MARR PITCHER, Manager, Transit Division

DATE: [REDACTED] PETE WILSON, Vice President, TWU-250A (9163)

DATE: [REDACTED] MARLON MCPHERSON, Transit Operator (9163)

- Cc: Leda Rozier & Emily Williams, Transit Administration
Roger Marengo, TWU-250A (9163)
Pete Wilson, TWU-250A (9163)
Loree Woods-Bowman, TWU-250A (9163)
Romarr Pitcher, Transit Manager, Woods Division
Aaron Beckwith, Employee/Labor Relations
Personnel File

EXHIBIT I



London Breed, Mayor

Amanda Eaken, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

U.S. Regular, Certified Mail # [redacted]
and email e-mail: [redacted]

April 6, 2023

Marlon R McPherson
[redacted]

RE: Notice of Dismissal
Transit Operator, Job Code 9163 – Permanent Civil Service (PCS)

Dear Marlon R McPherson:

In the attached Director of Transit Review and the Skelly Decision, both the Chief People Officer, Kimberly W Ackerman, and the Skelly Hearing Officer, John Sears III upheld the proposed dismissal from your position, Transit Operator, Job Code 9163, as proposed by the division. (See attached)

This letter is to notify you that you are being dismissed from your permanent civil service appointment as a Transit Operator, Job Code 9163, with the San Francisco Municipal Transportation Agency (SFMTA), effective March 25, 2023.

The SFMTA is recommending to the Civil Service Commission that your future employment be restricted as follows:

- No future employment that requires a class B or BP Driver’s License.
- Cancel any current examination and eligibility status that requires B or BP.
- Future employment is subject to the review and approval of the Department of Human Resources Director after satisfactory completion of two years of verifiable work experience outside of City and County of San Francisco services involving face to face customer service.

If you have any questions regarding this matter, please contact Employee & Labor Relations at HR-ELR@SFMTA.com.



Sincerely,



Shana Dines
Employee and Labor Relations Manager

Enclosures: Separation Report
Notice of Future Employment Restrictions
Director of Transit Review

cc: Julie Kirschbaum/Leda Rozier/Ammee Alvior, Transit Operations
Teresa Scism/Greg Valentine, Woods Division
David Garcia/Christine Cayabyab, Employee & Labor Relations Unit
Nicolle Lewis, Payroll
Valerie Colmen/Brian Lim/Wallina Pellette/Stefinee Jones, Employee Services
Rie Butler, Client Services, DHR
Personnel File



London Breed, Mayor

Amanda Eaken, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

U.S. Regular, Certified Mail # [redacted]
and email e-mail: [redacted]

April 6, 2023

Marlon R McPherson
[redacted]

RE: Director of Transit Review on Marlon R McPherson Violation of Last Chance Agreement
Customer Service Complaint # [redacted] on January 21, 2023

Dear Marlon R McPherson:

After reviewing the Notice of Intent to Dismiss, the Skelly decision, supporting documentation, and Last Chance Agreement, as well as affording your response careful consideration, the SFMTA has concluded that the proposed dismissal is adequate and appropriate due to the breach of the Last Chance Agreement signed on March 24, 2022.

I have reviewed the following documents:

- Proposed Recommend Dismissal for a Conduct Violation Letter dated March 13, 2023
- Proposed Recommend Dismissal for a Red-Light Violation Letter dated March 13, 2023
- Skelly Officer Decision – Red Light and Conduct Violation dated March 24, 2023
- Last Chance Agreement dated March 24, 2022

I have concluded that on January 21, 2023 while operating Coach 8723 on the 29 Line, Run 102 you got into a verbal altercation with a passenger. A Customer Service Complaint (CSC) # [redacted] indicating you were rude to them and used profanity when communicating with them. A review of the onboard video confirmed what was stated in the CSC. Your actions and statements violated various City and County of San Francisco (CCSF) and SFMTA employee rules and policies including but not limited to, Polite, respectful behavior is required of all employees in their dealings with the public; Equitable, Fair, and Respectful Workplace Policy; and Policy Regarding the Treatment of Coworkers and Members of the Public.



While reviewing the associated video for CSC # [REDACTED], you were also seen running a red light at 19th and Winston Avenue. This is a major safety violation which jeopardized lives and properties. Your actions violated rules in the San Francisco Municipal Railway Rules and Instructions Handbook including but not limited to employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco; employees shall be familiar with and obey all such laws, ordinances and regulations applicable to their responsibilities, including the signing of traffic citations; while vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals; employees must be careful to avoid any action or situation that could cause injury to themselves or others; and all cars and coaches must be brought to a full stop at all places where traffic regulations or safety rules require stops be made.

Both the verbal altercation with a passenger and the red-light incidents are in violation of the Last Chance Agreement signed on March 24, 2022 as stated below. You agreed not to violate any rule(s), regulation(s), and/or policies pertaining to safety or passenger altercations at any time within a twelve (12) month period.

“In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.”

In Skelly Decision dated March 24, 2023, the Skelly Hearing Officer, John Sears III upheld the proposed dismissal from your position, Transit Operator, Job Code 9163, as proposed by the division manager, Teresa Scism on March 13, 2023. As Sears mentioned, safety requires rigorous enforcement of traffic laws to ensure public safety. By failing to stop at a red-light, places passengers, pedestrians, and other drivers at risk of injury. Scism also mentioned that you did not treat the customer with dignity and respect, and your behavior was very concerning and egregious.

