

On Appeal from the New South Wales Court of Appeal

BETWEEN:

COREY FULLER-LYONS  
by his Tutor, NITA LYONS  
Appellant

and

STATE OF NEW SOUTH WALES  
Respondent



**APPELLANT'S CHRONOLOGY**

**Part I:**

This chronology is in a form suitable for publication on the internet.

**Part II:**

<u>Date</u>	<u>Event</u>	<u>Appeal Book Reference</u>
21.07.1992	Appellant's date of birth.	Blue Appeal Book Vol 1, p.292K.
00.00.1994	OMET 115 (Operation Manual for Electric Trains) promulgated containing operational rule: " <i>The 'right of way' signal from station staff (where provided) is an indication to the guard that station work has been completed and it is safe for the train to proceed</i> ".	Blue appeal Book Vol 1, p.6.
00.08.2000	Safe working unit 141 identifying the basic duties of train crews.	
00.08.2000	SWU (Safe Working Unit) 141 promulgated. Basic Duties of Guards (Passenger Trains):	Blue Appeal Book Vol 1, p.122.

<u>Date</u>		<u>Event</u>	<u>Appeal Book Reference</u>
		<p><i>"...The guard is responsible for the safety of all passengers on the train and must be prepared to stop a train immediately if an emergency situation arises.</i></p> <p>.....</p> <p><i>Guards must:</i></p> <p>.....</p> <ul style="list-style-type: none"> <li>• <i>watch the train in and out of every platform at which it stops."</i></li> </ul>	
00.08.2000		Map of City Rail Network.	Blue Appeal Book Vol 3, p.1311.
21.12.2000		<p><i>"Doors No. 2 end defective. FMC advised."</i></p> <p>(The maintenance record does not identify whether "Doors No. 2 end defective. FMC advised" related to the doors on the left-hand side facing towards the driver through which the appellant fell or the doors on the opposite side which were observed after the accident to stall with a 350mm gap and then close.)</p>	Blue Appeal Book Vol 2, p.938.
29.01.2001	1017 hours	Service N137 from Sydney to Newcastle departed Sydney Central Station.	Blue Appeal Book Vol 1, p.189I.
	1100 hours	Michael Dunn commenced duties as a Customer Services Attendant at Morisset Railway Station.	Blue Appeal Book Vol 1, p.181M.
	1154 hours	Approximate time that the appellant left the company of his brothers to get a drink of water.	Black Appeal Book, p.41, lines K-M.
	1207 hours	Train left Morisset Railway Station.	Blue Appeal Book Vol 1, p.292N.
	1209 hours	Appellant fell from train N137 just prior to stanchion 125+482 located 125.937 kms from Central Station.	Blue Appeal Book Vol 3, p.1277S.
	1210 hours	Appellant reported missing to the train guard, Mr Meiforth.	Blue Appeal Book Vol 3, p.1277F.
	1210 hours	<i>"Guard Meiforth of Newcastle reported that N137 departed Sydney on time and ran on time and was working without incident</i>	Blue Appeal Book Vol 1, p.189.

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		<p><i>until after the train had passed through Dora Creek when a young male passenger who called himself Nathan Lyons reported to him that he could not find his little brother. He asked him if he had looked through the carriages and toilets. He said he did so. He said he might have got off at Morisset. So I then rang Morisset Station and reported to the Station Master Morisset that a little boy seven years of age by the name of Corey Lyons dressed in a black 'T' shirt and green shorts may have got off the train at Morisset with his older brother still on the train. I asked the Station Master to check if he was present on the station. The Station Master told me there was no one there by that name. I then contacted SM Newcastle and made the same report to him. He told me that he would contact North Control and ensure that all trains were warned in that area.</i></p> <p><i>I then checked the train to see if I could find him on the train but I was unable to do so. On arrival at Newcastle I took the boy's brother to SM Newcastle.</i></p> <p><i>He further reported that when he prepared his train at Sydney all doors were working in the proper manner."</i></p> <p>(Report prepared by Andrew Ross-Gowan, Operations Inspector).</p>	
	1224 hours	Ambulance booked.	Blue Appeal Book Vol 1, p.193.
	1230 hours	Station Master Morisset called Morisset Police to advise of a missing child.	Blue Appeal Book Vol 3, p.12770.
	1235 hours	Police arrived at Dora Creek.  Narrative details:	Blue Appeal Book Vol 1, pp.292-293.

<u>Date</u>	<u>Event</u>	<u>Appeal Book Reference</u>
	<p><i>"About 12.07pm Monday 29/01/2001, the victim Corey Fuller-Lyons, born 21.07.92 has been travelling aboard a northbound train from Sydney to Newcastle. The victim was travelling with his brothers Nathan 15 y.o. and Dominic 11 y.o. and to their mother's knowledge, they were going to see a friend at St. Peters and probably boarded the train at Sydenham.</i></p> <p><i>The train they were aboard, has then left Morisset Railway Station about 12.07pm heading north and between Morisset and Dora Creek Railway Stations, the victim has fallen from the train to the west side of the tracks. (Reasons unknown at this stage).</i></p> <p><i>Speed of the train at this point up to 100km/h. The victim has missed a power line stanchion by approximately one metre, and then hit the ground sliding for about 20 metres over a 3 metre embankment where he has come to rest. The victim has received a severe laceration to his forehead and legs and arms.</i></p> <p><i>The victim has then been able to climb the embankment and walked across both tracks, and climbed the safety fence to Main Road 217 near Marconi Road, Dora Creek, where passing motorists have sighted the victim covered in blood. Ambulance and police had been informed and attended at 12.35pm, and the victim was airlifted to John Hunter Hospital via Westpac helicopter, in a serious but stable condition.</i></p> <p><i>His brothers on reaching Newcastle Railway Station, have reported the victim missing between Wyee and Fassifern Railway Stations. Police from Newcastle collected the brothers and obtained particulars as to NOK.</i></p> <p><i>....."</i></p>	

