

UPSEU-USW Service Agreement

# Union Drivers' Journal

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

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## Union PTI Drivers Update May 15, 2017

### Internet Expedited Arbitration Results

On May 10, 11, and 12th the Union and Company conducted their first Expedited Arbitrations using a Video Conferencing system over the Internet. This is a process we agreed to in the 2015 Contract and has taken some time to get up and running. We have identified three Arbitrators who are willing to hear expedited arbitrations in this way. The system uses computers with cameras to bring the Arbitrator, grievants and union/company presenters together by video. This allowed us, for example, to have drivers and witnesses from Fort Worth, Texas, an Arbitrator in Long Island, NY, the Union presenter in Pittsburgh, PA and the Company presenter in Evansville, IN all appear on everyone's screens together and conduct the case. We presented three cases on May 10th in front of Arbitrator Thomas Linden and five cases on May 11th and 12th in front of Arbitrator Michael Hrycyk. The Contract says that these decisions do not set a precedent (cannot be used in similar situations), however they will provide both the company and the union guidance in considering future cases for arbitration.

#### The results are as follows:

**#1 – The Case of the Blinking Dashboard Light:** A driver was terminated for failing to immediately pull over when a dashboard warning light began flashing, resulting in substantial damage to the engine. The testimony showed that not only had the driver been reporting problems with the “check engine” light for months, but had asked not to use that vehicle that shift because it wasn't sounding right. The Arbitrator returned the driver to work with all seniority and benefits and half of the lost back-pay.

**#2 – The Case of the Clean Start Agreement:** A driver was terminated for failing to work for two pay periods. The grievant had a long disciplinary history, however the company had cleared out his prior records and agreed to a “clean start”. The Union was able to show that the driver had, in fact, worked during the time frame. However the Arbitrator did not ignore the prior history and awarded the drivers job back with a last chance agreement and severe requirements for continued employment.

**#3 – The Case of the Vacation without Pay:** In this case a driver had been granted a week of vacation, took the vacation and when Payroll later determined that the driver had already used up their eligibility, refused to pay the vacation period. The Union's position was that if the company granted the vacation, it was responsible for paying for its mistake. However, it was unclear if the Branch Manager had granted the vacation without Payroll's review. The Arbitrator ruled that a driver should know how much vacation they are due and have used and it is their responsibility to only claim vacation they are still eligible for.

**#4 – The Case of the Rolling Fire Extinguisher:** A driver was terminated when a fire extinguisher rolled under the brake pedal of his van and caused him to crash into a fence and a pole, causing damage to the front of the vehicle. The driver had failed to put a seat belt on and had been starting to do that when the incident occurred. In this case the driver's clear record, the fact that drivers had been reporting that the fire extinguishers were loose in the vans (with no repair performed), and that the company moved the location of the fire extinguishers after the accident all played a role in the arbitrator's decision. The Union did not ask for back pay. The Arbitrator awarded the driver's job, seniority and benefits back.

**#5 - The Case of the Medical Absence:** A driver had been taken from work to the hospital, spent two days in the hospital, and returned with a Doctor's note after eight days off. Management declared that the driver had quit and refused to accept the Doctor's note. The Union immediately protested the situation; however it took over 14 weeks for the driver to be returned to work. The issue of back pay was left to arbitration. The Arbitrator awarded full back pay, minus the Unemployment Compensation the driver received. Key to the Arbitrator's decision was that the company never notified the driver that it considered the driver to be a quit, failed to show the company tried to contact the driver, failed to show the driver had to have the doctor's note on the official company form, the witness was credible that numerous efforts were made to talk to the company, and that the company knew the driver was off for medical reasons.

**#6 – The Case of the New Hire Rate:** This case arose when the Company hired several new drivers into two Yard locations in the Chicago-West branch. The incumbent drivers filed a grievance that under the "enhanced hiring" policy, all drivers in the other three Yards associated with Chicago-West should have been raised to the rate that was paid the new hires. The Company had only raised the incumbents of the two Yards where the new drivers were placed. The Arbitrator ruled that the way the Company chose to administer the locations (one manager, one central office, seniority bidding rights) was not the determining factor. The Arbitrator wrote that he found "no basis to extend applicability of the enhanced hiring provisions outside of the individual yard".

**#7 – The Case of the Black Ice Incident:** A driver took a crew out in snowy and slushy weather, hit a patch of black ice, slid across the road and came to a stop on the shoulder. No damage was done to the van or riders. However the company terminated the driver for driving too fast for conditions, claiming that any loss of control provided proof. Testimony from both the driver and another driver from the location showed that the company had not put out a weather alert on the road, the vehicle tires were in poor condition, and the driver had slowed down considerably from what the speed limit allowed under good driving conditions. The Arbitrator credited the driver's long service, the proper reporting of the incident, that an adequate investigation was not done by the Company, and no passenger voiced any complaint regarding the driver's performance. The Union did not request back pay. The Arbitrator awarded the driver's job back with full seniority and benefits. The Arbitrator made an important distinction between a "preventable" incident and one that the driver has control over preventing. In this case the driver had no control over the condition of the vehicle or warning that the roadways had black ice on them.

**#8 – The Case of the Unknown Late Trip:** In a confusing case a driver was accused of being late for a trip when the driver had been assigned to another driving task at the time. The Company terminated the driver for excessive late trips. However the company relied on IVR records that conflicted with both testimony and payroll records put forward by the driver. In addition, the company never produced information on the trips taken or refused by the drivers actually scheduled during that time frame. The Arbitrator returned the driver to work with full seniority and benefits. However, the Arbitrator held the

drivers prior discipline for 18 months and ruled that any improper or inconsistent use of the IVR system or actions contrary to the rules of conduct would result in termination.

### **Justice for Driver/Members**

The Union feels that getting these Internet Expedited Arbitrations moving is a major advance for our driver/members. We have some thirty cases marked for Arbitration that we will now be able to get decisions on. Some cases are not suitable for this form of Arbitration and will need to go through the regular arbitration process. These would be language or contract cases (like the 2016 Failure to Pay the Wage Increase case, that will be heard in regular arbitration on July 19th and 20th) and some cases that require a more detailed presentation than can be done with this format.

As you might imagine, these case require significant time to prepare and present. They represent both a commitment by the union to get justice for our driver/members and find ways to use your dues dollars wisely. Hopefully the results will cause the Company to slow or stop its violations and will give the Union guidance on how Arbitrators view the situations we encounter with PTI.

### **Give us your Feedback**

Your feedback on this Update is welcome (yes even the less flattering ones). One step at a time, we are improving the working environment for PIT driver/members. Please share this Update with those who do not have email.

In solidarity,

Ike Gittlen,  
UPSEU/USW Rail Crew Project Coordinator

### **CONTACT USW/UPSEU**

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