

**Case Name:** Anthony J. Incaprera v. Union Pacific Railroad Company

**Date Decided:** January 7th, 2010

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. S.D. Illinois

**Judge:** Judge Reagan

**Citation:** 2010 WL 98879 (S.D.Ill.)

**Background:**

Plaintiff, Anthony J. Incaprera sued the Union Pacific Railroad Company for an injury sustained in the course of his employment as a maintenance-of-way employee. Incaprera alleged that he injured his back while shoveling large ballast rock, claiming that UP failed to provide him with a reasonably safe place to work, reasonably safe methods of work, and adequate equipment. Incaprera brought this action against UP under the FELA, Federal Employers Liability Act. Incaprera began working as a trackman for UP but was later trained as a machine operator. On October 19, 2007, Incaprera began his shift operating the tamper. The foreman sent the other machine operators home even though some rock still needed to be cleared. Incaprera was ordered to shovel the rock. Incaprera testified that he told the foreman he did not want to shovel and that a ballast regulator should be used to clear the rock. The foreman threatened Incaprera that he would charge him with insubordination if he did not shovel. Incaprera shoveled despite the fact the backhoe was sitting at the crossing he was working on. Incaprera asserted that the foreman screamed at him to shovel faster. After about 10 minutes Incaprera claimed he had a twinge in the middle of his back and refused to shovel. Incaprera was diagnosed with lumbar disc protusion and underwent surgery. Ultimately Incaprera brought this claim under FELA to recover damages sustained while working. UP moved for summary judgment contending that Incaprera could not prove breach, foreseeability, or causation

**Issue:**

Did this Court grant UP's motion for summary judgment?

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

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**Held:**

This Court found that given the rushed circumstances and refusal of the foreman to consider alternative means to complete the task and threatening Incaprera if he did not finish the job, it was not difficult to foresee a potentially unsafe workplace condition. Moreover, this Court found that UP had constructive knowledge that an unsafe condition existed near the end of the shift where an employee was pressured to hurry if shoveling was necessary to complete a

task. Although it may appear weak, this Court noted it is sufficient to withstand a motion for summary judgment. Accordingly this Court denied UP's motion for summary judgment.

**Comments:**

This Court examined another Illinois case which dealt with hurried circumstances. In that case, (Gibbs v. Union Pacific R.Co. 2009 WL 304956) " the Court found that general hurriedness of the signal crew led to an inference (in the plaintiff's favor) that the assistance may have been discouraged. Here, as in Gibbs, assistance was available in the form of a backhoe and the foreman's frantic pace led this Court to conclude that the inference, its use was discourage, was reasonable and created an unsafe place to work. Steve Gordon