

# THE DAILY HAZARD

## £55,000 damages for unfairly dismissed safety rep

**In what lawyers are saying is a landmark case, Connex South Eastern were ordered by Croydon Employment Tribunal to pay £55,000 damages to Laurie Holden, an ASLEF safety representative. The Tribunal found that Connex was more interested in their public image and cost saving than the safety of the public and it's workers.**

Laurie, a train driver with over 20 years experience and a safety rep for seven years, resigned after he was bullied out of his job for raising concerns about rail and worker safety. The Chair of the Tribunal said: 'Such conduct was found by the Tribunal to have constituted a sustained campaign against Mr Holden.' Laurie's health has suffered under the stress of his working environment and subsequently the Tribunal.

Laurie's main concern was the relationship between reduced driver training, long hours culture and the increase in Signals Passed at Danger (SPADs). New driver training had been slashed from a minimum of 390 to 225 hours. He had reports of drivers falling asleep at the wheel on the busiest rail network in Europe and of them working 11 hour shifts without adequate rest breaks. He questioned the superficial and secretive investigations into SPADs and argued the link between fatigue and SPADs was being covered up by the company both internally and externally.

In addition he dealt with mundane, although no less important, safety rep issues such as unsafe walkways, unsuitable seating, smoking policy. And his duties covered potentially disastrous issues including concerns for a potential roof collapse in the Sevenoaks Tunnel. Eventually after Laurie's warnings were ignored by Connex, this happened: a train was severely

damaged and major repairs needed to the tunnel.

### Paying lip service

Connex continually refused to recognise, or paid lip-service, to Laurie's rights as a safety representative under law. He continually requested a copy of Connex's risk assessment on the changes to driver shift patterns before they were introduced in 1997. Risk assessments are required under the Management of Health and Safety at Work Regulations 1992 and safety reps should be consulted in good time before changes are made. This is a requirement of the Safety Representatives and Safety Committee Regulations 1977 which also give safety representatives the right to have copies of relevant documents.

Connex withheld the risk assessment for years, only disclosing it shortly before the Tribunal hearing in November 2001.

Laurie surveyed his members about their safety concerns and published the results along with his evidence about the rise in SPADs. He gave copies of the report to Connex as well as giving them to his members and the railway safety inspectorate. Connex management were unhappy with this and threatened disciplinary action.

The Tribunal heard that these safety concerns were ignored by Connex who did nothing to investigate them. A disciplinary hearing was ruled a kangaroo



PHOTO: MICK HOLDEN/LHC

*Laurie Holden, ASLEF Safety Rep.*

court with no proper investigations or findings and was designed to shut Laurie up. Connex SE misused their Managing For Attendance (sickness) Procedures in that Mr Holden was kept on an extended Final Warning. Connex gave Mr Holden disciplinary charges for minor incidents which reached the 'ridiculous' stage of having six to seven final warnings outstanding against him. The company put pressure on Mr Holden to leave and their conduct was such that Mr Holden was entitled to treat his contract of employment as fundamentally broken.

The damning summing up of Laurie's barrister says it all: 'It is submitted that this case involves victimisation on a scandalous level forcing resignation of an extremely long-serving employee who held the best interests of railway users at his heart. Ultimately, it was his dedication and commitment to railway safety that brought about the victimisation.'

The award to Laurie included £18,000 for aggravated damages and injury to feelings. Laurie's solicitor, Paul Maynard, said this was the first time this had ever been given in an unfair dismissal case. The claims against Connex were made under the whistleblower legislation, the Public Interest Disclosure Act 1999 as well as the Employment Rights Act 1996.

Connex are reported to have indicated they will not appeal against the ruling.

Laurie says: 'I hope this will act as a warning to all those companies that ignore basic health and safety principles. Even if you are not interested your staff and customers your shareholders may start asking awkward questions.'

More detail of the case can be found at: <http://www.connexnews.com/>

See *Daily Hazard* 66 April 2000 for a similar case with South West Trains.

# Government quick fix 'inadequate'

Tony Blair announced in February that mesothelioma sufferers affected by the Fairchild decision could apply for compensation under the Pneumoconiosis etc (Workers' Compensation) Act 1979, (the 1979 Act) an act extended to cover asbestos victims whose firms had gone bankrupt and insurers could not be traced.

This Act is inadequate compared to settlements in the Courts. However, claimants affected by Fairchild will be able to make civil claims in the future, if the Court of Appeal decision is finally overturned by the House of Lords.

Under this Act widows receive only £8,039 if their husband was 60 and only £2,068 if their husband was 67 or over. Payments will only be made if DSS Industrial Disablement Benefit has already been awarded but 50% of those who apply for these benefits are refused them.

