

Case Name: Riedel v. Consolidated Rail Corporation

Date Decided: May 6th, 2010

Originally Filed in: Ohio (State)

Decided by: Ohio Supreme Court (State)

Court: Supreme Court of Ohio

Judge: Judge Pfeifer

Citation: Riedel v. Consolidated Rail Corporation, 928 N.E.2d 448 (Ohio 2010)

Background:

Jack Riedel and Josephine Weldy separately filed suits against Consolidated Rail Corporation, American Premier Underwriters, and Norfolk Southern Railway Company alleging various claims under Federal Employers' Liability Act (FELA) and the Locomotive Inspection Act (LIA). The complaints alleged claims for occupational exposure to asbestos. The defendants moved to dismiss Reidel's claim because he failed to show the prima facie showing required by R.C. 2307.93(A)(1). The court found that Reidel failed to meet this standard but did show satisfy the requirements of R.C. 2307.92(B). As such, the court dismissed the R.C. 2307.93(A)(1) but ordered the remaining claims scheduled for trial. Consolidated Rail appealed the trial court's decision arguing that R.C. 2307.93(A)(1) do not apply to the non-asbestos claims and (2) severing the non-asbestos claims for trial. Consolidated Rail asserted that the court should have administratively dismissed all the claims pursuant to R.C. 2307.93(C). The Court of Appeals affirmed the trial court's ruling.

Issue:

Did the trial court err in failing to apply R.C. 2307.93(A)(1) to non-asbestos claims and in severing the non-asbestos claims and proceeding with them to trial?

Overall Issues Discussed or Touched Upon in this Case:

- *Procedural Issues - State*
- *Ruling on Summary Judgment*
- *Locomotive Inspection Act*

Held:

The Court began its analysis by reviewing the language of R.C. 2307.93(A)(1). The law states that a "plaintiff in any tort action who alleges an asbestos claim shall file prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in R.C. 2307.92(B), (C), or (D)." After reviewing the legislation history, the Court interpreted the provision to indicate that the General Assembly intended to require all asbestos-claim plaintiffs, irrespective of the action in which the claims are filed, to provide prima-facie evidence of physical impairment related to asbestos in order to avoid dismissal.

Further, the court read this provision to be limited to asbestos claims. Thus, R.C. 2307.93(A)(1) cannot apply to claims of injury due to exposure to other toxic substances. The Court also disagreed with Consolidated Rail's argument that the district court erred in ordering the remaining claims for trial. R.C. 2307.93(c) provides that "court shall administratively dismiss the plaintiff's claim without prejudice" when the plaintiff fails to make the prima-facie showing required by R.C. 2307.93(A)(1). The use of the word claim does not mean the entire tort action as Consolidated Rail alleges. The Court found no support Consolidated Rail's position. It held that if the General Assembly intended for courts to dismiss an entire tort action, it would have used the term "tort action" instead of the more limited term "claim." Therefore, the trial court has the power to sever and dismiss an asbestos claim where the prima facie elements have failed to be shown and continue with the non-asbestos claims. The Court went so far as to say that to rule any other way would provide an unreasonable and absurd result.

Comments:

Under R.C. 2307.92(B) any person bringing an asbestos claim must make a prima facie showing that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition.