



On The Move

May 9, 2016

Official Publication of TWU Local 234

www.twulocal234.net

Video Recordings Help Win Discharge Cases in Arbitration

Smile—you're on camera most of the day. Video cameras are everywhere. On office buildings, police cars, telephone poles, workplaces, subway stations and on buses, trolleys and trains. The video cameras are not going away. It would take an act of Congress to make their use illegal. But we all know that's not going to happen anytime soon.

At first, many Local 234 members, and some union representatives, considered the video cameras a dangerous weapon in the hands of SEPTA management for purposes of discipline. Efforts were made to get rid of them, but they were unsuccessful, because the law allows video cameras in the workplace, except for areas of privacy, like locker rooms or bathrooms. So the question is not getting rid of the cameras, its finding ways to use them *to save jobs*, not lose them.

Over the past few years, the Union has taken a hard look at the video evidence SEPTA uses to support discipline. Here's what we found. In many cases, the Union can flip the script and use the videos to defeat the Authority's case. This has led to important arbitration victories and the reinstatement of many discharged employees. We have used videos to win cases involving allegations of violence on the job, pedestrian knockdowns, sleeping on duty and a host of other dischargeable rule violations. In one case, a supervisor accused a member of assault. But the video showed that the member tried to deescalate the conflict, while the supervisor kept stoking the flames. We won the member's reinstatement with back pay. This is just one example where the Union used video recordings to turn the tables on SEPTA management.

It's true that video cameras can help SEPTA with discipline, but it's time to recognize that the cameras can also lead to defeating SEPTA's case and lead to the reinstatement of the affected employee. This is the smart approach to the problem---use the videos to our advantage whenever we can and limit the use of the videos wherever that's possible.

Union Wins another Knockdown Case

In the end justice prevailed. The Union recently won another knockdown case in arbitration, something unheard of as recently as three years ago. Unfortunately, the Local had lost six consecutive knockdown cases in arbitration prior to winning the reinstatement of a Southern operator, in September, 2015. In the six lost cases, the Union focused on the blind spot caused by left-hand side mirror of the bus. However, every arbitrator who heard this argument rejected it. They all decided that the "rock and roll" rule defeated the Union's mirror defense. After six

straight loses, it looked like SEPTA might succeed in making pedestrian knockdowns a dischargeable offense, *whatever the circumstances*.

However, the situation is changing with each victory in arbitration. In the most recent left-turn knockdown case won by the Union, involving an Allegheny operator, the mirror never even came up, instead the case was won by making several other arguments.

First, Union argued that the grievant's discharge amounted to "disparate treatment," since another operator involved in a similar accident only received a written warning. The video cameras played an important role in showing disparate treatment, because by watching the videos the arbitrator could see that the two knockdowns were similar enough to convince her that SEPTA was disciplining operators by using a double standard.

Second, the arbitrator accepted the Union's argument that "no injury" to the pedestrian must be taken into account and weighed in the grievant's favor. Meanwhile, SEPTA's Senior Director Tom Marcucci, the guy who fired the operator, argued that it didn't matter whether the pedestrian suffered an injury or not! The arbitrator rejected Marcucci's backward thinking.

Third, after the accident, the operator did everything by the book; he attended to the pedestrian to make sure he was okay, he called control center to report the incident, he calmed the passengers on his bus until assistance arrived and he obtained witness statements. All of this weighed in the operator's favor.

Finally, even though the grievant had only three years on the job, the Union persuaded the arbitrator that in the two years prior to the accident he had a perfect safety record and deserved the chance to keep his job as a SEPTA employee.

The four factors used to win the Allegheny knockdown case: (1) disparate treatment; (2) no injury to the pedestrian; (3) operator compliance with all the rules after the accident; and, (4) a decent employment record, can now be used to help win the reinstatement of other operators in knockdown cases. In other words, the Union has finally established standards to apply in favor of the operator's reinstatement.

2016 Contract at the Top of Union's Agenda

Update: This is a big year for TWU/SEPTA contract negotiations. The Local is determined to address the issues, both big and small, in this round of bargaining. We have received thousands of contract surveys which are being analyzed. So far, the surveys show agreement on the top three issues; pensions, health care and wages. There are other important issues as well. These issues often relate to specific groups of workers and specific job classifications. We will soon report on the results of the survey and what it's going to take from *all of us* to win at the bargaining table in 2016.

WE MUST AND WE WILL