

1995

Jose L. Lopez v. Board of Review of The Industrial Commission of Utah, Department of Employment Security, and Utah Transit Authority: Petitioner's Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Emma R. Thomas; K. Allan Zabel; Attorney for Respondents; Board of Review of The Industrial Commission of Utah, Department of Employment Security; John Paul Kennedy; Attorney for Employer-Respondent Utah Transit Authority.

Jose L. Lopez; Claimant-Petitioner; Pro-se.

Recommended Citation

Reply Brief, *Lopez v. Board of Review*, No. 950279 (Utah Court of Appeals, 1995).
https://digitalcommons.law.byu.edu/byu_ca1/6612

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

ORIGINAL

IN THE UTAH COURT OF APPEALS

Jose L. Lopez

Petitioner

vs.

Board of Review of The Industrial
Commission of Utah, Department of
Employment Security, and Utah
Transit Authority

Respondents.

PETITIONER'S REPLY BRIEF

Case No. 950279-CA

Category 7

Petition for Review of a Decision of the Board
of Review of the Industrial Commission of Utah,
Department of Employment Security,
State of Utah

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50
.A10
DOCKET NO.

EMMA R. THOMAS - 4681
K. ALLAN ZABEL - 3598
140 East 300 South
Salt Lake City, Utah 84145-0244
Telephone: (801)536-7683
Attorney for Respondents
Board of Review of The Industrial
Commission of Utah, Department
of Employment Security

JOHN PAUL KENNEDY - 1796
1385 Yale Avenue
Salt Lake City, Utah 84105

Attorney for Employer-Respondent
Utah Transit Authority

JOSE L. LOPEZ
5229 West 6600 South
West Jordan, UT 84084
Telephone: (801)969-6801
Claimant-Petitioner,
Pro se

FILED

OCT 20 1995

COURT OF APPEALS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.	ARGUMENT	1
	A. THE RECORD DOES NOT REASONABLE SUPPORT THE CONCLUSION THAT I JOSE LOPEZ, IN EFFECT, WAS DISCHARGE FOR JUST CAUSE.....	1
	B. THE RECORD DOES NOT SUPPORT FINDING THAT I JOSE LOPEZ'S PAST AND PRESENT RECORD <u>PRO</u> VIDED "JUST CAUSE" FOR MY TERMINATION.....	8
	C. I RECEIVED AN UNFAIR HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE.....	10
	D. THE MAJORITY OF THE BOARD OF REVIEW'S DE — CISION THAT THE EMPLOYER HAD JUST CAUSE FOR DISCHARGING ME WAS UNREASONABLE AND IRRATIONAL.....	12
	E. THERE IS NOT ACTUAL OR POTENTIAL HARM TO THE EMPLOYER.....	17
II	CONCLUSION	18
	CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases Cited

Kennecott Corp. v. State Tax Commission 858 P 2d 1381 (Utah 1993)	8
Ashcrof v. Industrial Commission, 855 P 2d 267, 268 (Utah App. 1993), cert.denied, 868 P 2d 95 (Utah 1993)	8
Bhatia v. Dept. of Employment Security 834 P 2d 574,579 (Utah App.1992)	8
Dept. of Air Force v. Swider, 824 P 2d 448 (Utah app.1991)	9
Kehl v. Board of Review, 700 P 2d 1129 (Utah 1985)	9
Nelson v. Dept. of Employment Sec. 801 P 2d 158, 161 (Utah app. 1990)	9
Morton International v. Auditing Div. of the Utah State Tax Commission 814 P 2d 12 (Utah app. 1993)	9
Tasters Ltd. v. Dept. of Employment Sec. 863 P 2d 12 (Utah app. 1993), cert. den. (Utah 1994)	9

Statutes Cited

Utah Code Ann. 35-4-11(7)(a)	2
Utah Code Ann. 35-4-5(b)(1)	6
Utah Code Ann. 35-4-11 (2)	12
Utah Code Ann. 35-4-5 (2)(a)	16

OTHER AUTHORITIES CITED

Rules of Evidence 402.403,702	10
Utah Adminstrative Code R562-10e-7	12
Utah Constitution,Section 1,7,5	12

I.

ARGUMENT

A.

THE RECORD DOES NOT REASONABLE SUPPORT THE CONCLUSION THAT

I JOSE LOPEZ, IN EFFECT, WAS DISCHARGE FOR JUST CAUSE

Begining at page 4 of its brief, respondent Board of Review (some times hereinafter refered to as the Board) argues that the employer Utah Transit Authority (UTA) received a complaint from the parents of a passenger R. 140 (Notations prefixed by "R" are set foth in numerical order in Appendix E.) and as set forth in this page transcript: the employer was unable to provide accurate information on how the complain channeled to my superiors and I based my words on testimony, and in the records, given the day of the hearing before the ALJ:

(My counsel, HOLDSWORTH): Maybe one or two. I apologize for not asking earlier, but do you know, Mr. Miner. whether Alicia Johnson has filed any sort of a claim against UTA and asked to be (indiscernible) because of the alleged kiss?

(UTA) MINER: Just a verbal notification to the Authority about this incident.

HOLDSWORTH: And do you know who Mrs. Johnson notified?

MINER: Well, the information came through Mr. Lance Epperson, and I don't know whether she contacted personally through her supervisor at UTA. I can't say if she contacted him personally or not.

HOLDSWORTH: But as far as you know in terms of Alicia Johnson or her parents, they are not contemplating any sort of legal action for assault or battery or false imprisonment, anything like that to you, verbally?

MINER: I don't, I don't think I can answer what they're contemplating.

There is evidence in the record R.14,15,16 through testimony given by (UTA) Allan Miner, dated December 28, 1994:

Employer rebuttal, Allan Miner, Human Resources: The girl's father did not come directly to us, he reported the incident to the Union president, who reported the incident to us.

Statement regarding claims for benefits, Utah department of employment Security. Mr. Miner is an experience Human resources representative for the UTA and his statements acknowledge the fact that the Law provides penalties for falsifying statements in order to obtain benefits or denying in this case, written at the bottom of this statements says: I certify that the above statements are true and correct to the best of my knowledge and belief.

I do not question the fact that anybody can file a complain against any person of public service such as a bus operator who is under continuous scrutiny and in a daily basis, the fact in this matter is, that there is conflicting testimony from the employer to establish Burden of proof (Employment Security, Job Service R562-5b-103)

The employer is required by subsection 35-4-11(7)(a) to keep accurate records and to provide correct information to the Department for proper administration of the Act.

Also, on page 4 of its brief, The Board argues that the mother, Colleen Johnson, reported she had seen Claimant kissing her mentally handicapped daughter, Alicia Johnson, while she was a passenger on claimant's bus. R.57,106

R. 57, 107 The mother presented testimony that while she was a passenger in a car going the opposite direction from the bus I was driving, she observed her daughter and I kissing on the bus. her testimony was unclear whether she observed the kiss in the intersection or after the bus stopped.

R. 107 HOLDSWORTH: Okay. So the southbound on 5600 West, so you actually go past the bus. You are heading in opposite directions.

JOHNSON: Right.

HOLDSWORTH: Okay. At about 3900 South, as you are proceeding through a semifore and the bus is heading south.

JOHNSON: Right.

HOLDSWORTH: You look and see something on the bus?

JOHNSON: My daughter was not home from work yet, and I was waiting for her to come home. and she was on the bus.

HOLDSWORTH: I think I understand the answer. So about how fast was your car traveling, would you estimate, Mrs. Johnson?

JOHNSON: about 25 to 28

HOLDSWORTH: Okay. And were you driving?

JOHNSON: No, I was not. I was the passenger.

HOLDSWORTH: Okay. So as I visualize this, you looked up, and the bus is coming at the opposite direction and it goes past your car. You look up and see your daughter in the front part of the bus?

JOHNSON: Right.

R. 108_HOLDSWORTH: Where did they Kiss? did he kiss her on the cheek or did she kiss him?

R. 108 JOHNSON: I think he kissed her, but I couldn't tell if it was on the lips or on the cheek, or where.

HOLDSWORTH: But you could tell it was a kiss?

JOHNSON: Yes

R. 105 KENNEDY: You mention in your statement that you could see the uniform, is that--

JOHNSON: Yes

KENNEDY: You also mention that she was wearing a light jacket. would you describe the jacket?

JOHNSON: It's white with blue on it.

KENNEDY: Is that a uniform?

JOHNSON: No, that was her light jacket.

KENNEDY: What did you say to her and what did she say to you?

JOHNSON: We asked what had happened, and she just told us that the bus driver wouldn't let her off the bus. She got angry with us because we kept questioning her.

R. 105 KENNEDY: Did she eventually explain what happened?

JOHNSON: yes she did.

KENNEDY: And what did she say?

JOHNSON: she said that the bus driver kept her on the bus all day long and he wouldn't let her off the at all. She said every time she went to get off, he wouldn't let her off.

KENNEDY: Did she say anything about the kiss?

JOHNSON: No. She did not say nothing, but I did tell her that I see that, and she felt better that I had seen something like that.

R. 108 HOLDSWORTH: Okay. I guess that's - well, one other question. Did you say earlier that this was her stop, I think. Is that true, this area where you saw the kiss happen, that's where she normally would have gotten off the bus?

JOHNSON: Yes.

R. 109 HOLDSWORTH: Okay, and then I guess she did not get off the bus and continued on the bus for a period of time, and then came home late, later than normal?

JOHNSON: Right.

If the mother observed the kiss in the intersection and let her daughter continue in route on the bus, then there are serious safety issues not raised by the employer or by the mother who allegedly observed the incident. Even if the employer, the mother and the Union had decided to start an investigation against myself without my knowledge the day of the alleged incident, then, there is the evidence of November 2, 1994, R. 184,185 Police Report, Case # 94-58743, The young lady passenger was still on the bus when an accident ensued, in other words, she had already passed her regular stop when the Police Officer arrived at the scene before UTA supervisors and had the opportunity to talk to the young lady passenger, there is not evidence of forcingy keeping the young lady against her will or forcing to exchange a kiss. After the Police Officer had departed from the Scene of the accident, Two UTA supervisors arrived to continue investigation, and they also had the opportunity to talk to the young lady (R.73,61,62,64) and there were not employer's policy violations concerning a kiss or false imprisonment, in fact, according to the employer's report the

two UTA supervisor at the scene, they were more concerned about what I had purchased at the store than directly investigating the welfare of the nineteen year old lady. When I noticed that over half an hour had passed I asked the two UTA supervisor to take her home and they agreed R.136.

As is customary with every accident situation that a UTA supervisor investigate, (Mr. Chistensen) one of the supervisor at the Scene instructed me to contact the radio control coordinator for instructions on instructions and information on how to get back on route, (R.133) I was still trying to find the location to the nearest schedule time when the other UTA supervisor call me and asked me why I did not call back for instructions for I was still trying to find the proper location to call back.

The eye witness account of the event, in this case the mother, is not reliable and is not sufficient evidence upon which to base a finding, The Majority Board's findings must be based upon substantial competent evidence. If I am to be denied benefits, the denial must be based on a finding that I was terminated for "just cause" as that term is used in Utah Code Ann. 35-4-5(b)(1).

In my opening brief I stated after ten years of service I am well aware of my employer policies regarding unprofessional conduct, there was not past conduct, or behavior pattern or case related to the act of forcing a passenger to stay on the bus or a kiss.

R562-5b-102 Longivity and prior work record are important in determining if the act or omissions is an isolated incident or a good faith error in judgment. An employee who has historically complied with

work rules does not demonstrate by a single violation, even though harmful, that such violations will be repeated and therefore require discharge to avoid future harm to the employer.

The evidence is not sufficient to support the majority Board's finding that a kiss had occurred and led to the charge, in this case, of unprofessional conduct.

The Board accepted a copy from the employer of its written policy which provides that in the case of unprofessional conduct, the employer has the authority to discharge in the case of a single violation. I respectfully believe the majority of the Board should have accepted a copy of R184,185,183 which provides a complete report from a Police Officer at the Scene on November 2, 1994, and a report of a regular passenger who used to travel that particular route and times of the reported incident.

In my case of unprofessional conduct the mother testified that she was not certain whether the kiss was a kiss on the lips or a kiss on the cheek. If she was unable to ascertain this detail, she was not able to testify with certainty whether what she saw was a kiss or if it was something else, a close conversation, or, as I testified from the beginning of the investigation and during the hearing: an approach by the passenger to the front of the bus to ask if she could turn the destination sign R.11, 12, 13, 147.

As for the passenger herself, she was a highly suggestible witness whose testimony was malleable under any questioning (of which there was very little). She first testified she didn't know me well, but later conceded she did. She first testified that I had held her

against her will on the bus all day long, the fact is, at the time of this incident I did not start my shift of work until around 12:30 noon and this was my regular route on a daily basis not just one day and in order to keep someone against his or her will all day I should have had the bus at my own and no people on board. R.148 She did not specify how long she was on the bus against her will or what I had done to keep her against her will on the bus.

B.

THE RECORD DOES NOT SUPPORT A FINDING THAT I JOSE LOPEZ'S PAST AND PRESENT RECORD PROVIDED "JUST CAUSE" FOR MY TERMINATION

In point II of its brief, The majority of The Board appears to acknowledge that *Kennecott Corp. v. State Tax Commission*, 858 P. 2d 1381 (Utah 1993), would be controlling absent subsequent statutory amendments. In *Kennecott Corp.* this Court held that, factual finding bore burden of marshalling all evidence supporting finding and then, despite supporting facts showing that finding were not supported by substantial evidence.

Ashcroft v. Industrial Commission, 855 P. 2d 267, 268 (Utah App. 1993), cert. denied, 868 P. 2d 95 (Utah 1993). Claimant did not properly preserve for review issues of sufficiency of evidence. Statutory language concerning convincing of medical panel in workers' compensation case is permissive rather than mandatory. U.C.A. 1953, 35-1-77 (1) (a). *Bhatia v. Dept. of Employment Security*, Whether employee misconduct precipitating employee dismissal is sufficiently culpable to warrant denial of unemployment compensation, benefits

by balancing employee's longevity and prior repeated offenses that were likely to be repeated.

