The grievant has two prior preventable accidents on his record both from approximately 6 months before this incident and both apparently related to sliding on black ice. There was no evidence that he was given remedial driving training after these and no evidence of any disciplinary consequences or even coaching following those two incidents. As discussed below, it was apparent form the record that these prior accidents factored into the decision to reject the recommendation of the disciplinary panel and impose the greater discipline in this case.

The incident was investigated and the grievant was interviewed under Garrity. The evidence showed that he was forthright with the investigators and told them what had happened. He was also truthful when asked about the use of his siren and acknowledged that he had used it intermittently, just as the video showed. He asserted that he used the siren sparingly so as not to alert the assailant of his impending approach.

The parties spent considerable time arguing over whether this was a sound decision in that the siren could certainly have caused the assailant to flee which would have perhaps made it more difficult to find and apprehend that person but could also certainly have stopped the assault. It would be pure speculation at this point to try to determine which was the more rational approach. What was clear was that the policy requires use of sirens and lights when responding to an emergency and that the grievant did not follow that procedure.

The evidence showed Deputy Chief Glampe was advised of this and sent an e-mail in which he opined initially that the matter sounded like a coaching session was warranted. The federation asserted that this was conclusive evidence that the department subverted the process but the message also showed that Deputy Chief Glampe may not have been fully aware of all of the circumstances at the time he sent that e-mail. On this record that e-mail message alone was not conclusive.

The matter was reviewed by a three-person disciplinary committee, comprised of Inspector Sullivan, Lt. Fossum, and Lieutenant May. Two of these individuals were bargaining unit members but all were experienced and responsible members of the Minneapolis Police Department and they unanimously agreed that the discipline should be a written reprimand for the failure to follow the lights and siren policy set forth above. This recommendation was forwarded to Deputy Chief Glampe on January 30, 2015 – some 6½ months after the e-mail of July 1, 2014.

There was some troubling evidence regarding what happened next. The evidence showed that Assistant Chief Clark who did not testify at this hearing, stated that he agreed with a sustained "B" violation and 13.43 - Personnel Data based on the number of preventable accidents in 2013 and "points outlined in DC Glampe's memo." Clark signed and dated the document on March 4, 2015. The somewhat confusing evidence showed that Deputy Chief's memo recommending 13.43 13.43 was dated March 16, 2015, almost two weeks after Assistant Chief Clark's message that he agreed with 13.43 - Personnel Data. It was not clear how these dates could be accurate or whether there was a foregone conclusion regarding the suspension. The department claimed that there must simply be a typo on the dates and that could certainly have been the case. There was also evidence that the grievant's work record may not have been thoroughly reviewed when deciding 13.43 13.43. On this record it was not clear what exactly happened or what the exact time line was. What was clear was that the disciplinary panel's recommendation for a written reprimand was rejected in favor of 13.43.

It was also clear that the prior preventable accidents were considered in determining the discipline even though no prior discipline, coaching or remedial training had been given to the grievant prior to the May 4, 2014 incident.

Based on this the department determined to impose 13.43 - Personnel Data and the federation grieved this. The matter proceeded through the appropriate grievance steps to hearing. It is against that factual backdrop that the analysis of the matter proceeds.

**WAS THERE A VIOLATION OF THE POLICY?**

As noted above, the policy 7-403 provides as follows: "All MPD officers shall use red lights and sirens in a continuous manner for any emergency driving. Officers responding to a Code 3 emergency shall exercise caution and due consideration for the safety of the public."

The federation raised a somewhat clever but ultimately unpersuasive argument that the grievant did not actually violate the policy. The argument was that nothing in the policy explicitly requires that the siren be used continuously but rather only when necessary to protect the public and to safely cross intersections or areas where the officer feels it is necessary. The crux of this argument appears to be that if the officer responding to an emergency is exercising caution and due consideration for the safety of the public, as required by the second cited sentence above, that officer is somehow absolved of the responsibility for compliance with the first sentence cited above.

That is not what the language says nor is what it clearly means.

The federation's argument in this regard was inconsistent with the clear terms of the policy and must be rejected as inconsistent with the clear terms of the policy. Simply stated, the policy does require that the siren be used "continuously" when responding to an emergency. To read it the way the federation suggests would be an amendment to a public employer's policy that an arbitrator has no power to do. On this record, it was clear that the grievant, while well-meaning, violated the policy.

**CONSISTENCY WITH STATE STATUTES**

The federation noted that the policy in place regarding use of sirens is outdated and old. Since it has been in place since 1988. Federation noted that the policy was consistent with state law in 1988 but that law changed in 1997 to allow for use of lights or sirens in responding to an emergency situation. See, Minn. Stat. 169.17, which provides as follows: "law enforcement vehicles shall sound an audible signal by siren *or* display at least one lighted red light to the front." (Emphasis added.)

