

**Case Name:** Henry Callahan v National Railroad Passenger Corp.

**Date Decided:** July 14th, 2007

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

**Decided by:** Pennsylvania Supreme Court (State)

**Court:** Superior Court of Pennsylvania

**Judge:** Judge Melvin

**Citation:** 2009 WL 2025703 (Pa.Super.)

**Background:**

Appellant, National Railroad Passenger Corp. ("Amtrak") appeals judgment entered, in the Court of Common Pleas of Philadelphia County, following a jury verdict in favor of, Henry Callahan ("Callahan"). Callahan sustained bodily injuries on April 20, 2004, in the course of his employment, when he fell approximately 40 feet from a catenary pole at or near the Richmond substation in Philadelphia. Callahan filed suit against Amtrak, pursuant to the Federal Employers' Liability Act ("FELA"), and the matter proceeded to trial January 2007. The trial court permitted the following rulings that are now under appeal, (1) the trial court permitted an expert witness for Callahan to testify regarding provisions of the Occupational Safety and Health Act ("OSHA"), (2) and also instructed the jury on its considerations of those provisions with respect to Amtrak's alleged negligence. (3) The trial court denied Amtrak's request for special interrogatories regarding the jury's calculation of damages, and (4) excluded testimony on Callahan's future economic loss. Following trial, and finding Callahan 30 percent contributorily negligent, the trial court entered judgment on the verdict for plaintiff in the amount of \$3.15 million.

**Issue:**

Should Amtrak be successful in appealing these issues and therefore, be granted a new trial?

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

- *Found Plaintiff Comparatively Negligent*

**Held:**

Two issues are examined for review and according to appellant's warrant a new trial. (1) Plaintiff's liability expert was allowed to testify regarding defendant's alleged violations of OSHA regulations, that do not apply to the facts of this case, and the trial court charged the jury that those regulations do apply and could support a finding of liability. Also, Amtrak contends a new trial is warranted because of the unfair and erroneous manner in which the trial court handled plaintiff's claim for future economic loss. Amtrak first contends that the trial court erred in permitting testimony about OSHA regulations and in instructing the jury that it could consider those regulations in evaluating whether Amtrak was negligent. Amtrak argues that the OSHA regulations, in this case, are preempted by the Federal Railroad Safety Act

(FRSA). Allowing the OSHA violation, Amtrak contends, would ignore the express purpose of the FRSA to promote safety in "every area of railroad operations". A trial court's admission of evidence will only be reversed upon a showing that it abused its discretion and it must be shown admission of the evidence was harmful and prejudicial to the complaining party. This Court found that the FRSA did not preempt the OSHA regulations presented by the plaintiff, and absent a showing of an abuse of discretion, refused to reverse the trial court's decision to allow the testimony of the OSHA regulation. Furthermore, Amtrak failed to show this Court that the trial court committed a clear abuse of discretion or error of law controlling the outcome of the case by instructing the jury to consider the OSHA regulations in its instruction. As for economic loss, Amtrak contended the trial court erred in permitting Callahan's expert to provide testimony because the opinion, the effect of Callahan's percocet use on the job, was not included in this expert's report. This Court was unable to find the trial court abused its discretion. Amtrak was clearly on notice of Callahan's percocet use and the impact of the medication. Moreover, Amtrak contended that the trial court erred in excluding evidence that Amtrak offered alternative employment, as a power director, in determining economic loss. However, Amtrak did stipulate Callahan, while taking percocet, could not perform the duties of the job. Therefore the trial court did not abuse its discretion in excluding Amtrak's evidence presented at trial. Finally, Amtrak claims that the trial court erred in not allowing evidence that tended to establish Callahan had a "chronic history" of drug use. However, because Amtrak only introduced merely two instances of drug use, 20 years of apart, the trial court did not abuse its discretion in excluding Callahan's past use of prescription drugs as evidence. Amtrak failed to show a clear abuse of discretion by the trial court and therefore, this Court affirmed the trial court's decisions to exclude and include certain evidence at trial.

**Comments:**

The burden an appellant faces to overcome a trial court's ruling on evidence, as illustrated, is extremely tough. The party opposing the evidence must first make a timely objection at trial on the trial court's ruling because failure to do so waives the right to bring the objection on appeal.

Appellate courts do not disturb the trial court's discretion in allowing or excluding evidence absent a clear abuse of discretion, error, and that allowing the evidence prejudiced the opposing party.

Steve Gordon