Dept. of Air Force v. Swider, 824 P 2d 448 (Utah app. 1991), this Court held cause determination are entitled to deference because a determination was for just cause when employee brought his drug use to the attention of Air Force investigators.

Kehl v. Board of Review, 700 P 2d 1129 (Utah 1985) The Court noted: The discharge was necessary to avoid actual or potential harm to the employer's rightful interest Id at 1134 (quoting Utah Admin.P R475-5b-102(1)(a) (emphasis added). employee's conduct in moving motors containing explosives across railroad tracks, potentially devastating effects on employer's rights.

Nelson v. Dept. of Employment Security, 801 P 2d 158, 161 (Utah app. 1990). This Court held that Board's conclusion that claimant was terminated for just cause was reasonable and rational for repeated improper redemption of coupons in violation of store policy.

Morton International v. Auditing Division of the Utah State Tax commission. 814 P 2d 12 (Utah App. 1993); Tasters Ltd. v. Dept. of employment Sec. 863 P 2d 12 (Utah App 1993), cert. den.(Utah 1994).

Substantial evidence test mandates that party challenging agency's factual findings must marshal all of the evidence supporting facts and all reasonable inferences that can be drawn there from findings are not supported by substantial evidence given record as a whole. U.C.A. 1953, 63-46b-16 (4)(g).

Without rational, competent evidence as to the particulars of my own case, The majority Board's evaluation of Culpability, Knowledge

and Control, The Three Elements of "Fault" as that term is used in the proposed Rules, is of little or no help. All that can be determined from the record is that the charge of unprofessional conduct against myself was initially brought by my employer UTA based upon conflicting testimony on how the complaint, first, came to their attention and second the contradictory testimony of the young lady and her mother.

In a criminal case a party will sometimes wish to impeach a witness' credibility by presenting expert psychiatric testimony that the witness is incapable of accurately observing, remembering or narrating the events in question. Witness' credibility, his or her inconsistent statements and the likelihood of the declarations being untrue are very great. In exercising its discretion, a trial Court may require a medical expert witness to demonstrate familiarity with the applicable opinion on a particular matter for determining when scientific evidence is sufficiently reliable to be admitted and is not inconsistent with Rules 402, 403, and 702 of the Utah rules of Evidence. *Kofford v. Flora*, 744 P.2d 1343 (Utah 1987).

C.

I RECEIVED AN UNFAIR HEARING BEFORE THE ADMINISTRATIVE
LAW JUDGE.

I understand that in my opening brief some of my due process argument are directed against the employer's investigation process and the Union failure to provide me with adequate representation because these issues are relevant to the initial evidence when the employer UTA introduce an anticipated six witness to be present at the

Hearing before the ALJ (R. 31) to my surprise, the day of the hearing, two of the UTA key witnesses did not appear and it was of the Judge's discretion to allow their testimony on the telephone and I understand now that my Attorney failed to object that decision because there was not positive identification of who the driver was from the beginning of the investigation (R.57).

In the case of my only witness (Mr. Joe Cintron) he was in his way to the hearing, in person, when a UTA supervisor directed him to go to the UTA main office where he was placed in a small room. My other two witnesses did not testify, the only reference to the issue is on

R. 107 : STAFF: I'm sorry to interrupt you. Mr. Lopez' witness Ms. Garza, needed to be in (indiscernible) room. waiting She just wonder how long it was going to be before she might be called.

JUDGE: Mr. Holdsworth, I --we're probably going to have a problem with that.

HOLDSWORTH: Yeah.

STAFF: She needed to take her car in and I'm sure if she can--

JUDGE: Tell her to go ahead. She can be excused.

VOICE: Okay.

JUDGE: If we need anything from her further, Mr. Holdsworth will contact her and we'll arrange for that. Okay. Thank you, Mr.--Ms. Johnson, thank you for holding on that. Mr. Holdsworth, do you have further questions or did Mrs. Johnson finish the answer to the question you had?

In point III of its brief The majority of the Board acknowledge Utah Administrative Code R562-10e-7. Telephone appearances by witnesses do not deprive parties of opportunities to confront and cross examine witnesses, to observe their demeanor and judge their credibility, or to ascertain whether they are testifying from memory or whether they are being coached. While my only witness who was allowed to testify from the employers' main office where he knew his answers were being monitored, the two UTA key witnesses I believed were being coached at the Union Office (Amalgamated Transit Union) and I based this information on the telephone number appear during the hearing, # (801) 972-8560 listed, back then, in the telephone directory to the amalgamated transit Union, local 382 R.102. May be the issues above are beyond the scope of this review but I believe is relevant to the evidence because I needed to know if the Union was going to be included in the hearing directly or indirectly. Utah Constitution, Declaration of Rights: Section 1, Section 7, Section 5.

D.

THE MAJORITY OF THE BOARD OF REVIEW'S DECISION THAT
THE EMPLOYER HAD JUST CAUSE FOR DISCHARGING ME WAS
UNREASONABLE AND IRRATIONAL.

R562-5b-101. Discharge General Definition.

Authority for rule making is granted in subsection 35-4-11(2). ordinarily accepted concepts of justice are used in determining if a discharge is disqualifying under the "just cause" provisions of the act. Just cause is defined as a job separation that is necessary due

to the seriousness of actual or potential harm to the employer provided the claimant had knowledge of the employer's expectations and had control over the circumstances which led to the discharge. Just cause is not established if the reason for the discharge is baseless, arbitrary or capricious or the employer has failed to uniformly apply reasonable standards to all employees when instituting disciplinary action. The question which must be established by the evidence is whether the claimant is at fault in his resulting unemployment.

R.172 The administrative Law Judge found this to be a very close case and a difficult matter to adjudicate. The Just Cause elements of knowledge and control are not at issue as the evidence clearly established the claimant knew the employer rules and policies pertaining to all charges and he had control in the conduct in each instance provided the evidence supports a determination the incidents did in fact occur as the employer contends.

R.173 The final issue to consider is the charge of unprofessional conduct. Since the testimony provided by the parties was substantially contradictory, the Administrative Law Judge must determine the matter on credibility and self interest.

R. 172 The ALJ found that I did incorrectly characterize the circumstances surrounding the purchase of the food item (a burrito) and my misrepresentation of the situation to the supervisor created a question regarding my credibility on other matters.

R. 169 The Claimant left the scene and the two supervisors went into the convenience store. The second supervisor asked the

store clerk about the claimant's actions while he was in the store when the accident occurred. The store clerk reported the claimant had gone to the restroom and then stopped to purchase the food item. While the claimant was paying for the purchase, he was told of the accident (I was never charge for this accident) and he immediately left. No one was certain if the claimant took the food purchase or left the item on the counter. He did leave the money for the purchase. The fact is, during the initial investigation and during the hearing I did state I had not purchased anything and I reiterated I had not made any purchase at the store when questioned by a supervisor on the radio. Technically, there was a question as to whether the act of purchasing itself constitutes the means for buying and actually taking possession of the item and taking the item outside of the premises and as the evidence states in this case "no one was certain if the claimant took the food purchase or left the item on the counter". The ALJ found the testimony of the passenger somewhat dubious as to the actual course of events, but there was reason to believe there was some basis of truth to her statements (R 173) but not reasonable competent evidence to justify Just Cause for discharge and deny benefits pursuant to subsection 35-4-5(2)(a). Considering her limited capacity, her testimony could be confused as to the specifics of the situation but the testimony of her mother would corroborate that something inappropriate occurred whether compelled or not, although, according to testimony during the hearing she was not able to testify with certainty whether what she saw was a kiss or if it was something else. R.191,192

Then, there is the issue of safety that was never brought by the mother or the employer, I am a father myself and I would considered irrational to actually see my mentally handicapped daughter in a passing vehicle exchanging a kiss with a stranger then acknowledging the fact that she did not get off at the time and place where she was supposed to get off the vehicle and then, like the initial complaint stated: my husband and I proceeded to the store. R.57

Personally, I would follow the vehicle, in this case a bus, I immediately contact Police and I would press charges for false imprisonment and added the possibility of sexual abuse charge.

On point II of its brief, the majority of the Board attempts to distinguish the case in my opening brief by pointing out that after many years of service, being charge with unprofessional conduct I should have been discharge without progressive discipline and the employer rules reveals that there is no progressive discipline when found guilty of unprofessional conduct; in my case, where the issues were surrounded by contradictory testimony from the beginning of the investigation, the employer failed to uniformly apply standards of progressive discipline already established to all employees.

If I may explain myself to the Court: about three years ago, in the early morning hours, a fourteen year old student was ran over and kill by a bus, the driver continue his route and was caught minutes later about a mile away from the accident had happened, apparently the driver was unaware he had ran over something, but there was a witness who was at the scene and testified she had seen the bus ran

over the young student, The Police and my employer investigated the accident and the driver was placed on administrative leave pending investigation and after the customary Company's policy of eleven days to produce results regarding the investigation, the driver was clear of the accident because the testimony of the witness and the passengers on the bus at the time of the accident was contradictory. This particular driver is still working.

In my opening brief, I stated that when I was being investigated after the eleven days of customary Company's policy to produce results, my employer arbitrarily went over the eleven days, R.24 even though the investigation was not even close to the death of a pedestrian, thus, pursuant to subsection 35-4-5(2)(a): Just cause is not established if the reason for the discharge is baseless, arbitrary or capricious or the employer has failed to uniformly apply reasonable standards to all employees when instituting disciplinary action. If there was a reason for the employer to harshly and arbitrarily treat my case I provided the Board with evidence R. 20, 71, 182 and R14,15,16 linking their actions to previous complaint to the Industrial Commission.

The term just cause as used in subsection 35-4-5(2)(a) does not lessen the requirement that there be some fault on the part of the employee involved. Prior to the 1983 addition of the term "just cause" The commission interpreted subsection 5(2)(a) to require an intentional disregard of the employer's interest. 35-4-11(2).

Just Cause is defined as a job separation that is necessary due to the seriousness of actual or potential harm to the employer.

E.

THERE IS NOT ACTUAL OR POTENTIAL HARM
TO THE EMPLOYER.

In point IV letter B of its brief the Board noted the employer presented evidence that its reputation for safety and professional conduct was crucial to its acceptance and use by the community: Employer receive sales tax, a quarter cent sales tax. They receive federal subsidies to operate and capital grants in order to provide mass transit service and the public support is essential for continuation of these tax subsidies and they also receive revenues from passengers and these federal subsidies and the fares are directly related to the number of passengers who use the system. There is no evidence of an adverse impact on the number of passengers that would not use the system, as the evidence shows R. 140:

HOLDSWORTH: But as far as you know in terms of Alicia Johnson or her parents, they are not contemplating any sort of legal action for assault or battery or false imprisonment, anything like that to you, verbally?

MINER: I don't, I don't think I can answer what they are contemplating.

17A-2-1002. Legislative findings. (Independent special districts, Part 10, Public transit districts).

Therefore, it is essential to establish a public agency known as a transit district which can operate in its own right and authority and exercise jurisdiction.

The distinctive, traditional and legitimate basis for bringing evidence and attempt to show that I committed an act of unprofessional conduct does not exist in this case.

The employer did not show evidence of the amount of passengers more likely to stop using the service and the public would need to know if the kiss ever happened due to contradictory testimony and the people involved (the employer, the parents, the union and myself).

The employer did not show evidence that the federal Government have already stop provide them with federal subsidies as well as a quarter sales tax from the State for the alleged kiss.


The real issue is whether I was discharged for reasons that disqualify me from unemployment benefits.

II

CONCLUSION

I Jose Lopez respectfully submits that this Court should enter its order reversing the decision of the majority Board of Review and remand the matter to the Industrial Commission with directions to enter an order declaring me eligible for unemployment benefits in accordance with Utah Code Ann. 35-4-3.

Dated this 20 day of October, 1995

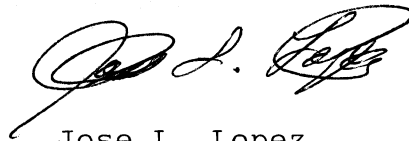

Jose L. Lopez
Petitioner

Pro se

CERTIFICATE OF SERVICE

I certify that on the 20 day of October, 1995, I hand delivered eight (8) copies of the foregoing reply brief to The Utah Court of Appeals, 230 South 500 East Suite 400 Salt Lake City, Utah 84102,

this 20 day of October 1995




Jose L. Lopez
Petitioner

I certify that I mailed two copies of the foregoing to John P. Kennedy #1796 Attorney for respondent Utah Transit Authority 1385 Yale Avenue, Salt Lake City, Utah 84105, postage prepaid, this 19 day of October 1995



Jose L. Lopez
Petitioner

I certify that I mailed two copies of the foregoing to Emma R. Thomas # 4681 and K. Allan Zabel #3598 Attorney for respondent Board of Review of the Industrial Commission, Dept. of Employment Security, 140 East 300 South P.O. Box 45244, postage prepaid, this 19 day of October 1995



Jose L. Lopez
Petitioner

1 license is revoked, and who is not discharged for other reasons,
2 shall be granted a leave of absence.

3 ARTICLE 11: NOTICE OF DISCIPLINE

4 Employees shall be advised of any discipline or
5 charges within eleven (11) calendar days after the General
6 Manager of the Authority or its designees have knowledge of any
7 alleged violation of Authority rules or other offenses. Oral
8 warnings may be given, or the employee shall be furnished a
9 written statement of the offense or discipline.

10 ARTICLE 12: SUSPENSION OR DISCHARGE

11 A prompt review shall be made in any situation where
12 discharge or other discipline is contemplated or has been
13 administered, provided request for such review is made within
14 seven (7) calendar days following notice by the Authority to the
15 Union that discharge or discipline may be involved. If no
16 request is made to the Authority within that time, and the
17 discharge or discipline is administered by the Authority, such
18 action by the Authority shall be deemed final by all concerned.

19 If timely review is requested, the Authority shall
20 promptly designate someone not involved in the discipline to
21 conduct a preliminary hearing to be held within seven (7)
22 calendar days after request for review. At such hearing, the
23 employee, the Union, and others may present any relevant facts
24 and evidence. Within (5) calendar days after the hearing, the
25 Authority shall notify the employee and the Union that the
26 discipline has been rescinded, modified, or sustained.

