

**Case Name:** Cowden v. BNSF Railway Company

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

**Originally Filed in:** Missouri (federal)

**Decided by:** (State)

**Court:** U.S.D.C. E.D. of Missouri

**Judge:** Judge Webber

**Citation:** Cowden v. BNSF Railway Co., 2010 WL 3564714 (E.D. MO 2010)

**Background:**

Kevin Cowden was employed by BNSF Railway Company (BNSF) to work aboard its locomotives. On January 14, 2008, Cowden was aboard a BSNF locomotive when he was thrown several feet into the air which resulted in injuries to his back and neck. The area of track the locomotive was travelling over at the time of Cowden's injuries was under a slow order requiring all trains to travel that stretch of track at a maximum speed of forty miles per hour. Cowden filed suit asserting that BNSF is liable for his injuries under the Federal Employers Liability Act ("FELA") for negligently failing to provide him with reasonably safe work conditions, reasonably safe work equipment, and for violating regulations promulgated under the Locomotive Inspection Act ("LIA"), which under the FELA constitutes negligence *per se*. In response, BNSF filed a motion for summary judgment.

**Issue:**

Is the defendant entitled to summary judgment on the plaintiffs FELA and LIA claims?

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

- *Locomotive Inspection Act*
- *Summary Judgment - Defendant Legal Granted*
- *Insufficient Evidence of Negligence*

**Held:**

BNSF argues that it is entitled to summary judgment on Cowden's LIA claim because there is no evidence in the record that the locomotive's condition played a role in his alleged injuries. Further, BNSF argues, rightfully so, that it is entitled to summary judgment because claims alleging violations of the LIA must be brought under the FELA. As such, the court granted the defendant's motion for summary judgment. Next, the court addressed BNSF's motion for summary judgment on Cowden's FELA claim. Under FELA, a plaintiff must show the same elements for a negligence claim as he does in a common-law claim: duty, breach, causation, and injury. BNSF argues that there is no genuine issue of material fact as to whether it violated the LIA or breached a duty owed to the plaintiff. First, the court considered whether BNSF violated the LIA. Under the LIA, railroads may only allow a locomotive to be used in service if it (1) is "in proper condition and safe to operate without unnecessary danger of

personal injury"; (2) has been inspected as required by the LIA and regulations promulgated thereunder; and (3) "can withstand every test" required by the Secretary of Transportation under the LIA. The court rejected Cowden's argument that BNSF violated any of the duties imposed by the LIA because he failed to provide any evidence that the condition or operation of the locomotive caused his injuries. Next, the court considered whether BNSF failed to provide a reasonably safe work environment and equipment. The FELA requires an employer to provide a reasonably safe place to work. The employer's conduct is measured by the degree of care that persons of ordinary, reasonable prudence would use under similar circumstances. Plaintiff contends that Defendant breached its duty to provide him with a safe workplace by failing to repair the section of track on which he allegedly sustained his injuries, or in the alternative for failing to reduce the applicable speed limit. The district court rejected this argument, however, because FRSA regulations permitted the train to continue over the track and there is no evidence that the locomotive travelled at a speed in excess of the regulation. As such, Cowden failed to show any genuine issues of material fact. As such, the court granted BNSF's motion for summary judgment.

**Comments:**

**Under the LIA, railroads may only allow a locomotive to be used in service if it (1) is in proper condition and safe to operate without unnecessary danger of personal injury; (2) has been inspected as required by the LIA and regulations promulgated thereunder; and (3) can withstand every test required by the Secretary of Transportation under the LIA.**