

**Case Name:** Ronald Anderson v Union Pacific Railroad Co.

**Date Decided:** September 27th, 2002

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. â€" E.D. California

**Judge:** District Judge Levi

**Citation:** 2002 WL 34482622 (E.D.Cal.)

**Background:**

Plaintiff, Ronald Anderson, brought suit against defendant, Union Pacific Railroad Company ("Union Pacific"). Anderson was injured while working as an engineer for Union Pacific. Anderson moved for summary judgment on the railroad's liability and all of Union Pacific's affirmative defenses. Anderson further contended that Union Pacific violated the California Public Utilities Commission General Order 26-D ("GO 26-D") and that such violation constituted negligence per se under the Federal Employers' Liability Act ("FELA").

**Issue:**

Whether the Court will grant summary judgment to Anderson.

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

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**Held:**

Anderson's motion for summary judgment will be denied without prejudice. There is disagreement in the case law as to whether a violation of a state regulation, here the GO 26-D, can constitute negligence per se under FELA. Anderson cited Whitley v Southern Pacific Transportation Co., 902 P.2d 1196 (Or.1995), where a state regulation established negligence per se. However, Union Pacific cited to Schultz v Northeast Illinois Regional Commuter R.R. Corp., 2002 WL 1227222 (Ill.2002), as well as Haugen v Burlington Northern and Santa Fe Railway Co., 2001 WL 1852331 (W.D.Wash.2001) to show that a state regulation could not establish negligence per se under FELA. This Court held that further briefing on the issue, as well as the cases of Whitley, Schultz, and Haugen were needed before a decision can be made. Therefore, the Court will permit further briefing on whether a state regulation can constitute negligence per se under FELA.

**Comments:**

This case represents a ruling that is not often given: a motion for summary judgment that is denied without prejudice. When a motion is dismissed without prejudice, it indicates the absence of a decision on the merits. This leaves the parties free to litigate the matter in a subsequent action, as though the dismissed action had never happened. The purpose of the

Court ruling without prejudice on Anderson's motion was to prohibit Union Pacific from using the doctrine of res judicata in a later action. Res judicata occurs when a court has already decided a case, and as a result, no new lawsuits may be brought on that subject. Steve Gordon <http://www.gordon-elias.com>