

**Case Name:** Cohara v. CSX Transportation Inc.

**Date Decided:** May 11th, 2010

**Originally Filed in:** Ohio (Federal)

**Decided by:** U.S. Court of Appeals, Sixth Circuit (Federal)

**Court:** The United States Court of Appeals for the Sixth Circuit

**Judge:** Judge Gibbons

**Citation:** Cohara v. CSX Transportation Inc., 2010 WL 1851370 (6th Cir. 2010)

**Background:**

Joseph Cohara (Cohara) suffered a shoulder injury while operating a railroad switch on January 10, 2007 for his employer, CSX Transportation (CSX). Cohara filed suit against CSX under the Federal Employers Liability Act (FELA) but the defendant was found not liable. A motion for a new trial was filed by Cohara. In support of this motion, Cohara alleges that CSX improperly withheld evidence until ten days before trial. Before trial, Cohara filed a motion for sanctions requesting the court to bar CSX from using all the material that was disclosed just 10 days prior to trial. The trial court did not rule on Cohara's motion for sanctions and proceeded for trial. During the trial, Cohara did not object to the admission of the evidence. After the jury returned a verdict in favor of CSX, Cohara made his motion for new trial which the court denied and now he appeals.

**Issue:**

Does Cohara's failure to preserve his objection at trial bar him from raising the issue of admissibility of the untimely discovered evidence bar him from filing appeal? Was there sufficient prejudice to require reversal?

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

- *Procedural Issues - Federal*

**Held:**

The Sixth Circuit began its analysis by explaining that the proper standard of review when reviewing a denial of a motion for new trial is the abuse of discretion standard. In order for Cohara to prevail, he must show that suffered prejudice and that failure to grant a new trial is inconsistent with substantial justice. *Tompkin v. Philip Morris USA, Inc.*, 362 F.3d 882, 891 (6th Cir.2004). But the Sixth Circuit held that because Cohara did not object to the admission of the documents at trial that he cannot rely on their admission to show prejudice. See *Tobin v. Astra Pharm. Prods., Inc.*, 993 F.2d 528, 541 (6th Cir.1993); see also Fed.R.Evid. 103(a)(1). Further, the Sixth Circuit held that even if the court were to consider the admission inappropriate that Cohara would be unable to show prejudice because he was not a victim of trial by ambush since he had access to all of CSX's evidence at least 10 days before trial. *Erskine v. Consolidated Rail Corp.*, 814 F.2d 266, 272 (6th Cir.1987).

**Comments:**

**The proper standard of review when reviewing a denial of a motion for new trial is the abuse of discretion standard.**