

**Case Name:** Balsley v. BNSF Railway Co.

**Date Decided:** November 22nd, 2010

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

**Decided by:** Washington Western District Court (Federal)

**Court:** W.D.Wash.

**Judge:** Bryan

**Citation:** 2010 WL 4857284 (W.D.Wash.)

**Background:**

Plaintiff, a railroad employee brought this claim against his employer, BNSF Railway ("BNSF"), pursuant to the Federal Employers' Liability Act ("FELA"), 45 U.S.C. Â§ 51 *et seq.* Plaintiff alleged that he suffered injuries when climbing down a ladder, while disembarking a train, for the purpose of rendezvousing with his employer's van for a scheduled change of crew. Plaintiff sustained injuries when he slipped on a piece of ballast as he climbed off the ladder onto the ground. Plaintiff alleged BNSF was negligent and liable for his injuries. BNSF filed a motion for summary judgment, alleging (1) that Plaintiff failed to provide evidence that BNSF was negligent, and (2) that Plaintiff's FELA claims are barred by the Federal Railroad Safety Act ("FRSA) and the Interstate Commerce Commission Act ("ICCTA"). Plaintiff also filed a motion for summary judgment, alleging that BNSF was precluded from raising a contributory negligence defense because "the record is devoid of any evidence that the Plaintiff actually acted in a negligent manner."

**Issue:**

(1) Did the Plaintiff provide enough evidence that BNSF was negligent to survive a motion for summary judgment? (2) Is a FELA claim, based on the fact that a worker was injured when he tripped on ballast as a result of traversing from a locomotive to the ground, precluded by either the FRSA or the ICCTA? (3) Did BNSF provide enough evidence that Plaintiff was negligent to retain the right to assert a contributory negligence defense?

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

- *Insufficient Evidence of Negligence*
- *Summary Judgment - Defendant Factual Denied*
- *Summary Judgment - Plaintiff Factual Denied*
- *Pre-Emption*
- *Federal Rail Safety Act (FRSA)*

**Held:**

(1) No, the court held, with little discussion, that genuine issues of material fact existed as to what duty was owed, and whether it was breached. (2) No, FELA claims that are based on the fact that a worker was injured when he tripped on ballast as a result of traversing from a locomotive to the ground are not precluded by either the FRSA or the ICCTA. Preclusion of

the FELA requires that another federal statute substantially subsume the subject matter of the claim under review. Here, the court found that, while parts of the FRSA may arguably cover employees walking on mainline ballast, there is no indication that the federal regulations contemplate an employee traversing a ladder and transferring his weight from a locomotive to the ground. (3) Yes, the court denied the plaintiff's motion for summary judgment. In order to present a contributory negligence defense, the defendant railroad has the burden of producing evidence, showing negligence on behalf of the plaintiff. The court found there existed a genuine issue of material fact regarding the specific actions that the plaintiff took as he disembarked the train. The court concluded that whether the plaintiff acted carelessly and added new dangers to BNSF's allegedly negligence "is a question best left for the jury".

**Comments:**

For an FRSA regulation to preclude a FELA claim, a party must establish more than that they touch upon or relate to that subject matter, and must show that the federal regulations substantially subsume the subject matter of the claim.