PINE R-AMERIBIND

ne Recreation & Sports Inc
10 S Oak Midvl 84047 ----- 561 3622
ne Rose Brighton
Salt Lake City Tel No ----- 532-4731
ne Scale
042 E Fort Union Blvd Midvl 84047 ----- 561 3774
PINE SECURITIES
CORPORATION 440 E 400 South
84111 ----- 355-5588

ne Service Enterprises
141 S Meadow Ct Sandy 84093 ----- 942 0861
ne Snow Removal
01 E South Temple 84102 ----- 363 2078
ne Supply
841 W Parkway Blvd W Vly Cty 84119 ----- 972 0477
ne Technical Services
01 W 6825 South Midvl 84047 ----- 255 5336
ne Telecommunications
674 W 2100 South 84120 ----- 973 2250
ne Tile & Supply
058 S 300 West 84115 ----- 467 6575
ne Video Productions
07 N Main Bntfl 84010 ----- 295 1436
ne Water Systems
ne Window Cleaning
586 S T J Dr Sandy 84070 ----- 572 3576
net Inc 4444 S 700 East Murray 84107 ----- 265 3300

Amyotrophic Lateral Sclerosis Div
Muscular Dystrophy Assoc
568 S Highland Dr Hildy 84117 ----- 278 6200
Auto Parts
53 E Arrowhead Ln Murray 84107 ----- 266 8264
Copy Right A C R
781 W 7800 South W Jrdn 84088 ----- 569 9545
Custom Upholstery & Repair
32 N Main Midvl 84047 ----- 561 7552
Electronics 55 N Redwood Rd 84116 ----- 328 0433
Floor Covering Brokers
60 W Fine Dr 84119 ----- 269 1116
Rotisserie Catering
Salvage & Repair
079 S Prospect 84104 ----- 972-4113
Volvo Service 2262 S 600 East
II Free Dial 1 & Then ----- 800 565 7723
Volvo Service 2262 S 600 East 84106 ----- 467 7722

de Supply Center
115 W 2610 South 84119 ----- 972-4729
J C Carl chiropractor
1360 S Redwood Rd 84123 ----- 969 1212
J Robert A atty 79 S Main 84111 ----- 523-1500
J Rodney E chiropractor
50 N 500 West Bntfl 84010 ----- 298 8112
on Rob M atty First Interstate Plaza
84101 ----- 521-3200

Adjusting Co
133 E 4800 South Murray 84107 ----- 268-3473
Aircraft Maintenance
7220 S 4450 West W Jrdn 84084 ----- 566-8271
Approach Sales & Rentals
3764 S Little Cottonwood Pl 84092 ----- 942-7980
Associates
1379 S Carol Jane Dr Hildy 84124 ----- 272-3079
Ball Bonds
Branch Library Alta 84092 ----- 742-2068
Canyon Baptist Church
11190 S 1000 East Sandy 84094 ----- 572-0747
Canyon Orchids
10510 S Featherwood Dr S Jrdn 84095 ----- 254-0776

FA CANYON SPORTS CENTER

9565 S Highland Dr Sandy 84092 ----- 942-2582
Capital Corp 7109 S Highland Dr 84121 ----- 943 7447
a Care Center
4035 S 500 East Murray 84107 ----- 262 9181
a Care Center Residence Line
4035 S 500 East Murray 84107 ----- 288 2040
a Children's Center Alta 84092 ----- 742 3042
a Club 100 E South Temple 84111 ----- 322 1081
a Computer Service
1887 S 700 West 84104 ----- 972 0679
a Dental Care
9730 S 700 East Sandy 84070 ----- 572 1130
a Dental Center
1025 E 11400 South Sandy 84094 ----- 572 8955
a Dry Cleaners
896 E 12300 South Draper 84020 ----- 572 1386
a Electric Motor Service Co
773 E Lafayette Sandy 84094 ----- 572 2802
a Financial Inc 1545 S 1100 East 84105 ----- 487 9191
a Fire Protection Co
206 W 3620 South 84115 ----- 269 1555
a Geo LC 211 W Cottage Av Sandy 84070 ----- 562 2970
a Gold
702 433 8525
a Groomery 8052 S 700 E Sandy 84070 ----- 566 1235
a Group The 4 Triad Center 84180 ----- 532 8402
a Health Strategies Inc ----- See First Health
a Heating & Air Conditioning
a Heating & Air Conditioning
548 W 9560 South Sandy 84070 ----- 569 3149
a High School
11055 S 1000 East Sandy 84094 ----- 572 7040
a Hills Farm
10852 S 2000 East Sandy 84092 ----- 571 1712
a House Cleaning Co
5468 S Arches Dr Kearns 84118 ----- 963 6140
a Industries 1887 S 700 West 84104 ----- 972 8160
a Insurance Agency
1801 E Spring Ln Hildy 84117 ----- 278 7500
a Lodge
Information & Reservations
Salt Lake City Tel No ----- 322 4631
Alta Tel No ----- 742 3500
ummer Dining
Salt Lake City Tel No ----- 322 4631
Alta Tel No ----- 742 3500
roup Sales ----- 487 5500
a Marketing
211 W 2100 South 84115 ----- 484 9900

Alta Montana
2471 S 2570 West W Vly Cty 84119 ----- 977 9310
Alta Mortgage Services
33 W 10600 South Sandy 84070 ----- 553 8866
Alta Motel Lodge 1899 S State 84115 ----- 486 7417
Alta Motors 7291 S State Midvl 84047 ----- 566 6666
Alta Mount Oil & Mining Tool Co
216 W 6400 South Murray 84107 ----- 268 4391
Alta Pacific 1059 E 900 South 84105 ----- 328 1081
Alta Paint Coatings
136 W 3300 South 84115 ----- 466 9625
Alta Painting
Mobile Service ----- 560 6730
Alta Peruvian Lodge
Alta ----- Salt Lake City Tel No ----- 328 8589
Alta 84092 ----- 742 3000
Alta Photo & Video Alta 84092 ----- 742 2100
Alta Pines Apartments
4070 S 900 East Murray 84124 ----- 263-1100
Alta Post Office Alta 84092 ----- 742-2142

ALTA SCHWINN
CYCLERY

9330 S State Sandy 84070 ----- 566-1421

Alta Shallow Shaft Bar & Restaurant
Alta 84092 ----- 742 2177

ALTA SKI LIFTS

Recorded Snow Reports
13670 S Fort Draper 84020 ----- 572-3939
Office ----- 742-3333
Lodging Reservations ----- 942-0404
Ski School ----- 742 2600

Alta Ski Shuttle ----- 553 9184
Alta Ski Shuttle ----- 742 3406
Alta Sports Alta 84092 ----- 742-3110
Alta Technology Corp
9500 S 500 West Sandy 84070 ----- 562 1010
Alta Technology Corp
9523 S 560 West Sandy 84070 ----- 562-4535
Alta Television & Video
41 N Main Midvl 84047 ----- 255-4868

ALTA TOWN OF

See Government Section
Alta Transportation ----- 742-3406
Alta Travel & Reservation Service
3332 E Little Cottonwood Rd Sandy 84092 ----- 942-0404
Alta United Mines 50 W Broadway 84101 ----- 359-5112
Alta Veterinary Hospital
8052 S 700 E Sandy 84070 ----- 566-1234
Alta View Appliance Service
8195 S 1675 East Sandy 84093 ----- 943-4135

ALTA VIEW CENTER FOR
COUNSELING

9690 S 1300 East Sandy 84094 ----- 572-5001

ALTA VIEW CENTER FOR
COUNSELING

9690 S 1300 East Sandy ----- 576-4350

Alta View Concrete
9547 S 500 West Sandy 84070 ----- 255-3580
Alta View Dental Care
880 E 9400 South Sandy 84094 ----- 572-4261
Alta View Ear Nose And Throat
9690 S 1300 East ----- 576-4300
Allan L Andersen audiologist
Craig W Anderson MD
Alta View Elementary School
10333 Crocus Sandy 84094 ----- 572-7031
Alta View Eye Care Center
9720 S 1300 East Sandy 84094 ----- 572-0631
Alta View Foot Clinic
Schiffgen S Thomas
9690 S 1300 East Sandy 84094 ----- 576 7525

ALTA VIEW GLASS & MIRROR

720 E 10600 South Sandy 84094 ----- 572-2224

ALTA VIEW
HOSPITAL

A Service of Intermountain Health Care

ALTA VIEW HOSPITAL

9660 South 1300 East Sandy
Patient Information ----- 576 2600
All departments and general
Information ----- 576 2600
Ask A Nurse ----- 972 8488
Billing Information Business Office ----- 576 2723
Childbirth Education ----- 576 2370
Community Education ----- 572 3112
Counseling Center ----- 572 5001
EMERGENCY ----- 269 2085
Foundations ----- 269 2085
Friends Of Alta View Hospital ----- 321 1980
InstaCare Holiday ----- 967 7667
InstaCare Taylorsville ----- 321 5627
Job Line ----- 576 2742
Laboratory ----- 576 2744
Mammography ----- 576 2750
Medical Records ----- 576 2750

BUSINESS

Continued From Last Column

ALTA VIEW HOSPITAL

9660 South 1300 East Sandy
Personnel & Human Resources ----- 576 2600
Pharmacy ----- 576 2796
Physical Therapy ----- 571 5043
Purchasing ----- 576 2076
Safety & Security ----- 576 2767
Snowbird Clinic ----- 521 6040
Surgical Center ----- 576 2758
TDD ----- 576 2600
Women's Center ----- 576 2370
X Ray ----- 576 2744

Alta View Hospital Community
Education 9850 S 1300 East Sandy 84094 ----- 572 3112

Alta View Internal Medicine
Associates 9720 S 1300 East Sandy 84094 ----- 572 0311

Alta View OBGYN Associates
Obstetrics Gynecology & Infertility
Womens Center 9600 S 1300 East
Sandy ----- 572 5808
Hansen E Kerth ----- 572 5808
Curtis Glade B ----- 572 5808
Tanner Gregory C
9600 S 1300 East Sandy 84094 ----- 572 5808

Alta View Optical Center
9720 S 1300 East Sandy 84094 ----- 576-0640

Alta View Orthodontics
9844 S 1300 East Sandy 84094 ----- 571-0044

Alta View Physical Therapy
9690 S 1300 East Sandy 84094 ----- 571 5043

Alta View Sports Medicine Clinic
9844 S 1300 East Sandy 84094 ----- 571 9433

Gordon Anthony S MD
9844 S 1300 East Sandy 84094 ----- 571 9433

Merendino John R MD
9844 S 1300 East Sandy 84094 ----- 571 9433

Westin Craig D MD
9844 S 1300 East Sandy 84094 ----- 571 9433

Alta View Surgical Center
9660 S 1300 East Sandy 84094 ----- 571-0552

Alta View Urology Clinic
9690 S 1300 East Sandy 84094 ----- 571 5121

AltaMedia 2351 E 3000 South 84109 ----- 487 4276

Altara Elementary School
11055 S 1000 East Sandy 84094 ----- 572 7000

Altawood Fence Co
10203 S Roseboro Rd Sandy 84092 ----- 571 5099

Altech Computers
2701 S Main So St Lk 84115 ----- 484-4252

Alter David eng 4455 S 700 East
Murray 84107 ----- 263-2455

Alternative Audio
3528 W 3500 South W Vly Cty 84119 ----- 966-3636

Alternative Center 718 S 600 East 84102 ----- 531-7336

Alternative Commercial Interiors Inc
12706 S Old Fort Dr Rvtn 84065 ----- 254-2706

Alternative Lifestyle Dating
Dial 1 And Then ----- 976-4297

Alternative Merchandise Liquidation
3805 S 900 East 84106 ----- 262-7099

Alternative Options & Services For
Todays Children
11638 S High Mountain Dr Sandy 84092 ----- 572-6360

Alternative Supply & Fasteners
2985 S 300 West So St Lk 84115 ----- 485-9691

Alternet Realty 602 E 500 South 84102 ----- 328 8004

Altan Dean Medical Products
1547 W 2290 South Wds Crss 84087 ----- 298-1938

Alttop Ice 225 W Paramount Av 84115 ----- 467-4112

ALTRES INC
1160 S Main 84101 ----- 596-8119

Toll Free-Dial 1 & Then ----- 800 658-5354

ALTRES Financial
1160 S Main 84101 ----- 531-1116

Toll Free-Dial 1 & Then ----- 800 531 0137

ALTRES Labor Services
1160 S Main 84101 ----- 328-9567

3607 Washington Blvd S Ogden 84403 ----- 625-0607

ALTRES Staffing
1160 S Main 84101 ----- 596 8103

3607 Washington Blvd S Ogden 84403 ----- 625 0607

ALTRES Workforce Employment
1160 S Main 84101 ----- 596 8119

Aluma Crown 5949 S 350 West
Murray 84107 ----- 265 1710

Alumacast Inc
5154 S 300 West Murray 84107 ----- 268 3861

5154 S 300 West Murray
Toll Free Dial 1 & Then ----- 800 320 3861

Alumacon
57 E Truman Av So St Lk 84115 ----- 487-0631

ALUMASTEEL MANUFACTURING
CO 3855 W 700 South 84104 ----- 973 8600

AlumaTek 130 S Redwood Rd N St Lk 84054 ----- 299 1920

ALUMINUM LOCK ROOFING INC
840 W 1700 South 84104 ----- 484-3321

Alumni Association University Of Utah
155 S Central Campus Dr 84112 ----- 581 6995

Alves Tony computer svcs
3174 S Hillside Dr W Vly Cty 84119 ----- 968 2177

Alvey David ins 140 W 2100 South 84115 ----- 466 8000

Alvey Dave R LUTC
Alvey Dave R LUTC ----- 466 8000

Always & Forever Floral Wedding
Specialist
8488 S Harvard Park Dr Sandy 84094 ----- 566 5777

