

# Union Drivers' Journal

*Organizing Crew Transporters for a Better Life On and Off the Job*

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## Union Update for PTI Drivers

**July 31, 2018**

- **Contract Negotiations:** On July 11<sup>th</sup> and 12<sup>th</sup> the Union and Company met in Charleston, WV on non-economic contract issues. We have 14 unresolved union issues out of 71 we presented. There are 3 unresolved company issues out of 18 they put forward. We will tackle those at the next bargaining session on August 14<sup>th</sup> and 15<sup>th</sup> in Indianapolis. At this point the current contract has been extended to August 31<sup>st</sup>.
- **Federal Lawsuit on 2016 Wage Increases:** The lawyers for both the Union and Company have completed submission of all the required briefs and associated evidence to Federal Judge Richard L. Young. The next step is for the Judge to rule either in favor of the Union and enforce the Arbitrators award, or in favor of the Company. As we've said before, it is unlikely that the Judge will overturn decades of legal cases that uphold Arbitrators decisions to be final and binding. Given the current case backlog and pace of decisions, the best estimate from our Attorney's is we are still looking at three months or more before a ruling is made. Meanwhile the Union and Company will wrap up non-economic contract discussions and the 2016 and 2017 wage increases will be front and center of the economic issues negotiations that come next.
- **Building Power:** Up until now, drivers have participated in our contract survey and Stewards have been talking to non-members about joining the Union to show solidarity. We are now planning an additional activity for drivers that will give you an opportunity to boost the union's power at the bargaining table. For all of you who have been frustrated by the slow pace of negotiations and the lawsuit, this will be an opportunity to get in there

and help pull on the oars. We think you'll have some fun with this. Stay tuned...

- **Arbitrations:** As part of the contract negotiations we have been working to resolve all unresolved cases in the grievance procedure. Below you will find the three Arbitration cases we conducted last week. Two were termination cases and one was a dispute over the company's right to sub-contract work to non-PTI taxi services. The Arbitrator returned our two drivers to work and sent the sub-contracting case to the negotiations table for resolution. Here are the actual Arbitration Awards.

**IN THE MATTER OF EXPEDITED ARBITRATION  
PURSUANT TO AGREEMENT BETWEEN THE PARTIES**

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In the Matter of Controversy

between

The United Professional & Service Employees Union/

United Steel Workers

And

Professional Transportation Incorporated

-before-

Thomas Linden, Arbitrator

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These expedited arbitrations arise pursuant to Article 20, Grievance and Arbitration Procedure, Section 2.B, of the Collective Bargaining Agreement between the UPSEU, Local 1222, and Professional Transportation Incorporated.

Under the provisions of this article, Thomas Linden was selected to serve as arbitrator and under which his Award shall be final and binding upon the parties.

A cyber hearing using Team View software and Open Voice conference call capability, was held on May 10, 2017. The parties had an opportunity to examine and cross examine witnesses, introduce documentary evidence and argue the issues in dispute. There was no transcript of the hearings and no post hearing briefs. There were three cases presented. I have made the required binding decisions and have included a “brief written explanation of the basis for the conclusion (s).” (see Article 20, Section B).

## **REPRESENTATIVES**

### For the Union:

Ike Gittlen, Coordinator, USW Crew Transportation Project

Richard Zimmerman, Union Representative

### For the Company:

Steve Greulich, Director of Human Resources

## **Termination Case: Curb Hit Incident**

This is a disciplinary discharge case centered on a vehicular accident which occurred while The Grievant, a Rockport yard driver, was transporting Norfolk

Southern railroad employees. Because PTI vehicles are equipped with video recording devices called DriveCam, the incident was recorded in both forward and backward viewing modes.

The DriveCam recording was made on Sunday, March 26, 2017. The collision with a curb around a bridge abutment occurred at 11:30 p.m. with speed at impact of 35m.p.h. The Grievant was heading west. The video shows the extreme glare of rain soaked streets and oncoming headlights. While there was no traffic to speak of in The Grievant' s lane, there also doesn't appear to be any yellow paint on the curb warning motorists of its existence. You will also notice that no one in the van is talking and The Grievant' s attention is focused straight ahead proceeding at a speed which was not excessive. There was mention at the hearing about cars either following or on the side of the vehicle in question, which I did not see.

