

TRANSPORTATION Manager's DISPATCH

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Driver wasn't allowed to wear loose-fitting religious garment

Female operator claims illegal bias, contacts government agency

The scenario

A female truck driver had accumulated more than 800,000 miles of safe vehicle operation without an accident while wearing an abaya – a full-length, loose-fitting garment that covered her body. She wore the abaya because of her Muslim religious beliefs.

The woman then applied for a position as an operator with another company. She received a job offer and was enrolled in the company's training program.

During the hiring and orientation process, the woman repeatedly asked whether the abaya would be a problem, and she was

assured that it would not be an issue.

However, when the woman went to training, she was told that she needed to put on a company uniform. She suggested several other clothing options, but her proposals were rejected. She resigned, then contacted the Equal Employment Opportunity Commission (EEOC).

Legal challenge

The EEOC sued the transportation company for religious discrimination.

The employer said the woman's long, loose-fitting garment was a safety risk.

The ruling

The company lost. The court dismissed the employer's argument that the woman was a safety risk. Here's why: She had driven more than 800,000 accident-free miles while wearing an abaya.

The skinny

Keep in mind that if you refuse to accommodate a worker's religious beliefs, you have to provide a solid reason for doing so. Otherwise, you're risking a costly lawsuit.

Cite: *EEOC v. Greyhound Lines, Inc.*, U.S. District Court, D. Maryland, No. ELH-19-1651, 11/9/21.

Incident investigation

After laboring 38 of the previous 50 hours, a tired man walked in front of a moving train

Summary

A fatigued crew member was fatally crushed when he stepped in front of a train that was traveling at 78 mph.

What happened

A work crew was told to walk along railroad tracks and make repairs as needed. One of the crew members was given a disc and a hand-held horn and was instructed to

watch for approaching trains.

A few minutes after an eastbound train passed the work group, the watchman spotted a train moving westbound. He sounded the air horn and displayed the disc. The train's engineer saw the work crew on the tracks adjacent to where his train was traveling.

Suddenly, a member of the work crew stepped onto

the tracks right in front of the westbound train. The engineer slammed on the brakes, but it was too late. The train, which was moving at 78 mph, slammed into the man. His injuries were fatal.

Findings

Investigators learned that the victim had worked 38 of the previous 50 hours and probably made the fateful

decision to walk in front of a rapidly approaching train because he was fatigued.

It turns out that the union contract called for overtime hours to be distributed based on seniority, with no consideration of hours worked or fatigue levels.

And officials suggested that federal hours-of-service rules be extended to include on-track workers.

Transportation news

Why you should audit the positive train control systems in locomotives

A word to the wise: The government wants you to immediately audit the positive train control (PTC) systems in your locomotives, especially older mechanical ones.

That's your takeaway from an advisory recently issued by the Federal Railroad Administration (FRA). The advisory points to a design flaw that could allow engineers to manually disable the PTC system.

According to the advisory, three recent events put the FRA on notice that engineers could be routinely disabling the PTC system by manually cutting out the valve/brake

stand before the PTC system applies the brakes. The FRA says the problem is most acute in older locomotives equipped with mechanical brakes.

Industry groups don't think Biden's trucking action plan will work

You're not alone if you doubt the likelihood that the trucking action plan recently unveiled by the Biden administration will make a big difference in the current shortage of commercial vehicle operators.

As you know, the administration recently rolled out the 90-day program to great fanfare. Among other things, the action plan directs the

Federal Motor Carrier Highway Safety Administration to provide more than \$30 million to help states speed up the issuance of commercial driver's licenses. And the plan promises the development of a driver apprenticeship program, as well as efforts to increase the number of minority and female drivers.

However, industry groups are skeptical that the plan will actually help.

"The plan fails to address excessively high driver turnover rates," said the Owner-Operator Independent Drivers Association. "Attracting and training new drivers won't solve the larger problem of retention."

Increased scrutiny of the handling of empty containers at U.S. ports

Brace for increased government scrutiny of the manner in which your operation handles empty containers.

The deal: The Biden administration has put carriers on notice that if empty containers continue to be returned to Asia from U.S. ports, the Federal Maritime Commission might ratchet up its enforcement efforts. The shortage of containers at West Coast ports has hurt farmers who can't send their products overseas.

One option: Relocate empty containers to Oakland, CA, from the Los Angeles/Long Beach ports.

You make the call

Could engineer have done more to avoid drunk lying on tracks?

"You've got to be kidding me," said Adam, the transportation manager. "A man gets dead drunk, lies down on one of our tracks and then claims it's our fault when our train strikes him?"