Your actions and statements violated various policies as listed in the Proposed Recommend Dismissal letters issued on March 13, 2023. Your behavior is a complete disregard for the Agency’s attempt to give you another chance and make you a successful employee. You



violated the policies resulting in a negative impact on the Agency, and your actions were a violation of the last chance agreement you signed on March 24, 2022.

After a thorough review of all the facts and John Sears III's decision, Teresa Scism's recommend discipline, and the terms of the Last Chance Agreement it is my decision to uphold the decision to dismiss you from your permanent position.

If you have any questions regarding this matter, please contact Employee & Labor Relations at HR-ELR@SFMTA.com.

Sincerely,



Jeffery Tumlin/Designee Kimberly W Ackerman
Director of Transportation/Chief People Officer

Enclosures: Proposed Recommend Dismissal for a Conduct Violation
Proposed Recommend Dismissal for a Red-Light Violation
Skelly Officer Decision – Red Light and Conduct Violation
Last Chance Agreement dated March 24 ,2022

cc: Julie Kirschbaum/Leda Rozier/Ammee Alvior, Transit Operations
Teresa Scism/Greg Valentine, Woods Division
David Garcia/Christine Cayabyab, Employee & Labor Relations Unit
Rie Butler, Client Services, DHR
Personnel File



SEPARATION REPORT

INSTRUCTIONS: Please complete the Separation Report to:

1. Document internal departmental processes. Please do not send to DHR.
2. Document that the employee separation is not a complete separation from City service, Separation Report must be completed by the sending department and submitted to the receiving department to be attached to the AP ESR.
3. To process a layoff. Please send to the DHR layoff coordinator.
4. To administer a settlement agreement involving the separation of the employee-submit documentation to your Client Services Representative. (Reference TER_RZA)*

Date of Request: 04/06/2023

Department Contact: Christine Cayabayb Email: christine.cayabayb@sfmta.com Phone: (415) 646-2058

SECTION I: PERSONAL AND JOB INFORMATION

Name (Last, First, M.I.): McPherson, Marlon R Employee I.D.: [REDACTED]

Job Code: 9163 Job Title: Transit Operator

Position Number: 01129578 Hourly Rate: [REDACTED] Step: [REDACTED] Effective Date: 03/25/23

Empl. Class: PCS Work Schedule: Full-Time

Is the employee serving a probationary period at the time of the separation? Yes No

Is this a complete separation from City and County Service? Yes No

If no, continuing in:

Department Code: (Select One) Status: _____ Job Code: _____ Effective Date: _____

Is employee granted leave pursuant to Civil Service Rule 120.31? Yes No

If no, is employee a transfer? No Yes, type of Transfer: (Select One)

SECTION II: SEPARATION INFORMATION

Resignation

Satisfactory Services (TER_RSS)

Unsatisfactory Services (TER_RUS)
(Form DHR 1-13 must be on file)

By the appointee: I hereby freely and voluntarily resign from the above position. I request approval of this resignation as of the effective date with the full understanding that once approved, I may acquire another position in this class only as provided in the rules of the Civil Service Commission (see employee copy and CSC Rules 114&119).

Employee Signature _____

Date _____

Lay-off

Involuntary Leave (PCS_LIL) Elective Involuntary Leave (PCS_EIL)

Involuntary Lay-off (PCS_LIO) Voluntary Lay-off (PCS_LVO)

(PV & EX Only): (Select One)

Reason for lay-off: (Select One)

Employee acknowledges receipt of the DHR information leaflet.

Employee Signature _____

Date _____

SEPARATION REPORT

DEPARTMENT USE ONLY

Termination

Settlement Agreement (TER_RZA)
*(Separation Report and Settlement Agreement must be forwarded to Client Services Rep.)

Release from appointment:

Release from probation:

Dismissal:

Terminated for cause (TFC) (TPV,NCS, & Exempts only)

Automatic Resignation (ARS)

Never Reported to Work (DSH)

Death of an employee (DEA)

Other (Specify): _____

Retirement:

DEPARTMENT CERTIFICATION

The Appointing Officer/Authorized Designee named below hereby certifies that the information provided on this Separation Report is accurate, complete, and in compliance with applicable CCSF rules and policies.

Appointing Officer/Authorized Designee Signature

Telephone

Name/Title: Shana Dines, Employee & Labor Relations Manager

Department Number: 68 Department Name: SFMTA

Personnel File Forwarded? Yes No

Forwarded to:

Department: _____ Contact: _____

DHR USE ONLY

Action Pending? Yes No

Analyst Name

Telephone

SR Ref Number: _____ Holdover Canvass: _____

Reference Number used for layoff actions: _____



NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS

Marlon R McPherson
 Employee Name

 Street Address

 City State Zip

April 6, 2023
 Mailing Date

 SFMTA / Transit
 Department/Division

 PCS
 Type of Appointment

This notice is to inform you that a future employment restriction is being imposed along with your separation action, or with the action of automatic resignation, reported to the Department of Human Resources separating you from your position in Class 9163 Title Transit Operators, effective 03/25/2023, for the reasons outlined in the attached document(s).

