

**Case Name:** Jeff Nickles v Union Pacific Railroad Company

**Date Decided:** July 27th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. Eastern District of California

**Judge:**

**Citation:** 2009 WL 2242433 (E.D.Cal.)

**Background:**

Plaintiff, Jeff Nickles, ("Nickles") filed an action seeking to recover for injuries suffered as a result of the derailment of rail grinding track maintenance equipment, owned and operated by Harsco Track Technologies ("Harsco"). Nickles moves for summary judgment on the issue whether he, an employee for Harasco, was also a borrowed servant under the Federal Employer's Liability Act ("FELA").

**Issue:**

Did the plaintiff's motion for summary judgment, whether he was a borrowed servant to UP and thus able to collect damages under FELA for injuries sustained while working as a contractor for defendant?

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

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**Held:**

The Court will only grant a motion for summary judgment if, based upon the evidence presented, there are no genuine issues of material fact. Nickles claims as an employee of Harsco, contacted to work on UP's railroad, than he is an "employee" as defined under FELA. Nickles introduced evidence showing that the Harsco equipment was under the direct supervision of UP employees while it was being used. Case law under FELA has established that each case must be decided on its particular facts and that there is no special sense or definition of "employee" or "employed". Therefore, because the issue of "employed" or "employee" is so factually driven under FELA, this Court denied plaintiff's Motion for Summary Judgment on the issue whether he was considered a "servant" and thus, covered under FELA.

**Comments:**

Under FELA only employees or those employed by the railroad company may sue for injuries occurred "while employed". Here, the plaintiff worked as a subcontractor for UP and used equipment upon the direction of UP's supervisors. As such, plaintiff contended that he was clearly employed by UP and therefore able to sue under FELA. However, the Court held that the definition of employee or employed by was so factually driven by each special

circumstances of the case it was inappropriate to hold there were no genuine issues of material fact. Steve Gordon <http://www.gordon-elias.com>