While the facts here show that the grievant was in compliance with state law, he was not however in compliance with the City of Minneapolis Police Department policy. State law may well set a minimum standard for safety but a City is free to dictate a more stringent policy to ensure the safety of the public or its employees. Here while the policy is different from the state law, it is not inconsistent with or in violation of it. Thus the policy is still quite valid. Further, it is not for an arbitrator to dictate to a public employer what its policies should be unless there are clearly in violation of or in violation of applicable law. Here no such evidence was presented.

On this record, the change in statute did not control the result. What does is the policy. As noted above, it was clear that the grievant violated the policy. The remaining question is whether the degree of discipline imposed was appropriate under these circumstances.

**WAS THE DEGREE OF DISCIPLINE IMPOSED APPROPRIATE UNDER THESE FACTS?**

One of the time honored tests of just cause is the determination of the appropriate penalty, given all of the facts and circumstances of a particular case. While arbitrators should be cautious in changing the penalty imposed by management once there has been a finding that there was a violation of a legitimate and appropriate rule so as not to substitute one's own judgment for that of management, arbitrators can and frequently do review the penalty, even in cases of 13.43 - Personnel Data in order to determine just cause for that penalty. Here that power is supported by the terms of the disciplinary policy itself. The policy calls for this to be a class B offense and carries with it a presumptive 13.43 13.43. That however is not absolute. It is subject to the just cause analysis and, more to the point, can be adjusted up or down depending on the factors listed above in the federations contentions.

The parties discussed the various factors and whether they were aggravating or mitigating. This case warrants some discussion of each of them as well but on balance it was clear on this unique record that far more of them mitigated in favor of the grievant than were found to be aggravating.

The factors again are as follows: Commendations, Prior Discipline, Seniority, Rank, Circumstances, Culpability, Employee Attitude, Performance Evaluations, Training, and Liability. See Federation Exhibit 31.

The grievant has several commendations for his exemplary service. These are several years old but the policy itself does not delineate how old they must be before they are not to be given any weight or not considered at all. Their age was certainly considered but since there was no discipline, discussed below, or other problems with the grievant's employment history in the interim, this was a factor that weighed in his favor.

Prior discipline: There was none shown and this was clearly a factor in the grievant's favor.

Seniority: This too was a factor in the grievant's favor. The department argued that his long tenure showed that he was also aware of the rule and that he should therefore have known not to respond without his siren. This was admittedly a close call but 21 years of good service is a factor that weighed in the grievant's favor.

Rank: The grievant is a patrol officer and therefore held to the same standard of conduct as other patrol officers. This frankly was a neutral factor. All patrol officers should know and follow department rules. The fact that he is not held to some higher standard was a non-factor here.

Circumstances: This too weighed slightly in the grievant's favor. He was responding to what could well have been a felony assault in progress – that latter piece was important. On the other hand traveling at 48 MPH on Cedar Avenue in somewhat heavy traffic was a factor that weighed against the grievant. He frankly should have been much more attentive to having the siren on in that kind of traffic at that time of day. This was a factor that weighed slightly against the grievant in this case.

Culpability: This was a factor that clearly weighed in favor of the grievant. The video shows the other car pulling out from a side street with a stop sign and failing to yield to incoming traffic. While the grievant should have had his siren on too, he did have his lights on and the other driver failed to even look for those. This was a clear factor in the grievant's favor here.

Employee Attitude: This was also a clear factor in the grievant's favor. He was completely forthright and truthful, honest and contrite throughout this proceeding. He was very truthful in the hearing and by all accounts throughout the investigation as well.

Performance Evaluations: these were shown to be quite good. This was a factor that either weighed in the grievant's favor or were at least neutral. These were certainly not aggravating factors.

Training: the federation made much of the fact that the grievant was not given remedial driving training until after this incident. This was frankly something of a non-factor here – at least a neutral one. He was not given remedial driving training but one might well ask, do you really need remedial driving training to follow the policy on using the siren in this type of situation? The grievant knew that policy yet decided not to follow it for the reasons set forth above. The best that can be said here is that it is highly unlikely that the grievant will repeat this behavior should a similar situation arise in the future. On this record, this factor was thus considered somewhat neutral.

Liability: None was shown here other than the damage to the police vehicle and some medical bills for the grievant's back injury sustained in the accident. There was no other showing of liability here and no evidence of a claim filed by the other driver or anyone else involved in the crash. This too was something of a neutral factor and did not weigh heavily one way or the other.

On balance, there were more factors that mitigated the discipline imposed than aggravating ones. The policy does not appear to be one that measures each of those factors scientifically or is a mathematical calculation where each factor is given equal weight and if there are more in favor of mitigation that aggravation the result must be a reduction of the discipline. The plain reading of the policy does not appear to work that way. Some discretion is and must be given to the department to determine if any deviation up or down from the presumed penalty. That discretion though is passed on to the arbitrator as part of the just cause analysis and the factors should therefore be considered as part of that analysis. Here those factors showed that the penalty should be adjusted down.

The most important factor on this unique record was the recommendation of the discipline panel. It was clear that they reviewed the entire case and while their recommendation is not binding, it did carry some weight here.

