

THE DAILY HAZARD

Safety rep sacking sparks strike at Waterloo

Sarah Friday, an experienced train driver of more than ten years standing and railway workers' union RMT safety rep at Waterloo Station, was sacked by South West Trains (SWT) on 15 February for allegedly disobeying a manager's instructions. The RMT went on to hold one day strikes on 23 and 31 March, severely affecting SWT suburban services. The union has since balloted workers at all eleven SWT depots and the result of that ballot is expected towards the end of April. This could result in further industrial action in May if the company remains intransigent.



On 9 February, Sarah was meeting SWT manager Jim Hall, to discuss a dispute over inspection rights. With little time before she had to drive her next train she tried to sort out matters but her manager adopted a bullying and intimidating manner and suspended her. The following day, Sarah was charged with serious misconduct and later dismissed at a disciplinary hearing for delaying a train. Her appeal failed and she is taking the case to an Industrial Tribunal. The case is likely to be heard at the beginning of May.

SWT victimised Sarah Friday because of her struggle to get the company to recognise that train drivers' long working hours, shift patterns and poor working conditions are dangerous to workers' health and the travelling public. Drivers can work shifts of over ten hours, often going seven hours without a break. Union surveys at Waterloo showed that stress and fatigue were prevalent among drivers. At a meeting with SWT and the Health and Safety Executive

(HSE), the Waterloo branch of the RMT, with support from the London Hazards Centre, challenged the company's risk assessments of current shift patterns. The assessments barely mentioned fatigue and did not evaluate the effects of the more intensive duty roster the company had introduced.

The real issue: profit before safety

Sarah's persistence and conscientiousness had succeeded in raising the profile of health and safety at the station, drawing the issues to the attention of a wider public and getting the HSE involved. The company realised that the union's continuing pressure, allied to growing public support for improved rail safety in the aftermath of the Ladbroke Grove disaster (see Daily Hazard 65), could force them to cut into their profits by recruiting enough drivers to operate safe working hours and shift patterns.

This victimisation is a further setback for rail safety and illustrates the weakness of

employment law in this area. Safety reps need greater employment protection when disputes like this arise. It is not enough for safety reps to be able to take their employer to an industrial tribunal, especially as tribunals cannot enforce reinstatement. Unfortunately, the current government review of employee representation is unlikely to address this issue. So

support for Sarah and the RMT in this dispute is all the more vital.

Support

Invite a speaker along to your union branch. Contribute to the financial appeal (cheques to 'Waterloo RMT'). Further information from Waterloo RMT, c/o 3 Blades House, London SE11 5TW. Tel: 020 7582 2955.

WORKERS MEMORIAL DAY – APRIL 28TH

Remember the dead – fight for the living

London MSF and Construction Safety Campaign have jointly organised a march from the London office of MSF to the headquarters of the Health and Safety Executive/Commission at Rose Court, Southwark Bridge Road. Assemble MSF, 40 Bermondsey Street from 10.00. Depart 10.45 sharp, arrive at the HSE HQ at approx. 11 a.m. Led by a brass band, marchers will carry 'empty shoes' to represent the 258 workers who died in year 1998/99. A delegation will symbolically hand in a response to the government's discussion document on employee representation and lay a memorial wreath to all those who have died at work.

Contact: Construction Safety Campaign
PO Box 23844, London SE15 3WR Tel: 07747 795954
Email: Construction.safetycampaign@talk21.com

Voluntary sector takes steps to improve health and safety

Organisations from all over London are reaping the benefits of the London Hazard Centre's Voluntary Sector Training Project. The three year project, funded by the National Lottery Charities Board is nearing the end of its second year. The project has run ninety nine training courses, involving participants from nearly 500 organisations. The courses have emphasised the importance of making immediate practical improvements to working conditions as well as addressing policy issues.

One organisation providing scooters and wheelchairs for disabled people charged the batteries required to power the vehicles every night in an unventilated portacabin situated within a car park. The training group discussed the explosive hazard posed by the hydrogen gas given off by the batteries overnight. Immediately after the course, the administrator called in the local fire safety officer who

recommended the installation of ventilation in the portacabin. The vents are now being fitted. The administrator also shared this experience with other organisations providing a similar service throughout London.

A common problem is space. Voluntary organisations are often located in shared premises, with little control over their physical environment. Fitting people and office machinery into a small area can be a big problem. One east London advice agency has allocated a member of staff to sort through old files and ring binders in a twice yearly clear out designed to make the room fit for 'live people' rather than 'dead paper'. A north London women's organisation is throwing out old, obsolete equipment. Another practical step has been the reorganisation of space to reduce the hazards of photocopier and laser printer

emissions. Participants have moved the offending items into corridors or to well ventilated positions three metres away from the nearest worker.