The items checked below are the restrictions made by the department on your future employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/> No Restrictions on Employment <input type="checkbox"/> Permanent Restriction <input checked="" type="checkbox"/> Conditional Restriction	<input checked="" type="checkbox"/> Citywide <input type="checkbox"/> Department(s): _____ <input type="checkbox"/> DOT/SAPP <input type="checkbox"/> Job Code(s): _____ <input checked="" type="checkbox"/> Cancel Current Examination & Eligibility Status
---	--

Conditional restrictions may be lifted by proving you have satisfactorily met the following requirements:

Requirement Type	Description:	Level of Measurement:	Measurement Value:
<input type="checkbox"/> CER: Certification			
<input checked="" type="checkbox"/> EXP: Work Experience	Verifiable work experience outside of CCSF.	Months	24
<input checked="" type="checkbox"/> LIC: Licensure	Employment requiring Class B/BP Driver s Lisc.	Months	24
<input type="checkbox"/> SAP: Substance Abuse Program			
<input checked="" type="checkbox"/> Other:	Verifiable Face to Face Customer Service Wk Exp.	Months	24

In addition to the noted conditional restrictions, you are also restricted from specific attributes of a job class and/or department until you satisfactorily prove you meet the requirements to lift the restriction(s) as noted below:

Future Employment Restrictions	Description:	Level of Measurement:	Measurement Value:
001: Vehicle/Heavy Machinery			
002: Vulnerable Populations			
003: Face to Face Contact w/Public			
004: Contact w/Animals			
005: Signing/Approving City Docs			
006: Financial Instruments			
007: Confidential/Privileged Information			
008: IT Infrastructure			
009: Means of Entry to Living Spaces			
010: Pharmaceutical/Drug Inventory			
011: CDC Defined Toxins			
012: Weapons/Explosives			
013: City Property Valued > \$100			

You may request a hearing before the Civil Service Commission on your future employability with the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 20 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by 04/26/23. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of separation (Note: Future Employment Restriction(s) effective immediately).

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6. (SEE BELOW)

List #: <u>M00073</u>	Rank #: <u>169.00</u>	<input type="checkbox"/> Pending	<input checked="" type="checkbox"/> Final	Status of Action
DSW: <u>[REDACTED]</u>		<u>[REDACTED]</u>		
Emp Organization: <u>TWU, Local 250-A (9163)</u>		<u>[REDACTED]</u>		
METHOD OF SERVICE:		SIGNATURE		
<input type="checkbox"/> Hand Delivered		Shana Dines		
<input checked="" type="checkbox"/> Certified Mail	<u>[REDACTED]</u>	NAME		
		Employee and Labor Relations Manager		
		TITLE		

INFORMATION FOR FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions imposed with the Notice of Automatic Resignation from Employment to the former employee or with a Separation Action that is subject to the provisions of a collective bargaining agreement, to the Civil Service Commission, and the Department of Human Resources.
2. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
3. Such appeals or requests for hearing must be in writing and received from the employee or the employee’s representative by the date specified on this notice, or within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
4. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of the employee's own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee’s attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
5. Any interested party may request that the hearing be continued or postponed.
6. The decision of the Civil Service Commission is final and not subject to reconsideration.
7. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.



PRESIDIO DIVISION

2610 Geary Boulevard
San Francisco, CA 94115

London Breed, Mayor

Amanda Eaken, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 24, 2023

MAIL # 23 - 2538

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Skelly Officer Decision – Red-Light and Conduct Violation on 1/21/2023 in Violation of Last Chance Agreement on 3/24/2022.

Dear Operator McPherson,

On March 13, 2023, you received a notice recommending that you be dismissed from your position as a 9163 Transit Operator for a red-light and conduct violation occurring on January 21, 2023, in violation of Last Chance Agreement signed on 3/24/2022.

Skelly Meeting:

A meeting was held on Wednesday, March 22, 2023, at 10:00 am and Karl Cato was your Union Representative.

Operator’s Comments:

The operator does not dispute the red-light violation. The operator states that the verbal altercation was prompted by the passenger and his “verbal” response was defensive. The operator states further that he followed procedures in notifying TMC and delivered the passenger safely to his destination. The operator also stated that his Last Chance Agreement was premised on physical conduct.

Union’s Comments:

The union argues that the operator was never afforded the opportunity for re-training (regarding customer service interactions) following the Last Chance Agreement.

Hearing Officer’s Comments:

The operator has the sole responsibility to ensure adherence to all traffic laws, and safety requires rigorous enforcement of traffic laws to ensure public safety. The operator failed to stop at a red-light, and in doing so placed passengers, pedestrians, and other drivers at risk of injury. The operator does not dispute the red-light violation. The operator was also involved in a verbal altercation with a passenger and argues that his actions were a defensive response to the passenger’s conduct. In both instances, the operator clearly violated the Last Chance Agreement he signed on 3/24/2022. Item (1) of the Agreement clearly states that violating “any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations...at any time within a twelve (12) month period following his signature to this Agreement, SFMTA shall retain the right to find McPherson in breach of this Agreement and may move to implement dismissal of McPherson from employment as a 9163 Transit Operator. Item (3) of the Agreement also



clearly states that, “McPherson and the Union waive all rights to any administrative proceedings, including the grievance process, in the event SFMTA decides to move to dismissal during that twelve (12) month period. The dismissal recommendation will be subject only to a review by the Director of Transportation. The operator signed the Agreement on 3/24/2022 and it is therefore binding.

Hearing Officer’s Decision:

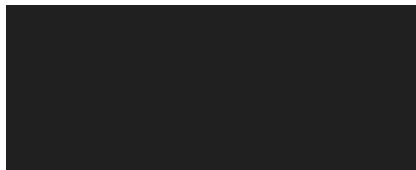
After reviewing the evidence and discussing the incident, the proposed recommendation for dismissal is sustained.