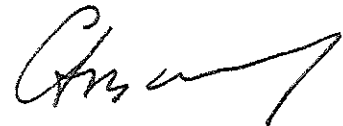
<u>Date</u>		<u>Event</u>	<u>Appeal Book Reference</u>
	1240 hours	Station Master Newcastle reported to Sydney North Control that Corey was missing and to warn all trains.	Blue Appeal Book Vol 3, p.1277N.
	1245 hours	Appellant found on the side of the road at Dora Creek.	Blue Appeal Book Vol 3, p.1277Q.
	1245 hours	Customer Services Attendant at Morisset, Mick Dunn, arrived at Network Control Gosford.	Blue Appeal Book Vol 3, p.1278D.
	1250 hours	<p>Trevor Weir, Maintenance Facility Manager, Passenger Fleet Maintenance, advised that Corey was reported to have fallen from the northbound passenger service N137. Weir was requested to attend Newcastle Station and carry out an inspection:</p> <p><i>"At approximately 1250 hours 29/1/01 I was advised that a youth was reported to have fallen from the Northbound passenger service N137. It was requested that I attend the service at Newcastle Station and carry out an inspection of the door locking operation prior to the set's departure on its journey N154."</i></p> <p>(Internal memo prepared by Trevor Weir, Maintenance Facility Manager, Passenger Fleet Maintenance).</p>	Blue Appeal Book Vol 1, p.191M.
	1252 hours	Network operation Superintendent advised that Corey was missing.	Blue Appeal Book Vol 3, p.1277O.
	1300 hours	Ambulance officers assessed the appellant.	Blue Appeal Book Vol 1, p.193.
	1300 hours	Appellant transferred by Westpac helicopter to John Hunter Hospital.	
	1320 hours	Fleet Maintenance Manager completed examination of the train at Newcastle Station <i>"finding all doors to be operating correctly"</i>	Blue Appeal Book Vol 3, p.1278F.

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	<i>with functional locking mechanisms".</i>	
1325 hours	<p>Trevor Weir and Mr A. Gibson proceeded to check all door locking systems.</p> <p><i>"I arrived at Newcastle Station at 1325 hours and with the assistance of Car and Wagon Builder, Mr A. Gibson, carried out a test of all door on the consist. The Guard of N157 Mr C. Fleming was requested to close all doors on the set and Mr Gibson and myself proceeded to check all door locking systems by attempting to force the doors apart.</i></p> <p><i>At the conclusion of the test all doors were found to be locking when closed. It was noted that all doors at the No. 2 end of DJM8124 when closed and locked left a gap of approximately 100mm at the floor level and no gap at the ceiling level. It was also noted on closing, the doors at No. 2 end and No. 1 side of DJM8124 stalled momentarily with a gap of approximately 350mm then continued to close and lock.</i></p> <p><i>All diaphragm curtains were in place throughout the set, and the cars in directions of travel for N137 were DJM8124, DIT9109, DIT9156, DJM8104."</i></p> <p>(Internal memo prepared by Trevor Weir, Maintenance Facility Manager, Passenger Fleet Maintenance).</p>	Blue Appeal Book Vol 1, p.1910-T.
1344 hours	Network Operations Manager, Kevin Grubb, arrived at Gosford Control.	Blue Appeal Book Vol 3, p.1278E.
1750 hours	<p>"Old fault Code 44 No. 5 but doors still locking OK".</p> <p>(See also report of Hugh Cowling p.30 - Blue Appeal Book Vol 3, p.988). ( It is clear from this report</p>	Blue Appeal Book Vol 2, p.938; Report of Mr Cowling, Blue Appeal Book Vol 3, p.992).

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	that this "old fault code" related to the doors on the opposite side of the rail car through which the appellant fell and which were observed to stall with a 350mm gap and then close and lock i.e. this was a fault in these particular doors that existed before 29.01.2001).	
29.01.2001	Operations Inspector, Andrew Ross-Gowan, prepared a report of the information provided to him by guard Meiforth.	Blue Appeal book Vol 1, p.189.
18.11.2003	Facsimile transmission from Network Control (Gosford) in relation to the appellant's accident. (Sent at a time when the CSA was still alive).	Blue Appeal Book Vol 3, p.1277C.
09.04.2008	Statement of Claim filed.	Blue Appeal Book Vol 1, p.564.
15.06.2008	Michael John Dunn died.	Death certificate reproduced at Blue Appeal Book Vol 1, p.183.
06.08.2010	Amended Statement of Claim filed.	Blue Appeal Book Vol 1, p.580.
28.05.2012	Mr Hugh Cowling, Specialist Consulting Engineer, inspected rail car DJM8124.	Blue Appeal Book Vol 3, p.988.
18.07.2012	Date of report of Klaus Clemens.	Blue Appeal Book Vol 3, p.1133.
22, 23, 24, 26 and 29 April; 1 and 2 May 2013	Hearing dates before Justice Beech-Jones.	
15.11.2013	Judgment on liability by Beech-Jones J.	
08.04.2014	Order of Beech-Jones J.	
05.05.2014	Notice of Appeal filed in the Court of Appeal.	

<u>Date</u>	<u>Event</u>	<u>Appeal Book Reference</u>
13 and 14.11.2014	Dates of hearing in the Court of Appeal.	
09.12.2014	Reasons for Judgment of the Court of Appeal.	
22.12.2014	Application for Special Leave to Appeal to the High Court of Australia.	
17.04.2015	Date of hearing of Special Leave Application.	

Dated: 1 May 2015.



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