

**Case Name:** Larry L. Koger v. Norfolk Southern Railway Company

**Date Decided:** December 7th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. Southern District West Virginia

**Judge:** Judge Faber

**Citation:** 2009 WL 4730815

**Background:**

Plaintiff, Larry Koger (Koger) filed a Motion for Reconsideration of Whether a regulation was a "statute" under Â§53 of the Federal Employers' Liability Act, or FELA. Initially, this Court found that the defendant's (Norfolk Southern Railway Company) violation of a regulation constituted negligence per se. However, this Court did not allow Koger to assert the violation of the regulation as a bar of the comparative negligence defense.

**Issue:**

Did this Court hold that railroad's violation of the regulation bars the comparative negligence defense?

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

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**Held:**

Under FELA, 45 U.S.C. Â§53, if an employer railroad carrier violates a statute enacted for the safety of employees, and the violation contributes to the employee's injury, then the employer railroad is barred from asserting a comparative negligence defense. Previously the Court found that the regulation was not a statute enacted for the safety of employees. As such, this Court found no case law in support of Koger's position that 49 C.F.R. Â§240.305 was enacted for the safety of employees. Accordingly, this Court denied Koger's Motion to Reconsider whether the regulation was a safety statute under FELA Â§53.

**Comments:**

Under Â§53, if the railroad carrier violates a statute enacted for the safety of the employees, (and it contributes to the injury) then they are barred from asserting the comparative negligence defense under FELA. A violation will also cause a railroad to be negligent per se. Here, the railroad violated a regulation, not a safety statute. Therefore, while the Court found they were negligent per se, they were not barred from asserting the comparative negligence defense. Steve Gordon