Right of Appeal:

You have waived all rights to any administrative proceedings, including the grievance process. The sustained decision is subject only to a review by the Director of Transportation.

This decision will not be implied as a precedent for any pending or future disciplinary action that may be perceived as similar in nature, by either MUNI Management or Union Local 250-A.

Sincerely,



John Sears III
Operations Manager (Acting)
Presidio Division

cc: HR, Union, EE File



WOODS DIVISION

1001 22nd Street
San Francisco, CA 94107

London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 13, 2023

Skelly Meeting

Mail #23 - 2394

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Proposed Recommended Dismissal for a Red-Light Violation

Dear Operator McPherson:

This is to advise you that I am proposing to recommend that you be dismissed from your position as a 9163 Transit Operator.

This action is based on the following charges:

San Francisco Municipal Railway Rules and Instructions Handbook

Rule 2 General Rules

Rule 2.1 Application of Rules

Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:
A. Inattention to Duties

Rule 2.14 Traffic Laws

2.14.1 Employees must comply with the laws, ordinances, and regulations of the state of California and the city and county of San Francisco.

2.14.2 Employees shall be familiar with and obey all such laws, ordinances and regulations applicable to their responsibilities, including the signing of traffic citations.



Rule 2.21 Safety

- Rule 2.21.1 Operator shall never operate a MUNI vehicle at a speed that is greater than that which is reasonable or prudent, and in no event at a speed that would endanger the safety of persons or property.
- Rule 2.21.2 While vehicles are in motion, operators are to devote his/her attention to pedestrians, tracks, traffic, and signals.
- Rule 2.21.15 Employees must be careful to avoid any action or situation that could cause injury to themselves or others.
- Rule 2.21.16 Employees must protect their own personal safety, the safety of others, and the safety of equipment and property.

Rule 4.19 Stops

- 4.19.1 All cars and coaches must be brought to a full stop at all places where traffic regulations or safety rules require stops be made.

Rule 4.22 Speed

- Rule 4.22.1 Operators, in or out of service, shall at all times operate at a safe speed that is consistent with weather, visibility, road or track conditions, traffic, traffic signal indications, and the indications of ATP system where used.

Last Chance Agreement signed 3/24/22 which states:

“In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.”

The Facts Upon Which These Charges Are Based

On **January 21, 2023**, you were operating Coach 8723 on the 29 Line, Run 102. While investigating Customer Service Complaint (CSC) # [REDACTED], and reviewing the associated video, you are seen running a red light at 19th Ave., and Winston Ave.

An Investigative Conference was held on Friday, February 24, 2023, at 6:15 am. The operator was represented by Karl Cato. The operator said he did not realize that the light had turned red.



Materials Upon Which Charges are Based

The following materials, attached hereto, provide the written evidentiary basis for the charges and proposed recommendations:

- Discipline Tracking (Employee History) Records
- Video from Coach #8723 on 1/21/23 at approximately 12:28 pm.
- Last Chance Agreement dated 3/24/22

Basis for Recommendation/Conclusions

You are required to adhere to all rules and regulations regarding safe operation of equipment. This incident was a result of your inattention to duties and negligence by failing to devote your attention to the traffic signals while the vehicle was in motion. This is a major safety violation which jeopardized lives and properties.

Therefore, based on the above, you are recommended to be dismissed.

Right of Response

You have the right to provide a response to this proposed recommendation. Your response may be written or oral. **A meeting is scheduled for Monday, March 20, 2023 at 10:00 AM at Woods Division).** This stage of the process is your opportunity to respond to the charges and proposed recommended action. This is not a formal hearing and therefore there is no examination of witnesses nor a court reporter or transcript of the process.

You are entitled to bring a representative of your choosing with you to the meeting. Your Union representative is Karl Cato.

If you choose to respond in writing, your written response should be directed to **Teresa Scism** and must be received no later than Monday, March 20, 2023.

If you fail to appear as scheduled or respond in writing, the disciplinary process will proceed.

Sincerely,



Teresa Scism
Operations Manager
Woods Division



cc: Labor Relations
Division Union Chairperson
Operator's File

Muni Customer Service Case Details

Feedback Details		
Case Number	Status	ADA Status
██████	Pending Division investigation	Non-ADA
Case Type	Feedback is about	Feedback specifics
Complaint	Discourteous or unprofessional employee	Verbal or physical disagreement
Line or Route and Direction		Vehicle Number
29 Sunset Inbound to The Presidio		8723
Incident Details		
Where did this happen?	Date	Time
LAKE MERCED BLVD at WINSTON DR	01/21/2023	02:30 PM
What happened?		
<p>"I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable."</p>		
Operator Details		
Operator Name	Operator ID	
Marlon McPherson	██████	

Woods Division Discipline Tracking Form

[REDACTED]
McPherson
Marlon

Date	Violation	Violation Comment	Action	Action Comment	Rule Violation
1 1/19/2023	Operating Rules	Defect Card not properly completed	2. Conferenced	Defect Card Audit Letter Issued	
2 1/5/2023	CSC - Commendation	CSC # [REDACTED] - please see CSC for full narrative	Commendation		
3 10/30/2022	CSC - Commendation	CSC # [REDACTED] - please see CSC for full narrative	Commendation		
4 6/9/2021	CSC - Other	Off Route	3. Caution & Reinstruct		
5 5/15/2021	Schedules - Ahead of Schedule	12 min ahead	3. Caution & Reinstruct		
6 5/9/2021	Operating Rules	Radio Check	3. Caution & Reinstruct		
7 5/8/2021	WMO #2		5. Written Warning		

Thursday, February 16, 2023

#Name?



