

**Case Name:** Alex Gonero v. Union Pacific Railroad Company

**Date Decided:** October 19th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. Eastern District of California

**Judge:** Judge Shubb

**Citation:** 2009 WL 3378987

**Background:**

Plaintiff, Alex Gonero ("Gonero"), brought this action in state court against Union Pacific Railroad Company ("UP"), and his supervisors for wrongful termination and intentional infliction of emotional distress relating to his termination of employment for UP. In 2008, Gonero was employed by UP as a machinist in California. Gonero was instructed by his supervisor to work on a train inside an area of the repair facility known as the "house". Gonero alleged that before he started his assignment he saw two other trains coming towards the house on the same track because the track switches were not properly set. As a result, Gonero claimed he was in an "imminent risk of physical harm" to him and other workers. Following this incident, Gonero and his supervisor engaged in a dispute over his safety concerns and the requirements, under the Federal Railroad Administration ("FRA") regulations regarding safety disputes. Gonero requested that these conditions be reported to the mechanical officer in charge but that his supervisor, in violation of UP's work rules, instructed him to return to work immediately. Eventually, Gonero was terminated, according to a letter, for (1) refusal to comply with instructions (2) insubordination and (3) because his acts of hostility, misconduct, or negligence, affected UP's interests. Gonero alleged that the reasons laid out in the letter are pretext not supported by the facts, and alleged the real reason UP terminated his employment because it was UP's policy to intimidate employees who protest unsafe or illegal working conditions. Gonero filed a Complaint in district court alleging wrongful termination and intentional infliction of emotion distress relating to his termination with UP. This action was subsequently removed to the court under diversity jurisdiction and UP moved to dismiss for failure to state a claim upon which relief can be granted.

**Issue:**

Did this Court dismiss Gonero's action for failure to state a claim for which relief could be granted?

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

-

**Held:**

First, UP claimed that Gonero's entire complaint must be dismissed pursuant to the election of

remedies provision of the Federal Railroad Safety Act ("FRSA"). The FRSA protects railroad employees who report safety concerns from discrimination and provides and provides for the resolution of claims against employee whistleblowers. UP argued that because Gonero elected a remedy under the FRSA, then he is estopped from bringing a claim under another remedy. However, this Court found that an amendment to the FRSA made it clear that it did not preempt other remedies related to railroad safety or whistleblower retaliation. Since the amendment, courts have found that this applied FRSA related state common law claims. Therefore Gonero's California common law claims in this case are not preempted by virtue of the Amended Act. Additionally, UP claimed that although Gonero withdrew his complaint with the DOL, the filing of the complaint qualifies as seeking protection under the FRSA sufficient to constitute an "election" barring Gonero's claim under the "election" doctrine. However, again, this Court held that this argument ignored the clear intent of the amendments on FRSA that nothing preempts or diminishes any other safeguards against discrimination provided by Federal or State law. UP also claimed that FRSA did not create a private cause of action. However, this Court, recognizing that Gonero is suing under California common law, dismissed this argument. Moreover, UP claimed that FRSA provides a mandatory dispute resolution process that preempts Gonero's state common law claims but that this argument fails because the common law claims may be adjudicated without interpreting the collective bargaining agreement. UP further argued that the Federal Employer's Liability Act, preempts Gonero's first cause of action for wrongful termination in violation of public policy. However, this Court found that FELA provides a broad remedial statute and that courts have adopted a standard of liberal construction in order to accomplish its objectives. However, because FELA does not authorize railroad workers to recover damages from their subsequent and allegedly wrongful discharge, and because Gonero's claim does not stem from any physical injury, the FELA does not apply. The Court further found that Gonero has alleged facts sufficient to survive a motion to dismiss under his Intentional Infliction of Emotional Distress claim. Gonero alleged that UP knew he would become susceptible for injuries through mental distress because of the wrongfully imposed economic hardship resulting from their involvement in his wrongful termination. Gonero also alleged that his immediate supervisor disregarded his concerns about railroad safety violations and alleged this incident was the basis for his termination at UP. Accordingly, this Court denied UP's motion to dismiss.

**Comments:**

Under FELA, the plaintiff must allege some kind of physical injury in order to state a claim for which relief can be granted. As such, UP was unable to get Gonero's claim for IIED and wrongful termination because it held that the FELA was inapplicable to Gonero's claims. Steve Gordon