Participants are revising their safety policies and preparing safe systems of work for staff and volunteers who work offsite, alone and outside normal office hours. Groups in Redbridge and Bexley have produced a checklist for workers setting up meetings away from the office. This covers all aspects of the visit including precise directions, safe parking facilities, a centrally held diary, an agreed time to complete the visits and a telephone contact to confirm the safe completion of the visit.

Cleaners and caretakers, often ignored or forgotten, have now been included in the safety regime of a large community association on the outskirts of London. Its risk assessment showed a need for training in the safe use of cleaning

materials and a new system of supervision to improve communication with staff who work outside core hours.

Stress is one of the biggest problems faced by the voluntary sector. A squeeze on funding and a growing reliance on the voluntary sector to deliver statutory services more cheaply has piled pressure onto paid and voluntary workers alike. The main causes of stress were reported as excessive workload and long hours. Course participants have returned to their workplaces determined to raise the issue and see it addressed by management committees and trustees. One west London women's organisation listed the physical symptoms of stress and asked staff members to tick each symptom they suffered over a period of a month. This revealed a range of symptoms from headaches to insomnia. The organisation is now looking at staffing levels and work organisation.

Simon Jones Campaign gets a result



On 23 March, Simon's family won an historic victory against the Crown Prosecution Service (CPS) when two judges ordered the CPS to reconsider their decision not to prosecute Euromin or its manager James Martell for manslaughter in relation to Simon's death. The judgement is the first successful judicial review of a decision not to prosecute for

Vigil outside the High Court.

manslaughter over a workplace death.

In a strongly worded judgement, the two judges hearing the review described the CPS as behaving 'irrationally', 'failing to address the relevant law' and adopting an approach that was 'baffling' and 'beggared belief'. The CPS

were instructed to review their decision not to prosecute 'with dispatch'.

This is a huge victory for Simon's family and all those campaigning for justice for Simon and others killed by companies who put their profits before people's safety. In the light of this judgement the Simon Jones Memorial Campaign is calling for Euromin and its manager James Martell to be prosecuted for the manslaughter of Simon Jones. The campaign is also calling for an urgent, high-level enquiry into the CPS's systematic refusal to prosecute companies, directors and senior managers for workplace deaths.

While this is a major step towards getting justice for Simon, the campaign has not forgotten that Personnel Selection, the employment agency that clearly broke the law when it sent Simon to work

at Euromin, have not been prosecuted by the Department of Trade and Industry (DTI) for their part in Simon's death. In the light of this judgement, the campaign is writing to Stephen Byers at the DTI asking him to prosecute Personnel Selection immediately. The campaign hopes that others will write to Stephen Byers expressing the same view.

Labour MP George Galloway has tabled a motion in the House of Commons congratulating Simon's family and the campaign for their victory in the High Court. The motion calls for a public inquiry into the CPS's handling of this and all other cases of work related death. Please write to your MP and ask them to support this motion

Simon Jones Memorial Campaign, PO Box 2600, Brighton, E.Sussex, BN2 2DX

Telephone/fax 01273 685913
email: action@simonjones.org.uk

HEALTH AND SAFETY LAW ENFORCEMENT

This factsheet sets out the functions and duties of the health and safety enforcement authorities, some criticisms of their performance and some proposals for improvement. It is aimed at safety representatives and others whose activities bring them into contact with the authorities.

Division of responsibilities

Health and safety law is enforced by the Health and Safety Executive (HSE) and by local authorities. The HSE is responsible for:

- manufacturing premises
- construction sites
- railways, trams and underground systems
- mines, quarries and landfill sites
- agriculture and forestry
- hospitals and nursing homes
- local government premises
- educational establishments
- domestic gas installation, maintenance and repair
- utilities, including power generation, water and waste
- fairgrounds
- airports
- police, fire authorities and national government
- docks
- nuclear installations
- the oil industry, both offshore and onshore
- transport of dangerous substances
- work with explosives

Local authorities are responsible for:

- shops
- most offices
- some warehouses
- hotels and catering including restaurants and pubs
- leisure and entertainment other than fairgrounds
- undertakers
- places of worship
- animal care including zoos
- therapeutic and beauty services

Enforcement action

HSE and local authority inspectors are entitled to enter any workplace with or without giving notice to the employer. They can inspect all aspects of work processes and associated records, take photographs and samples and talk to workers and their representatives. Inspectors can:

- Give informal advice to employers on necessary steps to comply with the law. This can be contained in correspondence.
- Issue Improvement Notices. These notices instruct the employer to take action to comply with the law and should set out what needs to be done, why and by when.

Employers have 21 days within which to appeal to an Industrial Tribunal.