WOODS DIVISION

1001 22nd Street
San Francisco, CA 94107

London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 13, 2023

Skelly Meeting

Mail #23 - 2393

McPherson, Marlon # [REDACTED]
9163 Transit Operator

SUBJECT: Proposed Recommended Dismissal for a Conduct Violation

Dear Operator McPherson:

This is to advise you that I am proposing to recommend that you be dismissed from your position as a 9163 Transit Operator for a verbal altercation with a passenger that took place on January 21, 2023.

This action is based on the following charges:

San Francisco Municipal Railway Rules and Instructions Handbook

Rule 2 General Rules

Rule 2.1 Application of Rules

Rule 2.1.3 All employees will be held accountable for compliance with all rules in the San Francisco Municipal Railway Rules and Instructions Handbook.

Rule 2.1.5 Violation of any rule in this Rules and Instruction Handbook is sufficient cause for disciplinary action up to and including dismissal.

Rule 2.8 Conduct

Rule 2.8.1 Polite, respectful behavior is required of all employees in their dealings with the public, their subordinates and each other.

Rule 2.8.3 Avoid disputes with any person, no matter what the provocation.

Rule 2.13 Discipline

Rule 2.13.1 Violation of any of the following rules will be sufficient cause for charges for disciplinary action involving suspension, or if appropriate, dismissal:

A. Inattention to Duties

F. Discourteous treatment of the public or other employees of the SF MUNI Railway;

Last Chance Agreement signed March 24, 2022, which states:



Last Chance Agreement signed March 24, 2022, which states:

“In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.”

The Facts Upon Which These Charges Are Based

On **January 21, 2023**, you were operating Coach 8723, on the 29 Line, Run 102. A Customer Service Complaint (CSC) # [REDACTED], was filed and the passenger stated, “I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable.”

Upon review of the associated video, we confirmed this verbal altercation did take place and you used profanity when communicating with the passenger. Specifically, the incident unfolded as follows:

You stopped Coach 8723, and the customer knocked on the door at which you yelled, “Wait a minute!” Then exclaimed, “Wait!” Once the passenger who was agitated and was on his personal cell phone boarded the coach there was an exchange to which you responded “Don’t start nothin’ with me man. I was doin’ something. I was doin’ something.” The passenger in a loud voice said he was, on the phone with your people, or words to that effect. At that time, you said “Yeah fuck you! Get your ass off my bus matter of fact!” You continued arguing with the passenger and told him, “You ain’t paid no bus fare so get your ass off!” Rather than discontinue engaging in shouting, arguing, and escalating the situation, you refused to provide your information when asked for your name and or identification and said, “We not going nowhere until you get off my bus!”



Inquiry/Investigation

An investigative conference was scheduled for **February 21, 2023**. The operator was represented by Karl Cato. The operator stated he was reading his paddle when he arrived at the bus stop, was confused as to where his leader was and did not open the doors right away. This upset the passenger and he started yelling at the operator. The operator responded back as a mode of self-defense.

At all times, you are required to adhere to City and County of San Francisco (CCSF) and SFMTA policies which include but are not limited to the Equitable, Fair, and Respectful Workplace Policy, the Policy Regarding the Treatment of Coworkers and Members of the Public. You did not treat the customer with dignity and respect. As an employee, used vulgar language when you engaged in gross misconduct. You used overtly negative, offensive, combative, profanity-laden comments and engaged in dangerously inappropriate conduct. You were aware of the rules governing your conduct and the requirements of your last chance agreement. You have been coached, trained, and received several publications on how to properly interact with others.

Based on the information available, it was determined that you did not get in the customer's face, nor did you almost put your hand on him during the interaction. Those allegations made in the complaint were not sustained.

However, your actions and statements violated various policies. Your behavior was very concerning and egregious. In complete disregard for the Agency's attempt to make you a successful employee, you demonstrated misconduct which violated the aforementioned policies resulting in a negative impact on the workplace. Your actions were a flagrant violation of the last chance agreement you signed. You are a threat to yourself and/or others and it makes sense to terminate.

Materials Upon Which Charges are Based

The following materials, attached hereto, provide the written evidentiary basis for the charges and proposed recommendations:

- Equitable, Fair, and Respectful Workplace Policy
- Policy Regarding the Treatment of Coworkers and Members of the Public
- Discipline Tracking (Employee History) Records
- CSC # [REDACTED] and associated video
- Last Chance Agreement signed March 24, 2022

Basis for Recommendation/Conclusions

Discourteous and disrespectful treatment of the public and our passengers is unacceptable and will not be tolerated.



Right of Response

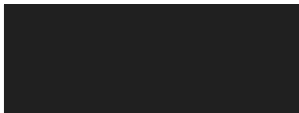
You have the right to provide a response to this proposed recommendation. Your response may be written or oral. **A meeting is scheduled for Monday, March 20, 2023 at 10:00 AM at Woods Division).** This stage of the process is your opportunity to respond to the charges and proposed recommended action. This is not a formal hearing and therefore there is no examination of witnesses nor a court reporter or transcript of the process.

You are entitled to bring a representative of your choosing with you to the meeting. Your Union representative is Karl Cato.

If you choose to respond in writing, your written response should be directed to **Teresa Scism** and must be received no later than Monday, March 20, 2023.

