

Case Name: Marlo Kinsey v. Union Pacific Railroad Company

Date Decided: October 9th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Court of Appeal, Third District, California

Judge: Court Nicholson

Citation: 178 Cal.App.4th 201

Background:

Plaintiff, Marlo Kinsey ("Kinsey"), brought this action against employer, Union Pacific Railroad Company ("UP"), under Federal Employers' Liability Act ("FELA"). The Superior Court entered on jury verdict for UP and awarded costs, including expert witness fees, and Kinsey appealed the award of fees. This opinion did not go into the factual details of this action because of the limited legal question.

Issue:

Did this Court find that UP was entitled to an award of costs pursuant to federal law and if not does it affect the recovery of costs under state law?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

The Supreme Court has held that federal law controls the availability of prejudgment interest in a state-filed FELA case. Furthermore, in California, prejudgment interest is not available in a California FELA case, notwithstanding contrary state law. The goal of achieving national uniformity in personal injury actions by railroad employees against their employers would be frustrated if FELA plaintiffs could recover certain costs simply by filing their actions in state, rather than federal court. Moreover, this Court applied the same reasoning to the availability of expert witness fees as costs in a FELA. This Court also referenced the many amendments to FELA that have not included a provision concerning the recovery of expert witness fees despite the issue going before courts. However, this Court further examined whether the prevailing defendant in a FELA case was entitled to recover expert witness fees as costs. More specifically, this Court examined the recovery of post offer costs under federal law and determined it was governed by FRCP 68. Which provides that "a party defendant against a claim may serve on an opposing party an offer to allow judgment on specific terms..." also "if the judgment that the offeree obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made." In short, if a plaintiff gets a less lucrative judgment than the defendant's original offer, then the plaintiff must pay costs incurred after the offer was made. However, this Court found that the rule applied only to offers made

by the defendant and only to judgments obtained by the plaintiff. Accordingly this Court found that the lower court erred in allowing defendant to recover expert witness fees as post judgment costs, and that portion must be reversed.

Comments:

FELA allows for the recovery of certain costs incurred during trial. However, as stated by this Court, if state law and the FELA conflict as to what costs are recoverable than FELA supersedes the state law. Steve Gordon