

Case Name: Palmer v. BNSF Railway Co.

Date Decided: October 30th, 2010

Originally Filed in: California (state)

Decided by: Florida 3rd District Court of Appeals (State)

Court: California Court of Appeals, Third District

Judge: Hull

Citation: 2010 WL 3798952

Background:

Plaintiff, a railroad employee, brought this action against his employer under the FELA for injuries he sustained when he climbed down from a tanker car while wearing a device used to remotely control locomotives. At the time, the plaintiff was performing switchman's duties. Plaintiff believed that the device obstructed his view and hindered his movement, causing him to lose his balance. Defendant moved for summary judgment, asserting that the Federal Railroad Safety Act (FRSA) (49 U.S.C. Â§ 20101 et seq.) and the Locomotive Inspection Act (LIA) (49 U.S.C. Â§ 20701 et seq.), precluded the plaintiffs FELA claim. The trial court granted the defendant's motion, holding that the FRSA precluded the plaintiff's FELA claim. Plaintiff timely appealed.

Issue:

Does the FRSA preclude a FELA claim when the claimant asserts that hi employer was negligent by requiring him to wear a remote control transmitter around his waist " which allegedly caused the claimant to fall from a tanker car?

Overall Issues Discussed or Touched Upon in this Case:

- *Federal Rail Safety Act (FRSA)*
- *Locomotive Inspection Act*
- *Pre-Emption*
- *Applicability of FELA at Issue*

Held:

No. The court held that the FRSA did not preclude the plaintiff's FELA claim because (1) the statute does not govern the use of remote control devices and (2) the statute does not govern the actions of a switchman when climbing down from a tanker car while wearing a remote control pack. However, the court did acknowledge the following, "Had plaintiff been injured while operating a locomotive with a remote control device, defendant's claim of preclusion might have merit."

Comments:

A FELA claim may be precluded by the Federal Railroad Safety Act, provided that the FRSA

explicitly or impliedly subsumes the subject matter of the plaintiff's FELA claim, but it must do so with some degree of particularity rather than by broad implication.