"That's about the size of it," replied Regina, the operations manager. "We've been slapped with a lawsuit by someone who was injured by one of our trains. He claims that our engineer didn't see him lying on the tracks because our operator was too busy chatting with his coworkers."

"Oh, brother," said Adam. "This is absurd. Our engineer did everything he could. As soon as he saw the body lying prone on the tracks, he sounded the horn and hit the emergency brake. There was nothing more he could've done."

Straight tracks

"The injured person claims that the tracks in the area of the incident were straight," said Regina, "and that our engineer would've seen him sooner if he hadn't been distracted."

"He's desperate," said

Adam. "I mean, it was late at night and there was some fog in the area. However, our engineer went above and beyond the call of duty. We shouldn't be on the hook for injuries suffered by someone who refused to move even though he knew, or should've known, that a train was bearing down on him."

"You've made some good points," said Regina. "We'll challenge this lawsuit."

Did the company win?

■ *Make your call, then please turn to page 4 for the court's ruling.*

TRANSPORTATION Manager's DISPATCH

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Transportation Manager's Dispatch, January 10, 2022, Vol. 1, No. 14, is published 24 times per year by Institute of Business Publications, P.O. Box 1340, Havertown, PA 19083; PHONE: 484-472-8227; FAX: 484-472-8708.

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Trends to watch

■ INFRASTRUCTURE Which state has the nation's worst roads?

If your commercial vehicle operators tell you that the roads in Rhode Island are in bad shape, they're probably right.

So suggests a new study by Consumer Affairs. The organization used a variety of data points to rank the quality of the roads in each state.

The data included an email survey of 1,027 U.S. residents, an analysis of road conditions conducted by the Federal Highway Administration, and statistics on motor vehicle crashes from the Insurance Institute for Highway Safety. Based on the combined data, the

rankings showed that Rhode Island has the worst roads. Other states with poor roads include:

- Hawaii
- Wisconsin
- California
- Massachusetts

Using the same data, Consumer Affairs also found that Kansas has the best roads, followed by:

- Alabama
- North Dakota
- Kentucky
- Florida

■ SHIPPING Port may charge a fee for empty containers

Keep an eye on the steps being taken by officials to alleviate bottlenecks at jammed U.S. ports.

The Port of Los Angeles, for instance, just announced plans to charge a fee to ocean carriers for empty containers. Under the proposed policy, carriers would pay \$100 for each empty container that sits for nine days. The fee would increase in increments of \$100 per container per day until the container leaves the port.

Note: The fee proposal awaits the approval of the Los Angeles Harbor Commission.

Meanwhile, across the country in Savannah, GA, port officials have set up four pop-up ports hundreds of miles inland in order to reduce port congestion.

Investigation update

Disabled driver couldn't exit burning school bus

Employer: Riverside Community School District.

Incident location: Oakland, IA.

Agency: The National Transportation Safety Board.

What happened: After picking up a student, a school bus driver backed his vehicle out of the student's driveway and continued reversing until the rear wheels ran off the road and dropped into a ditch. In an effort to free the bus, the driver revved the engine. However, the exhaust tailpipe was blocked, so the engine overloaded and caught fire. Both the driver and the student were fatally burned.

Findings: The driver had severe leg and back problems that effectively made him disabled, so he was unable to quickly exit the vehicle during the emergency. The school district should've insisted that the driver pass a physical abilities test.

Stability instructions were wrong; five dead

Employer: Alaskan Managed.

Incident location: Sutwik Island, AK.

Agency: The National Transportation Safety Board.

What happened: As he was piloting the *Scandies Rose* crab boat toward the Bering Sea from Kodiak, AK, the captain of the vessel noticed that it was accumulating ice at a rapid pace and had developed a 20° starboard list. He was moving the vessel toward Sutwik Island to seek shelter when the boat capsized. Five of the seven crew members died and the \$15 million boat was lost.

Findings: Officials said that the added weight from accumulated ice raised the vessel's center of gravity, reduced its stability and caused it to capsize. They found that the vessel's stability instructions didn't account for the icing of crab pots.

Legal developments

Driver who ignored directive hurt when tanker blows up

Manager's Insight: Make sure that drivers understand they have to follow your instructions when they face situations that could be dangerous.

What happened: An independent operator driving a tanker truck was assigned to pick up a chemical that wasn't supposed to be dangerous. However, the facility loaded the wrong substance into the tanker; so, unbeknownst to the driver, he was carrying a highly flammable chemical.

