

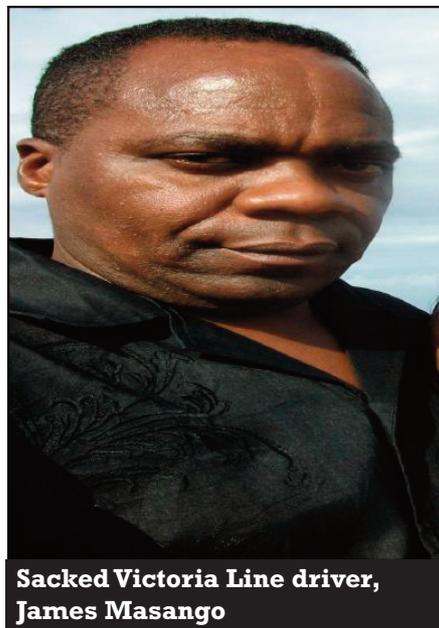


James Masango, Victoria Line Driver - Sacked 100% illegally

Still no job back from LUL as Mike Brown is “too busy” to speak to Bob Crow. Is our agreement not to ballot worth anything?

It is now nearly six weeks since an Employment Tribunal found that LUL were 100% liable for James Masango's dismissal following him being put back on his train by his Trains Operation Manager, Carl Painter despite him having a clear memo from LUOH that James was not fit for duty. The exact words of this memo were “I saw Mr Masango in clinic today. I have referred Mr Masango to a counselling and trauma service. He should undertake no train operating, no track work and no making of safety critical decisions. This restriction is temporary. I anticipate that one Mr Masango's work issues are resolved he will be able to make a graduated return to his duties.”

This advice was crystal clear and was temporary on the basis that his TOM completed an investigation into an alleged SPAD that James was involved in. James needed this matter cleared up before he picked up any duties and this was the advice that LUOH had provided Carl Painter with. James was not given a copy of the memo but was called to a meeting with Mr Painter to discuss it. He was refused representation and told that it was just an “informal” meeting. There was never any record kept of this “informal” meeting but the facts of what was agreed and discussed are disputed and were central to James' dismissal. However what is certain is that the tribunal believed James' account as following this meeting Mr Painter



Sacked Victoria Line driver, James Masango

later pretended that James' concerns had been cleared up and he had accepted a Corrective Action Plan (CAP). This was complete fabrication and later Carl is noted by the Tribunal as covering his rearguard in a later email with the tribunal stating that “Mr Painter's account of his 18 August meeting... post dated the wrong side door opening of 30 August, giving rise to the possibility that Mr Painter may have reconstructed the content of the 18 August meeting to safeguard his position; the decision to return the claimant to full driving duties had been his.”

This is a close as a tribunal can go to saying an employing manager has completely made up a story to cover his arse.

For what followed was a subver-

sion of the facts and incredibly the doctoring of a subsequent LUOH memo which resulted in different wording and which the tribunal commented on by saying “the unaccounted for variations in the wordings of the two OH reports dated 27 August, the date corresponding to the management email exchange involving Carl Painter were also salient”.

This is a close as a Tribunal can come to saying that so called independent doctors at LUOH have been leant on till Mr Painter got the advice he wanted which appeared in several versions. We are not sure who was doing this leaning on but we can suggest a prime suspect!

The upshot was that James was even more stressed out and confused and only found out anything about the SPAD investigation by way of reading a general notice which said a CAP plan had been agreed. This was a lie and one intended to publicly humiliate him. He was refused access to these LUOH reports which confirmed he was suffering from high blood pressure and was not to make safety critical decisions. Instead he was forced onto the road, interviewed by a DMT on the platform while picking up and told he would be punished for a SPAD he did not commit. Under pressure he opened the doors at a closed station and followed the incorrect procedure and after facing

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TRAIN DRIVERS COALITION OF SOLIDARITY

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the Kangaroo Court which poses as an independent disciplinary panel was eventually sacked for this mistake.

The tribunal concluded however that "no reasonable employer could have concluded from the evidence that the Claimant should have been driving at the time of the wrong side door incident."

This is as close as a Tribunal can come to saying that from the DTSM on the desk to the DRM interviewing him on the platform directed by Carl Painter to all the managers involved in the disciplinary process this was a clear stitch up from start to finish. Was James not to blame? To paraphrase the Tribunal Judgement..."We have considered the Claimants conduct ...and are not of the view that the claimant carried out culpable or blameworthy conduct. He was in a state of anxiety...We find the claimant was likely to make misjudgements due to the stress of unresolved work and health issues, such stress being entirely foreseeable by the respondent...He was not in a position to make sound judgement..In light of these findings, no deduction should be made to any award in respect of contributory fault"

This is as close as a Tribunal can come to saying that James was 100% unfairly dismissed and that he was badly let down by managers who not only attempted to tamper with medical evidence and mislead the tribunal but were completely reckless in their concerns for both James' welfare and the safety of the travelling public.

So what is the Union doing about it?

Unfair dismissals are rare enough to achieve in courts where employment law is stacked up against workers. But to win a case like this 100% is unheard of and is the equivalent of the police finding a

burglar with all your household goods he has just stolen and a confession. You would expect instant justice in these circumstances or at least the return of your possessions. But no, LUL has no intention of giv-



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**Employment Judge Campling,
22 August 2011**

ing James his job back. As soon as the union received this judgement backed by James' local branch, Finsbury Park calling for his reinstatement the national union and Bob Crow tried to seek a meeting with Mike Brown to avoid a dispute and further damage to LUL's already tarnished reputation following the recent successful campaigns. Instead of a speedy resolution this was met with the response that Mike was too busy even to get on the phone to Bob until the 30th September, coincidentally a few days before a "remedy hearing" where LUL are likely to play hardball. This makes us think that LUL are not serious about improving industrial relations and would rather back managers culpable of such callous behaviour as seen in this case. This is a situation we cannot tolerate as

it would give the green light for any manager on LUL to be able to sack our members with complete disregard for public safety and for their own disciplinary procedure which is now little more than a kangaroo court doing the bidding of more senior managers above who are pulling the strings. The union is also examining whether managers who have no regard for employment law may be prosecuted under Health and Safety Legislation for endangering passenger safety as this case clearly demonstrates.

We cannot tolerate this and say Justice for James – Reinstatement now.

Come to a meeting of Bakerloo Branch on 29th September at the Red Lion on Kingly Street at 1330 where you can hear more about this case and that of Jayesh Patel who is was similarly stitched up by the same BCV team and which the branch is calling for his reinstatement as a driver.

MEETING FOR ALL TRAIN STAFF

Justice for Jayesh Patel
and James Masango!

**Discuss the ASLEF sell out
on the Olympics!**

Speaker

PAT SIKORSKI

RMT Assistant General Secretary

14:30 hours

**Thursday September
29th**

Upstairs in the Red Lion
Kingly St, London
near Oxford Circus tube station