The following are not covered by the scheme:

- the self-employed.
- people ill because of living near one of the old factories, such as the Cape factory and waste dump in Barking and the T & N factory in Erith.
- those exposed because of

washing overalls and other household contact.

- those with pleural plaques (a non-fatal asbestos disease that can be claimed for in the civil courts).

## House of Lords Appeals Delayed

On Monday 22nd April, last minute moves by the insurance industry failed to halt appeals in the House of Lords due to begin. They are unlikely to proceed until May.

At the last minute insurers offered Mr Matthews and the widows of Mr Fox and Fairchild a full settlement, which would mean the crucial legal issues would not be heard. All other victims waiting in the queue would remain at the mercy of the Court of Appeal judgement. The insurer's offer was rejected.

The Association of British Insurers (ABI) proposed a scheme behind closed doors. We understand this would limit the amount of compensation mesothelioma victims would receive compared to settlements currently being obtained.

If such a scheme is to be developed there should be full public consultation with all concerned after these three important cases are heard.

# Lewisham exposes workers again

Trade unions in Lewisham Council contacted the Centre in February about an uncontrolled release of asbestos in offices at Rushey Green which happened when fire breaks above a suspended ceiling were broken through to do cabling work. No tests were done before the work started, and unions believe disruption due to cabling work may have stretched back over many years. The unions, UNISON, GMB and TGWU, were angry because they understand the Council were aware of the problems with this work from at least April 2001 but failed to tell

them until recently. More significantly HSE previously took Lewisham Council to court over a similar incident at Kingswear House. According to UNISON rep Philip Breslin 'we were assured there would be an asbestos register which would identify all asbestos in buildings. Whatever work was done by the council was clearly insufficient.'

HSE have now investigated with a view to prosecuting, and all asbestos is to be removed from the building with the unions closely involved in vetting contractors.

# It's still a killer

'I need help desperately' said Nancy Tait at a packed London Hazards Centre meeting on April 10th. Nancy, from the Occupational and Environmental Diseases Association, told the meeting that until the Fairchild decision (*Daily Hazard 73*) is resolved claimants are in limbo and may be forced to rely on the inadequate payments from the DTLR under the 1979 Workers Compensation Act and that this is 'not good enough'.

She described recent shameful attempts to rehabilitate chrysotile and circulated a 1982 letter from Norman Fowler, then Minister of Social Security and a report from the asbestos industry's favourite pathologist Dr Gibbs which help refute claims that chrysotile has not been found in the lungs of people who have died from mesothelioma and that asbestos fibres are 'locked in' asbestos cement. 'I thought I had fought and won both battles 20 years ago' said Nancy.

Pauline Bonney whose husband John, an electrician, recently died aged 51 could not describe how awful it was to see someone die from mesothelioma and that 'someone is to blame'. Her experience had led her to set up a Victim Support Group. She said: 'I know what happened to the HSE leaflets, they are sitting locked in cupboards all faded. But I am getting them out around sites whenever I can'.

Nigel Bryson, GMB Director of Health Safety and the Environment, talked about the work of trade unions to get asbestos banned and to manage the tonnes of asbestos still in place in buildings. The trade unions had had some talks with the treasury regarding the costs of managing it properly. However he said the attempt to rehabilitate white asbestos was threatening the introduction of the Duty to Manage Asbestos in Buildings due in 2004. If introduced it will cover 2million commercial premises out of an estimated total of 4.4 million buildings that may contain asbestos, ensuring someone is responsible.



PHOTO: MICK HOLDER/LHC

**Michael Clapham, MP speaking at the London Hazards Centre Meeting.**

At neighbouring Greenwich a scheme to protect all council workers from asbestos in properties is more advanced. GMB rep Anne Gallagher told us 'Greenwich are piloting a computer database system, so that it is a living document and not just a paper survey that gets buried. A survey of 10% of the housing stock and 10 corporate buildings is being carried out and will be put on the database, so that when building work is ordered it will automatically flag up whether asbestos is present, and send the work to a specialist contractor. If it all works, it will be extended and will include schools as well'.

Greenwich teacher Shirley Gibson died from mesothelioma in 1993 aged 37.

Finally, Michael Clapham, Labour MP, Convenor of the House of Commons All Party Committee on Asbestos, spoke about the £21 million no-fault settlement for victims of Cape in South Africa. Though inadequate this means victims received something. Attempts were being made to get global mining group Anglo American to make a contribution to the scheme set up to cover these 7,500 South African victims. All asbestos would be banned in Europe by 2005 but while the developed economies were increasingly using substitutes, asbestos was being used more widely in developing countries. He believed that governments onslaught on poverty in the third world should include a ban on asbestos.

# WORK-RELATED ROAD SAFETY

This factsheet covers the safety of people at work on public roads; it is not concerned with the safety of people travelling to and from work.

