

**Case Name:** McCain v. CSX Transportation, Inc.

**Date Decided:** April 23rd, 2010

**Originally Filed in:** Pennsylvania (Federal)

**Decided by:** Pennsylvania Eastern District Court (Federal)

**Court:** E.D. Pennsylvania

**Judge:** Judge Robreno

**Citation:** McCain v. CSX Transportation, Inc. 2010 WL 1659714 (E.D. PA 2010)

**Background:**

Norman McCain (McCain) worked as a machinist for his employer CSX Transportation (CSX) from October 1969 through January 2005. He filed a claim against CSX under the Federal Employers' Liability Act (FELA), the Federal Safety Appliance Acts, and the Boiler Inspection Acts. McCain alleges that as a result of his duties as a machinist that he was exposed to excessive and harmful cumulative trauma to his knees, arms and hands resulting in occupational repetitive stress syndrome. Further, he attributes his injuries to fourteen negligent acts including CSX's failure to provide a safe work place, timely and adequate ergonomic programs, and adequate warning as to the hazardous working conditions. CSX admits in part and denies in part McCain's allegations. In CSX's answer, it asserts several affirmative defenses including: 1) failure to state a claim upon which relief may be granted, contributory negligence, statute of limitations, statutory limitations of recovery under FELA, and improper venue. Several months after filing its answer, CSX now moves for summary judgment alleging that McCain failed to file his lawsuit within the three year statute of limitations and that his claims regarding unlevel ballast are preempted by federal law. In response, McCain argues that the injuries to his right knee are within the applicable statute of limitations and there is no Federal preemption in regards to ballast claims brought pursuant to FELA.

**Issue:**

Is summary judgment proper due to either the passing of the statute of limitations or preemption?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Applicability of FELA at Issue*
- *Ruling on Summary Judgment*
- *Summary Judgment - Defendant Factual Granted*
- *Summary Judgment - Defendant Legal Granted*
- *Statute of Limitations*
- *Pre-Emption*
- *Locomotive Inspection Act*
- *Federal Rail Safety Act (FRSA)*

**Held:**

The court began its analysis with the statute of limitations issue. The court noted that when a statute of limitations begins to run is ordinarily a question of fact and when the facts are established, the inquiry becomes a question of law. Under FELA, a railroad employee must bring an action within three years from the day the cause of action accrued. But under the discovery rule, a plaintiff's cause of action accrues when the injury manifests injury. Here, because the plaintiff's injuries occurred over time it becomes difficult to determine when the specific date of injury occurred. As such, the Supreme Court has instructed courts to begin the period of limitation when the injury manifests itself. Thus, the cause of action for a repetitive stress injury, under FELA, accrues when a plaintiff has knowledge of both the existence and cause of his injury. While the plaintiff has the ultimate burden of showing that he filed suit within three years of both the date he was aware of the injury and the date the cause of his injury was or should have been discovered at trial, the court is currently dealing with a motion for summary judgment. As such, the moving party has the burden to show the absence of a genuine issue of material fact. CSX argues and through medical records proves that McCain felt pain in his knees two years prior to visiting a doctor and five years prior to filing suit. Therefore, the court finds no genuine issue of material fact that plaintiff was aware or should have been aware of the cause of his injury more than three years before filing suit and as such his claims pertaining to his left knee are time barred. CSX, however, pointed to know physical evidence that McCain's injury to his right knee manifested itself prior to 2004. Thus, the suit seeking damages for his injuries pertaining to his right knee are not time barred. The Court next addressed the issue of preclusion. CXS argues that the Federal Railroad Safety Act ("FRSA") and the Federal Railroad Administration ("FRA") preclude Plaintiff's ballast claim as a matter of law under FELA. The court conducted a review of the preemptive language of the FRSA and concluded that it only explicitly preempts state laws, regulations and orders and remains silent as to other federal safety standards. It also distinguished a recent Sixth Circuit opinion that held claims brought pursuant to FELA precluded by the FRSA if they would have been pre-empted if brought by a non-employee under state law. This case differs in part from the recent Sixth Circuit case because the plaintiff's injuries alone were not caused by the ballast size but also in part due to his repetitive squatting and bending and climbing up and down locomotive ladders. As such, the court precluded McCain's claims attributable to the track ballase but not the squatting, bending, and climbing of ladders.

**Comments:**

**The cause of action for a repetitive stress injury, under FELA, accrues when a plaintiff has knowledge of both the existence and cause of his injury.**