

**Case Name:** Wheeler v. Illinois Central Railroad Co.  
**Date Decided:** November 9th, 2010  
**Originally Filed in:** Mississippi (federal)  
**Decided by:** Mississippi Southern District Court (Federal)  
**Court:** S.D.Miss.  
**Judge:** Starrett  
**Citation:** 2010 WL 4867410 (S.D.Miss.)

**Background:**

Plaintiff brought this claim against his employer, Illinois Central Railroad Company ("ICRR"), under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. Â§ 51 *et seq.* Plaintiff alleged he was injured while operation a main line railroad switch; a switch, he claims, that was defective and negligently maintained and inspected under the requirements set forth in 49 C.F.R. Â§ 213.235. Plaintiff asserts he was injured when the switch "bound up" (an incident that can occur when the switch gets stuck). Plaintiff's case rests on thin evidence. Plaintiff provides the following evidence: (1) that he spoke of the incident (the switch bounding up) to a select few co-workers, (2) plaintiff's expert found a "groove" (more than two years after the alleged accident) in the in the wooden switch tie along the path that the switch clip or cuff would follow when the switch is being thrown, and lastly, and (3) ICRR's inspection records were no entirely complete regarding the inspection of the switch. No witness or employee has had any difficulty with the switch. ICRR filed a motion for summary judgment, alleging that Plaintiff failed to provide enough evidence of negligence and causation.

**Issue:**

Is this small amount of evidence, on the part of the plaintiff, enough to survive a motion for summary judgment under the FELA?

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

- *Summary Judgment - Defendant Factual Denied*

**Held:**

Yes, the court denied the defendant's motion for summary judgment. First, the court held that there was a genuine issue of material fact regarding whether the switch was properly inspected. Although the court acknowledged that the switch was actually inspected on a monthly basis (which is more often than federal regulations require), the inspection records contained some slight omissions that created doubt as to whether the switch in question was properly "thrown" as required by the inspection. The court found that ICRR was not compliant with 49 C.F.R. Â§ 213.235, which prescribes switch inspection requirements. The court concluded that the violation could potentially amount to negligence per se.

**Comments:**

A railroad's failure to comply with 49 C.F.R. Â§ 213.235's requirement to provide complete inspection records may serve as a basis for a plaintiff to assert negligence per se in a FELA case.