

Case Name: Matthew T. Preston v BNSF Railway Company

Date Decided: August 28th, 2009

Originally Filed in: ()

Decided by: (State)

Court: U.S.D.C. Oregon

Judge: Judge Clark

Citation: 2009 WL 2731154 (D.Or.)

Background:

Matthew T. Preston ("Preston"), plaintiff, brought this action against BSNF Railway Company ("BNSF"), for alleged acts of negligence in violation of the Federal Employers' Liability Act ("FELA") and the Federal Safety Appliance Act ("FSAA"). Preston filed a motion for partial summary judgment asserting that he did not have the duty to mitigate damages. More specifically, Preston requested an order establishing that he has not duty to move or relocate from Klamath Falls, Oregon in order to mitigate damages. Preston was raised in Klamath Falls, Oregon. Preston also lived in Virginia for six years while serving the U.S. Navy. Preston returned to Klamath Falls and began working for BNSF. Preston alleged that on January 7, 2008, he suffered injuries due to BSNF's actions. As a result of his injuries, Preston could no longer continue his position in Klamath Falls. BNSF encouraged to apply for positions in Seattle, WA and Vancouver, WA.

Issue:

Did the Court grant Preston's motion for summary judgment holding as a matter of law that Preston did not have the duty to move away from Klamath falls?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

Preston must show that based upon all fact presented, construed in favor of BNSF, that this Court must hold, as a matter of law, in favor of Preston. More specifically, that as a matter of law, Preston did not have a duty to mitigate damages by seeking employment away from his home. BNSF first argued that Preston is moving for summary judgment upon an evidentiary issue rather than to seeking to dispose all or part of a claim or defense in his motion. This Court found however, that Preston is seeking a partial judgment on one of BNSF's defenses which is proper under a motion for summary judgment. BNSF also argued that the motion is purely a question of law and that, under FELA, there is not a per se no duty to move rule. Finally, BSNF contended that the motion is a mixed question of law and fact because there are genuine issues of material fact as to whether Preston reasonably mitigated his damages. Preston countered that there is no duty to mitigate on his behalf because according to a

Supreme Court description, (512 U.S. 532 (1994)), Congress crafted a federal remedy that shifted part of the "human overhead" of doing business from employees to their employers. However, this Court held that there is no precedent supporting Preston's assertion that there is not a per se no duty to move rule. Accordingly Preston's motion for partial summary judgment is denied.

Comments:

The plaintiff in this case tried to undercut the defendant's defense under FELA in which the plaintiff has a duty to mitigate. The defendant offered the plaintiff other positions of employment with comparable benefits and compensation with what the plaintiff was receiving prior to his injury. However, to accept one of these positions, the plaintiff would be required to move from his hometown. This Court found that asking the Plaintiff to move in order to mitigate his damages, is not, as a matter of law, contrary to FELA. Steve Gordon
<http://www.Gordon-Elias.com>