

The Chief

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No Fraud in Transit Worker Injury Case

By **GINGER ADAMS OTIS**

A New York City Transit worker who got hurt on the job and then suspended without pay after his employer accused him of filing a fraudulent Workers' Compensation claim has been cleared of all wrongdoing by an Administrative Law Judge.

Workers' Compensation Judge James Mulligan Aug. 22 concluded that Daniel Dermody, a Track Equipment Maintainer, had been permanently partially disabled during an on-the-job accident.

Concludes He Didn't Lie

He rejected NYC Transit's contention that Mr. Dermody lied about his medical conditions and submitted a false claim. He also dismissed the agency's assertion that Mr. Dermody should be blocked from receiving future Workers' Compensation benefits related to the accident.

NYC Transit made its allegations against Mr. Dermody after secretly videotaping him making home repairs following his injuries.

It has filed a request for an appeal. Charles Seaton, an agency spokesman, said he couldn't comment on the case while litigation was pending.

Mr. Dermody, 45, was accused of lying about the extent of his injuries even though one of the agency's own doctors had declared him partially disabled and authorized several surgeries and treatments for him.

Multiple Injuries in Fall

Mr. Dermody's accident occurred Sept. 8, 2005, when he fell off a crane that was on a railroad car, injuring his back and knee. Subsequent medical exams revealed a herniated disc in his back and two torn meniscus in his left knee.

An independent examiner and an NYC Transit doctor both approved him for surgery and follow-up treatments.

He filed a claim for Workers' Compensation Sept. 16, 2005, asking for compensation to cover his lost wages and medical benefits.

Twelve days later, NYC Transit sent him to an agency doctor, who declared him partially disabled, but fit for light duty.

Mr. Dermody reported to his supervisor the next day

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No Fraud Found in Transit Injury Case

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and asked for a light-duty assignment. NYC Transit said it didn't have any work for him and sent him home. He tried several more times after that, but was always sent away.

Doctor: Light Duty Only

On Oct. 28, Dr. Warwick Green, who works for NYC Transit, examined Mr. Dermody again, and reiterated that he had a permanent partial disability but was fit for light duty.

Mr. Dermody again informed his supervisors he was cleared for some jobs, but was sent home.

With nothing to do for several months, Mr. Dermody began making light repairs around a house that he had recently inherited from his father. Unbeknownst to him, an investigator hired by NYC Transit had him under surveillance.

Armed with a videotape that NYC Transit lawyers said proved Mr. Dermody was lying about his injuries, the agency suspended him without pay Feb. 14.

No Money Coming In

Mr. Dermody immediately filed a grievance through his union, Transport Workers' Union Local 100. Arbitration of his suspension has yet to begin, he said. Mr. Dermody has been without wages for the last eight months. He filed for unemployment in March, but NYC Transit challenged his claim. Mr. Dermody won the case when agency officials didn't appear at a hearing. Mr. Dermody's unemployment benefits will run out in two weeks.

His lawyer, Brian O'Keefe, said NYC Transit had been unfair to a dedicated and loyal worker.

"We think they are using the [Workers' Compensation] fraud statute as a sword rather than a shield," Mr. O'Keefe commented. "Apparently they think it's a light thing to accuse a man of the crime of fraud, and ask to have him permanently barred from getting Workers' Compensation benefits."

'Try to Trap You'

Mr. O'Keefe, who specializes in labor law, said he's represented other injured workers whose benefits claims were challenged by NYC Transit based on answers the workers gave to medical questionnaires provided by the agency.

"When you go to see an NYC Transit doctor, they ask you to fill out a poorly writ-



The Chief-Leader/Michael O'Kane

WANTS HIS JOB BACK: Track Equipment Maintainer Daniel Dermody won his Workers' Compensation case against New York City Transit, but his future is still in doubt pending the outcome of an appeal filed by his employer.

ten and vague questionnaire—without your lawyer present," said Mr. O'Keefe. "You're just sitting in a doctor's office filling out a form. You have no idea that these are not forms prescribed by the Workers' Compensation system, or your doctor. These are NYC Transit's forms, and your answers will be used against you later in your Workers' Compensation case."

Court papers show that NYC Transit controverted Mr. Dermody's claim because it said it had videotape that showed him making movements "contrary to the answers on a daily activities questionnaire."

That was the questionnaire Mr. Dermody had filled out in Dr. Green's office two months before the videotape was taken, immediately after his accident occurred.

Wasn't Given Reports

Ultimately Mr. O'Keefe got the initial medical reports from NYC Transit's doctor suppressed, because upon cross-examination Dr. Green admitted that he had sent his initial findings only to the agency. Law requires him to send them to all interested parties at the same time.

movements were consistent with a moderate disability."

NYC Transit filed its appeal of Judge Mulligan's decision last month, and at the same time stopped approving Mr. Dermody's medical treatments through Workers' Compensation. He has since been unable to get the physical therapy his doctors prescribed.

He's still waiting to be reinstated. Mr. Dermody wrote a letter to Metropolitan Transportation Authority Chairman Peter S. Kalikow July 21 asking that he be reinstated and the suspension against him dropped. He accused the agency of treating him like a criminal.

Termination Letter

A week later he got a letter from Robert Mesnard, Director of Payroll and Employee Resources in the Division of Car Equipment.

The letter said that pursuant to Section 73 of the Civil Service Law, Mr. Dermody would be terminated Sept. 19 due to a "disability resulting from a non-service connected injury/illness since Sept. 9, 2005."

"They even got that wrong," Mr. Dermody said. "I was hurt on the job. But the union fixed that for me and I wasn't officially fired last month. I'm still just suspended."

On Aug. 16 he got a letter from NYC Transit President Lawrence G. Reuter, who said that Mr. Dermody and his union representatives had already rescheduled the arbitration hearing four times—March 9, March 30, April 27 and July 6. The union held off on arbitration until Judge Mulligan reached his decision.

Resistance Continues

Mr. Reuter said that Mr. Dermody would be given an arbitration hearing in the near future.

Mr. Dermody sent another letter stating that he hoped to be reinstated without arbitration in light of Judge Mulligan's decision. That brought a final response from NYC Transit Vice President of Labor Relations Ralph Agritelley, who said the suspension issue would be decided in arbitration, and that NYC Transit would not communicate with him further on the topic.

As this paper went to press, NYC Transit hadn't scheduled arbitration for Mr. Dermody, and was attempting to get Dr. Green's initial medical reports brought into the hearing.

NYC Transit was allowed to show the videotape it had of Mr. Dermody making some light home repairs during the course of one afternoon. Agency lawyers contended that Mr. Dermody couldn't be suffering from a moderate disability that would only allow him to work at 50 percent capacity on his transit job if he could make home repairs.

Upon cross-examination, however, Mr. O'Keefe elicited testimony from Dr. Green that it was his medical opinion Mr. Dermody had a partial disability and was still injured. The doctor said it would be possible for someone with his condition to do moderate work of the type seen in the video.

'Work for Disabled Person'

Judge Mulligan came to the same conclusion. In his decision he wrote that "the activities I observed on the tape were light duty movements with long gaps of no movements by the claimant. [...] What is clear to me is that the activities that were done by the claimant at the house were slow and belabored and not the type of work that one would expect from a fit employee. These