Case Name: CSX Transportation, Inc. v Leroy F. Witt, Jr.
Date Decided: April 15th, 2009
Originally Filed in: Maryland (State)
Decided by: Maryland 1st Appellate Judicial Circuit (State)
Court: Court of Special Appeals of Maryland
Judge: Judge Hollander
Citation: 2009 WL 1476993 (Md.App.)

Background:
Leroy F. Witt ("Witt") has worked for CSX Transportation Inc ("CSX") since 1980. Witt filed suit under the Federal Employer's Liability Act ("FELA") alleging that CSX was negligent because it failed to provide him with a reasonably safe workplace which caused injuries to his knees. Following a seven-day jury trial, the jury awarded Witt $231,622.24. CSX appealed. In 1980, Witt was promoted from an "on-call employee" to a flagman and became a full-time employee. He was then promoted in 1985 to conductor which he worked as until 2005. That year, Witt became a yard conductor with physical duties that were "basically the same..." as a conductor. Witt's duties required him to walk between the tracks, look for car numbers, brakes, knock brakes off, check air hoses, tie air hoses up, and throwing switches, dismounting moving cars and climbing ladders. Witt walked between 3-5 miles a day on a surface known as "ballast" consisting of rocks that lie between the ties and the tracks. Moreover, Witt claimed, and introduced evidence, showing various pieces of debris scattered throughout the yard in which Witt was to walk on. Prior to his employment, Witt underwent a physical and claimed he was in "perfect" health. During one of the CSX physicals in the 1980s, Witt was told he had some "clicking" in his knees and was informed by the doctor it was due to old age. Finally, after many visits, in 2005 an MRI revealed osteoarthritis and a torn meniscus. At trial, Witt introduced expert testimony that would establish walking on ballast would be hurtful to those performing duties such as Witt's. The expert physician stated Witt was suffering from two different diseases, (1) osteoarthritis and/or (2) chondromalacia. Witt contended his chondromalacia was caused by repetitive climbing of ladders, *etc*. The physician testified he believed the duties, performed by Witt, were the cause of the chondromalacia. At the close of trial, the jury gave verdict in favor of Witt and CSX appealed.

Issue:
Will Defendant's appeal be successful to reverse the jury verdict given in favor of the plaintiff?

Overall Issues Discussed or Touched Upon in this Case:
- *Cumulative Trauma Case*
- *Insufficient Evidence of Damages*
- *Insufficient Evidence of Negligence*

Held:

Under FELA, the plaintiff must show evidence to justify with reason the jury's conclusion that employer negligence played any part, even the slightest, in producing injury or death for which damages are sought. *Even though the jury, with reason, may be able to attribute the result to other causes, the employer will still be found liable.* Under this standard, the employer must provide a reasonably safe workplace for its employees. Moreover, notice and foreseeability are a required showing under a successful FELA cause of action. CSX, conceding it has a duty to provide a reasonably safe place for Witt to work, contends the trial court erred in denying motions for judgment and submitting Witt's claim for lost future wages. They contend Witt failed to produce legally sufficient evidence of negligence by CSX. Furthermore, they argue Witt failed to show any evidence proving CSX knew or should have known that these activities posed any health risk to railroad workers. This Court rejected CSX's argument that Witt failed to produce sufficient evidence to support his claim with respect to air hoses and switches. The expert, Dr. Andres, analyzed each of the tasks Witt performed and concluded that the amount of repetition was significant. Furthermore, this Court rejected CSX's argument that the injury was unforeseeable in light of the duties performed. Witt's expert testified that there was absolutely no lack of knowledge of the dangers associated with repeated dismounting of moving rail cars in the 1970s and 80s. This Court found that a jury could have reasonably concluded Witt's work would not have been stressful on his knees if CSX had provided him with a reasonably safe work environment. CSX claims that because the ballast in the rail yard met Federal Railroad Administration regulation requirements and as such, Witt was preempted from bringing a FELA claim. However, this Court determined there were genuine issues of material fact as to the safety of the ballast and that just because they followed specific guidelines, other factors precluded to hold as a matter of law that using the ballast Witt walked on was not negligence on CSX's part. CSX also argued that the jury improperly calculated future lost earnings and that upon finding this calculation improper then the entire award must be revisited. According to CSX, the lower Court failed to provide the jury with an itemized sheet which precludes an appeal of certain damages This Court however, holds that under FELA, there is no itemization requirement. Furthermore, only when an absence of an itemized damages/verdict sheet impairs the ability to decide other issues on appeal will it be required.

Comments:

This case outlines the importance and effectiveness of expert testimony. Here, Dr. Andes, testified that there had been plenty of knowledge about the physical effects resulting from dismounting moving cars. In that sense, Witt was able to show constructive or actual knowledge on CSX's part. Furthermore, Dr Andes testified that the duties Witt performed resulted in the deterioration of his knees, that and his old age. However, under FELA, any negligence, in the slightest, of an employer failing to keep a safe working area only needs to be shown to recover. The fact that Witt's old age contributed to his knee damages does not release the employer from liability under FELA.

Steve Gordon