

Case Name: David Chad Glow v Union Pacific Railroad Company

Date Decided: August 26th, 2009

Originally Filed in: ()

Decided by: (State)

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

Judge: Judge Karlton

Citation: 2009 WL 2731020 (E.D.Cal.)

Background:

David Glow ("Glow"), plaintiff, worked for defendant, Union Pacific Railroad Company ("UP"), as a locomotive engineer. Glow brought an action, pursuant to the Federal Employer's Liability Act ("FELA") that as a result of UP's violation of the Locomotive Inspection Act ("LIA"), he has injured his neck during the course of his employment as a result of repeated turning of his neck. On September 14, 2007, Glow was assigned as a locomotive engineer traveling from California to Nevada. When the train reached a speed of 55mph the speedometer in the engineer's console would begin to bounce. There was a fully functional speedometer in the locomotive's rear panel which Glow could see from his engineer's seat by turning his head and looking over his shoulder. Rather than using his watch and a table of train speeds, Glow opted to check the speedometer located on the rear console. Glow testified that he did so because it would be hard to calculate the speed given that he also was required to monitor speed restrictions and signals while the train was traveling. During the 10 hour trip, Glow would turn and glance at the speedometer every 30 seconds. Glow introduced evidence that turning his neck, in light of his prior injury, further injured his spine. Glow also contended that the console was "badly maintained". UP moved for summary judgment on both the FELA and LIA claims.

Issue:

Did this Court grant UP's motion for summary judgment ruling that Glow failed to present evidence supporting his assertion that UP violated the LIA and the violation led to further aggravation of his spine injury?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

In opposing a summary judgment motion, Glow cannot rely on the denial of the motion's pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. The opposing party, Glow, in an opposition to summary judgment must demonstrate that the fact in contention is material meaning it might affect the outcome of the suit under the governing law. First, Glow alleged that UP violated FELA by acting negligently in its maintenance of the

speedometer and the engineer's seat in the train Glow drove. UP countered, in its motion, that a FELA claim will not lie on the basis of an allegation regarding the condition of a piece of equipment that is not required under the FELA regulations or the LIA and as such, the FELA claim is precluded by the LIA and its regulations. This Court, found that under at the FELA, a plaintiff (Glow) need only show that the defendant's (UP) conduct fell below the standard for ordinary care. Glow is not required to prove that a certain engineering change would have prevented the claimed injury, here Glow's spine. Moreover, it is the jury's duty to determine whether the employer followed industry practices and to determine the availability of alternatives. Accordingly this Court found that because Glow has introduced evidence supporting the assertion that UP negligently failed to maintain the speedometer and the engineer's seat in the train that he drove, and that it is consistent with what a FELA cause of action must show, that summary judgment on the FELA action is inappropriate. Moreover, this Court found that the FELA claim is not precluded by regulations enacted pursuant to the LIA. This Court stated there is no authority holding that a claim for negligence under FELA is precluded if UP complied with the LIA regulations. Secondly, UP moves for summary judgment on Glow's LIA claim. Glow alleged an LIA violation because UP failed to maintain the speedometer and engineer's seat in the locomotive he used to take his trip. Because the working speedometer was behind him, the seat did not protect him adequately from shocks, jolts, and vibrations and that his neck was injured by UP's violation. The LIA requires that railroad carriers, like UP, may only operate trains that are in proper condition and safe to operate without unnecessary danger of personal injury (emphasis added). The regulations in affect that are relevant here require that speedometers in trains be clearly readable from the engineer's normal position and that the be accurate within 5 miles per hour when traveling above 30 mph. Moreover, even if the train does not violate a specific regulation issued under the statute, the owner may be liable under the LIA for a broad duty to keep all parts and appurtenances of its locomotives in proper condition and safe to operate without unnecessary peril to life and limb. Accordingly, this Court, found that Glow introduced evidence supporting a violation of the LIA and determined UP's motion for summary judgment to Glow's LIA claim was improper.

Comments:

The standard for summary judgment is a tough one to reach. The moving party, here UP, must show that based on the evidence presented, construed in favor of the nonmoving party, forces the court to hold as a matter of law in favor of the moving party. Under the LIA, the railroad owners and operators are required to provide safe conditions for locomotives in use. A violation of the LIA or a regulation under the LIA, results in a per se violation of the FELA. If a plaintiff successfully shows that the violation of the LIA/regulation played any part in his/her injury than they have made a per se case of FELA negligence. Steve Gordon
<http://www.Gordon-Elias.com>