

SEPTA held in contempt of court

A judge ruled the agency intentionally withheld key documents in a civil suit. The fine was \$1 million.

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A Common Pleas Court Judge yesterday fined SEPTA \$1 million for contempt of court, ruling that the transit agency intentionally withheld key documents in a civil law-suit brought by the mother of a 4-year-old boy whose foot was sheared off by a subway escalator.

In blistering remarks, Judge Frederica A. Massiah-Jackson said the paper trail discovered during the hearing "established without any doubt that SEPTA's management at the highest levels" knew about internal documents relating to the case.

Nevertheless, she said, the agency still failed to turn over required evidence about the Nov. 27, 1996, accident at the escalator at the Cecil B. Moore subway station escalator on North Broad Street - and even planted a shoe lace at the scene to make it appear that the boy's untied lace triggered the injury.

"The most devastating evidence which remained hidden by SEPTA was a May 1994 memo which stated the Cecil B. Moore station escalator, and others, were dangerous," the judge said.

For 2 years, she said, SEPTA knew that the escalator needed repair yet took "no action" and "engaged in no maintenance" on any of its 27 subway escalators.

A jury last Tuesday awarded the boy, Shareif Hall, \$50 million dollars and his mother, Deneen Hall, \$1 million in damages, plus \$65 dollars to pay for the sneakers that Shereif wore that day. The boy's mother watched in horror as the escalator sheared off the foot of her son, who is now 7 and wears a prosthesis.

Massiah-Jackson noted that SEPTA should have turned over all documents related to the case before the civil trial started or asked the judge to overrule the request by Hall's lawyer, [Thomas R. Kline](#).

"SEPTA hindered justice and impeded the judicial process," the judge ruled.

Massiah-Jackson said that SEPTA hid and altered documents on the case. Referring to a SEPTA photograph produced into evidence, she said the agency placed an unmatched white shoelace on top of the boy's mangled black sneaker to make it look as if his untied shoelace caused the accident.

While Shareif's "blood is still wet on the ground" after the accident, "somebody from SEPTA was manipulating with physical evidence," the judge said.

In last week's civil trial, Kline argued that a step on top of the escalator dropped and that Shareif's foot was caught and mangled underneath.

Kline asked the judge to hold SEPTA in contempt of court last week after a top SEPTA director of safety and risk management was ordered to bring the documents - some of which were not introduced until midway through the week long trial - to court.

"We are pleased and tickled," Kline said after yesterday's ruling. "It's exactly what we asked for. The court found in direct, blunt terms that SEPTA subverted the legal process, that they obstructed justice, and the evidence of the tampering goes all the way to the highest levels of SEPTA."

On the witness stand yesterday, SEPTA's general manager, John K. Leary, Jr. conceded under questioning by Kline that the integrity of SEPTA's top management was in doubt.

"If some specific person failed to perform their duties, then that would be dealt with," Leary said afterward. "This is very serious. The people in the organization are taking it very seriously. I think it's possible people could lose their jobs if they deliberately withheld documents."

Leary said outside of the courtroom that he wanted the public to know "my heart goes out to the Hall family over this tragedy. This is clearly a wake-up call for SEPTA. I want you to know we received the wake-up call."

"Something good can come out of something bad. We will fix what is broken at SEPTA and it won't happen again."

He also said SEPTA might appeal both judgements.

Earlier in the day, G. Roger Bowers, the agency's general counsel, told the judge the failure to turn over materials was "bureaucratic bungling" and not an intent to deceive.

Bowers, whose legal staff received the requests for the documents from Kline, said in court that he never saw the final accident investigation report in the case until last week. However, other SEPTA witnesses presented papers showing that Bowers received a copy of the report and other documents, and a former top safety officer for the agency said SEPTA's investigation was rife with "loss of evidence and constant report editing."

The judge ruled that "Mr. Bowers blamed this on pure bureaucratic bungling. I suggest that the correct label is 'contempt of court.' The failure to produce voluminous records must be considered willful."

Among her findings based on SEPTA's own documents, Massiah-Jackson said the agency's preliminary report on the accident said that the escalator screws had been "sheared off." The agency's final report - six months later - stated that the screws were undamaged.

Massiah-Jackson ordered SEPTA to pay \$1 million to the Common Pleas Court Prothonotary for "disrespect to the court," saying "the parade of witnesses and thousands of pages of materials

produced by SEPTA after the jury verdict - and without rational explanation - leaves the court no choice."

Last week, a dozen top SEPTA officials appeared in court, carrying newly released documents in manila envelopes, briefcases and a Macy's shopping bag. Someone said that no one in SEPTA's legal department ever asked them for the papers. Others testified that they did not know the documents existed.

SEPTA believed it was immune to the laws we all live by, and the court today said no, Kline said after the ruling. "We are pleased. The bigger message is the escalators were unsafe in 1994, broken in 1996, and they are broken and in disrepair today. The good that will come from this contempt hearing is beyond measure."

Leary said findings from SEPTA's "blue-ribbon panel" of attorneys appointed to investigate the agency's actions to in defending the lawsuit would be made public. A spokeswoman for District Attorney Lynne Abraham said last night that Abraham would review Massiah-Jackson's ruling to consider whether obstruction-of-justice charges in a civil lawsuit amount to criminal behavior.