Always Going Towing
Mobile Service ----- 573 4260

Always Kids 4525 S 2300 East Hildy 84117 ----- 272 0100

Always Learning Center
815 S 900 East 84102 ----- 355 4217

Always Perfect Cabinets
35 S 900 West 84104 ----- 532 2733

Alzheimer's Association
455 E 400 South 84111 ----- 596 0308

AM Appraisals
2437 E Hunts End Dr Sandy 84092 ----- 944 5353

AM PM Appliance Repair
429 E 6865 South Midvl 84047 ----- 568 2676

Am Quip 451 W 3440 South 84115 ----- 269-0896

Amacan Resources Corp
1399 S 700 East 84105 ----- 486 9911

Amalgamated Transit Union Local 382
2261 S Redwood Rd W Vly Cty 84119 ----- 972-8560

Amalux Metaphysical Books ----- 272 9389

Amana
Consumer Products Service
Authorized Service ----- 262 9824
Genuine Parts ----- 262 7626

Amana A Appliance & Refrigeration
Service Co 501 E 2700 South 84106 ----- 467 7622

Amana A & J Appliance Parts &
Service 381 W 5900 South Murray 84107 ----- 268-0735

Amana Air Conditioning & Heating
1550 E 3300 South 84106 ----- 485-4000

Amana Appliance Parts & Services By
Dodge Appliance & Service
64 E 9503 South Sandy 84070 ----- 255-6446

Amana Factory Authorized Appliance &
Refrigeration Service
1133 S Richards 84101 ----- 364 7761

Amana Refrigeration Service ----- 299 1819

Amana Refrigeration Service & Parts
By Dodge Appliance & Service
64 E 9503 South Sandy 84070 ----- 255 6518

Amanda Callahan
4700 S 900 East Hildy 84117 ----- 264 8514

Amann & Wray L C atty
9 E Exchange Pl 84111 ----- 359-2230

Amariensis Secretarial & Transcription
Service
9220 S Stone View Cove Sandy 84093 ----- 944 5280

Amex Real Estate Services Group
See A-Max Real Estate Services Group

AMBASSADOR PIZZA
63 E 500 South Bntfl 84010 ----- 298-9500

Ambassador Plaza 150 S 600 East 84102 ----- 532-2232

Ambassador Press
1485 W Stern Dr Murray 84123 ----- 266-2348

Ambassador Scuba
1485 W Stern Dr Murray 84123 ----- 266-2348

Ambassadors 2111 S 1100 East 84106 ----- 943-7386

Ambe Corporation 90 N Main Bntfl 84010 ----- 298-8989

Amber Restaurant
7609 S Redwood Rd W Jrdn 84084 ----- 562-9452

4639 S 900 East Murray 84117 ----- 262-8446

217 E 3300 South 84115 ----- 484 3222

1665 W 4100 South Murray 84123 ----- 268-4640

Amber West Sales
2719 S Lemel Cir So St Lk 84115 ----- 467-0731

Amberly Corporation 10 W Broadway
84101 ----- 359 5002

Ambr Oil & Gas Company ----- 532-6646

Ambulance Service Gold Cross Business
Office 1717 S Redwood Rd 84104 ----- 972 360

AMCAP 2500 E 1700 South 84108 ----- 583 622

AMCO EQUIPMENT & STEEL INC
7580 S State Midvl 84047 ----- 255-4257

Amcor Inc
Block 333 S Redwood Rd N St Lk 84054 ----- 298 762

Pipe 333 S Redwood Rd N St Lk 84054 ----- 298 080

Amcrest Inc See EnCore Marketing & Sale

Amdahl Corporation 201 S Main 84111 ----- 350 916

Amelia's Floral & Weddings
Amelia's Floral & Wedding
Supplies-Rentals
Sandy
700 E 12300 South Draper 84020 ----- 943 730
572 458

Amemba & Halladay Lease Education
& Consulting 4 Triad Center 84180 ----- 533 85

Amemba Sudhir CPA 4 Triad Center 84180 ----- 533 85

Ameria Crafters 325 W Andrew Av 84115 ----- 484 77

34-20-8. Unfair labor practices.

(1) It shall be an unfair labor practice for an employer, individually or in concert with others:

(a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment or any term of [or] condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.

(d) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit; provided, that, when two or more labor organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of such proceedings the employer shall not be deemed to have refused to bargain.

(e) To bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit.

(f) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in Section 34-20-7, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

(b) To coerce, intimidate or induce an employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike

(d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employ-

tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state of Utah.

(8) The words "unfair labor practice" mean any unfair labor practice listed in Section 34-20-8.

(9) The words "labor dispute" mean any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.

(10) The words "secondary boycott" include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by: (a) withholding patronage, labor, or other beneficial business intercourse; (b) picketing; (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies; or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

(11) The word "election" means a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter and shall include elections conducted by the board or by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.

(12) The words "labor relations board" mean the industrial commission of Utah.

History: C. 1953, 34-20-2, enacted by L. 1969, ch. 85, § 15.

34-20-3. Labor relations board.

(1) The industrial commission of Utah is designated as the labor relations board for the state of Utah.

(2) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum. The board shall have an official seal which shall be judicially noticed.

(3) The board shall at the close of each fiscal year make a report in writing to the Legislature and to the governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.

History: C. 1953, 34-20-3, enacted by L. 1969, ch. 85, § 16.

Cross-References. — Board of labor to be provided, Utah Const., Art. XVI Sec. 2
Industrial commission, Title 35

NOTES TO DECISIONS

ANALYSIS

Function of board
Nature and jurisdiction of board

Preamble

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION.

ARTICLE I. DECLARATION OF RIGHTS

Sec. 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1896

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

1896

Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

1896

Sec. 4. [Religious liberty – No property qualification to vote or hold office.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

1896

Sec. 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

January 1, 1985

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896

Sec. 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

January 1, 1973

January 1, 1989

Sec. 9. [Excessive bail and fines — Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

17A-2-1030

SPECIAL DISTRICTS

17A-2-1030. Employee rights and benefits extended under federal law to apply.

The rights, benefits and other employee protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of Labor, shall apply to the establishment and operation by the district of any public transit service or system and to any lease, contract, or other arrangement to operate such system or services. Whenever the district shall operate such system or services, or enter into any lease, contract, or other arrangement for the operation of such system or services, the district shall take such action as may be necessary to extend to employees or affected public transit service systems furnishing like services, in accordance with seniority, the first opportunity for reasonably comparable employment in any available nonsupervisory jobs in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment or any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

History: L. 1969 (1st S.S.), ch. 12, § 30; C. 1953, 11-20-30; renumbered by L. 1990, ch. 186, § 396.

ment, effective April 23, 1990, renumbered this section, which formerly appeared as § 11-20-30.

Amendment Notes. — The 1990 amend-

17A-2-1031. Employees may organize and bargain collectively — Strikes prohibited — District to enter into bargaining agreements.

Employees of any public transit system established and operated by the district shall have the right to self-organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing provided, however, that such employees and labor organizations shall not have the right to join in any strike against such public transit system. The district shall recognize and bargain exclusively with any labor organization representing a majority of its employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare and pension and retirement provisions, and, upon reaching agreement with such labor organization, to enter into and execute a written contract incorporating therein the agreements so reached.

History: L. 1969 (1st S.S.), ch. 12, § 31; C. 1953, 11-20-31; renumbered by L. 1990, ch. 186, § 397.

ment, effective April 23, 1990, renumbered this section, which formerly appeared as § 11-20-31

Amendment Notes. — The 1990 amend

majority of all justices of the Supreme Court. If a justice of the Supreme Court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

January 1, 1945

July 1, 1985

Sec. 3. [Jurisdiction of Supreme Court.]

The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

July 1, 1985

Sec. 4. [Rulemaking power of Supreme Court — Judges pro tempore — Regulation of practice of law.]

The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature. Except as otherwise provided by this constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

July 1, 1985

Sec. 5. [Jurisdiction of district court and other courts — Right of appeal.]

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

January 1, 1945

July 1, 1985

Sec. 6. [Number of judges of district court]

The number of judges of the district court established by the Legislature shall be the number of judges shall have the effect of extending a judge's term of office. Geographic divisions of the Supreme Court may be provided by statute with the effect of removing a judge from office during his term of office.

Sec. 7. [Qualifications of justices and judges]

Supreme court justices shall be at least 35 years of age and have been Utah residents for five years preceding service on the court. Judges of other courts of record shall be at least 30 years of age and have been citizens, Utah residents for three years preceding service on the court, and have practiced law in Utah. If geographic divisions are provided, judges shall reside in the geographic division for which they are appointed.

Sec. 8. [Vacancies — Nominating commission]

(1) When a vacancy occurs in a court, the governor shall fill the vacancy by appointment from a list of nominees submitted to him by the Judicial Nominating Commission. The governor shall fill the vacancy from the list of nominees. If the governor fails to fill the vacancy within 60 days, the chief justice of the Supreme Court shall withdraw the list of nominees.

(2) The Legislature by statute may provide for the Judicial Nominating Commission's composition and procedure. No member of the commission shall serve as a member of, nor may the Legislature create or abolish the Judicial Nominating Commission.

(3) The Senate shall consider the appointment within 60 days of the date of the appointment. The Senate shall convene itself in extraordinary session to consider appointments. The appointment shall be effective if approved by a majority of members of the Senate. If the Senate fails to act within 60 days, the appointment shall be considered vacant and a new nonpartisan commission shall be created.

(4) Selection of judges shall be by nonpartisan election for office without regard to any partisan politics.

1043

Form 615-C
Rev. 8/81



UTAH DEPARTMENT OF EMPLOYMENT SECURITY

Ref.
U.T.A.

STATEMENT REGARDING CLAIMS FOR BENEFITS

Claimant's name Jose L Lopez Social Security No. 568-35-2705

Reference (Enter type and date of claim) Cont Rebuttal - The young woman
who the employer is saying I kissed was a daughter
of a Union Officer - The young woman's stop was
close to the end of the line & she asked me if it
was alright to stay on the bus while I completed
the loop. I allowed her to do this because I
didn't want to be rude to her because of her
father. She would quite often stay on the bus
because she was the last passenger & I would
ask me if it was okay to change the sign & I
allowed her to do so again, not wanting to offend
her. She had to reach above me to change
the sign & this is probably what her parents
saw.

I was not told I was being investigated until
after the accident. The accident was supposedly
the day after I left her on the bus - Why would her
parents allow her to ride on the bus if they were
afraid I may harm her? I stopped at the 7-11
to use the restroom - This is when our contact
even if there are passengers on the bus.

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Office: 28 Signed by: per phone call
Representative: Wintz Date Signed: 12-20-98 000011
11111111



UTAH DEPARTMENT OF EMPLOYMENT SECURITY

STATEMENT REGARDING CLAIMS FOR BENEFITS

Claimant's
Name _____

Social Security No. 568-35-2905

Reference (Enter type and date of claim)

Cont Rebuttal Cont.

I used the restroom & then decided to buy something to eat on the way out. While I was paying for my food, someone came running in & said someone had hit the bus & ^{had} driven away. I ran out to the bus to make sure the young woman was okay. I reported the accident & the police came along w/ the paramedics. The paramedics determined no medical help was necessary. The police said the bus was parked legally & I was not at fault. After the police left two U.T.A. supervisors showed up. I told them what happened & said because they had arrived so late they missed the police report. They said they thought my comments were inappropriate. The supervisors told me to get my bus back on schedule, even though the paperwork took 6 hr. after the accident. I asked the supervisors if they would drive the young woman home. They agreed to do so. I don't think I would have asked them to drive her home if I had anything to hide.

Bus was then suspended for 20 days. Writing a

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Office:

Signed by:

representative:

Date Signed:

000012

3013

Form 615-C
Rev. 8/81

UTAH DEPARTMENT OF EMPLOYMENT SECURITY

Ref
U.T.A

STATEMENT REGARDING CLAIMS FOR BENEFITS

Claimant's
Name

Jose L. Lopez

Social

Security No.

568-35-2905

Reference (Enter type and date of claim)

Mt. Robetta Cont

decision. The incident in April was when I told the payroll person that I didn't get paid for sick leave. I made a statement to the effect that they were discriminating against me again & I was written up for causing a racial issue.

I had filed an anti-discrimination complaint two years ago & I think they were waiting for a reason to fire me. I wasn't a member of the union so the union refused to provide any representation for me. In addition, because the girl's father was a union officer I don't think they wanted to get involved. My attorney contacted the union to see if it was with the contract to stop to use the restroom while passengers were still on the bus. The union up told my attorney this was not a violation. I feel the two supervisors pressed & pressured the young woman into filing a complaint while driving her home. I've been with the corp almost 11 yrs I wouldn't do anything to jeopardize my job.

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Office:

28

Signed by:

per phone call

Representative:

D. M. J.

Date Signed:

12-20-94

000013

EXHIBIT

103
Form 615-C
Rev. 8/81



UTAH DEPARTMENT OF EMPLOYMENT SECURITY
STATEMENT REGARDING CLAIMS FOR BENEFITS

Ref.
U.T.A

Claimant's Name Jose Lopez Social Security No. 568-35-2905

Reference (Enter type and date of claim) Employer Rebuttal. Alan Miner
H.R. - The parents of the female passenger were
very detailed in what they saw. The Clmt
did provide the statement that he was ^(passenger) changing
the destination sign. At the point where the
sign was changed was in the middle of the
route & not at a point where the sign
would be changed. In addition it would be
almost impossible for the female passenger
to change the sign while the Clmt was seated in
the operator seat. Also at the point where
the parents allegedly saw the Clmt kiss the passenger
the bus was stopped for traffic, not a designated
stop. It is against policy & Fed. regulation for
a passenger to be beyond the yellow line while the
bus is moving. The girl's father did not come
directly to us, he reported the incident to the
union president, who reported the incident to us.
We were in the process of investigating the allega-
tions when the Clmt was involved in the accident.
The parents had told the girl not to ride the

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Office: 28 Signed by: Mr. [Signature] Cal
Representative: [Signature] Date Signed: 12.28.94
000014



UTAH DEPARTMENT OF EMPLOYMENT SECURITY

STATEMENT REGARDING CLAIMS FOR BENEFITS

Claimant's
name

Jose J. Lopez

Social

Security No.

568-35-2905

Reference (Enter type and date of claim)

Rebuttal, Cont.

