

2025 WL 208221 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: NEW YORK CITY TRANSIT AUTHORIT

Case No. G358 1991

Carrier ID No. TA202301068 W848006

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Date of Accident 4/26/2023

The Full Board, at its meeting held on December 17, 2024, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed on August 28, 2024.

ISSUE

The issue presented for Mandatory Full Board Review is whether this claim for a psychological injury should be established based on a finding that the claimant conductor experienced stress greater than that which other similarly situated workers experienced in the normal work environment when the train she was working on hit a person.

The Workers' Compensation Law Judge (WCLJ) established this claim for a psychological injury ([adjustment disorder with anxiety](#) and depressed mood).

The Board Panel majority affirmed the WCLJ, finding that the claimant was an active participant in the accident who experienced stress greater than that which other similarly situated workers experienced in the normal work environment.

The dissenting Board Panel member would reverse the WCLJ and disallow the claim, finding that the claimant was not an active participant in the accident and did not experience stress greater than that experienced by other similarly situated workers.

The self-insured employer (SIE) filed an application for Mandatory Full Board Review, and requests that the Board Panel majority decision be reversed and the claim be disallowed. The SIE argues that the claimant has not shown that she was subjected to stress greater than that which other similarly situated workers experience in the normal work environment because the “[c]laimant was not an active participant” in the incident and she did not actually see a body or body parts.

In rebuttal, the claimant requests that the Board Panel majority decision be affirmed, arguing that she has shown that she was subjected to stress greater than that which other similarly situated workers experience in the normal work environment per Matter of [Anderson v City of Yonkers, 227 AD3d 63 \(2024\)](#), noting that she was in the scope of her employment from the

time that she felt the initial impact throughout her evacuation of the train, which makes her “an active participant ... despite not seeing the body.” The claimant further asserts that there is no medical evidence to contradict the emergency room records and the treating doctor's opinion that “this incident was extraordinary enough to result in PTSD.”

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

This claim was assembled after the SIE filed a First Report of Injury (FROI-00) on May 2, 2023, to report that the claimant was injured on April 26, 2023, while working as a conductor. The injury for mental stress was reported to occur after a “male customer fell in front of the [train] as it was entering [[the] station.”

*2 On May 25, 2023, the Board received an Employee Claim (C-3) in which the claimant reported that she has “trauma anxiety” as a result of the accident on April 26, 2023.

The claimant sought treatment in the emergency department on the day of the incident, and in the report of such treatment, PA Hummel noted a history as reported by the claimant that “after a train she was operating struck a person on the tracks, she [was] feeling very anxious initially but [that] symptoms have subsided after evacuating the train and speaking with her boss.” The reported diagnosis was unspecified anxiety disorder and follow-up instructions directed the claimant for “mental health clearance to return to work when the time is right.”

On April 28, 2023, the claimant had an initial visit with NP Kilkenny, who noted that the claimant presented with PTSD like symptoms such as nervousness and anxiety (ECF Doc ID #399137752). The claimant reported that while she was working as a train conductor on April 26, 2023, the train was pulling into the station, when it stopped after the emergency brake was activated. Her partner, the train operator, reported a “12-9” telling the claimant that there was a person under the train. The claimant called it in, and the train went out of service. The claimant did not see a body but stated that “just the thought alone of someone being under the train makes her feel anxious.” The claimant also said that her partner, who is normally calm, was in shock, and his reaction was a trigger for her. NP Kilkenny diagnosed causally related [acute stress disorder](#), and found a 100% temporary disability. NP Kilkenny recommended that the claimant “[a]void possible triggers such as train/train stations.”

On May 23, 2023, psychologist Dr. Feldman, conducted a psychiatric evaluation of the claimant, noting that the claimant reported that she was working as a train conductor on April 26, 2023, and as the train was pulling into a subway station and stopping, she “felt a 'bump', as if the train were going over a 'hump', and then the train stopped suddenly.” The claimant stated that she could not safely open the doors because the train was not fully in the station, and when she called the train operator to ask what was going on, the operator informed her that there was a “12-9” and “a person was under the train.” The claimant called Rail Control to report the incident and was given permission to make announcements and evacuate the train. After passengers had been evacuated, the claimant walked through the empty train alone to check the cars, and she “recall[ed] feeling ‘terrified’ because ‘you never know who could be there and she did not feel safe.’ She recalls feeling nervous and breathing heavily and her heart was racing.” Symptoms as reported by the claimant included depressed mood, anxiety, panic attacks, sleep disturbance, adjustment difficulties, guilt, loss of interest, intrusive recollections of traumatic experience, avoidance, decreased energy and motivation, and difficulty concentrating. The doctor diagnosed casually related [adjustment disorder with depressed mood](#) and anxiety.

*3 On September 12, 2023, Dr. Feldman testified in accordance with the report of her psychiatric evaluation, further noting that “ultimately,” the claimant “learned that the train had hit a person.” Dr. Feldman stated that the diagnosis of [adjustment disorder with depressed mood](#) and anxiety was based on claimant's self-reported history, complaints at the time of examination and her professional assessment of claimant's presentation at the time of examination. Dr. Feldman conceded that she did not review the report from the emergency department on the date of the incident; she was unaware that the claimant had reported that her symptoms had subsided since the time of the incident, and that the claimant's mood and affect were reported as normal.