One final matter was that it was clear that the decision to impose 13.43 - Personnel Data appeared to be based to some degree on the prior preventable accidents. While those might be considered as part of the "circumstances" factor it was not clear what was involved in those mishaps. On this unique record, those were not given great weight.

Based on the totality of the evidence it is determined that the grievant violated the lights and siren policy but that the factors listed in the discipline policy and the overall record supported the federation's claim for a reduction in the penalty. The federation claimed that there should be no penalty at all but that was not appropriate given the facts here. The 13.43 - Personnel Data is hereby 13.43 replaced with a written reprimand, per the recommendation of the disciplinary panel discussed above. . 13.43 - Personnel Data

13.43 - Personnel Data

## AWARD

13.43 - Personnel Data The 13.43 - Personnel Data is 13.43 replaced with a written reprimand. 13.43 - Personnel Data

13.43 - Personnel Data

Dated: December 30, 2015

POFM and City of Minneapolis Dante grievance AWARD.doc

Jeffrey W. Jacobs, arbitrator

# MINNEAPOLIS POLICE DEPARTMENT
## INTERNAL AFFAIRS COMPLAINT FORM #3401

## COMPLAINT INFORMATION

| INTERNAL AFFAIRS CASE NUMBER: | CCN: | DATE OF INCIDENT: | TIME OF INCIDENT: |
|---|---|---|---|
| 14-13398 | 14-145985 | 05/04/2014 | 1147 |
| LOCATION OF INCIDENT: | DATE OF COMPLAINT | REFERRAL METHOD: | |
| Cedar Ave. S. / 33rd St. E. | 06/20/2014 | Internal | |

| COMPLAINANTS NAME (LAST, FIRST MIDDLE) | SEX | RACE: | DATE OF BIRTH: |
|---|---|---|---|
| 13.43 | M☐ F☐ | | |
| HOME ADDRESS: | CITY / STATE / ZIP: | | TELEPHONE: |
| 13.43 | | | 13.43 |

## POLICY INFORMATION

POLICIES ALLEGED TO BE VIOLATED:

**7-403 VEHICLES - EMERGENCY RESPONSE (10/12/01)**

(B-D)

All MPD officers shall use red lights and sirens in a continuous manner for any emergency driving. Officers responding to a Code 3 emergency shall exercise caution and due consideration for the safety of the public.

ACCUSED EMPLOYEE(S)

NAME/BADGE:
Officer Dante Dean, badge #1475

COMPLAINT ALLEGATIONS

It is alleged that Officer Dante Dean failed to use his squad siren in a continuous manner during an emergency response to an Assault In Progress call. During this emergency response, Officer Dean was involved in a squad accident that was found to be "preventable" by the Minneapolis Police Department Squad Accident Review Committee.

## RECOMMENDATION
(Preliminary Cases Only)

- ☐ **Reckoning Period Expired Before Complaint was Filed**
- ☐ **No Basis for Complaint**
- ☐ **Closed Pending Further Information**
- ☐ **Refer to Precinct with Coaching Documentation**
- ☐ **Exceptionally Cleared**
- ☐ **Policy Failure**
- ☐ **Other**

| C | DATE |
|---|---|
| 13.43 - Personnel Data | 7-14-14 |
| COMMANDER REVIEW: | DATE |
| | |

# MINNEAPOLIS POLICE DEPARTMENT

**Deputy Chief Travis Glampe**
**Office of Professional Standards**
**Room 130-City Hall**
**350 South Fifth Street**
**Minneapolis, Minnesota 55415**
**612 673-2445**

## MEMORANDUM

03-16-2015

To: File 14-13398

Re:

I agree with the panel's recommendation that 7-403 be sustained for failed to use lights and siren in a continuous manner while driving in an emergency manner.

This falls on the discipline matrix as a "B" level violation 13.43 - Personnel Data 13.43 .

-The panel says traffic was "light". Compared to weekday on Cedar Avenue, this may be true. However, Officer Dean was constantly maneuvering around traffic as he made his way down Cedar Avenue. In his statement Officer Dean described the traffic as "Somewhat heavy". The amount of traffic present should have been an indicator to have used a continuous siren.
-The panel does not discuss Officer Dean's speed. As evidenced by the MVR, Officer Dean was going 48 MPH just prior to impact.
-The entire block prior to the impact, Office Dean did not use his siren. Not until the vehicle started out into the intersection did Officer Dean begin to use his siren.
-The panel relies on the fact that the other driver involved did not yield to Officer Dean. However, the panel doesn't factor in Officer Dean's speed or lack of continuous siren use.
-The panel makes note of Dean attempting to not alert the suspect of his arrival by using his siren. Officer Dean turns onto Cedar at 46th Street. During his entire time on Cedar, he did not use his siren in a continuous manner. Even at 33rd and Cedar the use of a continuous siren should not be issue, when the suspect is at 21st and Lake St. This

happened at approx. noon on a Sunday when there would have been plenty of activity around the area to mask the sound of the siren.
-This is Officer Dean's third preventable collision in a year. See CCN 13-429158 on 12/28/2013 and 13-404379 on 12-05-2013.

## 13.43 - Personnel Data

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