If you fail to appear as scheduled or respond in writing, the disciplinary process will proceed.

Sincerely,



Teresa Scism
Operations Manager
Woods Division

cc: Labor Relations
Division Union Chairperson
Operator's File

Muni Customer Service Case Details

Feedback Details		
Case Number	Status	ADA Status
██████	Pending Division investigation	Non-ADA
Case Type	Feedback is about	Feedback specifics
Complaint	Discourteous or unprofessional employee	Verbal or physical disagreement
Line or Route and Direction		Vehicle Number
29 Sunset Inbound to The Presidio		8723
Incident Details		
Where did this happen?	Date	Time
LAKE MERCED BLVD at WINSTON DR	01/21/2023	02:30 PM
What happened?		
<p>"I had a 29 pass me up earlier. So this 29 bus, 8723, this guy stopped at the bus stop and didn't open the door, and he starts getting all bad and arrogant. He said IM NOT MOVING OR DOING ANYTHING UNTIL YOU GET OFF THE BUS YOU DIDN'T PAY YOUR FARE. He didn't even give me a chance to! He just starts acting like this, like he's coming down from drugs or something. He got up in my face and almost put his hands on me. There's no need for that! He screamed and cursed so much about not moving the bus, that the other riders decided to get off the bus and ride the next one. This is unacceptable."</p>		
Operator Details		
Operator Name	Operator ID	
Marlon McPherson	██████	

Woods Division Discipline Tracking Form

[REDACTED]
McPherson
Marlon

Date	Violation	Violation Comment	Action	Action Comment	Rule Violation
1 1/19/2023	Operating Rules	Defect Card not properly completed	2. Conferenced	Defect Card Audit Letter Issued	
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4 6/9/2021	CSC - Other	Off Route	3. Caution & Reinstruct		
5 5/15/2021	Schedules - Ahead of Schedule	12 min ahead	3. Caution & Reinstruct		
6 5/9/2021	Operating Rules	Radio Check	3. Caution & Reinstruct		
7 5/8/2021	WMO #2		5. Written Warning		

Thursday, February 16, 2023

#Name?



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

LAST CHANCE AGREEMENT **For 9163 Marlon McPherson**

This Last Chance Agreement (“AGREEMENT”) is entered into between the San Francisco Municipal Transportation Agency (“SFMTA”), TWU, Local 250-A (9163) (“UNION”) and Marlon McPherson (“MCPHERSON”), who is a Transit Operator, Job Code 9163.

MCPHERSON was recommended for dismissal by Romarr Pitcher, Division Manager, Woods Division, due to violations of the San Francisco Municipal Railway Rules and Instructions Handbook’s safety & procedures, and misconduct.

As per the Step-2 decision rendered, SFMTA has reduced MCPHERSON’s dismissal pending and instead enters into this AGREEMENT with MCPHERSON. As such, MCPHERSON and his representatives voluntarily agree to the conditions listed below, each of which is an essential and material term of this AGREEMENT.

The parties agree as follows:

1. In the event that MCPHERSON violates any rule(s), regulation(s), and/or policies pertaining to safety, passenger altercations, deliberate misuse of SFMTA equipment, and/or reporting procedures contained in the San Francisco Municipal Railway Rules and Instructions Handbook, at any time within a twelve (12) month period following his signature to this AGREEMENT, SFMTA shall retain the right to find MCPHERSON in breach of this AGREEMENT and may move to implement dismissal of MCPHERSON from employment as a 9163 Transit Operator.
2. In lieu of consideration of dismissal, MCPHERSON agrees to serve a suspension from March 19, 2022, to April 18, 2022.
3. MCPHERSON and the UNION waive all rights to any administrative proceeding, including the grievance process, in the event SFMTA decides to move to dismissal during that twelve (12) month period. The dismissal recommendation will be subject only to a review by the Director of Transportation.
4. MCPHERSON also agrees to undergo any retraining(s), at the recommendation of Transit Management, tailored towards the safety, reporting, and customer service interactions lapses which initially led to his dismissal recommendation.
5. MCPHERSON acknowledges that he freely and voluntarily enters into this AGREEMENT and that he understands each and every provision set forth herein. MCPHERSON further certifies that he understands the waiver set forth in



paragraph 3 above and recognizes that it is a total waiver of all rights to challenge through the grievance process, any decision by SFMTA to recommend dismissal during the twelve (12) months following his signature on this AGREEMENT. MCPHERSON further acknowledges that he has had an opportunity to consult with a UNION representative prior to the execution of this AGREEMENT, and that he has done so.

6. The parties agree that this LAST CHANCE AGREEMENT shall not be used as a precedent in any other grievance or litigation proceeding.

DATE: [REDACTED] March 24, 2022
KIMBERLY W. ACKERMAN, Director, SFMTA Human Resources

DATE: [REDACTED] 3/23/22
ROMARR PITCHER, Manager, Transit Division

DATE: [REDACTED]
PETE WILSON, Vice President, TWU-250A (9163)

DATE: [REDACTED]
MARLON MCPHERSON, Transit Operator (9163)

- Cc: Leda Rozier & Emily Williams, Transit Administration
Roger Marengo, TWU-250A (9163)
Pete Wilson, TWU-250A (9163)
Loree Woods-Bowman, TWU-250A (9163)
Romarr Pitcher, Transit Manager, Woods Division
Aaron Beckwith, Employee/Labor Relations
Personnel File

EXHIBIT J



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

NOTICE OF RECEIPT OF APPEAL

DATE: April 18, 2023
REGISTER NO.: 0077-23-7
APPELLANT: MARLON MCPHERSON

Jeffrey Tumlin
Director of Transportation
Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Dear Jeffrey Tumlin:

The Civil Service Commission has received the attached letter from Marlon McPherson, requesting a hearing on their future employability with the City and County of San Francisco. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 “Action Request on Pending Appeal/Request,” with supporting information and documentation to my attention by email at civilservice@sfgov.org. CSC Form 13 is available on the Civil Service Commission’s website at www.sf.gov.org/CivilService on the “File an action request for a Civil Service Commission hearing” page.”

