Case Name: Abromeit v. Montana Rail Link, Inc.
Date Decided: September 15th, 2010
Originally Filed in: Montana (federal)
Decided by: Montana District Court (Federal)
Court: D.Mont.
Judge: Molloy
Citation: 2010 WL 3724425

Background:

Plaintiff, a railroad worker, brought this FELA action against Montana Rail Link (Employer) for injuries sustained while plaintiff was working on the railroad tracks. Plaintiff alleges that he was injured on two distinct occasions. First, he was injured while inserting railroad spikes into ties when his hydraulic hammer became entangled. Second, he was injured when lost his footing when the surface of the track adjacent to a new railroad tie gave way, causing him injury by exacerbating his previous injury. Plaintiff's complaint alleged a claim under the Federal Employer's Liability Act, and he bolstered his argument by citing various violations of railroad safety statutes. Defendant filed a motion for summary judgment, arguing that plaintiff is (1) limited to the specific causes of action and theory of recovery that plaintiff identified in his preliminary pretrial statement, and that (2) plaintiff theories of recovery do not provide a basis for recovery. With regard to this second point, the plaintiff alleged that the Federal Railroad Safety Act precluded plaintiffs negligence claim under the FELA.

Issue:

(1) Is a plaintiff limited to the causes of action and theories of recovery that he pleads with a level of particularity within his preliminary pretrial statement? (2) Does the FRSA preclude a FELA claim when the plaintiff's theory of recovery is that the walkway between railways presented an unreasonably unsafe condition that caused his injuries?

Overall Issues Discussed or Touched Upon in this Case:

- *Procedural Issues - Federal*
- *Applicability of FELA at Issue*
- *Federal Rail Safety Act (FRSA)*

Held:

(1) No. Even though Local Rule 16.2(b)(1)(D) requires that the plaintiff disclose the legal theory underlying each claim within a preliminary pretrial report, the plaintiff need not exhaust with particularity each rule or regulation violated by the defendant, provided that the defendant has been reasonably placed on notice so that the defendant can pin down his theories of defense. To hold otherwise would require the evisceration of Rule 15(b) of the federal rules of civil procedure. (2) No. The FRSA does not preclude a FELA claim when the plaintiff's theory

of recovery is that a walkway between railways presented an unreasonably unsafe condition that caused his injuries. The test for whether the FRSA precludes the FELA is whether the pertinent area of law under the FELA is substantially subsumed by the FRSA. The court reasoned that the pertinent regulations promulgated under the act are limited to addressing the materials that support a railroad's track (e.g. ballast, aka rocks), and that such regulation is silent on the issue of walkways. The court reasoned that plaintiff's allegation concerned the quality of the workplace provided for employees, and not the safety of the train itself. Therefore, the regulations under the FRSA did not substantially subsume the plaintiff's theory of recovery under the FELA.

Comments:

The FRSA does not preclude a FELA claim when the plaintiff's theory of recovery is that a walkway between railways presented an unreasonably unsafe condition that caused his injuries.