- Issue Prohibition Notices. These prohibit any activity which risks causing serious injury. The activity may be prohibited immediately or after a specified period and cannot be resumed until certain conditions are met. Again, the employer has a right of appeal
- initiate prosecutions. A failure to comply with an Improvement or Prohibition Notice can be prosecuted in a Magistrates Court and can result in a fine of up to £20,000 or six months imprisonment or both. Prosecutions in higher courts can lead to unlimited fines or imprisonment. Prosecutions can also be brought by the Crown Prosecution Service.

Enforcement action declined from 1990 to 1997 but has increased since then. In 1998-99, 6328 Improvement Notices and 4516 Prohibition Notices were served and 1797 prosecutions were brought

Employee consultation

In the course of visits to workplaces, inspectors should check whether employers have arrangements for informing and consulting with employees and their representatives. They should normally meet employees and their representatives during visits, in private if requested. They have a legal duty to provide information, orally or in writing, to employees or representatives on:

- matters of serious concern
- details of any enforcement action to be taken
- an intention to prosecute the employer

The willingness of inspectors to deal with employees and representatives is variable. Safety representatives should make a point of making the acquaintance of the inspector responsible for their workplace and establishing a working relationship, if possible. This could include:

- notifying the inspector of the names of representatives
- asking the inspector to make contact during visits
- asking the inspector for all the information s/he is required to provide
- asking to accompany the inspector on inspections

Workers and members of the public can make complaints, including anonymous complaints, about unsafe work activities to inspectors who are obliged to take note of these but not necessarily to take action.

Complainants should make it clear if they want to remain anonymous.

Inspectors carry out enforcement according to the principles of the Enforcement Policy Statement published by the Health and Safety Commission (HSC). The HSC declares that the aim of inspectors is to secure compliance with the law and that enforcement should be proportional, consistent, transparent and targeted. Proportionality means that enforcement action should be proportional to the seriousness of the breach of law involved, consistency that a similar approach should be used in similar circumstances, transparency that employers should be helped to understand what is required of them, and targeting that attention is given most to the most dangerous workplaces and activities. Prosecutions of both companies and individuals are at the discretion of the enforcement authorities when:

- the breach of the law has the potential for considerable harm
- the general record and approach of the offender warrants it
- there is a general requirement to demonstrate the need for compliance with the law

For work-related deaths, consideration should be given to bringing manslaughter charges in conjunction with the police, coroners and the Crown Prosecution Service.

Criticisms of the system

Three main criticisms have been levelled against the enforcement system:

- the courts are too lenient
- the HSE is reluctant to prosecute
- the HSE has a poor record of investigating accidents

The average level of fines on companies for all cases rose from £903 in 1990-91 to £5038 in 1998-99. The Labour Government elected in 1997 expressed a wish that the courts should impose larger fines. This was reinforced by a ruling from the Court of Appeal in 1998. There was some improvement subsequently.

Manslaughter and other charges against individuals have become slightly more common since 1995 than before. The charges are almost always brought against small employers or self-employed people and when convictions have been obtained, these have frequently resulted in short or suspended sentences.

The HSE is open about the fact that it sees its primary role as preventive and that it would prefer to persuade employers than prosecute them.

However, an independent inquiry by the West Midlands Health and Safety Advice Centre into workplace deaths in the West Midlands between 1988 and 1992 found that in 24 out of 28 cases, the HSE had failed to initiate prosecutions when the evidence warranted them.

Research by the Centre for Corporate Accountability showed that in 1999 the HSE only investigated 11% of the serious injuries notified to it. Of the cases it did investigate, only 10% led to a prosecution. The HSE has targeted an improvement in this performance but was severely criticised for its record by a Select Committee of MPs who reported in February 2000.

The trade unions have responded to this situation with primary demands for:

- an increased level of fines
- new legislation to make it easier to impose custodial sentences on employers who have contributed to death or injury at work through negligence
- the introduction of a right for safety representatives to issue Provisional Improvement Notices (PINs); these are devices which safety representatives could use in irresolvable disputes with employers on safety matters. The employer would be obliged to abide by a Notice unless s/he made a successful appeal to a local authority or HSE inspector.

The Government has given a general commitment to bring in new legislation in this area but has not stated when it is going to do so. It may be some time before action finally takes place.

Further reading

What to expect when a health and safety inspector calls, Health and Safety Commission, HSC14, 1998

Enforcement policy statement, Health and Safety Executive, MISC 030, 1995

The perfect crime?, HASAC/David Bergman, ISBN 0 9522962 0 9, 1994

Fine times: penalties for breaking health and safety law, TUC/British Safety Council, 1999

Select Committee on Environment, Transport and Regional Affairs memoranda: memorandum by the Centre for Corporate Accountability (HSE 20), Parliamentary copyright, 1999

Contacts

Centre for Corporate Responsibility,
40 Leventon St. London NW5 2PG.
020 7209 9143.
info@corporateaccountability.org
www.corporateaccountability.org

HEALTH AND SAFETY TRAINING COURSES

London Hazard Centre training courses are activity-based and aim to give participants the knowledge and confidence to tackle workplace health and safety problems in a practical and effective way. Follow-up support is available to participants through our free advice line.