In 2000, over 3000 people were killed and almost 40,000 injured in road traffic accidents. Research indicates that between a quarter and a third of all incidents involved someone who was at work at the time. The number of at-work road fatalities exceeds that of any other category of worker killed at work.

Car and van drivers who drive over 25,000 miles per annum are at approximately the same risk of an accident as a construction worker.

## Workers at risk

### Driving vehicles

The Health and Safety Executive (HSE) estimates that over 10 million workers drive a licensed vehicle at some time in connection with their work. The vehicles include lorries, vans, taxis, buses, coaches, company cars, emergency service and utility vehicles, construction and agricultural machinery, motorcycles, mopeds and bicycles.

### Working on the road

This includes cleaning and maintenance workers, refuse collectors, postal workers and police and emergency service workers.

## Employer and employee duties

There is no specific legislation covering employer duties on road safety. Under the Health and Safety at Work Act employers must ensure that the safety of their employees and people affected by their work is maintained. Under the Management of Health and Safety at Work Regulations employers must perform a risk assessment of all work activities including working on the roads.

A risk assessment of road safety should include:

- avoidance of the risk altogether, e.g. avoidance of unnecessary journeys or types of travel
- use of safe routes
- provision of suitable, properly maintained vehicles
- avoidance of excessive or badly secured loads
- adoption of suitable schedules to avoid excessive driving times, especially where night work or shift work is involved
- provision of rest and refreshment facilities
- provision of suitable seating, seat belts, leg room, etc.

- provision of communications equipment
- use of properly qualified drivers with the provision of all necessary training and information
- suitable procedures for dealing with accidents, breakdowns and other emergencies
- provision of suitable protective barriers and warning lights for road workers
- provision of highly visible clothing for road workers
- wherever possible, avoidance of work at night or in bad weather
- reporting and investigation of all incidents including near misses.

## Driving hours

Some 20,000 accidents were caused by drivers falling asleep at the wheel during 2000.

The optimum condition is to take a break of 15 minutes or more after driving for two hours.

Drivers' hours are restricted under both United Kingdom (UK) and European Union (EU) law. For drivers of goods vehicles, under UK rules, a driver must not drive for more than 10 hours per day and must not be on duty for more than 11 hours per day. Under EU rules, the maximum driving time is 9 hours per day (which can be increased to 10 hours twice per week). Drivers must take a break of at least 45 minutes after 4.5 hours of continuous driving. EU rules apply to vehicles over 3.5 tonnes driven in the UK or to other vehicles driven in a combination of the UK and other EU countries. UK rules apply to other vehicles driven solely in the UK.

For passenger vehicles, under UK rules, the maximum driving time is 10 hours per day. A break of at least 30 minutes must be taken after 5.5 hours continuous driving. Within any period of 8.5 hours, there must be total breaks of at least 45 minutes. Under EU rules, the maximum driving time is 9 hours per day (rising to 10 twice per week) with a break of at least 45 minutes after 4.5 hours continuous driving. The applicability of UK or EU rules depends on the nature and location of the journey and the number of seats on the vehicle.

Under EU rules, tachographs are used to record hours of driving, other work, breaks and rests for all goods vehicles over 3.5 tonnes and for some passenger vehicles.

### General requirements

All drivers must possess a licence appropriate to the size and nature of

the vehicle they drive. They must also possess valid insurance. Owners of vehicles must ensure that they are registered, currently licensed, display a tax disc and possess a valid test certificate if required.

All drivers are obliged to obey traffic legislation, the Highway Code and local regulations.

## Law enforcement

The police are normally responsible for investigating traffic incidents. Employers can be prosecuted for aiding and abetting, counselling or procuring the commission of road traffic offences by their employees. The HSE can get involved in the investigation and prosecution of traffic incidents when:

- vehicles are engaged in specific work activities, e.g. refuse collection
- workers not in vehicles are engaged in specific work activities, e.g. street cleaners
- vehicles are manoeuvring in, out or near their work premises.

### Action by safety reps

Safety reps have a crucial role to play in ensuring that employers meet their safety obligations. Safety reps should:

- encourage employers to carry out proper risk assessments
- check that journeys are on the safest route, normally on motorways
- confirm that journey schedules do not lead to driver fatigue or speeding
- establish that appropriate vehicles are used for the load and journey
- check that vehicles are properly maintained, repaired, tested and registered
- check that vehicles are fitted with all necessary, properly functioning safety and communications equipment
- ensure that workers are provided with appropriate training and information
- check that road work is properly fenced off from traffic
- ensure that road workers are provided with suitable clothing
- report, anonymously if necessary, persistent infringements by employers to the enforcement authorities.