In the event that Marlon McPherson’s appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on June 22, 2023**, so that it may be heard by the Civil Service Commission at its meeting on July 3, 2023. If you will be unable to transmit the staff report by the June 22nd deadline, or if required departmental representatives will not be available to attend the July 3rd meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.

Appellant: Marlon McPherson
April 18, 2023
Page 2 of 2

You may contact me at Sandra.Eng@sfgov.org or (628) 652-1100 if you have any questions. For more information regarding staff report requirements, meeting procedures or future meeting dates, please visit the Commission's website at www.sf.gov/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Kimberly Ackerman, Municipal Transportation Agency
Shana Dines, Municipal Transportation Agency
David Garcia, Municipal Transportation Agency



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

**LONDON N. BREED
MAYOR**

Sent via Email

April 18, 2023

Marlon McPherson



Subject: Register No. 0077-23-7: Requesting a Hearing on their Future Employability with the City and County.

Dear Marlon McPherson:

This is in response to your appeal submitted to the Civil Service Commission on April 13, 2023, requesting a hearing on your future employability with the City and County of San Francisco. Your appeal has been forwarded to the Municipal Transportation Agency for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form.

The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. However, the Commission CANNOT reverse the department's decision to terminate your employment. In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date by email to civilservice@sfgov.org. Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Sandra.Eng@sfgov.org or by phone at (628) 652-1100 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sf.gov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Aldana, Elizabeth (CSC)

Subject: FW: Request for Hearing of Future Employment Restrictions

From: marlon mcpherson [REDACTED]
Sent: Thursday, April 13, 2023 4:35 PM
To: Eng, Sandra (CSC) <sandra.eng@sfgov.org>
Subject: Re: Request for Hearing of Future Employment Restrictions

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Sandra,

This is to inform the civil Service Commission that I am appealing my future employment restrictions from the SFMTA. I will submit a separate narrative and documents for the Commission's review and consideration.

Respectfully,

Marlon R. McPherson

On Apr 13, 2023, at 3:50 PM, Eng, Sandra (CSC) <sandra.eng@sfgov.org> wrote:

Dear Marlon McPherson,

Per your request, attached is the appeal form for requesting a hearing on your future employment restrictions from MTA.

<https://sf.gov/sites/default/files/2022-07/Civil-Service-Commission-Appeal-Form-CSC-12.pdf>

If you are unable to open the document, you may email your appeal in writing to our office.

Sincerely,

Sandra Eng

<image003.jpg>Vdqgud#Hqj#vkh/khu,
H{hfxwlyh#G lhfvr
F lyl#huylfh#F rp p lvrq
58#dq#D hv#Dyh# #xLh# 53#Vdq#Eudqflvr# #D# #7435
95;098504433# dlq# #dqgudhqc vijry1ruj

<image004.png><image005.png><image006.png>

This electronic communication and its contents may contain confidential and/or legally privileged information. It is intended solely for the recipient(s) identified above. Unauthorized interception, review, use or disclosure of this communication's

contents is prohibited and may violate applicable laws. If you are not the intended recipient, please contact the sender, delete the original message, and destroy all copies of the communication.



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Executive Officer
 (628) 652-1100

CSC Register No.

 To: _____
 CC: _____

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.</p>	<p>TYPE OF APPEAL: (Check One) <input type="checkbox"/> Examination Matters (by close of business on 5th working day) <input type="checkbox"/> Employee Compensation Matters (by close of business on 7th working day) - Limited application <input type="checkbox"/> Personal Service Contracts (Posting Period) <input type="checkbox"/> Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days) <input type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
---	--

"During the Shelter Order dated March 17, 2020, we are accepting appeals by email at civilservice@sfgov.org"

Marlon Riley Mcpherson		1098 23rd Street	(415) 530-3452		
Full Name of Appellant		Work Address	Work Telephone		
9163	Transit Operator	SFMTA			
Job Code	Title	Department			
[Redacted]		[Redacted]	[Redacted]	[Redacted]	[Redacted]
Residence Address		City	State	Zip	Home Telephone
Full Name of Authorized Representative (if any)			Telephone Number of Representative (including Area Code)		

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email: _____

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
--	---

<p>[Redacted Signature]</p>	<p>April 13, 2023</p>
Original Signature of Appellant or Authorized Representative	Date

I am appealing the SFMTA's two-year employment restrictions because I believe the decision is not fair or just. I received yearly and multiple accommodations for the Customer Service I provided during my nine years as a Transit Operator. As I seek the care and treatment that I was unable to get as an employee of the SFMTA, I do not believe that my ability to return to a Civil Service position outside of the SFMTA should be hindered.

