

**Case Name:** Jeffrey P. Lafferty v. Norfolk Southern Railway Co.

**Date Decided:** November 12th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C Northern District of Ohio

**Judge:** Judge Katz

**Citation:** 2009 WL 3817603 (N.D.Ohio)

**Background:**

Plaintiff, Jeffrey Lafferty ("Lafferty") brought this action under the Federal Employers' Liability Act ("FELA") against defendant Norfolk Southern Railway Company ("NSRC"), his former employee. Lafferty sought partial summary judgment against NSRC on the issue of liability and comparative fault. At the time of injury Lafferty was employed as a freight conductor for NSRC. During a routine trip another employee informed Lafferty one of the cars was throwing sparks. The engineer brought the train to a stop and upon investigating the cause of sparking, Lafferty slipped while climbing a rail car and dislocated his ankle severely enough to preclude him from further work as a train conductor. Lafferty moved for partial summary judgment arguing that NSRC was liable under FELA and that he was not comparatively negligent.

**Issue:**

Did this Court grant Lafferty's motion for partial summary judgment on the liability and comparative negligence issues?

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

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**Held:**

Lafferty contended that his injury was caused by "sticking brakes" on the car of the train causing it to throw sparks. This forced Lafferty to stop the train and investigate. Lafferty cited two regulations promulgated by the Federal Railroad Administration claiming it was unlawful for CSXT to operate a railroad car with defective breaks. One such regulation, states that each train shall have its air brakes in effective operating condition unless the car is being moved for repairs. According to the regulation an "inoperative" brake is defined as a 'primary brake, for any reason, no longer applies or releases as intended". Courts have found that train cars must have effective air brakes in the Safety Appliance Act, ("SAA"). A finding of an SAA violation is sufficient to establish fault in a FELA suit. NSRC, however, points to the requirement that Lafferty's injury must be the type the regulation was intended to prevent. The primary concern of the air brake regulation is that the engineer must be able to control the movement of the train and that his injury was not a result of the train losing control. This Court however rejected this argument, because the SAA purpose is to not allow railroads to run trains with defective

brakes. This Court then examined whether Lafferty had established, as a matter of law, that the sparking was caused by an unintended brake application. Second, the Court stated that a FELA comparative negligence defense may not be asserted in a case where the defendant's violation of a statute enacted for the safety of employees' contributed to the employee's injury. As such, this Court upon finding that there's sufficient evidence to support a jury finding that the defective brake application was the cause of Lafferty's injury held that Lafferty was obligated to stop his train upon the report of sparking and undertake an investigation. This Court held that NSRC could not assert the comparative fault defense but that Lafferty did not produce sufficient evidence to clearly support a finding, as a matter of law, that the sparking was related to brake defect. Lafferty's motion for partial summary judgment was denied.

**Comments:**

Under a FELA claim it is up to the jury, as the fact finder, to determine whether the railroad was negligent or that they violated the SAA. In order to grant summary judgment a court must find, as a matter of law, that the employer was negligent and that there are no genuine issues of material fact as to the issue. This Court denied the plaintiff's motion for summary judgment given FELA's factual deference given to the jury and because he failed to present evidence that made a clear and undisputed finding of railroad's violation. This isn't determinative on the issue of liability because the facts will go before the jury who will then determine whether the defendant was negligent or violated a safety statute. Steve Gordon