

Case Name: Justin Belisle v. BNSF Railway
Date Decided: April 5th, 2010
Originally Filed in: Kansas (Federal)
Decided by: Kansas District Court (Federal)
Court: U.S.D.C. Kansas
Judge: Judge Melgren
Citation: 2010 WL 1424344 (D.Kan.)

Background:

Before this Court are defendant's and plaintiff's motions in limine to exclude expert testimony. Plaintiff, Justin R. Belisle was employed by defendant, BSNF, as a brakeman for a train that was preparing to depart from a yard. Belisle was performing his duty to prepare the end of the train for departure including testing a turbine powered end-of-train device which attaches to the last car on the train. While working on or near a train on Main line 2, a train approached Belisle on Main line 1, at 50 mph, and struck Belisle as it passed. Belisle suffered [extensive injuries](#) as a result. Belisle brought this action under [FELA](#) claiming that BNSF failed to furnish and provide him with a reasonably safe place to work, safe methods for work, safe conditions to work, and safe appliances for work. BNSF denied all claims. Belisle filed a Motion to Exclude the testimonies of William F. Kennedy and Brad C. Mathiason while BSNF filed a Motion to Exclude the testimony of Jimmy Scott.

Issue:

Did this Court grant either plaintiff's or defendant's motions in limine and exclude the expert(s)' testimony?

Overall Issues Discussed or Touched Upon in this Case:

- *Daubert Ruling*
- *Expert Witness- Daubert Issues*

Held:

The proponent of expert testimony must show a grounding in the methods and procedures of science which must be based on actual knowledge and not subjective belief or unaccepted speculation. The Court will first, determine if the expert has a reliable basis in the knowledge and experience of the field in which he/she is testifying, and whether the testimony is relevant to the case. **Testimony of William Kennedy (BNSF's expert)** William Kennedy was identified as BNSF's accident reconstruction expert. Belisle contended that the manner in which Kennedy reached his conclusions in this case was faulty and not in compliance with the accepted methods of accident reconstruction. Accordingly, Belisle argued that Kennedy's testimony must be excluded. Belisle argued that the report was erroneous because BNSF failed to provide him with a reference mark from the train's event data recorder to plot the

locomotive in space and time. Kennedy chose to use the whistle board as the reference mark to plot the train's position and Belisle contended that this was inconsistent with the Event Data Recorder's reference mark and deposition testimony which invalidates the conclusion. Additionally, Belisle argued that Kennedy attempted to correct the errors of his initial report in a second report but various mathematical errors in the report caused his subsequent findings to be unreliable. Kennedy did admit to errors in his initial report but stated the methodology he used was accepted in the community. Kennedy included, in his second report, subsequent information gained from the EDR. Accordingly, this Court found that although Kennedy did not start his report "from scratch" after receiving information from the EDR, that his methodology was reliable and therefore, testimony admissible. **Testimony of Brad Mathiason (BNSF's expert)** Mathiason was identified as BSNF's expert to develop animation of BSNF's perception of the accident. Mathiason relied largely on Kennedy's opinion to place the train in time and space and because Kennedy's opinion was unreliable, the animations are also unreliable. BSNF countered, arguing that Kennedy's reconstruction analysis of the accident was reliable and provided a sufficient basis for Mathiason's animations. BNSF further contended that the animations are a fair and accurate representation of the evidence. This Court found that the animations were not unduly prejudicial or misleading to exclude their use during trial. The Court made it clear that BSNF must introduce them, to the jury, as their *own opinion* of what they think led to the accident and *not the actual* accident. **Testimony of Jimmy C. Scott (Belisle's expert)** BNSF claimed that Scott's expertise was not grounded on any scientific or technical based study but on "other specialized knowledge" based on his experience with another railroad. Scott's experience, as testified, included supervisory and safety duties working with employees in close clearances, as an actual brakeman, engineer, and conductor, and working with end of train devices. Scott acknowledged that he had not worked in any engineering department with any railroad nor had he worked in any mechanical department for CSX. BNSF moved to strike Scott's testimony in its *entirety*. This Court, after reviewing Scott's report and testimony was convinced that his experience would be an aid to the jury in understanding railroad operations, rules and regulations, some factual issues, and procedures that occurred on the night in question. However, this Court did exclude parts of Scott's testimony, for example, where Scott stated "it should be obvious to any reader of this description that Belisle thought he was in the clear..." the Court found it speculative and struck it from the testimony. This Court denied Belisle's motion to exclude BNSF's experts' testimony and denied in part and granted in part BNSF's motion to exclude Belisle's testimony.

Comments:

Expert testimony does not necessarily *have* to be scientific or technical. As this case illustrates, if an "expert" demonstrates sufficient experience in giving testimony that will clear up an otherwise confusing issue for the jury, then the testimony may be admissible. Additionally, the Courts have the discretion whether to exclude the entire testimony, or may just strike *portions* of the offered testimony that may appear

speculative or are otherwise inadmissible. Steve Gordon