Respectfully,

Marlon R. McPherson



SFMTA

London Breed, Mayor

Amanda Eaker, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Hertzberg, Director
Fiona Hulse, Director
Manny Makutell, Director

Jeffrey Tamlin, Director of Transportation

U.S. Regular, Certified Mail # [REDACTED]
and email e-mail: [REDACTED]

April 6, 2023

[REDACTED]
[REDACTED]
[REDACTED]

RE: Notice of Dismissal
Transit Operator, Job Code 9163 – Permanent Civil Service (PCS)

Dear Marlon R McPherson:

In the attached Director of Transit Review and the Skelly Decision, both the Chief People Officer, Kimberly W Ackerman, and the Skelly Hearing Officer, John Sears III upheld the proposed dismissal from your position, Transit Operator, Job Code 9163, as proposed by the division. (See attached)

This letter is to notify you that you are being dismissed from your permanent civil service appointment as a Transit Operator, Job Code 9163, with the San Francisco Municipal Transportation Agency (SFMTA), effective March 25, 2023.

The SFMTA is recommending to the Civil Service Commission that your future employment be restricted as follows:

- No future employment that requires a class B or BP Driver's License.
- Cancel any current examination and eligibility status that requires B or BP
- Future employment is subject to the review and approval of the Department of Human Resources Director after satisfactory completion of two years of verifiable work experience outside of City and County of San Francisco services involving face to face customer service.

If you have any questions regarding this matter, please contact Employee & Labor Relations at HR-ELR@SFMTA.com.



Sincerely,

[Redacted Signature]

Shana Dines
Employee and Labor Relations Manager

Enclosures: Separation Report
Notice of Future Employment Restrictions
Director of Transit Review

cc: Julie Kirschbaum/Leda Rozier/Ammee Alvior, Transit Operations
Teresa Scism/Greg Valentine, Woods Division
David Garcia/Christine Cayabyab, Employee & Labor Relations Unit
Nicolle Lewis, Payroll
Valerie Colmen/Brian Lim/Wallina Pellette/Stefinee Jones, Employee Services
Rie Butler, Client Services, DHR
Personnel File



SFMTA

#0063

COMMENDATION

Date: 01/09/2023

Operator: Marlon McPherson (Operator ID [REDACTED])

Re: Muni Customer Service Case 740339 Received on 1/5/23

Dear Operator,

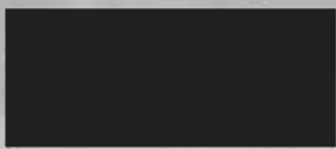
The attached commendation was recently received. Congratulations on doing the kind of job that compelled this passenger to take the time to contact us to point out your outstanding performance.

It is our pleasure to acknowledge the outstanding service to the people of San Francisco by passing on this commendation. MUNI Management always looks forward to the time we can say, "JOB WELL DONE!!!"

A copy of this commendation will be included in your permanent personnel file.

Thank you for your dedication to public service. Keep up the good work.

Sincerely,



Teresa Scism
Operations Manager
Woods Division

CC: Division Union Chairperson
Labor Relations
Operator's File

Muni Customer Service Case Details

Feedback Details				
Case Number	Status	Case Type	Feedback is about	Feedback specifics
██████	Praise recorded- Thank you!	Praise	Praise (Employee)	
Line or Route and Direction			Vehicle Number	
35 Eureka Inbound to The Castro			8505	
Incident Details				
Where did this happen?			Date	Time
BOSWORTH ST at DIAMOND ST			01/05/2023	07:22 AM
What happened?				
I would like to leave a compliment for a muni driver. I believe his name is Marlen. He arrives at Glen Park at about 7:22 am when I typically board the bus Wed - Fri. He is always on time and very patient to wait for passengers to get on board. Great service!				
Operator Details				
Operator Name			Operator ID	
Marlon McPherson			██████	



London Breed, Mayor

Malcolm Heister, Chair
Gwyneth Sarden, Vice Chair
Cheryl Brinkman, Director

Amanda Egan, Director
Cristina Kubie, Director
Art Torres, Director

Edward D. Reischl, Director of Transportation

July 2, 2019

To: Marlon McPherson # [REDACTED]

From: Ayn Antonio
Superintendent
Woods Division

Subject: COMMENDATION

The attached commendation: On 6/22/2019 have been received relative to performance of your duties. You have demonstrated the kind of professionalism as a Transit Operator that makes us proud at Woods Division.

An operator who goes beyond the normal requirement in performing their duties is especially commended and plays an intricate part in our daily operation.

A copy of this commendation will be included in your permanent personnel file.

Thank you for your dedication to public service.

cc: Personnel File



INCIDENT DETAIL

Category: COMMENDATIONS

Type: 40 - EMPL. COMMEND

ADA?

Title VI?

Driver Date

Trapeze Line/Route: 43 MASONIC

Direction: INBOUND

Incident Date: 06-22-2019

Incident Time: 13:42

Vehicle Number: 8649

Location: N/A

Department: WDS OPS

Division: WOODS

Employee ID: [REDACTED] Marlon McPherson

Employee Physical Description: African American male

Incident Details: The patron stated, "There was a lot of people on the bus with their things and there was nowhere to go. This woman was ranting and raving about it. I told the woman where are we going to go?. The woman got really irate so she followed him down to Hayes, screaming and cursing and swearing. The driver explained the situation to her that she had to wait and there was nothing else that could be done."

AGENCY HANDLING AND RESOLUTION DETAILS

Date Logged: 06-23-2019

Date Closed: 06-24-2019

Resolution Code: C-1 Commendation