

**Case Name:** Helen Vincent v. BNSF Railway Company

**Date Decided:** March 23rd, 2010

**Originally Filed in:** Montana (State)

**Decided by:** Montana Supreme Court (State)

**Court:** Supreme Court of Montana

**Judge:** Judge Wheat

**Citation:** 2010 WL 1040985 (Mont.)

**Background:**

Helen Vincent brought this action against defendant, BSNF Railway, pursuant to the Federal Employer's Liability Act, [FELA](#), as a result of injuries Vincent suffered during the course of her employment for BNSF. Following the injury, Vincent worked light duty for approximately 7 months in which her employment ended. BNSF offered Vincent an Inspection Officer position prior to the termination of her employment. The position was created specifically for injured employees and tailored to accommodate the medical restrictions of injured employees. BSNF maintained that Vincent would have received the position if she had applied and passed a background check. Vincent elected not to apply for the job. Vincent filed the underlying claim pursuant to FELA. BNSF admitted liability and the case proceeded to a jury trial on damages. Vincent filed a motion in limine to prevent BNSF from presenting information about the Inspection Officer position. Ultimately, the Court denied Vincent's motion. Vincent also made a motion for a Directed Verdict on the issue of mitigation of damages. The Court denied the motion stating that BNSF had introduced sufficient evidence to support a finding, by a reasonable jury, that Vincent failed (or did not fail) to mitigate her damages. At the end of trial, BSNF submitted jury instructions to which Vincent objected to on the grounds that there was insufficient evidence to support *any* mitigation instructions. One of the instructions submitted to the jury stated "The Plaintiff has a duty to minimize his damages. However that duty does not require him to do what is unreasonable or impracticable". Also the jury was instructed that BNSF had the burden to prove plaintiff failed to mitigate the damages. The jury returned a verdict in favor of Vincent in the amount of \$186,000. Vincent filed a motion for a new trial arguing that BSNF failed to introduce *any* evidence of alternative jobs Vincent could perform or the wage rate available for such work, and accordingly, there was insufficient evidence to support BSNF's contention that Vincent failed to mitigate her damages.

**Issue:**

Did this Court find that the District Court erred in denying Vincent's motion for a new trial?

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

- *Reduction of Damages*
- *Ruling on Summary Judgment*
- *Procedural Issues - State*

**Held:**

On appeal, Vincent argued that BSNF offered no evidence establishing the physical requirements of the Inspection Officer job. However, this Court recognized that the record reflected that Vincent was able to look for work and an appropriate job was available. A nurse for BSNF offered Vincent the Inspection Officer position and told her that she would be willing to discuss the position with Vincent. The nurse also testified that the Inspection Officer position required only the ability to use a cellular phone and operate a company vehicle. Vincent countered, arguing that she refused the position because it did not offer union protection and she would have to work in the presence of an individual she did not like. However, Vincent testified that she had worked non-union positions in the past and that she hoped to become a conductor, requiring her to work in the presence of the individual she did not like. Accordingly, this Court affirmed the District Court's denial of Vincent's motion for a new trial.

**Comments:**

In a FELA action the plaintiff has the burden of proving his/her damages. The plaintiff also has a duty, if possible, to mitigate his/her damages. However, it is the employer's burden to show that the plaintiff failed to mitigate damages. Steve Gordon