

**Case Name:** Cobb v. Soo Line Railroad Company

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

**Originally Filed in:** Minnesota (state)

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

**Court:** Court of Appeals of Minnesota

**Judge:** Wright

**Citation:** 2010 WL 4941618 (Minn. App.)

**Background:**

Plaintiff, a railroad employee, brought this action against his employer, Soo Line Railroad Co. ("Soo"), based on the Federal Employers' Liability Act ("FELA"). Plaintiff was injured when he exited a private vehicle at his place of work, then allegedly slipped on an ice patch beneath his feet, thereby hurting his back. Defendant's expert testified that the Plaintiff's back condition was merely an otherwise existing ailment that pre-existed the incident. The jury found for the Defendant, but did award the plaintiff a smaller award for lost wages. Plaintiff appeals the decision, arguing that the trial court erred by instructing the jury on contributory negligence despite the lack of evidence supporting such an instruction. Specifically, Plaintiff alleges that the defendant did not provide any specific evidence that plaintiff was negligent.

**Issue:**

Did the trial court abuse its discretion when it instructed the jury on contributory negligence even though the defendant did not specifically provide any direct evidence of the plaintiff's negligence?

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

- *Damages*
- *Insufficient Evidence of Negligence*
- *Procedural Issues - State*

**Held:**

No, the court held that the trial court did not abuse its discretion. If there is no evidence in the record from which the jury could properly find that the employee exercised a lack of due care, it is fundamental error to instruct the jury on contributory negligence. However, in this case, the defendant could not be expected to produce direct evidence of the plaintiff's negligence because the plaintiff was the only person with direct knowledge of the incident. Thus, in this case, it was proper to consider circumstantial evidence that the plaintiff was contributorily negligent.

**Comments:**

In a FELA case, circumstantial evidence is sufficient to prove that a plaintiff was contributorily

negligent when the only person with direct knowledge of the incident is the plaintiff.