Claimant's bus again & she had taken another bus to place of employment. Something happened where it became necessary for the girl to make a transfer & she ended up back on the claimant's bus. It is allowed for the operators to make a restroom stop while passengers are on the bus, but it is against policy to stop for food or drink while there are passengers still present. It is against policy to create any unnecessary delay for the passengers. We questioned the 7-11 clerk & he stated the claimant to purchase food.

We questioned the parents, the claimant & the young female passenger & it did not seem possible for the events to have taken place as the claimant described them. In questioning the girl, she stated the claimant had held her on the bus in the past & had left his seat & come to her seat & sat down beside her. She stated he put his arm around her & said she would have

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Witness:

28/11/84

Signed by:

Jose J. Lopez

Representative:

Date Signed:

5-28-84

1-841111 1000015

343

Form 615-C
Rev. 8/81

UTAH DEPARTMENT OF EMPLOYMENT SECURITY

STATEMENT REGARDING CLAIMS FOR BENEFITS

Claimant's
Name

Jose L. Lopez

Social

Security No. 568-35-2905

Reference (Enter type and date of claim)

Employer Rebuttal Cont.

to be nice to him if she wanted to get off the bus. The female is 19 yrs old but has the learning abilities of a 12 yr old. She does not have the social or reasoning skills to know how to deal w/ this situation.

The clmt is well aware of all company policies & Federal regulations & would know that any of these violations could result in the loss of his job.

FOR PRIVACY ACT NOTICE SEE UNEMPLOYMENT INSURANCE CLAIMANT GUIDE

I know that the law provides penalties for falsifying statements in order to obtain benefits. I certify that the above statements are true and correct to the best of my knowledge and belief.

Office:

28
D. Monty

Signed by:

per [signature]

Representative:

Date Signed:

12-28-94

EXHIBIT 000016

617 Jose Lopez
568-35-2905

STATE OF UTAH
INDUSTRIAL COMMISSION
ANTI-DISCRIMINATION DIVISION
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84111

Complaint No. _____

JOSE L. LOPEZ vs. UTAH TRANSIT Authority
Charging Party Employer

AFTER BEING DULY SWORN AND UPON OATH I DEPOSE AND SAY:

First, on July 28, 1994, I received The Right To Sue Letter from The
Equal Opportunity Commission, but I decided not to file charges in
Federal Court and I let the 90 days run out. exhibit A
On Nov. 3, 1994, I was suspended without pay following a short meeting
with Division Manager Karen Hicks and Supervisor Carl Filby.
A Letter of Nov. 4, 1994 from Karen Hicks informs me that I was under
investigation for violations of UTA policy, specifically (a) stopping to
purchase food/drink while passengers were on the Bus; (b) dishonesty;
(c) unprofessional conduct unbecoming a UTA employee; and (d) insubordina-
tion. The basis for each of these charges is found in the handbook enti-
tled " The UTA Approach to Safe, Quality, Customer Service: The Operati
Department Procedural Handbook" dated May 1, 1994.
Three different categories of Offenses during a period of 12 months,
(1 offense, 2nd offense, 3d offense) may or may not allow the operator
to keep his job; UTA interpretation of those policies as they apply to
the facts of my case are as follow:
Food and Drink Stops: If there are no passengers on the bus, you may
stop to purchase food or drink at the last accessible location before
reaching your EOL. You must be able to park your bus safely, and must
take your purchases to the EOL and consume them there.
There was a passenger on the bus at the time that I stopped to use the

17 Jose Lopez
568-35-2905

On Nov. 7, 1994, In a meeting with Ms. Karen Hicks, Division Manager Gary Massey, Division Manager and Mr. Allan Miner, Human Resources Generalist, I came alone, and I stated that I had brought a ~~tape~~ recorded to the meeting because I am not a Union member and also the Union high Official is involved in one of the complaint againts me.

Mr. Allan Miner said that in order to allow the tape recorder, both parties had to agreed, and they did not want a tape recorded, I asked them if I could bring an Attorney, but they said that this was an informal meeting, they offered the option to do it in writing or have a Union representative, but Union representation was Bias because a Union high Official was involved and since this was an informal meeting I agreed to continue with the meeting (With their authorization I recorded only the begining of the such conversation.)

What went on during the meeting is that they wanted to hear the side of my story regarding the issues on Nov. 1, 1994, and Nov. 2, 1994. One of their main concerns was the complaint from the young lady passenger and her parents (they said that the young lady even though she is over 19 years of age, has the mentallity of a younger person) I was asked to file a report what went on Nov.1, 1994, and I did (exhibit) At the end of the meeting Mr. Miner asked me if there was something important to them I had to say and I said: I am willing to pass a lie detector test and also make a desicion based on a THOROUGH investigation.

On Nov. 23, 1994, I went to the Union Office to see Mr. Steve Booth, union president, we set an appt. for Nov. 30, 1994, at 10 A.M. in the morning. On that day, my wife and I went to the appt. a 10 A.M. and one of the reasons I brought my wife alone is because I wanted a witness to file a grievance. Mr. Booth did not showed pp, the next day Dec.1, 1994, I was fired, Later, Mr. Booth called to my house and said that he Had forgotten or/ was sick the day before (when the appt. supposed to take place).

Mr. Booth contacted me prior to the expiration date of the time limit available for filing a grievance (on Dec. 7, 1994) on such a short notice we only had 3 houss left; I stated that it was late, but if a letter can be Fax immediatly just do it, but that never happened.

Now, UTA and the Union said that by intentionally letting the opportunity to grieve lapse, I may also have precluded any right that I have to litigate the issue.

I have review the Union collective Barganing agreement. I looked at this in light of the Company's compliance with the terms thereof to see if they followed the contractual provisions:

Article 11 addresses Notification of discipline. Pursuant to this article employees must be notified within eleven days of the Manager learning that a employee has violated any Policy. This notification may either be in writing or given orally. In the written notification I received on Nov. 4, 1994, it states that I was going to be investigated (or under investigation) it was not untill Dec.1, 1994, I was formally charge and fired. (over 20 days later)

EXHIBIT 000024

UTAH TRANSIT AUTHORITY

3600 South 700 West
P. O. Box 30810
Salt Lake City, Utah 84130-0810
Telephone (801) 262-5626
Fax (801) 287-4614



Department of Employment
Security Appeals Tribunal
Attn: Terry J. Kump
Administrative Law Judge
P.O. Box 45244
Salt Lake City, Utah 84145-0244

January 24, 1995

RE: Docket #95-A-00069
Jose L. Lopez
SS# 568-35-2905

In accordance to Form 743-1 Hearing Instructions, please find attached the Utah Transit Authority's list of exhibits. Also per our telephone conversation on January 24, 1995, you were notified that the Utah Transit Authority would have six witnesses at the hearing. If you have any questions or need clarification concerning our exhibits, please call at tele. 262-5626 ext. 2320.

Sincerely,

A handwritten signature in cursive script that reads "Toby Alires".

Toby Alires
Human Resource Generalist

cc Jose Lopez
John Kennedy
personnel file



AWARD
WINNER

American Public Transit Association
Outstanding System Achievement in North America

UTA IS AN EQUAL OPPORTUNITY EMPLOYER

000031

TO Whom it may concern:

On Nov. 01, 1994 at approx 5:40 p.m. Merrill and I was on our way to the grocery store. As we proceeded through the light, there was an eastbound 39th St. bus, as we got closer to passing, I noticed a passenger on the coach get up and bent her head toward the driver, he also turned his and kissed her. Merrill and I proceeded to the store. I knew that was Slick, by her uniform she wears and the light jacket she was wearing.

Sincerely

Colleen Johnson

JOSE: I'M GOING TO TRY AND START MY WEST BOUND 40 APPROXIMATELY AT 23RD EAST ON ABOUT 4500 SOUTH-OVER:

CARL: FOR CLARIFICATION, YOU HAVE MADE THAT STOP TO MAKE IT 10-100: (10-100 = REST ROOM STOP)

JOSE: EXCUSE ME, I CANT HEAR YOU VERY WELL, WHAT DID YOU SAY-OVER:

CARL: FOR CLARIFICATION, I WANTED TO MAKE SURE YOU MADE THAT STOP WHERE YOU WERE HIT TO MAKE IT 10-100 STOP:

JOSE: YES THAT IS CORRECT 10-100 STOP AT VERY SAME LOCATION:

CARL: BUT, WERE YOU PURCHASING ANYTHING?:

JOSE: UM, NO I USUALLY DON'T PURCHASE ANYTHING UNLESS I HAVE TIME, IF I HAVE TIME I PURCHASE SOMETHING, THAT'S WHAT I ALWAYS DO-OVER:

CARL: BUT TODAY YOU DID NOT HAVE TIME:

JOSE: OVER:

CARL: AND TODAY YOU DID NOT HAVE TIME:

JOSE: TODAY I HAD ABOUT 2 - 3 MINUTES JUST TO GO TO THE RESTROOM-OVER:

CARL: OK THANKS JOSE JUST GO AHEAD AND DEADHEAD TO YOUR CLOSEST TIME POINT:

CARL: CONTROL WE DID HAVE ANOTHER EAST BOUND 39 GO THROUGH:

R/C: AFFIRMATIVE

000061

JOSE LOPEZ/RADIO CONTROL
November 02, 1994 - Approximately 18:22

20 TO CONTROL:

CARL: WHAT INSTRUCTIONS WAS OPERATOR LOPEZ GIVEN
TO GET BACK ON SCHEDULE:

RADIO CONTROL(R/C): HE HAS NOT CALLED IN YET:

CARL: I RELEASED HIM ABOUT, PROBABLY 10 TO 12 MINUTES
AGO:

R/C: 10-4, I GAVE NO INSTRUCTIONS:

CARL: IF YOU DON'T HAVE A LOT STACKED UP ON YOUR
SCREEN CAN YOU CHECK AND SEE WHERE HE IS
SUPPOSED TO BE:

R/C: STARTING 40 WEST BOUND:

CARL: WHY DON'T YOU PATCH ME WITH HIM PLEASE:

JOSE: THIS IS 9230, OVER:

CARL: JOSE WHAT IS YOUR LOCATION PLEASE:

JOSE: I'M 40TH WEST ON 47TH SOUTH I JUST GOING TO MEET
MY A POINT OF ROUTE SO I CAN CONTINUE REGULAR
ROUTE, IF THAT'S OK- OVER:

CARL: I DIDN'T COPY, WHAT WAS YOUR LOCATION:

JOSE: 40TH WEST ON 4700 SOUTH-OVER:

CARL: WHERE ARE YOU HEADING TO:

JOSE: I JUST GOING TO MEET THE APPROXIMATE TIME OF MY
REGULAR ROUTE SO I CAN CONTINUE, OVER:

CARL: 10-4, YOU WERE DUE TO JUST START YOUR WEST
BOUND 40:

000062

I N T E R O F F I C E M E M O R A N D U M

Date: 22-Nov-1994 04:11pm GMT
From: Richard Christensen
CHRISTEN
Dept: OPERATIONS
Tel No: 262-5626 extension 2158

●O: Alan R. Miner

(MINER)

Subject: JOSE LOPEZ ACCIDENT 11/2/94

A approximately 17:45 on 11/2/94 I was dispatched to investigate an accident involving Operator Lopez at 5600 West 3500 South. The actual accident investigation was routine except for the following observations:

1. Mr. Lopez was questioned as to the nature of his stop at this location. He indicated that he had stopped to use the rest room in the 7-11 store. He was also asked if he had made any purchases. He indicated that he did not.

AFTER OPERATOR LOPEZ WAS RELEASED FROM THE ACCIDENT SCENE, MYSELF AND SUPERVISOR FILBY QUESTIONED THE CLERK INSIDE THE 7-11 STORE. THE CLERK INDICATED THAT OPERATOR LOPEZ WAS IN THE PROCESS OF PURCHASING A BURRITO AT THE TIME HE WAS INFORMED THAT HIS COACH WAS INVOLVED IN AN ACCIDENT.

2. At the time that I released Mr. Lopez from the scene, I instructed him to obtain routing and schedule instructions from Radio Control before continuing. HE DID NOT.

3. Operator Lopez displayed a considerable amount of displeasure at Supervisor Filby's presence at the accident scene. He became argumentive and contemptuous toward him.

000064

August 6, 1992

William Cunningham, Investigator
Labor/Anti-Discrimination Division
Industrial Commission of Utah
160 East 300 South
P.O. Box 510910
Salt Lake City, Utah 84151-0910

Exhibit C
SS # 568-35-2905
Docket # 95-A-00069

RE: Jose L. Lopez v. Utah Transit Authority
UADD No. 92-0231

Dear Mr. Cunningham:

In our conversation that we had on July 27, 1992, you asked me if my Company had already stopped harassing me; my answer was that all they did was basically nothing.

In fact, the supervisor Dennis Peterson, who has been the cause of so many complaints, stemming from abuse of authority to discrimination and physical assault, is still there, and as far as I know he has not been disciplined whatsoever.

Just on May 29, 1992, (8 weeks ago), when I went to get my check at the Meadowbrook Office, a supervisor by the name of Carl Filby began yelling at me (in front of other employees) calling me dishonest, and at that moment, I replied to him what was the reason and he answered " I do not like an Industrial Commission representative to come to the office to do any investigation regarding your case".

I immediately told him that if he had any problem with that, the best thing to do was to write a letter stating his objections and I would be glad to take over to the Commission. I was told to get out the office, otherwise, they would call security.

I told him: if the company does not want me there, please write a letter to explain their motive.

After this incident, I went to the human resources department to complain to one of the top managers Mr. Jerry Benson and he assured me he would talk to that supervisor and straighten things out, but as of now, I have not heard anything about it, no apology, no letter.

The Utah Transit Authority is not above the Law. the only reason I continue employment with them is because I have a family to support; the evidence I have submitted to you the last eight months is overwhelming. I do want to take the UTA to Court.

UTA's Civil Rights Representative Mr. Phil Romero, has failed to do his job; as an example I want to mention an ex-driver by the name of Giro A. Darelli who was given a right to sue letter after Mr. Romero had told him that he did not have a case.

