

Case Name: Laura Jan Melton v. BNSF Railway Company

Date Decided: February 22nd, 2010

Originally Filed in: Tennessee (State)

Decided by: Tennessee Court of Appeals (State)

Court: Court of Appeals of Tennessee

Judge: Judge Stafford

Citation: 2010 WL 597457 (Tenn.Ct.App.)

Background:

Laura Jan Melton, wife of deceased [BNSF](#) employee Ronald Melton, brought this action pursuant to [FELA](#), Federal Employers' Liability Act, as a result of being struck by defendant's, BSNF, rail car. Ronald Melton was employed by BNSF at the time of his death as a carman. Mr. Melton had been instructed, along with another employee, to locate and repair a rail car with a bent pin lifter. The rail car was located on track 301, a protected track. Both parties disputed whether Mr. Melton's supervisor sent Mr. Melton to track 51 or 301. Track 51 is a "bad order" track where cars in need of repairs are sent. The rail cars on track 51 are moved down an incline and through "retarders" which reduce the speed allowing the cars to roll freely until they bump into another car or are stopped by gravity. The section of track 51 at issue is located in an area of the yard that is sloped on either side and referred to as the "bowl". Mr. Melton drove a BNSF road truck to locate the rail car needing repairs and parked the truck between tracks 301 and 51. Upon exiting the truck, Mr. Melton instructed his fellow employee to be careful because track 51 was "live". Both employees then walked up track one searching for the rail car needing repair. Upon returning to the truck, the other employee saw a rail car approaching from the south on track 51 and yelled to Mr. Melton to watch out. The car collided with another car causing them to move forward, striking Mr. Melton thus causing his injuries. Mr. Melton's wife filed this action under FELA and BNSF answered the complaint denying negligence and raising a contributory negligence defense. Mrs. Melton amended her complaint and BNSF filed an amended answer raising preemption as an additional defense. Mrs. Melton, again, filed another complaint alleging that BNSF violated CFR 49 Part 213.37 on vegetation. BNSF denied such violation. BNSF filed a motion for summary judgment and the trial court granted the motion on the issues of vegetation and ballast (49 CFR). Trial then took place and the jury returned a verdict finding BSNF negligent and Mr. Melton not negligent. The jury awarded Mrs. Melton 1 million dollars in pecuniary damages and 4 million dollars in damages for Mr. Melton's conscious pain, suffering, and mental anguish. The Court issued a final judgment consistent with the verdict. BNSF Filed a motion under Tennessee Rule of Civil procedure asking the trial court to set aside the verdict and the judgment entered and to enter judgment in accordance with BNSF's previous motions for summary judgment and directed verdict. BNSF claimed the trial court erred in denying summary judgment to other issues that had "no factual basis to support any of plaintiff's 31 separate claims". BNSF also requested a new trial arguing that the verdict was excessive. Upon hearing BNSF's motions, the trial court denied BNSF's motion. Ultimately, the court reduced the total award of pain and suffering from

5 million to four million dollars. BNSF appealed the trial court's rulings.

Issue:

Did this Court uphold the 5 million dollar judgment in favor of decedent's wife?

Overall Issues Discussed or Touched Upon in this Case:

- *Reduction of Damages*
- *Ruling on Summary Judgment*
- *Applicability of FELA at Issue*
- *Procedural Issues - State*

Held:

BNSF first argued that the trial court erred when it denied BNSF's motion for directed verdict at the close of Mrs. Melton's evidence. This Court however, found that the trial court did not err in refusing to grant BNSF a directed verdict. Mrs. Melton offered testimony of the other employee that track 51 and 301 were at an arm's distance and that in his opinion, the cars should not have been moved on track 41 when the men are working in the bowl. Moreover, the other employee also testified he though he heard the supervisor send them to track 51, the live track, opposed to track 301, the "dead" track. Drawing all reasonable inferences in favor of Mrs. Melton, this Court found that she presented enough evidence to support her claims. BNSF also asserted the trial court erred in denying its Motion for a New Trial. First, BNSF contended that it was prejudiced by the erroneous admission of evidence, specifically allowing Mrs. Melton's counsel to read from and refer to the deposition of Foster Peterson, during cross examination of BNSF's medical expert. Peterson was hired by BNSF after the accident to do an investigation, his deposition was not introduced into evidence. The Court found that the Dr. testified to Mr. Melton's injuries and not necessarily the deposition. There was no indication that the Dr. considered Peterson's deposition for purposes of her opinion but rather read the deposition, along with other materials, to determine what happened in the current case. Also, Mrs. Melton argued that the trial court erred in granting BNSF summary judgment on the issues of vegetation and ballast. This Court found, ultimately, that Mrs. Melton provided the trial court with depositions which indicated that there were issues of material fact. A roadmaster for BNSF testified that if track inspectors had seen the vegetation as it existed at the time of the accident, they should have taken the track out of service. Accordingly, this Court reversed the granting of BNSF's motion for summary judgment on the issues of vegetation and improper ballast but affirmed the trial court's refusal to direct a verdict and upheld the jury award.

Comments:

Also at issue in this case was preemption of the Federal Railway Safety Act. Under

**FRSA, if a federal safety regulation is applied similarly to a FELA plaintiff's negligence claim, prescribed under FRSA, then the plaintiff's claims are preempted. In order for FRSA to preempt the FELA claim, the railroad must be in compliance of the FRSA.
Steve Gordon**