

Case Name: Freda Ratliff v. Norfolk Southern Railway Company

Date Decided: March 12th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Supreme Court of Appeals of West Virginia

Judge: udge Davis

Citation: 680 S.E.2d 28

Background:

The estate of a locomotive engineer, who died from mesothelioma, brought an action under the Federal Employers' Liability Act ("FELA") against railroad Norfolk Southern Railway Company ("Norfolk"). The lower Court granted Norfolk's motion for summary judgment and the plaintiff, Ratliff, appealed. Mr. Ratliff, the deceased, worked for Norfolk for nearly 40 years. Upon reaching the age of 60, Mr. Ratliff received several documents explaining a voluntary separation or early retirement program. The purpose of the program was to reduce staffing levels in order to reduce employment costs by replacing or eliminating certain positions. Within the separation agreement was a release that stated, "is total and absolute release of any employment rights with any Norfolk Company and of any claims of any kind whatsoever arising from your employment relationship with the Company ("Norfolk")." Mr. Ratliff entered into the agreement and began "retirement". About 19 years after his separation, Mr. Ratliff was diagnosed with mesothelioma and died as a result. Mrs. Ratliff, as an executrix to Mr. Ratliff's estate, brought this action under FELA. Norfolk responded with a motion for summary judgment and asserted that they had been released under the separation agreement. The lower court granted Norfolk's motion for summary judgment.

Issue:

Did this Court uphold the "release" in the separation agreement and find that the plaintiff's action, under FELA, was barred?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

Under FELA, common carriers are prohibited from exempting itself from liability imposed by FELA. Â§5 States that : "Any contract....the purpose or intent of which shall be to... enable a common carrier to exempt itself from any liability created by this chapter (FELA) shall be void". Although the provision appears to prohibit all liability exemptions, there are instances where the Supreme Court has upheld such releases. When a device is used to compromise claimed liability, the Court has upheld such release. However, when the device is used to exempt the employer from liability created under FELA, then it will not be upheld. When there is a dispute

between an employer and employee under FELA, the parties may release their specific claims as part of an out-of-court settlement without contravening the Act. However, when the release was not executed as a part of a specific settlement of FELA claims then 45 U.S.C. Â§55 precludes the employer from claiming the release as a bar to liability. Accordingly this court reversed the lower court's grant of summary judgment.

Comments:

A general release of liability, when no FELA claim exists, will not be allowed. However, the distinction is made that when a controversy has arisen each party may enter into an agreement (settlement) to release one another from such action. If the deceased here had signed the release after getting mesothelioma and filing an action under FELA, that it most likely would have been upheld. Steve Gordon <http://www.Gordon-Elias.com>