### Action by drivers

Drivers, especially on their own, need to take safety precautions. These include:

- driving within speed limits
- wherever possible, avoidance of driving in bad weather
- taking appropriate breaks outside the vehicle (15 minutes every two hours is recommended) and rest periods

- taking appropriate refreshment
- sitting as upright as possible and using head restraints
- wearing a seat belt at all times
- ability to perform basic vehicle maintenance
- using safe practices when entering and leaving the vehicle
- making sure the load is properly securing and evenly distributed
- parking the vehicle or trailer in positions that will not obstruct traffic or the visibility of other drivers or pedestrians.

## Further reading

An HSE task group produced a report in 2001: *Reducing at-work road traffic accidents*, ISBN 0 7176 2239 8. Among the recommendations were:

- the HSE should, as soon as possible, develop generic guidance for employers and others on managing at-work road safety (most unions and safety specialists wanted a Code of Practice which would have more legal force)
- the HSE should campaign to alert employers that their occupational risk management should cover at-work road safety
- consideration should be given to how reporting of at-work road accidents should be included in the RIDDOR regulations
- police report forms should be amended to include questions about journey purpose
- the road safety enforcing authorities, led by the HSE, should develop ways to investigate at-work road traffic incidents and take appropriate enforcement action



**FREE ADVICE ON WORKPLACE, COMMUNITY AND ENVIRONMENTAL HEALTH AND SAFETY**

Telephone advice line: 020 7794 5999  
Or mail@lhc.org.uk. Call us today.

## FIGHT FOR THE LIVING



PHOTO: MICK HOLDER/LHC

Mick Holder at Three Mills Green Monument.

On Sunday 28th April Workers Memorial Day the London Hazards Centre and the Construction Safety Campaign gathered at Three Mills Green Stratford where there is a memorial to four men who died in a sewer gas incident in 1901.

In 1990 three young men including two brothers died in a sewer gas incident at Watney Market, E1, where there is a permanent memorial on the clock tower.

Mick Holder said 'we should see these these two events and memorials as linked' and he called for a similar memorial to be placed wherever anyone loses their life at work. 'Every hour, someone in Britain dies because of their work.'

Tony O'Brien from the Construction Safety Campaign asked 'Why are we still waiting for changes in legislation on workers rights and corporate killing?'

## LHC TRAINING Autumn/winter programme

In the spring/summer period the following courses will be held at IVAC, 322 Upper Street, London N1 2XQ

- **Tuesday 8th October 2002**  
*Asbestos awareness*
- **Thursday 17th October 2002**  
*Introduction to workplace health and safety*
- **Tuesday 5th November 2002**  
*Women's health and safety at work*
- **Thursday 14th November**  
*Introduction to risk assessment*
- **Thursday 28th November 2002**  
*Tackling stress at work*
- **Tuesday 10th December 2002**  
*VDU risk assessments*

Cost £40 per person per course

To book call 020 7794 5999 or e-mail [mail@lhc.org.uk](mailto:mail@lhc.org.uk)

## Protest against casualisation

On the fourth anniversary of Simon's death, Wednesday 24th April 2002, the Simon Jones Memorial Campaign organised a protest outside the Building Industry's Annual Award Gala at a five star hotel in Park Lane. Protesters reminded the companies up for awards, including some with convictions for killing their employees, that people are sick of their profits-before-anything-else attitude.



PHOTO: MICK HOLDER/LHC

Construction Safety Campaign outside the Building Industry's Award Gala.

The Inquest into the death of student Michael Mungovan, aged 22 from Limerick, was due to take place on 7th May at Southwark Coroners Court. Michael was sent to work for Balfour Beatty doing railway maintenance by agency McGinley's on 9th October 2000. He was killed at 0.37am when he was hit by a train.

## Free Training Project on Health and Safety in London

The free health and safety training project for the black and minority ethnic voluntary sector has taken off since October 2001. Two full time staff Mumtaz Mahmood and Angie Birtill were recruited for three years to run the project, which is being managed by the London Hazards Centre.

260 organisations throughout London have registered for free training and support, but we are still recruiting. The project has held 3 consultation meetings in Camden, Islington and Hammersmith and Fulham in April. Groups discussed their health and safety issues at work, agreed on course contents, dates and venues.

The work of the project will be to:

- Identify 300 groups throughout London willing to participate
- Identify their health and safety needs
- Deliver three days' training in all boroughs
- Support each organisation to update their health and safety standards at work.

For more information or to register for the free training, please contact Angie or Mumtaz.

A COMMUNITY  
FUND PROJECT

COMMUNITY  
FUND  
Lottery money making a difference



Hampstead Town Hall Centre  
213 Haverstock Hill  
London NW3 4QP  
Tel: 020 7794 5999  
Fax: 020 7794 4702  
Email: [mail@lhc.org.uk](mailto:mail@lhc.org.uk)  
Website: [www.lhc.org.uk](http://www.lhc.org.uk)

Registered Charity No: 293677

