

Case Name: Philip J. Waisonovitz v. Metro-North Commuter Railroad

Date Decided: Not Available

Originally Filed in: New York (Federal)

Decided by: U.S. Court of Appeals, Second Circuit (Federal)

Court: U.S.D.C. Court of Appeals Second Circuit

Judge: Chief Judge Wilfred, Judge Wilfred, Judge Feinberg, Judge Katzmman

Citation: 2009 WL 3424223 (C.A.2)

Background:

Philip Waisonovitz, plaintiff, appealed from a judgment dismissing on his claim against Metro-North Commuter Railroad ("Metro-North"), under the Federal Employers' Liability Act ("FELA") for negligent infliction of emotional distress ("NIED") and negligent supervision.

Issue:

Did the lower court improperly grant Metro-North's motion for summary judgment?

Overall Issues Discussed or Touched Upon in this Case:

- *Ruling on Summary Judgment*
- *Insufficient Evidence of Negligence*

Held:

Under FELA, Negligent Infliction of Emotional Distress claims are examined under the "zone of danger test". The "zone of danger" test limits recovery "to those plaintiffs who sustain a physical impact as a result of defendant's negligent conduct or who are placed in an immediate risk of physical harm by the conduct. Waisonovitz testified that he did not see a body between the tracks until the train came to a stop, and he then learned that he had been struck. Moreover, *Waisonovitz admitted he suffered no physical harm nor did he anticipate or fear suffering such harm.* Waisonovitz countered Metro-North's second motion for summary judgment by recasting his own prior deposition testimony as "questionable" and that it did make sense he failed to see the co-worker's body. However, this Court found that the district court properly concluded that Waisonovitz was outside the zone of danger.

Comments:

The plaintiff in this case tried to argue that he was within the zone of danger because he saw the body lying over the tracks, entered into a state of shock, lost control of the train, and therefore entered the "zone of danger". Under a Negligent Infliction of Emotional Distress claim, a worker within the zone of danger of physical impact will be able to recover for emotional injury caused by fear of physical injury to herself. If the Court finds the plaintiff to be "outside the zone of danger" then the claim will necessarily fail.

Steve Gordon