

Case Name: David Perkins v. Illinois Railway, Inc
Date Decided: March 11th, 2010
Originally Filed in: Illinois (Federal)
Decided by: Illinois Northern District Court (Federal)
Court: U.S.D.C. Northern District of Illinois
Judge: Judge Kennelly
Citation: 2010 WL 963928 (N.D. Ill.)

Background:

Plaintiff, David Perkins, filed this action against Defendant, his former employer Illinois Railway Inc., under [FELA](#), Federal Employer's Liability Act. Perkins alleged he sustained [injuries](#) while working as part of a team installing a signal light at a railroad crossing. Perkins injured his shoulder when he attempted to catch a heavy signal light as it fell from a truck. In addition to his FELA claim, Perkins brought a claim of tortious interference with prospective economic advantage alleging Illinois Railway caused him to lose his job with a locomotive repair company that did work for Illinois Railway. Perkins based his interference claim on the fact that Illinois railroad prohibited him from working on Illinois Railway property. On the day of the incident, Perkins and other employees each drove a truck to their job site. Perkins drove an Illinois Railroad truck equipped with a boom to lift heavy objects. The boom was not usable because Perkins was instructed to remove the chains that go with the boom. On the way to the site, Perkins and his fellow employees stopped at a warehouse to pick up several signal lights, loading at least two of them onto the boom truck. Once on site, Perkins began flagging traffic while the other two installed a signal light. In order to speed up the process, Perkins began preparing the second signal for installation while the others continued to install the first light. While moving the light to the edge of the truck Perkins slipped causing the signal to fall, Perkins attempted to catch the 75lb light as it fell and it pulled Perkins' shoulder out of its socket. Perkins had to have surgery to repair his shoulder. Later, Perkins voluntarily left his position at Illinois Railway to work for a company servicing locomotive engines. Perkins then retained a lawyer in connection with his injury. Illinois Railway then informed Perkins' employer he could no longer work on its property in order to ensure Illinois Railway employees would not have contact with him. Perkins was laid off by his employer. In response to Perkins' claims, Illinois Railway has filed summary judgment.

Issue:

Did this Court grant Illinois Railway's motion for summary judgment on Perkins's FELA and Tortious interference claim?

Overall Issues Discussed or Touched Upon in this Case:

- *Ruling on Summary Judgment*
- *Applicability of FELA at Issue*

Held:

Perkins argued that his shoulder injury was caused by Illinois Railway's negligence in failing to provide chains to make the boom usable and failed to give Perkins adequate training. This, according to Perkins, was a failure to provide a reasonably safe place to work. Illinois Railway contended that Perkins was acting independently, not pursuant to his employment, when he chose to move the second light to the edge of the truck. Also, Illinois Railway alleged that because Perkins was supposed to be flagging traffic, and not moving signal lights, his injury was unforeseeable. Illinois contended that Perkins was acting *outside the scope of his employment* when he moved the signal light. However, this Court recognized that Illinois Railway could not prevail on summary judgment under FELA merely because an employee was not *required* to perform the act resulting in the injury. Moreover, Perkins introduced evidence establishing that his supervisor had told him to follow Loy's, (another employee on site) instructions. Perkins testified that he had used the same method to move the second signal light as he had for the first light, to the edge of the truck. Accordingly, this Court found that the issue required a jury to determine the facts. This Court also found that the injury was foreseeable because the boom truck was inoperable and it was foreseeable that Perkins, even with the help of another, would be required to move the signal to the edge of the truck bed. Therefore, there were genuine issues of material fact whether Perkins would be involved in moving the signal lights and that moving them by hand *could cause injury*. Perkins also argued that Illinois Railway's decision to bar him from Illinois R. property caused his employer to fire him because his employer worked on IR's locomotives. However, Perkins's counsel demanded that *all* of Illinois Railway's employees have no contact with him whatsoever. This Court found that Perkins failed to introduce evidence from which a reasonable jury could find that Illinois Railway intended that their bar would lead to his lay-off. Accordingly, this Court granted Illinois Railway's motion of summary judgment as to Perkins's tortious interference claim.

Comments:

This Court relied on *Wilson v. Milwaukee, St. Paul, and Pac. R.R. Co.*, 841 F.2d 1347 (7th Cir. 1988) in reviewing the summary judgment standard on a scope of employment issue. The Court noted that the traditional summary judgment standard, that the Court need only determine whether a reasonable jury could find for the plaintiff on this issue, applied to *scope of employment* issues. In determining scope of employment, the Seventh Circuit examines two principal factual issues. (1) Motivation (of the employee performing the act) and (2) Whether, objectively, his actions furthered the Railroad's business. Steve Gordon