

**Case Name:** James Deacon v. Metro-North Railroad Company

**Date Decided:** September 22nd, 2009

**Originally Filed in:** Connecticut (Federal)

**Decided by:** Connecticut District Court (Federal)

**Court:** U.S.D.C. Connecticut

**Judge:** Judge Kravitz

**Citation:** 2009 WL 3059128

**Background:**

Plaintiff, James Deacon ("Deacon"), filed an action against defendant, Metro-North Railroad Company ("Metro-North") under the Federal Employers' Liability Act ("FELA"). Deacon was injured on the job when an electrical arc explosion occurred while he was working on a sectionalizing switch box which housed a switch that controlled power to a rail. Both parties agreed that during the project, a set of cables running from the rail Deacon was working on to the switch had become detached from their housing and were touching the metal casing of a motor inside the switch box causing it to be electrically charged. Deacon alleged that Metro-North violated FELA for failing to take reasonable care to provide him with a safe place to work. Metro-North countered asserting that Deacon was contributory negligent. Deacon filed a partial motion for Summary Judgment asserting that Metro-North's violation of an OSHA regulation causing his injury precluded Metro-North from using the contributory negligence defense.

**Issue:**

Did the Court find that an OSHA regulation was a "safety statute" under FELA and therefore, making a violation of an OSHA regulation a bar to the contributory negligence defense?

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

- *Found Plaintiff Comparatively Negligent*
- *Insufficient Evidence of Negligence*

**Held:**

Deacon argued that an OSHA regulation should be deemed a statute for the purposes of Â§53 of FELA which does not allow the contributory negligence defense for employees who are killed or are injured as a result of the violation of "any statute enacted for the safety of the employees...". Moreover, Deacon argued that under Â§54(a), added in 1994, which states that "any regulation, standard or requirement" prescribed by the Secretary of Transportation a "statute" for purposes of Â§53". That is, any OSHA regulation is considered a statute enacted for the safety of the employees, barring the contributory negligence defense, pursuant to Â§53. Deacon contended that OSHA regulations should be deemed to be safety statutes under Â§53 because the Federal Rail Administration have stated that OSHA regulations are "in force" on

railroads in the absence of specific FRA violations. Deacon further argued that OSHA regulations are de facto FRA regulations because FRA has either explicitly adopted, or formally delegated authority to OSHA. However, this Court found that the FRA has merely clarified that OSHA regulations apply to railroad as they would to any other industry unless the FRA has not issued regulations governing the subject matter of the OSHA regulations. In fact, according to this Court, the FRA will make it clear if it explicitly adopts an OSHA regulation. Finally, Deacon argued that policy supports the assertion that OSHA regulations that apply to railroads are no different than FRA regulations. However, this Court refused to accept this reasoning stating that Congress has not intended to do so and if anyone is to make the change, it is Congress. Ultimately, this Court rejected Deacon's argument holding that an OSHA violation is not a violation of a safety statute under Â§53.

**Comments:**

One of the railroad's defenses under FELA, contributory negligence, is barred if the plaintiff is able to show a violation of a safety statute under Â§53 and Â§54(a) of FELA. The plaintiff in this case tried to assert that an OSHA violation, by way of the FRA adopting OSHA regulations, was a "safety statute" under Â§53 and therefore an OSHA violation by Metro-North precluded their use of the contributory negligence defense. However, this Court found that an OSHA regulation was not a "safety statute" under FELA and therefore did not bar the contributory negligence defense.

Steve Gordon