At the hearing held on September 26, 2023, the claimant testified that she had worked as a train conductor for the employer for seven years. She testified that a “12-9” is code for “when a person is underneath the train” (Hearing Transcript, 9/26/23, p. 5). Claimant stated that she had never been involved in a “12-9” prior to April 26, 2023. On that date, she was waiting to open the doors for a station stop, and as the train was halfway through the station, she “felt a bump underneath the train” (id.). Her immediate thought was that there was a “12-9” but she wanted to make sure. She was nervous and her heart was racing. She tried to ask the train operator what happened but he was unable to respond for the first five minutes. When he did answer, he was stuttering and the claimant believed “he was shocked, in shock of what had happened [when he said that] there's a person under the train” (id., p. 6). She then made an announcement to direct passengers to a particular exit. She was scared to “get off the train and see anything and people were in a panic” (id., p. 7). Upon cross-examination, the claimant confirmed that she is trained how to evacuate a train in cases of emergency, and it is part of her job duties as a conductor. In response to the WCLJ's question, the claimant stated that after she made the announcement, she waited five minutes, and then consistent with her training, she walked through the train to make sure there were no remaining passengers. Thereafter, claimant stayed on the train until it “felt safe to come off,” and did not see the body under the train (id., p. 8).

After the claimant's testimony, the parties provided summations, and the WCLJ found that the train hitting somebody is not expected to happen and creates stress beyond what is expected by similarly situated people. As noted in the decision filed on September 29, 2023, the WCLJ, among other findings, established the claim for adjustment disorder with anxiety and depressed mood; set the average weekly wage; made awards for lost time; and awarded a fee to the claimant's attorney.

The SIE filed an application for review and requested that the WCLJ decision be reversed and the claim be disallowed. The SIE argued that the claimant was not subjected to stress greater than that which other similarly situated workers experience in the normal work environment. The SIE noted that the claimant reported to Dr. Feldman that she felt terrified because she felt unsafe while walking through the train in the dark; she did not report to Dr. Feldman any symptoms resulting from the “12-9” incident.

*4 In rebuttal, the claimant requested that the WCLJ decision be affirmed, noting that “[a]ny slight discrepancy [in Dr. Feldman's report] does not change what happened.” The claimant further argued that, “[w]hile the claimant knows of and receives classroom training for this remote possibility, she does not expect it to happen as she prepares for work in the morning, no train operator [[sic] does.” Alternatively, the claimant requested that the case be remanded for development of the record on whether claimant suffered an occupational disease.

LEGAL ANALYSIS

“[P]sychological injuries resulting from the psychic trauma of witnessing an accident have been deemed compensable when the claimant was an ‘active participant’ in the accident (Matter of [Wolfe v Sibley, Lindsay & Curr Co.](#), 36 NY2d 505 [1975]; see [Matter of Wood v Laidlaw Tr.](#), 77 NY2d 79 [1990])” (Matter of [Wyman v Maldas Floral Shop](#), 1 AD3d 728 [2003]).

Prior Board Panel decisions have been issued to establish claims for psychological conditions after the claimant had been found to be an “active participant” because the claimant had either been involved in the precipitating event or had seen a dead body or body parts (Matter of New York City Transit Authority, 2024 NY Wrk Comp G3630788 [train operator was not directly involved in the precipitating event, but had witnessed a dismembered body on the train tracks]; Matter of New York City Transit Authority, 2024 NY Wrk Comp G3488211 [[train operator saw a person's foot on the tracks and stopped the train within inches from hitting the person]; Matter of New York City Transit Authority, 2022 NY Wrk Comp G2933532 [subway cleaner was an “active participant” by virtue of her job duties when she came upon a dead body in a subway station in the course of her work]; Matter of New York City Transit Authority, 2023 NY Wrk Comp G3232133 [conductor looked into the tunnel and saw the disfigured body of an injured person]; Matter of New York City Transit Authority, 2021 NY Wrk Comp G2857081 [conductor saw body bag with blood as it was being picked up from the tracks]).

Here, however, the claimant was neither the operator of the train that hit a person, nor did she see a dead body or body parts after the accident.

Therefore, the Full Board finds that the case law and prior Board precedent does not support a finding that she was an “active participant.”

Nevertheless, a claim for stress can be established if there is evidence to show that “the stress that caused the injury was greater than that which other similarly situated workers experienced in the normal work environment” ([Matter of Cerda v New York Racing Assn.](#), 112 AD3d 1075 [2013] [internal quotation marks and citations omitted]; see [Matter of Guillo v NYC Hous. Auth.](#), 115 AD3d 1140 [2014])” ([Matter of Cox v Saks Fifth Ave.](#), 130 AD3d 1236 [2015]). “This inquiry ... presents a factual issue for the Board to resolve and its determination, if supported by substantial evidence in the record as a whole, will not be disturbed” ([Matter of Kopec v Dormitory Auth. of State of N.Y.](#), 44 AD3d 1230 [2007] [citation omitted]).

*5 Here, the SIE does not dispute that the claimant was working as a conductor when a person “fell in front of the [train] as it was entering [the] station” (FROI-00, filed 5/2/23). The undisputed evidence also shows that after the train came to an emergency stop, the claimant called Rail Control to report the incident and then made announcements and remained on the train to evacuate passengers, as required by the duties of her job. Further, two days after the incident, the claimant sought treatment with NP Kilkenny and reported that the thought of someone being under the train makes her feel anxious. The claimant testified that prior to the accident, she had never before been involved in a “12-9” (i.e. a person under the train) and when it happened to her that day, she was nervous and her heart was racing. Both NP Kilkenny and Dr. Feldman provided opinions of causal relationship based on the history reported by the claimant, and the SIE presented no contrary medical evidence. As such, the Full Board finds sufficient evidence in the record that the claimant experienced stress that was greater than that which other similarly situated workers experienced in the normal work environment.

Therefore, the Full Board finds that the record supports establishment of this claim for [adjustment disorder with anxiety](#) and depressed mood.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on September 29, 2023, is AFFIRMED. No further action is planned by the Board at this time.

Clarissa Rodriguez
Chair

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