

Case Name: Timothy J. Nitecki v. CSX Transportation, Inc.

Date Decided: February 23rd, 2011

Originally Filed in: Ohio (state)

Decided by: Ohio Northern District Court (Federal)

Court: United States District Court for the Northern District of Ohio, Western Division

Judge: Judge Zouhary

Citation: 2011 WL 723062

Background:

Timothy J. Nitecki ("Nitecki") brought a negligence action pursuant to the Federal Employers' Liability Act ("[FELA](#)"), 42 U.S.C. Â§ 56 against his employer CSX Transportation, Inc. ("CSX"). Nitecki worked at CSX's Stanley Yard facility in Walbridge, [Ohio](#). While repairing a [railroad](#) brake retarder, Nitecki suffered an injury to his left arm which required three separate [surgeries](#) and time away from work. A jury found both Nitecki and CSX were negligent, attributing 60% of the fault to Nitecki and 40% to CSX. The jury awarded \$75,000 to Nitecki for past lost wages and \$0 for pain and suffering. The award was reduced to \$30,000 to account for each party's portion of fault. Nitecki filed a Motion for a New Trial in the United States District Court for the Northern District of Ohio. Nitecki contends that the jury's award of \$0 for pain and suffering goes against the manifest weight of the evidence, and that the lower court improperly allowed Nitecki's supervisor, Larry Lewis ("Lewis") to testify to the cause of the Nitecki's injuries. This Court reviews Nitecki's Motion pursuant to Federal Civil Rule 59(a). Here, the Court will grant a new trial if the verdict regarding pain and suffering damages is against the weight of the evidence, and if there was substantial error in the admission of Lewis' testimony.

Issue:

1. Did the jury's award of \$0 for pain and suffering damages go against the manifest weight of the evidence submitted at trial? 2. Did the lower court err in admitting the testimony of Lewis?

Overall Issues Discussed or Touched Upon in this Case:

- *Insufficient Evidence of Damages*
- *Found Plaintiff Comparatively Negligent*
- *Expert Witness- Daubert Issues*
- *Reduction of Damages*
- *Damages*

Held:

1. No, the Court held that the jury's award of \$0 did not go against the manifest weight of the evidence. At trial, Nitecki testified that he attempted to continue working immediately after injuring his arm. Additionally, Nitecki testified that in the months following the injury, sometimes his arm hurt and sometimes the pain subsided; the only limitations he identified were an inability to open jars and pick up certain items. Furthermore, Nitecki's own physician testified

that the period for recovery from this type of injury was six weeks; casting strong doubt on Nitecki's assertions that he continued to experience pain two years after the incident. The Court held that the verdict regarding pain and suffering damages was not contrary to the weight of the evidence reasoning the jury was in the best position to evaluate the credibility of Nitecki's testimony regarding his pain, and that the jury clearly felt the injury was not as severe as Nitecki claimed because they awarded lost wages in an amount far less than Nitecki requested. 2. No, the Court held that Lewis' testimony was properly admitted. Nitecki argues that Lewis' testimony regarding the cause of the accident was improperly admitted because Lewis has no special training in engineering or in the type of brake retarder Nitecki was repairing. Nitecki cites Federal Evidence Rule 701(c), which bars lay witnesses from offering opinions "not based on scientific, technical, or other specialized knowledge." At trial, Lewis testified about the training of his employees, manuals regarding brake retarders, and his investigation of the brake retarder following the Nitecki's injury. Lewis testified that in his view, Nitecki was injured because the power to the brake retarder was not shut off prior to the repair. The Court rejected Nitecki's argument and held that Lewis' testimony was properly admitted as limited and appropriate. It reasoned that Lewis' testimony did not violate Rule 701 because his opinion about the cause of the accident was not conclusive and did not purport to explain the sole cause of the accident. Furthermore, the Court reasoned that Lewis testified only about his post-accident observations, not from any specialized knowledge. Accordingly, the Court DENIED Nitecki's Motion for a New Trial.

Comments: