

**Case Name:** Brad Boyd v. CSX Transportation, Inc.

**Date Decided:** March 7th, 2011

**Originally Filed in:** Indiana (federal)

**Decided by:** Indiana Northern District Court (Federal)

**Court:** United States District Court for the Northern District of Indiana

**Judge:** Judge Springmann

**Citation:** 2011 WL 854350

**Background:**

This case arose out of injuries Brad Boyd ("Boyd") allegedly sustained between 2005 and 2007 while employed by CSX Transportation, Inc. ("CSX"). Boyd began his employment with CSX in 1999 where he worked as a brakeman and conductor. These positions required Boyd to throw switches to facilitate loading and unloading of trains in CSX rail yards. In 2005, Boyd became a road engineer and worked in this position until 2007. Here, Boyd was required to ride trains between Avon, Indiana, and Cincinnati, Ohio where a portion of the trip was over "rough track." In 2010, Boyd brought a negligence action against CSX under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. Â§ 51 et seq. Boyd sought damages to compensate him for injuries he alleges he sustained as a result of exposure to excessive whole-body vibration. In the complaint, Boyd alleges that CSX violated the Locomotive Inspection Act ("LIA"), 49 U.S.C. Â§Â§ 20701-20703 by failing to provide locomotives in a proper condition and safe to operate with unnecessary peril to life or limb, and the Federal Track Safety Standards ("FTSS"), 49 C.F.R. Â§ 213 et seq. by failing to properly maintain its tracks. In support of his allegations, Boyd presented experts Alan Blackwell ("Blackwell") and Paul Byrnes ("Byrnes") who testified that the stretches of track Boyd was exposed to failed to comply with the FTSS. Boyd also presented Dr. Dennis Gates ("Dr. Gates") who testified Boyd's degenerative disc disease was aggravated by the vibrations he was subject to during his trips between Avon and Cincinnati. Before the Court is CSX's Motion to Exclude the testimony of Dr. Gates and its Motion for Summary Judgment. CSX argues that Dr. Gates' testimony regarding the cause of Boyd's injury is inadmissible under Federal Rule of Evidence 702 and as a result, Boyd cannot survive its Motion for Summary Judgment.

**Issue:**

(1) Is the testimony of Dr. Gates inadmissible? (2) Is CSX entitled to succeed on its Motion for Summary Judgment?

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

- *Locomotive Inspection Act*
- *Cumulative Trauma Case*
- *Summary Judgment - Defendant Factual Denied*
- *Expert Witness- Daubert Issues*
- *Insufficient Evidence of Negligence*

**Held:**

To survive a Motion for Summary Judgment in a FELA negligence action, a plaintiff must allege sufficient facts from which a reasonable jury could conclude an employer was under a duty, that the employer breached that duty, and that the breach caused the harm alleged. Here, the Court first considered whether Dr. Gates' testimony was sufficient to establish causation, and then whether CSX had breached a duty to Boyd. (1) No, the Court held that Dr. Gates causation testimony was admissible. Rule 702 of the Federal Rules of Evidence requires courts to determine whether the reasoning or methodology underlying expert testimony is scientifically valid. Courts perform this analysis in an effort to exclude testimony that is based on "junk science," and to rule out "subjective belief or unsupported speculation." In making a determination, courts consider (1) whether the expert's theory has been tested; (2) whether the theory has been subject to peer review; (3) the known or potential rate of error; and (4) whether the theory is generally accepted within the relevant scientific community. The Court held that Dr. Gates' testimony was not in violation of Rule 702. It reasoned Dr. Gates relied on a number of studies and literature, a full review of Boyd's medical history and working conditions, and his experience as a doctor. CSX insisted that Dr. Gates' methodology was faulty because he did not rule all other potential causes of Boyd's injury, and because he did not rely on the International Organization for Standardization's ("ISO") standards for determining whole body vibrations. The Court rejected these arguments reasoning Dr. Gates had ruled out certain causes because he was able to show Boyd's health had improved in the area of a prior injury. Furthermore, the Court reasoned ISO standards are not the only basis for a reliable opinion. Having concluded Dr. Gates' causation testimony was admissible, the Court went on to consider CSX's Motion for Summary Judgment. (2) No, the Court held that summary judgment was not appropriate. The Court first considered whether CSX breached a statutory duty under the LIA. Here, the record shows that Boyd made the trip between Avon and Cincinnati on a four-axle locomotive. Boyd testified that he experienced a lot of bouncing, shaking and vibration while onboard this locomotive, and Byrnes' testified this could be due to insufficient maintenance. CSX argues that Byrnes' testimony is insufficient to establish a violation of the LIA because nothing in the record shows that the four-axle design violates any federal regulations. The Court rejected this argument reasoning Byrnes testimony was sufficient to establish a factual dispute about whether inadequate maintenance caused the conditions Boyd described. It noted that a plaintiff can establish a violation of the LIA in either the regulatory sense or in the traditional duty sense. The Court then considered whether CSX breached a statutory duty under the FTSS. Blackwell testified that discrepancies between track inspector reports and track geometry car records indicate that had CSX performed regular track inspections, they would have been aware of certain track defects. CSX argues that the records Blackwell consulted were not all from the period during which the alleged injury took place, thus are not reliable. However, the Court rejected this argument. It reasoned Blackwell's testimony combined with Boyd's testimony regarding the conditions he experience provided enough evidence for a jury to find that CSX knew or should have known about track defects,

and failed to remedy them. Lastly, the Court addressed the element of causation. Here, the Court held that because Dr. Gates' causation testimony was admissible under Rule 702, Boyd had presented sufficient evidence of causation to proceed to a jury. For the foregoing reasons, the Court DENIED CSX's Motion to Exclude and Motion for Summary Judgment. ORDERED.

**Comments:**