Mr. Greulich stated that The Grievant was terminated under Article 19, Section 5B, Bullet Point 3. which states that an employee is subject to immediate termination for "any preventable accident with customer on board." The National Safety Council definition of a preventable accident reads as follows: "*A collision in which the driver failed to do everything reasonable to avoid it.*" Mr. Greulich argues that termination was for just cause and that grievant should not be allowed

back on the job by the arbitrator. This accident and a previous one, which occurred roughly three years ago, should preclude The Grievant from returning to work

The Drivers Manual, which The Grievant said he read states that an accident should be reported to the dispatcher on duty and to the police. In this incident, only the dispatcher was called by The Grievant. (It is instructive to note that the company representatives sent to the scene of the accident that night, also did not notify the police.) The company also alleges that because The Grievant had two accidents within three years that he no longer meets the qualifications for “driver” as contained in the Drivers Manual.

Through the testimony of Mr. Bobby Vincent, PTI’s Director of Safety, the company presented more of its contentions as to the incident in question. Mr. Vincent noted that the railroads PTI works for and the insurance companies utilized are forceful in their role in promoting safety. Mr. Vincent emphasized the paramount importance of safety with regard to both yard and over the road drivers, stating that much of the company’s rules and safety standards come directly from the National Safety Council. For instance, with respect to “preventable” accidents, the NSC recommends maintaining a safe speed while scanning the road ahead looking for hazards. In this case, the company believes The Grievant did not adhere to these standards and, therefore, had a preventable accident.

The Union contends that there was not just cause for the termination of The Grievant and presented arguments of mitigation with respect to all charges. The Union points out The Grievant is a ten year employee with no record of disciplinary actions, no accidents and a clean motor vehicle record. The Grievant In his testimony, The Grievant gave a detailed account of the accident, recalling the rain, the glare and the fact that he did not see the unmarked curb before he ran into it. He believed he was going at a safe speed for conditions. He also recalled the on scene investigation and his conference call that evening which included Mr. Vincent (Mr. Vincent did not recall this in his testimony). He believed the conditions conspired against him and noted that supervisors at the scene did not request he call the police.

The Union also posits that the first accident was not really an “accident” as there were no passengers and no demonstrable damage, as evidenced by the fact that a supervisor took photos and no disciplinary charges were filed. The Union further contends that PTI, on at least three different occasions, chose not to discipline other employees who had similar incidents. This selective response, on its face, is a violation of any just cause provision.

## **DISCUSSION AND AWARD**

After watching the DriveCam video numerous times and reviewing my notes and the testimony of the witness and advocates, I have come to the conclusion that this was not a preventable accident. Reasonable speed, extreme glare and an unpainted curb do not add up to culpability in this case. The video is instructive in that it shows The Grievant focused on the road ahead while travelling at a safe speed for conditions. In keeping with the NSC definition of a preventable accident, I believe The Grievant did everything reasonable to avoid it.

Other factors in my decision:

- The first “accident” was a non-event and should be disregarded by the arbitrator,
- The Grievant did not call the police, nor did anyone else.
- There were no injuries.
- Damage of \$900 was *de minimus*.
- The Grievant has a clean MV record with no accidents.

In addition, it is axiomatic that the degree of penalty should be in keeping with the seriousness of the offence. This case does not rise to the level of just cause termination’

**AWARD**

Grievant will be restored to his position as Rockport yard driver with full back pay minus any unemployment benefits received.

### **Termination Case: Railroad Yard Gate Incident**

This is a disciplinary discharge case centered on a vehicular accident which occurred while The Grievant, a Chicago East yard driver, was transporting Norfolk Southern railroad personnel. Because Professional Transportation (PTI) vehicles are equipped with video recording devices called DriveCam, the incident was recorded in both forward and backward viewing modes.

