

**Case Name:** Justin R. Belisle v BNSF Railway Co.

**Date Decided:** June 24th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. â€" D. Kansas

**Judge:** District Judge Melgren

**Citation:** 2009 WL 1804131 (D.Kan.)

**Background:**

The plaintiff, Justin R. Belisle, brought this action pursuant to the Federal Employers' Liability Act ("FELA"). He claimed that the defendant, BNSF, negligently failed in a number of ways to furnish and provide him with a reasonably safe place to work, reasonably safe methods for work, reasonably safe conditions for work, and reasonably safe appliances for work. On March 3, 2007, Belisle was employed by BNSF as a brakeman for a train that was preparing to depart its Newton, Kansas yard. Belisle was assigned the task of preparing the end of the train for departure, which included the installation, arming, and testing of a turbine powered end-of-train device ("ETD"), which attached to the last car on the train. To test this particular ETD's ability to detect and report a simulated emergency to the engineer, Belisle had to let out the bottled air in the last one or two cars of the train. To do this required Belisle to walk from the end of the train to where the last couple of cars connected to the rest of the train. Belisle and other crew members were notified by their supervisor that an eastbound train would be approaching the area they were working. The trains were required to travel no more than 50 miles per hour, with a clearance of 58 inches between tracks. Belisle contended that the assistant train master informed the crew that the approaching train would be held while he finished his work. However, a train approached and passed by Belisle as he was working and struck him. Belisle suffered extensive injuries. BNSF argued that the Federal Railroad Safety Act ("FRSA") and the regulations under the Federal Railroad Administration ("FRA") supersede and preclude a number of Belisle's negligence claims as set forth in his complaint. They moved for summary judgment. Belisle countered by asserting that BNSF had failed to grasp the essence of his claims. Belisle argued that BNSF failed to provide him with a safe workplace, and they failed to inform him there would be train traffic coming past his work area. Belisle contended his claims under the FELA were not in conflict with the FRSA and summary judgment was unwarranted.

**Issue:**

Whether the Court will grant summary judgment in favor of BNSF.

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

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**Held:**

The section of the FRSA to which BNSF refers set the maximum allowable speed limit for passenger and freight trains for each class of track on which a train may operate. Belisle alleged that BNSF negligently failed to take appropriate steps to prevent Belisle from being struck by a train. BNSF's desire to have the Court limit or control how Belisle presented his evidence should be addressed through a motion in limine prior to trial. The Court noted that summary judgment was improper and not the appropriate method. BNSF argued that the Court should dismiss Belisle's claims to the extent they were premised upon unsafe or improper ballast and footing alongside the tracks, as claims are precluded by 49 C.F.R. Â§ 213.103. BNSF suggested that although Belisle had not specifically alleged that it was negligence because of unsafe footing or ballast, Belisle's proffered experts have suggested that the mainline ballast upon which Belisle was working may have inhibited his ability to avoid the accident. This Court did not find that any of Belisle's claims implied negligence on BNSF based on unsafe or improper footing or ballast so as to be precluded by 49 C.F.R. Â§ 213.103. Therefore, this Court denied summary judgment.

**Comments:**

The best way for the Court to know whether or not a party has correctly asserted a statute is to look directly at the statute's language. The Court looked at FN16.49 C.F.R. Â§ 213.103, which provided: Unless it is otherwise structurally supported, all track shall be supported by material which will- (a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade; (b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails; (c) Provide adequate drainage for the track; and (d) Maintain proper track crosslevel, surface, and alignment