Please see his charge number FEPA 90-0117 EECC 35C-90-0107 dated Jan. 1990.

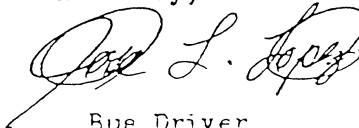
Mr. Darelli is willing to go to Court with me.

I have sought administrative relief starting from my supervisors all the way to the UTA's Director of Operations, and nothing has been done.

I went over to your office following the advice of the ACLU and other Civil rights Lawyers; as a last resort, I am hoping you will be able to help me.

Thank you for your consideration in this matter,

Sincerely,



Bus Driver

Note: I wrote a final letter on July 8, 1992 (regarding my case).

this letter is just the result of our conversation on July 27-92.-

000071

TO: Alan Miner
FROM: Carl Filby
DATE: November 9, 1994
SUBJECT: Operator Jose Lopez S.O.R.'s

At Approximately 17:30 I heard a call come in from Operator Lopez. He stated that his bus had been involved in a 10/50. The R.C.C. questioned him about passengers and injuries, Jose replied that he had only one customer on board the bus. He stated that it was a 19 year old female and that she was injured. (This conversation is not recalled verbatim but is generally accurate.)

I had been made aware of a situation involving Operator Lopez and a 19 year old female passenger that had taken place the day before. I had reason to believe that this situation could involve the same customer and that the situation the day before had potential for a serious policy violation and possibly some severe repercussions with the customer and her parents. I was not the Supervisor designated to respond/investigate the 10/50 but given the knowledge I had I felt that I should respond to make sure that the situation was addressed. (Operator Christensen was the assigned Supervisor on the 10/50 scene. I was quite certain that he did not have any information regarding the day before and it was sensitive enough that I did not want it broadcast over the radio.)

I arrived at 3500 So. 5600 W., the location of the 10/50, at approximately 17:55. Supervisor Christensen was just completing his investigation as I arrived. I walked up the opposite side of the bus of Jose and Supervisor Christensen and boarded the coach and checked his block sheet. I stepped off the coach and allowed Operator Lopez and Supervisor Christensen to finish their conversation. Rich asked if there was any information that I needed before he released the Operator from the scene. I stated that I was curious as to why Jose choose to stop where he did when he E.O.L. was just up the road a little further. Operator Lopez stated that according to contract he could stop at any safe location for a restroom stop. I corrected him by stating that it was policy not contract language. I had not mentioned anything about the safety of the location that he had stopped, that subject was breached by Operator Lopez himself. I then told him that if safety was his concern he would see that by parking where he had he had obstructed the view of any cars coming out of the 7-11 parking lot and any cars coming out of the parking lot of the small strip mall just South of where he had stopped. During this conversation the customer that was on board when the 10/50 occurred had walked up to us. Jose took a couple of small steps towards me and said you Supervisors thinks you know so much (or something to that effect, unsure of exact words used), you think you know so much more about what is safe than the Operators. He made this

000073

KENNEDY: That's all.

JUDGE: Okay. Any re-cross, Mr. Holdsworth?

HOLDSWORTH: No.

JUDGE: Okay. Mr. Miner, the incident where the kiss was involved, were there any other passengers on the bus at that time, that you were aware of?

MINER: Not that we're aware of.

JUDGE: Okay. Thank you. Next witness.

KENNEDY: Let's call our folks. Do you have that phone number?

MINER: Yes, it's 972-8560.

JUDGE: (Dialing telephone number) And this is the Johnson's?

KENNEDY: Yeah, we'll be speaking with Colleen, her mother, and Alicia.

JUDGE: Okay.

OPERATOR: 382, Jim.

JUDGE: Yes, Colleen Johnson, please.

OPERATOR: Okay, hang on please.

JOHNSON: Hello.

JUDGE: Mrs. Johnson, this is Terry Kump. I'm an Administrative Law Judge for the State of Utah. I'm calling regarding an unemployment insurance appeals hearing on Jose L. Lopez. It's my understanding that the employer in this case has asked you to testify as a witness in that matter. Are you aware of that request?

JOHNSON: Yes, I am.

JUDGE: And do you have any objections to testifying in that matter?

JOHNSON: No, I don't.

JUDGE: Okay. Mrs. Johnson, I would like to advise you at this point that I am recording this hearing, and I'm going to be placing you under oath for your testimony. I want you to hold for just a moment if you would please. While I do that, I need to change the tape, and I'm going to ask that there are no comments made while we're off the record by anyone present. (END OF TAPE 1, SIDE 1)

JOHNSON: Yes, she did. She wore a green top with black pants.

KENNEDY: You mention in the--in your statement that you could see the uniform, is that--

JOHNSON: Yes.

KENNEDY: You also mentioned that she was wearing a light jacket. Would you describe the jacket?

JOHNSON: It's white with blue on it.

KENNEDY: Is that a uniform?

JOHNSON: No, that was her light jacket.

KENNEDY: Okay. That's sort of unique to her, then?

JOHNSON: Right.

KENNEDY: Did you have a conversation with Alicia after this event occurred?

JOHNSON: Yes, we did.

KENNEDY: What did you say to her and what did she say to you?

JOHNSON: We asked her what had happened, and she just told us that the bus driver wouldn't let her off the bus. She got angry with us because we kept questioning her.

KENNEDY: Yes.

JOHNSON: And she just kind of clammed up, got a little angry with us, wouldn't respond for a while.

KENNEDY: Uh huh. Did she eventually explain what happened?

JOHNSON: Yes she did.

KENNEDY: And what did she say?

JOHNSON: She said that the bus driver kept her on the bus all day long and he wouldn't let her off at all. She said every time she went to get off, he wouldn't let her off.

KENNEDY: And did she say anything about the kiss?

JOHNSON: No. She didn't say nothing, but I did tell her that I did see that, and she felt better that I had seen something like that.

KENNEDY: Okay. Is there anything else that you remember about your conversations with Alicia relating to this incident?

JOHNSON: Not that I can recall.

KENNEDY: Okay, thank you. Wait just a minute. Did Alicia mention any previous times involving this particular operator?

JOHNSON: Not that I can recall she didn't, no.

KENNEDY: Did she say anything about his putting his arm around her?

JOHNSON: At one time she said there was one incident like that, yes.

KENNEDY: And tell me about that.

JOHNSON: She never spoke of that one at all.

KENNEDY: Well, what did she say? You said at one time she mentioned it. What did she say?

JOHNSON: She said about a few months prior to that, that he had done that to her.

KENNEDY: Okay. Thank you, Mrs. Johnson. It's your witness, Mr. Holdsworth.

HOLDSWORTH: Mrs. Johnson, my name is Dave Holdsworth. I'm Mr. Lopez' attorney in this matter, and I'd like to ask you a few questions.

JOHNSON: Sure.

HOLDSWORTH: Could you kind of tell us how it came about that you saw the kiss between Mr. Lopez and your daughter on November 1st? In other words, where—which way were you traveling? Where was the bus? Kind of help us figure out how this—how you saw what you saw.

JOHNSON: We was headed north bound on 5600 West. We had waited for the light on 4100 South, we had proceeded through the light, it was approximately 3900 South. The traffic was kind of heavy, the bus was moving slow, we were moving slow, and I just happened to see the bus, and I just happened to see my daughter in the corner, and I seen both of them kiss each other.

HOLDSWORTH: Okay, now to make sure I understand this, you are in an automobile and you're heading north bound.

JOHNSON: The bus was headed south bound.

HOLDSWORTH: South bound?

JOHNSON: Yes.

HOLDSWORTH: Okay. So the--south bound on 5600 West, so you actually go past the bus. You're heading in opposite directions.

JOHNSON: Right.

HOLDSWORTH: Okay. At about 3900 South, as you are proceeding through a semifore and the bus is heading south.

JOHNSON: Right.

HOLDSWORTH: You look and see something in the bus?

JOHNSON: My daughter was not home from work yet, and I was waiting for her to come home. And she was on that bus.

JUDGE: Okay, excuse me Ms. Johnson, please.

STAFF: I'm sorry to interrupt you. Mr. Lopez' witness, Ms. Garza, needed to be in (indiscernible) room, waiting. She just wondered how long it was going to be before she might be called.

JUDGE: Mr. Holdsworth, I--we're probably going to have a problem with that.

HOLDSWORTH: Yeah.

STAFF: She needed to take her car in and I'm not sure if she can--

JUDGE: Tell her to go ahead. She can be excused.

VOICE: Okay.

HOLDSWORTH: If we need anything from her further, Mr. Holdsworth will contact her and we'll arrange for that. Okay. Thank you, Mr--Ms. Johnson, thank you for holding on that. Mr. Holdsworth, do you have further questions or did Mrs. Johnson finish the answer to the question you had?

HOLDSWORTH: I think I understand the answer. So, about how fast was your car traveling, would you estimate, Mrs. Johnson?

JOHNSON: About 25 to 28.

HOLDSWORTH: Okay. And were you driving?

JOHNSON: No, I was not. I was the passenger.

HOLDSWORTH: Okay. So as I visualize this, you looked up, and the bus is coming at the opposite direction and it goes past your car. You look up and you see your daughter in the front part of the bus?

JOHNSON: Right.

HOLDSWORTH: Okay. And you--and tell us what you see happen.

JOHNSON: Uh—I saw Alicia get up, I knew that was her stop, and she bent down and he bent his head up and they kissed.

HOLDSWORTH: Where did they kiss? Did he kiss her on the cheek or did she kiss him?

JOHNSON: I think he kissed her, but I couldn't tell if it was on the lips or on the cheek, or where.

HOLDSWORTH: But you could tell it was a kiss?

JOHNSON: Yes.

HOLDSWORTH: He wasn't talking or saying something in her ear. It was an actual kiss?

JOHNSON: Yeah.

HOLDSWORTH: Okay, and I take it you're going 25 or 30 miles north bound, the bus is going how fast south bound, would you estimate?

JOHNSON: Between 15 and 20.

HOLDSWORTH: Okay. All right. After Alicia, Alicia came home, you had I take it, a conversation with her regarding this scene that you had seen?

JOHNSON: Yes.

HOLDSWORTH: Did you ask her or did she bring it up?

JOHNSON: I asked her why she was so late in getting home, and she told me that the bus driver wouldn't let her off the bus.

HOLDSWORTH: Okay. And then eventually, you asked her about the kiss and she didn't say anything about that?

JOHNSON: Yes. She got a little angry with me, kind of clammed up, wouldn't respond. But about an hour later, she started talking to me about it and she was—she felt better, you know. She said, "I'm glad you caught me, Mom."

HOLDSWORTH: She said, "I'm glad you caught me?"

JOHNSON: Mm hmm.

HOLDSWORTH: And did you ask her what she meant by that?

JOHNSON: That she was on the bus all day.

HOLDSWORTH: Okay. I guess that's—well, one other question. The—you said earlier that this was her stop, I think. Is that true, this area where you saw

the kiss happen, that's where she normally would have gotten off the bus?

JOHNSON: Yes.

HOLDSWORTH: Okay, and then I guess she didn't get off the bus and continued on the bus for a period of time, and then came home late, later than normal?

JOHNSON: Right.

HOLDSWORTH: Okay. Thank you. That's all I have.

JUDGE: Okay. Any other questions that you have?

KENNEDY: I have nothing further of Mrs. Johnson. Is Alicia there, Mrs. Johnson?

JOHNSON: Yes, she is.

KENNEDY: I wonder if you could invite her to come in and the Judge will put her under oath, and we'll ask her some questions, too.

JOHNSON: Okay, just a minute.

ALICIA: Hello?

JUDGE: Ms. Johnson?

ALICIA: Yeah?

JUDGE: Ms. Johnson, this is Terry Kump. I'm an Administrative Law Judge for the State of Utah, and I'm conducting a hearing for unemployment insurance on Jose Lopez. Do you know Mr. Lopez?

ALICIA: Yes, unfortunately I do.

JUDGE: Well, just answer my question, please. Ms. Johnson, the employer, Mr. Lopez' former employer, Utah Transit Authority, has asked that you be a witness in this matter. Are you aware of that?

ALICIA: Mm hmm. (Affirmative)

JUDGE: Do you have any objections to it?

ALICIA: Mm mm. (Negative)

JUDGE: Okay. Ms. Johnson, I'm going to put you under oath at this time, and then Mr. Kennedy will ask you some questions and Mr. Holdsworth will ask you some questions. Okay? And I do want you to understand that I am going to be recording your statement. Do you understand that?

ALICIA: Mm hmm. (Affirmative)

KENNEDY: At the time you released Mr. Lopez from the scene, did you give him any instructions about what he should do with respect to his route?

CHRISTENSEN: As is customary with every accident situation that I investigate, I instruct the operator to contact the radio control coordinator for instructions on—instructions and information on how to get back on route and back on time, and I did at that time instruct Jose to call in the radio for instructions from the radio control coordinator, to do that and get back on route.

KENNEDY: Did you subsequently find out whether or not Mr. Lopez carried out your instruction?

CHRISTENSEN: That was probably the last conversation I had with Jose. It was right in the doorway of the bus, and at that time I released him from the scene and I took the one passenger that was on the bus, Ms. Johnson, to her home. When I arrived at her home I escorted her to the door and knocked on the door and her father answered the door, and so I was away from the radio for a short period of time. I left Ms. Johnson with her father and went back in to the van. At that time, I contacted the radio control coordinator and asked if Jose had in fact carried out the instructions that I had given him to seek guidance from a radio control coordinator on how to get back on route, and at that time, the radio control coordinator that he had not done so at that time.

KENNEDY: One other thing that you mentioned in your statement, in point number 3, you said, "Operator Lopez displayed a considerable amount of displeasure at supervisor Filby's presence at the accident scene. He became argumentative and contemptuous toward him." Who became argumentative and contemptuous toward whom?

CHRISTENSEN: When—

KENNEDY: Do you understand my question?

CHRISTENSEN: Yes, um—

KENNEDY: I want to know to whom you're referring when you say "he" became argumentative. Who is it that became argumentative?

CHRISTENSEN: Jose's mood changed dramatically.

KENNEDY: Well, just—I just want you to answer my question. Then I'll let you explain it.

