

**Case Name:** Tucker v. CSX Transportation, In.c

**Date Decided:** May 7th, 2010

**Originally Filed in:** Kentucky (State)

**Decided by:** Kentucky Court of Appeals (State)

**Court:** Kentuck Court of Appeals

**Judge:** Judge Stumbo

**Citation:** Tucker v. CSX Transportation, Inc., 2010 WL 1815415 (KY. App. 2010)

**Background:**

The plaintiff, Tucker, was returning to work after a break when he noticed a hopper door on a coal car that was open. Tucker's duties included closing open hopper doors before they were loaded with coal and generally assisting in the coal loading process. After closing the open door, Tucker fell and his leg was crushed by a train wheel owned by CSX. As a result, Tucker suffered severe injuries to his leg which was run over by the train. At the time of his injury Tucker was on property owned by TECO Coal Company and was receiving his paycheck from TECO. Tucker filed two claims: (1) a Workers' Compensation claim against TECO and (2) a FELA claim against CSX. The first claim was settled in 2006. The second claim was dismissed by summary judgment in favor of CSX. Tucker argues that the circuit court erred in concluding that he was not a borrowed employee for purposes of the Federal Employers' Liability Act ("FELA") and therefore was not entitled to recover from CSX. In support of the motion for summary Judgment, CSX offered into evidence that Tucker was an employee of TECO, which engaged him to perform work; that TECO furnished Tucker's tools; that Tucker was paid by TECO and not CSX; and, that only TECO had the authority to fire or dismiss Tucker. As result the district court found that Tucker was not a borrowed employee.

**Issue:**

Did the district court err in concluding that the plaintiff was not a borrowed employee?

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

- *Held - Non-FELA Employee*
- *Ruling on Summary Judgment*
- *Applicability of FELA at Issue*

**Held:**

The appellate court began its analysis by explaining that in order for Tucker to recover from CSX he must demonstrate that he was a "borrowed employee" under the supervision and control of CSX. Meaning that he must show that he was employed by TECO, at the time of the accident he was "borrowed" by CSX and working under its authority. The appellate then reviewed the record and concluded that there was no reversible error. The Court explained that there are three means by which a worker can be characterized as an employee of another

company for the purposes of FELA: 1) the employee could be serving as the borrowed servant of the railroad at the time of his injury, 2) he could be deemed to be acting for two masters simultaneously and 3) he could be a subservant of a company that was in turn a servant of the railroad. It continued by explaining that in determining which purported employer had the authority to direct and control the employee's work a court may look at who selected and engaged the plaintiff to perform the work; who furnished the tools with which the work was performed; who paid the plaintiff his wages for the performance of this work; the amount of scale of such wages, and who had the power to fire or dismiss the plaintiff from the work. The appellate court found that the district court properly applied the relevant factors in determining whether Tucker was a borrowed employee. As such, the only grounds for reversal would be that summary judgment was improper because the record left genuine issues of material fact. And while the record must be viewed in favor of the non-moving party the appellate court found no basis to disturb the district court's decision because the record does not show that Tucker was working under the supervision of CSX or that CSX asserted control over Tucker. Instead, it shows that he was a TECO employee, working on TECO property under the direct supervision of another TECO employee, TECO hired him, established his pay scale, provided his tools, and had the authority to fire him. Thus, the appellate court affirmed the district court's decision.

**Comments:**

**There are three ways a worker can be deemed a borrowed employee 1) the employee could be serving as the borrowed servant of the railroad at the time of his injury, 2) he could be deemed to be acting for two masters simultaneously and 3) he could be a subservant of a company that was in turn a servant of the railroad**