The DriveCam recording was made on Tuesday, May 2, 2017. At 4:06 p.m., CST, while returning to the yard, The Grievant collided with a wooden gate, similar to a railroad gate that was installed across an opening between two concrete barriers. The video shows a mostly cloudy day with good visibility and The Grievant is wearing sunglasses. There were no other vehicles around. There were two railroad personnel on board. The man in the passenger seat stops talking approximately five seconds before impact. As the van approaches you can see, on a pole, a sign that says 20 mph. There is also an arrow painted on the concrete barrier on the left that points to the left. The video indicates that The Grievant was traveling at 29.4 mph when he impacted the gate.



PTI's case centers around the fact that The Grievant was traveling at 10 mph over the speed limit. Under Article 19, Section 6. Speeding, the contract states that drivers are expected to "obey posted maximum speed limits," in this Case 20 mph. Section 6 A states that "The first time drivers are caught are determined to have been driving ten (10) miles above the speed limit shall receive a three (3) day suspension," The company believes the fact that The Grievant was not only traveling at an imprudent speed, he was also involved in a preventable accident.

As the sole Union witness, The Grievant testified that this gate was new and therefore, he didn't realize it was in place. He further stated he was given no information, verbally or otherwise, as to the installation of the gate, (this was not controverted by the company) which to him appeared "makeshift and lower than a traditional railroad gate. The Grievant also admitted he was going in excess of the speed limit.

## **DISCUSSION AND AWARD**

It is the arbitrator's belief that Article 19, Section 5, D, Bullets, does provide wording allowing the company to terminate a driver who has a preventable accident. That being said, I believe the intention of the framers of the article could not have been to terminate anyone who, e.g., glances a pole unknowingly, causing *de minimus* damage with no injuries to the driver or customer on board. In this case

there was some culpability in that The Grievant was traveling at an imprudent rate of speed (29.4 mph). I believe that the preventability of the accident was minimized by the fact that no information about a new installation was given to employees. In addition, there should have been a warning on the road that there was a gate ahead. I also believe, therefore, that PTI shares culpability in this case thereby mitigating The Grievant' s guilt.

Therefore The Grievant will be reinstated to his position as yard driver at Chicago East. Because he must accept responsibility for driving at an imprudent speed, he will not receive any back wages for the time he was not employed.

### **Language Interpretation Case: Conway Yard Sub-Contracting to Taxi's**

Contract Interpretation case, Article 13-Subcontracting

*Article 13-Subcontracting, reads as follows:*

*“It is agreed and understood that there will be no contracting out of work, provided there are equipment and employees available to perform the work. However, the Union recognizes that at some locations it is not profitable to employ employees, or maintain equipment. In those cases it will be necessary to sub-contract the work in order to provide service to the customer(s) of the employer according to its contract (s). The Employer will notify the Union when this/these situation (s) arise.*

*Non-Bargaining Unit employees of the Employer may be utilized to fill in for regular assignments if there are no available Bargaining Unit Employees to perform such work.”*

### **UNION POSITION**

The Union filed this contract interpretation grievance in an effort to stop, limit or at least slow down the contracting out of runs from Professional Transportation Incorporated (PTI) at the Conway, PA, yard. The Union is claiming PTI violated Article 1-Parties to the Agreement and Scope, and Article 13-Subcontracting, the article listed above. The Union noted that railroads put out to bid, 1-3 year contracts to provide pickup and delivery transportation for railroad crews. The Union believes that because PTI “low balled” the bidding, thereby taking over the contract from Renzenberger, the company that previously serviced Conway. The Union believes this contributed to the increase in subcontracting or outsourcing of runs to the subcontractor, Jade Taxi. The Union argues that these runs now comprise roughly 20% of the runs emanating from the Conway yard.