CHRISTENSEN: Okay.

JUDGE: What's the antecedent of "he?"

KENNEDY: Yeah. Thank you.

CHRISTENSEN: Jose's mood.

HOLDSWORTH: And you say that he was a little bit irritated with Mr. Filby. Did they get into an argument?

CHRISTENSEN: No, I think it was more demeanor than words.

HOLDSWORTH: Was there any profanity used?

CHRISTENSEN: No, not that I recall.

HOLDSWORTH: No physical attacks or anything like that?

CHRISTENSEN: No, there was no physical exchange. I wish I could recall the words exactly.

HOLDSWORTH: Kind of a heated discussion?

CHRISTENSEN: It was. It was definitely a heated discussion, and Mr. Lopez said something, something toward the direction of, "You can do what you want with it, I don't," you know, "Take this any direction you want."

HOLDSWORTH: Okay. Now I understand that after the sort of investigation on-site had been completed Ms. Johnson was taken home.

CHRISTENSEN: That's correct.

HOLDSWORTH: Whose suggestion was that to take Ms. Johnson home?

CHRISTENSEN: I think it was Mr. Lopez' suggestion, and I asked her if she wanted a ride home. My interest was getting Jose back on route, and it's customary to pick up passengers and take them home.

HOLDSWORTH: Okay. It was his suggestion, wasn't it?

CHRISTENSEN: I don't recall, exactly. But it very well could have been.

HOLDSWORTH: Was it your suggestion?

CHRISTENSEN: I don't recall whose suggestion it was.

HOLDSWORTH: And did, do you recall Mr. Lopez asking you if it was okay for him to continue his route, and get back?

CHRISTENSEN: No, he didn't ask me that. Our last parting remark was that I asked him to call in for instructions on how to get back on the outlying (indiscernible).

HOLDSWORTH: You don't recall him asking you about if it was okay for him to continue his route and find the nearest location where he could get back on schedule?

CHRISTENSEN: No. I instructed him to see those instructions through.

MINER: Ms. Hicks was present, Mr. Massey was present, I was present, and Mr. Lopez was present.

KENNEDY: Mr. Massey is another division supervisor?

MINER: Yes, he is. Later into that meeting, additional union representatives, first one and then a second union representative also attended that meeting.

KENNEDY: Was there a discussion about the burrito at that time?

MINER: Yes, there was.

KENNEDY: And did Mr. Lopez finally--what did Mr. Lopez say about the burrito?

MINER: He indicated that he had indeed picked up a burrito, brought it to the cashier at the 7-Eleven, had put it on the counter and dropped a dollar, I believe he said, on the counter to pay for it when the commotion about the accident came to his attention. Someone ran into the 7-Eleven and he had left at that point, leaving the burrito on the counter with the money.

KENNEDY: Okay. That's all.

JUDGE: Okay, Mr. Holdsworth, any further questions of Mr. Miner?

HOLDSWORTH: Maybe one or two. I apologize for not asking this earlier, but do you know, Mr. Miner, whether Alicia Johnson has filed any sort of a claim against UTA and asked to be (indiscernible) because of the alleged kiss?

MINER: Just the initial complaint that was filed by Alicia, actually by her mother.

HOLDSWORTH: Is that the letter that we introduced into the record here, or is there something else beyond that?

MINER: Just a verbal notification to the Authority about this incident.

HOLDSWORTH: And do you know who Mrs. Johnson notified?

MINER: Well, the information came through Mr. Lance Epperson, and I don't know whether she contacted him personally through her supervisor at UTA. I can't say if she contacted him personally or not.

HOLDSWORTH: But as far as you know in terms of Alicia Johnson or her parents, they're not contemplating any sort of legal action for assault or battery or false imprisonment, anything like that to you, verbally?

MINER: I don't, I don't think I can answer what they're contemplating.

CLAIMANT: No, absolutely not. In fact, the next day when they come in for an investigation, I said to the company official that in some occasions, she wanted to change the sign. She knows it and she knows some of the calls for the electric signs. We have electric signs above the seat where you, it's a switch that you just change, actually. You just have to reach a little and change the sign.

HOLDSWORTH: This is on the outside of the—(Overtalking - unintelligible).

CLAIMANT: Yeah, the outside. The one that says that (indiscernible). And on some occasions, you know, she got up and said, "Can I change the sign?" and I, you know, she came close, I have to admit that, and I always ask her, "Don't do that because somebody" you know, "is driving by might think otherwise, that we are doing something," which happened before on some occasions, and I was worried about it. I just never, it never occurred to me that eventually it's going to end up being like something that really didn't happen.

HOLDSWORTH: On November 1st, did you touch her, touch Alicia Johnson?

CLAIMANT: Oh, no. No.

HOLDSWORTH: Did she come up close to you and talk to you very closely?

CLAIMANT: No, as close as she came is when she wanted to change signs and I felt really buffaloeed because I was actually driving, and she just, you know, came up and she said, "Can I change the sign?" and she did that, you know, for a while, because—

HOLDSWORTH: You remember her doing that on that particular day, then?

CLAIMANT: Yeah, oh, yeah. That's one of the reasons—

HOLDSWORTH: When she would ask you to change the sign, what would you tell her?

CLAIMANT: Oh, I said, "No," you know, "Don't do that." I said, "Because I have previous problems with management and I'm afraid something's going to happen. Them releasing me." And she just went back to her seat.

HOLDSWORTH: So how long is she on the bus from the time she gets on the bus on November 1st until she gets off the bus?

CLAIMANT: About a total, from the time she got on to the time she got off, about half an hour.

HOLDSWORTH: Had she been on the bus earlier that day?

CLAIMANT: No.

HOLDSWORTH: When you were driving it?

CLAIMANT: No, no because I start at 12:30 noon, so I will drive all day. I start at 12:30 noon.

HOLDSWORTH: Did you ever tell her that in order for you to allow her to leave the bus, she is to do something to you?

CLAIMANT: Oh, no. No, absolutely not. She has a pass. She has what they call a whole year around pass for employees. She doesn't, she doesn't even pay far, you know, because she just shows this pass and she can ride all the buses, go anywhere she wants. I didn't have anything to do with that.

JUDGE: I don't think that really answered your question, 'cause it didn't answer it for me.

HOLDSWORTH: Okay. My question is, do you on November 1st, recall telling her words to the effect "I'm not going to let you off the bus unless you give me a kiss."

CLAIMANT: Oh no.

HOLDSWORTH: Or "unless you do" anything else?

CLAIMANT: No, not at all.

HOLDSWORTH: Okay. Do you recall any other occasion when you would have said something like that? "I'm not going to let you off the bus unless you do something."

CLAIMANT: Oh, no. No. If you want a straight answer, no.

HOLDSWORTH: Of course I want a straight answer.

CLAIMANT: Okay, no. No.

HOLDSWORTH: Now you knew Alicia Johnson because she was a regular passenger.

CLAIMANT: Yeah, just a regular passenger.

HOLDSWORTH: Were you aware of her situation, knew that she had some sort of a handicap, I take it?

CLAIMANT: Oh, yeah. Basically I knew she, she had, like, some sort of a slow learning disability. I don't know if it's exactly what one pointing out a retardation, but I know it's some sort of a slow learning disability.

HOLDSWORTH: And were you friendly towards her?

CLAIMANT: No, no. She was friendly.

HOLDSWORTH: Not romantically friendly.

When the supervisor arrived he began his inquiry into the matter. He also determined the claimant was not at fault in the accident. A second supervisor was also dispatched to the accident location because the claimant had reported a possible injury to the passenger from the accident and because the supervisor was involved in the investigation of the incident of the prior day.

The supervisors in their inquiry asked the claimant if he had stopped to purchase something at the convenience store. The claimant indicated he had stopped only to use the restroom. He stated he had not purchased anything. According to the employer policy, an operator is permitted to stop anywhere along the route for a restroom break but the operator is strictly prohibited from stopping to make a purchase of any type while passengers were on the bus. Generally, an operator would be expected to stop for such purchases at an end of the line location or at the last such location available before the end of the line. The claimant was several blocks from the end of the line and there were other stores available closer to the end of the line. The claimant was aware of the employer rule but he often stopped at that particular location because it was convenient. During the conversation with the two supervisors the claimant became confrontive with the second supervisor challenging him as to the situation. The claimant felt the supervisor was not familiar with the circumstances to be accusing him.

One of the supervisors instructed the claimant to call the dispatcher to get back on his route and his time. The supervisor wanted the claimant to go to the next route location that would get him back on the proper time schedule. To do that an operator would drive directly to the location rather than make the normal route stops. Another bus would be on the route to gather those passengers.

The claimant left the scene and the two supervisors went into the convenience store. The second supervisor asked the store clerk about the claimant's actions while he was in the store when the accident occurred. The store clerk reported the claimant had gone to the restroom and then stopped to purchase the food item. While the claimant was paying for the purchase, he was told of the accident and he immediately left. No one was certain if the claimant took the food purchase or left the item on the counter. He did leave the money for the purchase.

At approximately 6:20 p.m., the second supervisor contacted the dispatcher to inquire as to the route instructions the dispatcher had given to the claimant and to have the dispatcher connect him to the claimant. The supervisor wanted to inquire further about the food purchase the claimant had made because of the information he had received from the store clerk. The dispatcher notified the supervisor the claimant had not called him to get the route and time information. The dispatcher then connected the claimant and the supervisor. The supervisor again asked the claimant about the situation at the convenience store. The claimant reiterated he had not made any purchase at the store. Later when the claimant was questioned about the instructions to contact the dispatcher he agreed that he did not call the dispatcher because he did not need to do so to get back on route. He did not recall the first supervisor telling him to do so.

The employer Rules and Policies specifically address the issues of unprofessional conduct, insubordination and dishonesty. All the issues are considered Group Three violations, which can result in disciplinary action to include discharge on the first violation. The claimant received a copy of the employer Rules and he was aware that the issues in this instance were grounds for immediate dismissal. He did not dispute the policies.

000169

he makes an application for work. One of those obligations is to give the employer truthful answers to all material questions. Any falsification of information which may operate to expose the employer to possible loss, litigation, or damage would be considered material and therefore may establish culpability. If the claimant made a false statement while applying for work in order to be hired, benefits may be denied even if the claimant would have otherwise remained unemployed and eligible for the receipt of unemployment benefits depending upon the degree of knowledge, culpability and control.

(4) Insubordination.

Authority is required in the work place to maintain order and efficiency. An employer has the right to expect that lines of authority will be maintained; that reasonable orders, given in a civil manner, will be obeyed; that supervisors will be respected and that their authority will not be undermined. In determining when insubordination (resistance to authority) becomes disqualifying conduct, the fact that there was a disregard of the employer's interests is of major importance. Mere protests or dissatisfaction without an overt act is not in disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may be insubordination if it is conducive to disruption of routine, negation of authority and impairment of efficiency. Mere incompatibility or emphatic insistence or discussion by an employee who was acting in good faith is not disqualifying conduct.

The Administrative Law Judge finds this to be a very close case and a difficult matter to adjudicate. The just cause elements of knowledge and control are not at issue as the evidence clearly established the claimant knew the employer rules and policies pertaining to all charges and he had control in the conduct in each instance provided the evidence supports a determination the incidents did in fact occur as the employer contends. The issue of culpability pertains to both the issues of dishonesty and insubordination while the Administrative Law Judge must consider the credibility and culpability of the issue regarding unprofessional conduct.

As to the matter of the claimant's dishonesty, the Administrative Law Judge finds the claimant did incorrectly characterize the circumstances surrounding the purchase of the food item but the evidence did not support a determination the incident in and of itself was sufficiently harmful to the employer and to the employment relationship to merit a denial of unemployment insurance benefits. However, the claimant's misrepresentation of the situation to the supervisor created a question regarding his credibility on other matters.

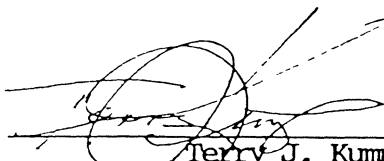
In consideration of the insubordination issue the Administrative Law Judge again finds the conditions were not sufficiently adverse to the employer to reach a level of culpability that would merit a denial of unemployment insurance benefits. Even if the claimant deliberately disregarded the supervisor's instruction to call the dispatcher, the evidence did not demonstrate the failure to call was injurious to the employer. The claimant's testimony he did not need to have the dispatcher direct him as to how to get back on his route and time was reasonable. Also, the claimant's response to the second supervisor's questions

during the inquiry into the bus accident, although out of line, did not establish a breach of the authority of the supervisor.

The final issue to consider is the charge of unprofessional conduct. Since the testimony provided by the parties was substantially contradictory, the Administrative Law Judge must determine the matter on credibility and self interest. Although the claimant denied he refused to allow the passenger off the bus or that he compelled the individual to kiss him, the preponderance of the evidence would support the employer's contention the incident occurred. The Administrative Law Judge finds the testimony of the passenger somewhat dubious as to the actual course of events, but there is reason to believe there is some basis of truth to her statements. Considering her limited capacity, her testimony could be confused as to the specifics of the situation but the testimony of her mother would corroborate that something inappropriate occurred whether compelled or not. The employer was rightfully concerned about the claimant's conduct in this regard and considering the claimant's questionable credibility regarding other matters in this case, the Administrative Law Judge finds merit in the employer's evidence. The claimant's testimony regarding the incident was clearly self interested but there is no reason for the Administrative Law Judge to believe the passenger's mother or the passenger had anything to gain by falsely describing the events of the day. The Administrative Law Judge therefore finds the described condition did occur. Again the knowledge and control elements of just cause are not at issue in this matter. Clearly the claimant knew such a violation was contrary to the employer policy as well as the employer's interest and he had control over his conduct. The issue is therefore culpability. Although a simple kiss may not by itself be harmful, given the conditions and circumstances in this case, the act was potentially harmful to the employer. Not only was the behavior adverse to the public image of the employer, the conduct also demonstrated a breach of trust and moral behavior the employer had a right to expect from employees. Although the direct injury to the employer may not have been substantial the potential for injury was great as was the employer's perception of the claimant's unacceptable future behavior. After duly considering the best available evidence and testimony the Administrative Law Judge determined the employer met the burden of proof necessary to demonstrate just cause for the termination of the claimant from the employment. It is therefore concluded the employer discharged the claimant for just cause in accordance with the Utah Employment Security Act.