What people did: When the driver stopped to get fuel, he noticed a leak

from the tanker. He contacted the company with whom he'd contracted to carry the load. He was told to get away from the tanker and move to a safe location. Instead, the man climbed into the cab of the vehicle and started making phone calls. Without warning, the tanker exploded and the operator was seriously injured.

Legal challenge: The independent operator sued the carrier that employed him to transport the load, arguing that it should've known he was moving a substance that was more dangerous than what was

originally agreed to.

Result: The company won. The court dismissed the lawsuit, ruling that the carrier had no way to know that the wrong chemical had been put in the tanker. It also noted that the victim failed to follow instructions and move away from the tanker truck as he'd been told to do.

The skinny: Injured commercial vehicle operators have to prove that they took all reasonable steps to protect themselves if they want to pin the blame for an accident on someone else.

Citation: *Stewart v. Marathon Petroleum Co., LP, et al.*, U.S. District Court, E.D. Michigan, No. 2:18-cv-12510, 11/29/21.

Management toolbox

Here's what to do when an employee tells you he must take time off for military duty

Oh no! One of your best staffers just told you that he has to take time off for military service. You know you're required under the law to accommodate his request, but you're not entirely sure of the extent of your legal obligations.

Keep in mind that it's important to be aware of your legal duties under the Uniformed Services Employment and Re-employment Rights Act (USERRA). Otherwise, your employer could get hit with a costly lawsuit.

First, you should recognize that USERRA

applies to all employees – the person doesn't need to be with your organization for any length of time in order to qualify for coverage.

It also pays to know that you can ask the worker to provide you with proof of the need for military leave, e.g., military orders or induction information.

The same benefits

While you're not obligated to compensate the worker while he's on military duty, he's entitled to the same benefits as other people taking leave. And benefits and seniority status, including vacation

time, must continue to accrue while the person is on military leave.

You're also required to hold the staffer's job open for as long as possible while he's on military duty. Plus, he has to be returned to the same position or to a similar job with comparable pay and benefits.

Bonus: Proceed cautiously before firing the staffer after he gets back from military duty. He'll have a strong case under USERRA if he's let go right after returning from military duty, no matter the reason for the termination.

You Make The Call: The Decision

(See case on page 2.)

Yes. The company won. A jury determined that the transportation operation wasn't liable for the injuries suffered by the man who was lying on the tracks when the train hit him.

The jury's decision was upheld by an appeals court, which decided that the jury's reasoning was supportable. The judge pointed to the so-called open-run defense, which assumes that someone in immediate danger on railroad tracks will move out of the way once he or she realizes that a train is approaching.

The court noted that the victim was dead drunk lying on the tracks and that the engineer did everything he could to stop the train before it hit the man. There was insufficient evidence that the engineer was distracted at the time of the incident.

What it means: People must get out of the way

Of course you don't want your trains striking anyone, but keep in mind that should someone get hit by a train, the victim will have to prove that he or she did everything possible to get out of the way with the train bearing down on him or her.

Under the law, a railroad engineer isn't obligated to stop a train for someone in potential danger; the operator is only required to sound the horn and take other reasonable steps to avoid a collision.

Otherwise, the person on the tracks has the legal responsibility to move.

Based on Kunнемeyer v. Long Island Railroad.

Federal regulatory notices

DRIVER SHORTAGE

'Under-the-hood' waiver for license certification

If you've been struggling to recruit school bus drivers, you'll be pleased to hear about a new waiver recently issued by the Federal Motor Carrier Safety Administration (FMCSA) in coordination with the U.S. Department of Education.

The waiver allows school bus drivers to pass the skills test when seeking a commercial driver's license without identifying the bus's "under-the-hood" components.

The temporary program, which has been rolled out because of a shortage of school bus drivers during

the COVID-19 pandemic, is effective through March 31, 2022. It allows – but doesn't require – states to grant the waiver.

SHIPPING

Why ocean carriers will face more complaints

Don't be surprised when there's an increase in the number of complaints filed against ocean carriers.

That's because the Federal Maritime Commission (FMC) recently updated its policies to make it easier for cargo owners to file complaints against ocean carriers over alleged unfair or unreasonable business practices that result in operational harm.

REG ROUNDUP

Vaccine-or-test mandate; 5G alert; Joshi departing

- The American Trucking Associations has asked the U.S. Supreme Court to nix the stay on the Biden administration's vaccine mandate that was put in place by an appeals court.
- The Federal Aviation Administration has issued a Safety Alert for Operators on the potential negative effects on altimeters when airplanes are operating in the presence of 5G signals.
- Meera Joshi, the deputy administrator of the FMCSA, has accepted a job on the staff of Eric Adams, the new mayor of New York City.