

# BakerlooNews

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**Newsletter of the Bakerloo Branch**  
national union of rail, maritime and transport workers

**December 2010**

## ***Let's have a massive YES vote for Eamonn!***

### ***Make sure you use your vote***

As this newsletter goes to print train operator Eamonn Lynch was still sacked and over a month after his appeal he has still received no decision from the appeal panel. This is why RMT is balloting for strike action and is asking members for a massive yes vote. Staff on the Bakerloo line have been astonished at the treatment of Eamonn by LUL management and can't believe he is still waiting for his appeal decision.

Because of this blatant victimisation and sacking the RMT launched and won a landmark case for health and safety rep Eamonn Lynch at an Interim Relief Tribunal when the Judge awarded a "continuation order" on November 5th 2010. This ruling by the judge means that the view of the Tribunal was that Eamonn had been sacked and victimised by London Underground on the basis of his trade union activity. To sack someone in this way is an unlawful sacking, and is viewed in employment law as an "automatically unfair" dismissal; this is akin to sacking someone on the basis of their race, sex or sexuality.

Recently, RMT solicitors were provided the full judgement of the Tribunal.

In the excerpts below, the

"Claimant" is Eamonn Lynch, the "Respondent" is London Underground.

The judge ruled that:

"In order to grant the application requested by the Claimant the Tribunal must be satisfied that there exists prima facie evidence not merely that the Claimant is likely to succeed in his unfair dismissal claim but also that his claims will succeed on the grounds that his dismissal was automatically unfair because the principle reason for the dismissal was on either (or both) trade union or health and safety grounds. Further the Claimant must establish... the Claimant's chance of success on these ground is strong...

"The Tribunal considered the following aspects of the evidence presented by the Claimant which suggested that the requirements that the burden of proof had been satisfied by the claimant.

The fact that the Claimant was following instructions given to him (albeit incorrect instructions) by staff at Network Rail and the Respondent as supported by documentary evidence...

That the Claimant had openly admitted the wrongdoing and had not concealed any facts from the Respondent.



That a comparable case which was patently of greater severity than that of the Claimant had been dealt with more leniently.

That other staff of the Respondent who had given the Claimant wrong instructions were not disciplined.

That the Claimant's union/health and safety roles were referred to four times during the disciplinary hearing and as an aggravating factor in the decision of the disciplinary panel without apparent justification

That the Respondent's procedures for disciplinary action were not followed correctly and in particular  
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ular that a manager with whom the Claimant was known to be in dispute appeared to be involved in the decision to instigate formal disciplinary proceedings."

The Judge was convinced that Eamonn would be able to show a full tribunal that not only was it an unfair dismissal, but that it was an automatically unfair dismissal due to his trade union activities.

The Appeal hearing was held on October 25th 2010, with an assurance by the Appeal Chair that Eamonn and the union would be informed of the result by October 29th.

The decision of the appeal is still outstanding. LUL has stated in writing to General Secretary Bob Crow that neither the Appeal Chair nor LUL had ever indicated to either the AGS Pat Sikorski or Eamonn Lynch when a decision would be forthcoming. This is despite the fact that at the Interim Relief Tribunal on November 5th, Miss J Shepherd, the Respondents Counsel, assured the Judge that a decision was expected "by the middle of next week". That would have been November 10th 2010. The RMT and Eamonn Lynch are still awaiting the result of the Appeal.

The written decision of the judge makes no bones about the decision of the Tribunal. Eamonn Lynch was unlawfully sacked and victimised by London Underground because of his trade union activities.

The RMT has lost patience with London Underground on this issue which is why the union is balloting drivers and station staff. The ruling from the judge is clear. This is an unlawful dismissal. This illegal sacking must be overturned.

It is unlawful to sack an employee because of his/her trade union activity. This is *lex terrae* - the law of the land.

London Underground is not above the law; they must now reinstate Eamonn Lynch!

## LUL Job cuts - the strike is on!



This week talks with LUL management over job cuts broke down at ACAS. RMT had offered to go to 'binding arbitration' with LUL over job losses meaning that any decision reached by an independent arbiter would be agreed by both sides, management said no. RMT representatives also offered to call off strike action in return for a safety review into LUL's job cuts, again management said no. Needless to say the strike is on.

Over the last few months support for the fight for safety and jobs has grown with DMTs at Elephant & Castle joining the strike. Across the combine staff of all grades have realised that this is their fight and that job losses on stations would undermine safety for all grades. During the last strike even fewer trains ran than in the previous strike and more stations were closed. The Bakerloo line witnessed the farcical

situation of a skeleton train service stopping at just five stations during the entire day again with no service north of Queens Park. By 2230hrs during the last strike Bakerloo managers threw in the towel and shut the entire line. Again the staff who did come in were worked ragged and risked their own safety and jobs as LUL management tore up the health and safety rule book to run a service. Be sure if a major safety incident takes place on your watch it won't be management who carry the can, in fact they'll probably get a bonus as you pick up your P45.

This month's strikes start on Sunday at 18:29 hrs and ends at 18:28 hrs on Monday. Don't book on between these times, speak to your RMT reps about joining the picket line and let's show the bosses that we aim to defend our jobs and safety.

## Do not attend 'Rainbow meetings' without representation

London Underground are abusing their so called 'rainbow procedure'. Heard of it? They have a chart signifying your time off work. One axis is the amount of days you have had off and the other is for the amount of instances. It is quite colourful like a rainbow and if you are deemed as having too much time off you hit the outer rings of the colourful chart.

Management have decided that the existing Attendance at Work Procedure (AAW) is too lax, that workers are somehow playing the system and have decided to employ a so called "capability route" where staff are interviewed on their attendance.

Their view is if you have escaped the AAW procedure and have not faced a CDI and dismissal then they have to get you by another means. You get hauled in to see the TOM, told that you are not entitled to a representative at the 'informal meeting' and then warned that you will be subject to 3 monthly reviews and disciplinary action

The RMT has raised this abuse with senior LU management. The union is

concerned that previously discounted items such as swine flu and accidents at work are being used to "monitor staff". We are also extremely concerned that even items were staff have taken time off due to domestic emergencies are being used. This is in breach of London Underground's own procedures (the Management handbook and LUL's 'family leave guidelines') but also in breach of the EC Parental Leave Directive which has been incorporated into the Employment Relations Act sections 57A and 57B.

Staff who are monitored and facing discipline on such items are suffering a detriment and are entitled to take LU to a Tribunal.

Senior managers are looking at our concerns and a further meeting should be convened within the next 2-3 weeks. The RMT stated that, in the meantime, we would be advising our members and local reps that they should not attend any more of these Informal Attendance Meetings unless it is agreed that Representation be allowed.