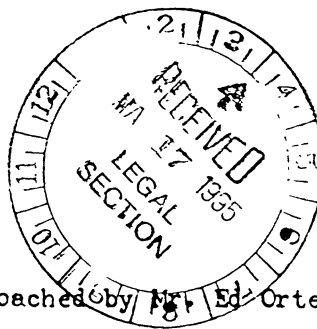
DECISION:

The decision of the Department representative is affirmed and benefits are denied effective December 4, 1994, pursuant to Section 35-4-405(2)(a) of the Utah Employment Security Act and continuing until the claimant has returned to bona fide covered employment and earned at least six times his weekly benefit amount.


Terry J. Kump
Administrative Law Judge
DEPARTMENT OF EMPLOYMENT SECURITY

000173

Exhibit A



TO THE UTAH TRANSIT AUTHORITY:

INCIDENT REPORT:

AUGUST 8, 1989

Today at 5:15 AM I was approached by Mr. Ed Ortega, who for the last two weeks has been trying to convince me to join the Union. Everytime he talked to me I politely told him I would think about it, So there would not be any hard feelings between us. On all these occasions I told him that I did not need the Union to solve any problems with UTA because they have always worked with me on resolving my problems personally since the day I was hired. So when we met this morning he asked if I was going to join the Union again, and when I finally told him no, he got upset and told me I was a SCAB and a THIEF for having the benifits without paying the Union dues, at that moment he added that I needed the Union more than anybody because one of his passengers had a serious accusation against me and I responded by telling him that he was a PENDEJO person, which means a stupid person, for believing things that people say on the bus, and I added that any serious accusations regarding the performance of any driver can be settled in a court of law and not thru the Union. (Throughout part of this arguement I have a witness, a driver I only know as Mr. Flores.)

When I got back to the garage at 9:00 AM, he was there talking with a group of drivers telling them how UTA had unfairly dealt with some of the operator performance, and at that moment I asked him to explain to me what was his problem regarding the statements he mentioned earlier, and he said he did not want to talk to me about it anymore. I told him he was a hippocret and I had the right to know what was his reasons for harassing me for the last two weeks about something that is my own decision.

This is what took place, to the best of me knowledge on the morning of August 8, 1989. Also I know the drivers that witness the second arguement.

SINCERELY,

Jose L. Lopez 000182

I Joseph Kim Cardelario, was a regular rider on the 39 Westbound UTA bus throughout the year of 1994 up to November. 90% of the time I would transfer to this bus from 37 Magna Express (Outbound) at Valley Fair Mall. In the evening at 500 pm. approximately I would board this bus. I would sit at the front and chat with the bus driver Jose Lopez from time to time. During this period of riding the bus I have never seen or for that matter heard of Jose Lopez forcing patrons to stay on the bus; for I was generally his last passenger to get off at 6000 West and 4100 South. The accusations made against Jose Lopez just don't fit his character. There have been times when a patron wouldn't have the correct fare to board the bus, he would let them board anyhow. I just don't believe Jose Lopez would put his job in jeopardy. He liked working for the Utah Transit Authority, In fact in the latter part of the summer he was offered a job with Kennecott Corporation, he didn't take it cause he like what he was doing.

J. Kim Cardelario
12/20/94

6146 Camus Circle
West Valley City Utah 84120
Home #: 964-6157
Work #: 328-5112

TIME	MONTH DAY YEAR 11-2-94	WEEK M T W T F S S	MILITARY TIME 15:01	CASE NUMBER 94-58743	15							
	PLACE WHERE ACCIDENT OCCURRED COUNTY <u>SALT LAKE</u> CITY OR TOWN <u>WEST VALLEY</u>			FOR AGENCY USE <u>HIT/RUN</u>	16							
LOCATION	Accident was outside city limits Indicate distance from city limits or nearest town _____ MILES			D.L.D. USE ONLY	17							
	ROAD ON WHICH ACCIDENT OCCURRED <u>5600 W.</u>			STATE/LOCAL	18							
	1. AT ITS INTERSECTION WITH <u>NOV 05 1994</u> <u>500 S.</u>			NOV 3 1994	19							
	2. IF NOT AT INTERSECTION NORTH S E W _____ of _____ NEAREST INTERSECTION, STREET HOUSE NO LANDMARK BE SURE TO COMPLETE IF ROAD HAS MILE POST			RECEIVED	20							
VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)	INTERSTATE	INTRASTATE	21	
1	77	CHEV	CAMARO	2DR	BLACK						22	
VEHICLE IDENTIFICATION NUMBER				DISPOSITION OF VEHICLE CODE <u>4</u>		NO. OF AXLES (INCLUDING ALL TRAILERS)		DIR. OF TRAVEL			23	
US DOT		LICENSE PLATE INFO	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	COST OF REPAIR			24	
ICC MC		94	11	UT	PPG 477			3000			25	
OWNER	FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO				26	
OPERATOR	WELHAM				Russo		?				27	
CARRIER											28	
DRIVER	FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO				29	
DRIVER'S LICENSE	STATE		NUMBER		DATE OF BIRTH		AGE		SEX		30	
UT	I.D.		3911253		8-1-66		M				31	
DRIVER'S EDUCATION	1. PUBLIC 2. COM. 3. NONE 4. UNKN		YEARS DRIVE EXP		LICENSE CLASS		ENDORSEMENT		RESTRICTIONS		32	
INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER					33	
INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE ()					34	
YES		NO									35	
VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)	INTERSTATE	INTRASTATE	36	
2	92	BUS	ORION II	BUS	WHITE						37	
VEHICLE IDENTIFICATION NUMBER				DISPOSITION OF VEHICLE CODE <u>3</u>		NO. OF AXLES (INCLUDING ALL TRAILERS)		DIR. OF TRAVEL			38	
2B1569778N6030884						2					39	
US DOT		LICENSE PLATE INFO	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	COST OF REPAIR			40	
ICC MC		50177EX	1-4					3000			41	
OWNER	FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO				42	
OPERATOR	U.T.A.						3600 S. 700 W SLC, UT 84119				43	
CARRIER											44	
DRIVER	FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO				45	
JOSE	Louie		LOPEZ		5229 W. 6600 W. W. JORDAN, UT 84084						46	
DRIVER'S LICENSE	STATE		NUMBER		DATE OF BIRTH		AGE		SEX		47	
UT	14031136				12-12-51		12 M				48	
DRIVER'S EDUCATION	1. PUBLIC 2. COM. 3. NONE 4. UNKN		YEARS DRIVE EXP		LICENSE CLASS		ENDORSEMENT		RESTRICTIONS		49	
INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER					50	
SELF INSURED											51	
INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE ()					52	
YES		NO									53	
1 PEDESTRIAN		2 CYCLIST		DATE OF BIRTH		AGE		SEX		INJURY		54
NAME		ADDRESS		TYPE		CAUSE		AREA				55
23		ALICIA JEN		5758 PEGGY LN		NOV 19 1994		F3				56
000184												57

DIAGRAM WHAT HAPPENED BELOW

Reason For No Diagram

- 1 Officer not at scene
- 2 Vehicles moved
- 3 Other

CA # NUMBER 94-58743

INDICATE DIRECTION OF NORTH



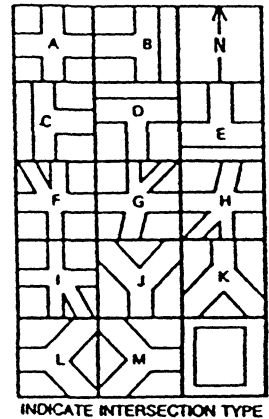
VEHICLE NO _____ NO _____

ESTIMATED TRAVEL SPEED

ESTIMATED IMPACT SPEED

POSTED SPEED

ADVISORY SPEED



INDICATE INTERSECTION TYPE

DESCRIBE WHAT HAPPENED
(Refer to Vehicle by Number)

VEH. #1 LEFT THE 7-11 PARKING LOT AT HIGH SPEED DRIVING ERRATICALLY. VEH. #1 KICK TAILED INTO #1 LANE, OVERCORRECTED AND RAN INTO A PARKED U.T.A. BUS. U.T.A. BUS (VEH. #2) WAS LEGALLY PARKED IN A MARKED SHOULDER, SOUTH BOUND ON 3500 SOUTH.

A SINGLE OCCUPANT OF THE BUS SAID SHE HIT HER CHEST ON AN INTERIOR BUS BUT DECLINED MEDICAL ATTENTION.

REG. OWNER OF VEH. #1 HAS A UT. DL BUT UNABLE TO ACCESS THE ADDRESS. A LICENSE PLATE LEFT AT THE SCENE WAS BOOKED INTO EVIDENCE.

If Hazardous Materials were involved list the placard number from off the commercial vehicle:

DAMAGE TO PROPERTY
OTHER THAN VEHICLES

Name object and state nature and amount of damage

ESTIMATE

Name and address of
owner of object struck

WITNESSES

Name SHERMAN HAERUP

Address 3702 FRANKLIN RD. MAGNA

Phone 250-3927

Time

Address

Phone

FIRST AID ADMINISTERED BY

EMS REPORT NO

94-5037

INJURED TAKEN BY

- 1- Ambulance, Private
- 2- Ambulance, Fire
- 3- Paramedics
- 4- Private Vehicle
- 5- Helicopter
- 6- Other

TIME: Amb. Called: Arrived:

- 1 - Policeman
- 2 - Fireman
- 3 - Ambulance Personnel
- 4 - Paramedics
- 5 - Doctor
- 6 - Private Individual
- 7 - Hospital
- 8 - Helicopter Personnel
- 9 - None Administered
- 0 - Unknown

EMS REPORT NO

INJURED TAKEN TO

LIC ACTIVITY

11-2-94
Month Day Year

Date Notified of Accident

1734

Time Notified of Accident

(USE
MILITARY
TIME)

1740

Arrived at Scene

Investigation of accident
Completed at

1835

of 1/2

the same day the day following

Source of Information

Officer at scene
Driver No Contacted station
Other WITNESSES CALLED

PHOTO(S) TAKEN
YES ☐ NO ☐
VIDEO TAKEN
YES ☐ NO ☐
FIELD DIAGRAM
YES ☐ NO ☐

ame Charge
ame Charge

✓SA/Inspection Yes No If Yes, Report Number

her action taken

RINT IDLE 8099 PATROL WVC Sgt Rasmussen 11-2-94
OFFICER'S RANK AND NAME NO PATROL DIVISION DEPARTMENT SUPERVISORS APPROVAL DATE OF REPORT

State Law requires that report be filed with the Department of Transportation

000185

This incident of unprofessional conduct coupled with the claimant's other policy violations constitute sufficiently culpable behavior to sustain a denial of benefits in spite of the claimant's long years with the employer.

/S/ Stephen M. Hadley
/S/ Lawrence Disera

I respectfully dissent from the decision of the majority of the Board of Review. I agree with the Board of Review majority decision to the extent that it would deny benefits to a bus driver who kissed a passenger during the course of his duties as a professional driver for a public carrier. The evidence in the record is not sufficient, however, to sustain a finding that the claimant did kiss a passenger.

There were two witnesses who testified that the claimant kissed the passenger. The first witness was the passenger's mother and the second witness was the passenger herself.

The mother presented testimony that while she was a passenger in a car going the opposite direction from the bus the claimant was driving, she observed her daughter and the claimant kissing on the bus. Her testimony was unclear whether she observed the kiss in the intersection or after the bus stopped. If she observed the kiss in the intersection, then there are serious safety issues not raised by the employer or by the mother who allegedly observed the incident. If the kiss occurred after the bus was stopped, the mother would have had to observe the kiss through her back window and through the entire length of the bus. It seems unlikely that the claimant kissed the passenger while the bus was moving without exciting concern in the mother for the physical safety of her daughter. It seems equally unlikely that the mother observed the claimant kiss the daughter through the length of the bus. Furthermore, the mother testified that she was not certain whether the kiss was a kiss on the lips or a kiss on the cheek. If she was unable to ascertain this detail, I am unconvinced that she was able to testify with certainty whether what she saw was a kiss or if it was something else, i.e., a close conversation or as the claimant testified, an approach by the passenger to the front of the bus to ask if she could turn the destination sign.

As for the passenger herself, she was a highly suggestible witness whose testimony was malleable under any questioning (of which there was very little). She first testified that she didn't know the claimant well, but later conceded she did. She first testified that the claimant had held her against her will on the bus all day long, but later conceded that she had gone to work during the day. She did not specify how long she was on the bus against her will or what the claimant had done to keep her against her will on the bus.


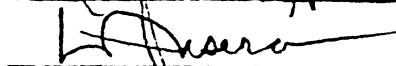
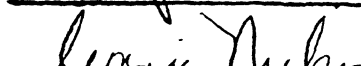
I would reverse the decision of the Administrative Law Judge on the basis that the testimony of the employer's witnesses was not reliable. No finding should have been made that the claimant kissed the passenger. The other policy violations, while shown to have occurred with the knowledge and control of the claimant, were not sufficiently culpable in and of themselves to sustain a denial of benefits in light of the claimant's long years of employment with the employer.

/S/ Connie Nielsen

Pursuant to §63-46b-13(1)(a) of the Utah Administrative Procedures Act, you may request reconsideration of this decision within 20 days from the date this decision is issued. Your request for reconsideration must be in writing and must state the specific grounds upon which relief is requested. The request must be filed with the Board of Review at 140 East 300 South, Salt Lake City, Utah, or may be mailed to the Board of Review at P.O. Box 45244, Salt Lake City, Utah 84145-0244. A copy of the request for reconsideration must also be mailed to each party by the person making the request. If the Board of Review does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied pursuant to §63-46b-13(3)(b) of the Utah Administrative Procedures Act. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order.

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued and mailed. The Court of Appeals is located at Midtown Plaza, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §63-46b-16 of the Utah Administrative Procedures Act and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

Date Issued and Mailed: 4/19/95

BOARD OF REVIEW




000192