



DALLAS COUNTY

WORKPLACE SAFETY

Negligence

Mechanic claimed he injured back pushing airplane by hand

DECISION	Defense
CASE	John B. Butler v. Douglas P. Gundermann, David Tears, GTA Investments, Inc., and GTA Air, Inc., No. 01-10896
COURT	Dallas County District Court, 44th, TX
JUDGE	David Kelton
DATE	10/20/2004
PLAINTIFF	
ATTORNEY(S)	Thomas W. McKenzie , Law Offices of Thomas McKenzie, Bedford, TX
DEFENSE	
ATTORNEY(S)	Robert J. Reagan (lead), Reagan & McLain, Dallas, TX Maurice E. Klein , Law Offices of Maurice E. Klein, Dallas, TX

FACTS & ALLEGATIONS In December 1999, plaintiff John B. Butler, 50, an aircraft mechanic, was on the night shift at Love Field in Dallas. He alleged that he injured his back while pushing a twin-engine light aircraft by hand. The plane weighed between 3,600 and 5,000 pounds. Butler's employer was one of two related companies, GTA Investments and GTA Air, which were non-subscribers to workers' compensation.

Butler sued GTA Investments Inc. and GTA Air Inc., of Dallas, for negligence. Butler also sued GTA owner Douglas P. Gundermann and former owner David Tears, but later nonsuited them.

Butler alleged that the defendants were negligent for not having an operable mechanical towing device, or "tug," available.

The defendants contended that an operable tug was available, but that it was reasonable to allow employees to push planes of this class by hand. Butler and his co-workers did so all

the time, without injury.

Also, Butler was a supervisor, and the defendants argued that he should not have pushed the plane if he felt that it was unsafe to do so.

Each side called an aircraft maintenance safety expert.

INJURIES/DAMAGES *aggravation of preexisting condition; fusion, lumbar; herniated disc at L5-S1*

Butler claimed a herniated disc at L5-S1 and underwent a fusion. He claimed that the injury was either new or an aggravation of a preexisting condition. His medical bills were about \$50,000. He did not claim lost wages.

The defendants argued that the herniation was entirely preexisting. Also, the defendants called a nurse practitioner who testified that the herniated disc was not caused by the December 1999 incident, but Butler objected, and Judge David Kelton ruled that her opinion as to causation would not be considered.

RESULT Butler nonsuited Tears and Gundermann.

The case was tried to the bench, and Judge Kelton did not find GTA Investments or GTA Air negligent.

**PLAINTIFF
EXPERT(S)** **John Howardson Darbo**, aircraft maintenance, Bedford, TX

**DEFENSE
EXPERT(S)** **Glenna Allbritton, R.N.**, CNP, medical/health, Shreveport, LA
Otho Henderson, aircraft maintenance, Granbury, TX

POST-TRIAL Butler's motion for new trial was denied. He did not appeal.

—John Schneider