The Union has been frustrated in currently bargaining a new agreement and among other things, the parties are stuck in the negotiation of a change to Article 13. The Union has asked PTI to put an expiration date on the use of subcontractors in Conway, to no avail. It has also asked PTI to hire more bargaining unit members to cover the current shortage, suggesting various ways this might come about. The Union is asking that “all subcontracting be eliminated except for the sporadic here and there.” PTI has consistently and repeatedly refused to agree to any of these proposals. In its frustration with the company position, the Union brought this matter to arbitration.

## **COMPANY POSITION ON SUBCONTRACTING**

The company believes that the language of Article 13 is clear and unambiguous and gives PTI the right to use subcontract employees whenever there are not enough available vans and Unit employees to do the work. The company notes that this language has been in the contract for three bargaining go arounds and has “not evolved.” The company further stated that it uses subcontractors only as a “last resort” and only after it has determined there are no vans or Unit members available to drive them. The company contends that it has tried to hire more Unit employees but cannot for two reasons: 1. The high turnover rate endemic to this industry and 2. The lack of available manpower in the economically depressed Conway area.

The company produced two witnesses, Josh Nally, Director of Operation Support, and Taraha Baum, Director of Legal and Compliance, both of whom gave testimony in support of the company position. Four examples were given of instances where the company tried unsuccessfully to use Unit employees. In each instance this was not possible and the subcontractor, Jade Taxi, was engaged. These examples were not controverted by the Union. Mr. Nally testified that when the call comes from the railroad, there is often not much time to provide a van and driver. He further testified that there is a recruiting problem and while PTI would

prefer to use Unit employees, it simply is not always possible. Dedicated yard workers “are more stable” and the company would prefer to use them.

Taraha Baum testified that the use of subcontractors at Conway has persisted throughout the 17 years she has been employed there. She also stated that “if we don’t have equipment or drivers the customer (the railroad) would use another vendor” thus taking away business from PTI and “reducing out margin.”

In closing, Steve Greulich stated that “if we could eliminate subs, we would.”

## **DISCUSSION AND AWARD**

There were many details given by both parties outlining what happens when an order comes in from the railroad. While these scenarios as presented gave the arbitrator an inside view of what happens when vans or Unit employees can’t be found, nothing testified to mitigate the language of Article 13. The language is clear and unambiguous: subcontracting is allowed if equipment and Unit employees cannot be found to provide the service. The Union presented an array of feasible solutions to which the company could resort which would increase Unit member numbers, thereby alleviating the necessity of using subcontractors. While some of these make much sense to the arbitrator, they do not change the clear

language of Article 13. In addition, there was no evidence or testimony convincing me to delve into Article 1.

Even absent a subcontracting article, the general arbitration rule is that management has the right to contract our work as long as it does so in good faith, represents a reasonable business decision and does not result in the subversion of the labor agreement. In this instance, there is no evidence of bad faith on the part of PTI, and the subcontracting does not substantially prejudice the integrity of the bargaining unit. The arbitrator believes the problems perceived by the Union with this Article can only be addressed during bargaining and, as such, are beyond the scope of arbitration. Therefore, the grievance is denied.

*Note: Grievant names have been replaced with “The Grievant” in this version of the decision. Formatting changes have been made to accommodate this email format. The Arbitrators decision is provided in full.*

## **THE UNION IS YOU!**

**To Receive these Updates, email us your name , company, and location at**

**[1222@usw.org](mailto:1222@usw.org)**

**Getting Help:** Your Location Steward should be the first stop in trying to get your union contract questions answered or if you have a problem. However, we understand that it’s sometimes hard to reach a Steward. The next and quickest way to get some help is:

The Union Driver Hotline at (866)203-4960.

Email us at: [1222@usw.org](mailto:1222@usw.org).

**Union Area Representative Contact Information:** Here are the contact numbers for our four Union Area Representatives:

**Northeast States: Jeff Kramer** – Phone: (317) 691-7690

Email: [jkramer@organizing.usw.org](mailto:jkramer@organizing.usw.org)

(Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island)

**Southeast States: Darryl Turner** – Phone: (205) 253-3016

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(Alabama, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, West Virginia)

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