- **Thursday 11 May**
VDU hazards and display screen equipment risk assessments
- **Thursday 25 May**
Introduction to workplace safety management
- **Thursday 8 June**
Tackling stress at work
- **Thursday 22 June**
Five steps to workplace risk assessment

Venue: Interchange Studios, Dalby Street, Kentish Town, London, NW5 3NQ (full access for people with disabilities).

Time: 10am to 4pm

We design courses customised to your training needs which we can run at Interchange or at your own site. Call us to discuss your training needs.



Interchange Studios
Dalby Street
London NW5 3NQ
Tel: 020 7267 3387
Fax: 020 7267 3397
mail@lhc.org.uk
www.lhc.org.uk

London Hazards Centre receives grant funding from the Bridge House Estate Trust



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RESOURCES

Consensus kills

In this critique of the tripartite system, health and safety campaigner Alan Dalton argues that 'the trade unions have handed control of UK health and safety law and policy to the employers'. The author reached this conclusion after a detailed analysis of Health and Safety Commission (tripartite body representing employers, trade unions and government) minutes (now publicly available for the first time) and a survey of 25 of the 100 trade union members on the HSC and its 21 committees. He was also able to draw on his own vast experience in the health and safety field, which has included sitting on two HSC committees. The author says that the unions have been ineffective and that the tripartite system has allowed employers to veto health and safety legislation, resulting in the death, illness and injury of millions of working people.

Consensus kills. January 2000, 62pp. £5 inc. p&p from Alan Dalton, 3 Montpelier Grove, London NW5 2XD.

Killer dust

A comprehensive history of the UK asbestos health problem. It

is also an exposé of the scandalous behaviour of the industry – the author had access to the company archives of the leading UK asbestos producer, Turner & Newall. These documents were brought into the public domain by Chase Manhattan Bank, when it took T & N to court in New York in 1995 in a property-damage suit. This is an outstanding book and an excellent read.

Magic mineral to killer dust: Turner & Newall and the asbestos hazard, Geoffrey Tweedale, 313 pp. 2000, Oxford University Press, ISBN 0-19-929690-8.

Unsafe as houses: urban renaissance or toxic timebomb?

This is a detailed case study of how an Enfield residents' association campaigned against the redevelopment of the Royal Small Arms Factory site, decommissioned by the Ministry of Defence in 1984 and severely contaminated. The campaign initially sprang out of concerns about the increase in traffic and pressure on local services that the development of 1,300 homes would have in an area already deprived of services. It has gone on to expose the

inadequacies of local and national government control over the development of contaminated land and the opportunism of developers.

Unsafe as Houses. Published by Friends of the Earth and the Enfield Lock Action Group Association. Friends of the Earth, 26-28 Underwood St, London N1 7JQ. 020 7490 1555.

The Hazards Charter – a charter for change

The Charter sets out an agenda for government action to improve working conditions in Britain. It is a systematic list of the demands of the UK hazards movement, as developed at national meetings and conferences in recent years. Copies of the 3rd edition are available from Hazards Centres around the country as well as via our web site, www.lhc.org.uk where the full text is available to download or print.

Online? Have you visited the LHC website at www.lhc.org.uk

'I would like to congratulate you on your website... invaluable as a safety representative with the GMB'

As well as news and background on the centre our website contains two databases:

● HAZLIT

union, campaign, medical and official documents summarised from our point of view

● HAZTEXT

full searchable text of our books, factsheets and newsletters.

'Very useful for myself and the reps on the TUC courses I tutor... this is a database operating for them'

If you're an affiliate/subscriber you have free access to these databases.

E-mail us at mail@lhc.org.uk for your password. Organisations with which we exchange information can also get access.

We'd like to thank UNISON and Poptel whose support has allowed us to set up this site.

Centre for Corporate Accountability

The Centre for Corporate Accountability is a new organisation, which through research, advocacy and advice, aims to increase the accountability of companies and their senior officers whose activities every year cause thousands of preventable deaths, injuries and disease. At present the criminal justice system allows companies to commit serious offences without proper investigation, prosecution and sentencing. As a result, companies and their officers obtain immunity from criminal sanction.

Increased accountability will both ensure that the bereaved and injured receive the justice that they seek, as well as deterring companies from placing the safety of workers and the public in danger in the future.

Please contact us if you need any information on these issues or are seeking advice on accountability issues relating to workplace/environmental death or injury.

Centre for Corporate Accountability

40 Leverton Street, London NW5 2PG Tel: 0171 209 9143
info@corporateaccountability.org

See our web site at:

www.corporateaccountability.org