

Case Name: Chadly S. Ballard v. Union Pacific Railroad Company

Date Decided: April 2nd, 2010

Originally Filed in: Nebraska (State)

Decided by: Nebraska Supreme Court (State)

Court: Supreme Court of Nebraska

Judge: Judge McCormack

Citation: 2010 WL 1253562 (Neb.)

Background:

Plaintiff, Chadley S. Ballard brought this action under [FELA](#) (Federal Employers' Liability Act) for injuries he allegedly sustained when three fellow employees [harassed](#) him. Ballard contended that Union Pacific, defendant, negligently supervised its workers and failed to provide a safe place to work. Ballard initially brought this suit against UP in the USDC for the District of Nebraska. The district court granted UP's motion for summary judgment and dismissed the action. Ballard appealed and this action was moved to the Supreme Court of Nebraska in accordance with statutory authority to regulate caseloads from the appellate courts within the state of Nebraska. In 2005, Ballard was employed as a truck driver in Oregon. Ballard's crew was moved to Utah; Ted Tom, Johnny Adison, and Oliver Becenti also worked in the group with Ballard. Adison and Tom were laborers and Becenti an assistant foreman, none of these men were supervisors nor could they hire, fire, or promote other employees. Craig Dannelly was Ballard's immediate supervisor. On March 21, 2005, Becenti and Tom allegedly took Ballard under the arms, lifted him off the ground, and Adison thrust his hips into Ballard's groin area. Ballard subsequently reported the incident to Dannelly who said he would speak to his supervisor. Ballard then contacted his union representative. UP's director of construction immediately traveled to the job site to conduct the investigation. Ballard was contacted by speaker phone. Adison, Becenti, and Tom were charged with violating UP's rules of conduct and suspended. Ballard returned to work and Dannelly asked Ballard to return to work in a different city in Utah to separate him from the same group where the harassment had occurred. The Federal District Court granted summary judgment in favor of UP and dismissed Ballard's claims. Subsequently Ballard brought this action in state court alleging FELA violations. Ballard, in his deposition, claimed that the three men had harassed him a week or two before the assault but did not report the incident. Ballard even stated that the men's actions were not a normal occurrence. Ballard alleged that UP knew or should have known the three men had a propensity to harass employees. In an affidavit another employee, David Duncan, alleged that Adison would "goose" the buttocks of other UP employees who walked down a UP hallway. However, none of the behavior was reported to UP's supervisors. The Court ruled that Ballard failed to produce sufficient evidence indicating that UP knew or should have known any of the three men had a propensity for violence or a proclivity for actions which would have resulted in the action and injury to Ballard.

Issue:

Did the Court err in granting UP's motion for summary judgment?

Overall Issues Discussed or Touched Upon in this Case:

- *Ruling on Summary Judgment*
- *Insufficient Evidence of Negligence*
- *Procedural Issues - State*
- *Procedural Issues - Federal*

Held:

allard argued that it was reasonable to infer that UP knew or should have known about the men's propensities leading to the incident. However, this Court disagreed. The Eighth Circuit dismissed the plaintiff's action in a similar case, in *Francisco v. Burlington Northern* (204 F.3d 787 (8th Cir. 2000)), based on a failure to report or complain of similar behavior to Burlington's supervisors/managers. Neither Ballard or any other employee had reported any inappropriate behavior regarding these three men to UP. Moreover, there was nothing in the record to establish or show that the men had a history of violent acts and/or sexual harassment. The testimony in the affidavits failed to establish any proof that UP knew that Adison or any of the other men had acted inappropriately. Accordingly, this Court affirmed the granting of UP's motion for summary judgment.

Comments:

This case illustrates the importance of reporting any incident to your employer regarding fellow employee or supervisor misconduct. While the affidavits and evidence presented by the plaintiff might lead to the reasonable conclusion that the incidents *occurred* they did not establish any reasonable inference that UP *had knowledge* that the incident(s) were foreseeable. Steve Gordon