

RE: ● -102

6-22-83 ●

Judge,

The Court originally dismissed this action for want of prosecution on 3-22-83. However, plff's local counsel moved the Court to redocket and the Court bought their story. Even so, no further action has been taken. Now the case is ripe for default judgment.

Donald

3:00 P.M.

FEDERAL CLAIMS INSTRUCTIONS

6

FEDERAL EMPLOYER'S LIABILITY ACT

(45 U.S.C. § 51 ET SEQ.)

FEDERAL SAFETY APPLIANCES ACT

(45 U.S.C. § 1 ET SEQ.)

In this case the Plaintiff's claims are asserted under the Federal Employers Liability Act and the Federal Safety Appliance Act.

The Federal Employers Liability Act provides in part that:

"Every common carrier by railroad while engaged in commerce between any of the several states . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier."

129. In this case the Plaintiff claims, specifically, that the Defendant *[describe the specific act(s) or omission(s) asserted as negligence on the part of the Defendant]*. 125

In order to prevail on this claim the Plaintiff must prove each of the following elements by a preponderance of the evidence:

1. That at the time of the Plaintiff's injury, Plaintiff was an employee of the Defendant performing duties in the course of his employment;
2. That the Defendant was at such time a common carrier by railroad, engaged in interstate commerce;

PATTERN JURY INSTRUCTIONS

3. That the Defendant was "negligent" as claimed by the Plaintiff; and

4. That such negligence was a "legal cause" of damage sustained by the Plaintiff.

"Negligence" is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in *doing* something that a reasonably careful person would *not* do under like circumstances, or in *failing* to do something that a reasonably careful person *would* do under like circumstances.

For purposes of this action, negligence is a "legal cause" of damage if it played any part, no matter how small, in bringing about or actually causing the injury or damage. So, if you should find from the evidence in the case that any negligence of the Defendant contributed in any way toward any injury or damages suffered by the Plaintiff, you may find that such injury or damage was legally caused by the Defendant's act or omission. Negligence may be a legal cause of damage even though it operates in combination with the act of another, some natural cause, or some other cause if such other cause occurs at the same time as the negligence and if the negligence played any part, no matter how small, in causing such damage.

If a preponderance of the evidence does not support the Plaintiff's claim under the F.E.L.A. for negligence, then your verdict should be for the Defendant. If, however, a preponderance of the evidence does support the Plaintiff's claim, you will then consider the defense raised by the Defendant.

The Defendant contends that the Plaintiff was himself negligent and that such negligence was legal cause of his own injury. This is a defensive claim and the

FEDERAL CLAIMS INSTRUCTIONS

burden of proving that claim, by a preponderance of the evidence, is upon the Defendant who must establish:

1. That the Plaintiff was also "negligent;" and
2. That such negligence was a "legal cause" of the Plaintiff's own damage.

If you find in favor of the Defendant on this defense that will not prevent recovery by the Plaintiff, it only reduces the amount of Plaintiff's recovery. In other words, if you find that the accident was due partly to the fault of the Plaintiff, that his own negligence was, for example, 10% responsible for his own damage, then you would fill in that percentage as your finding on the special verdict form I will explain in a moment. Such a finding would not prevent the Plaintiff from recovering; the Court will merely reduce the Plaintiff's total damages by the percentage that you insert. Of course, by using the number 10% as an example, I do not mean to suggest to you any specific figure at all. If you find that the Plaintiff was negligent, you might find 1% or 99%.

~~Plaintiff's second claim is based upon the Federal Safety Appliance Act. Specifically, Plaintiff claims that [describe the specific act(s) or omission(s) asserted as a violation of the Act by the Defendant].~~

~~In that regard, the relevant provision of the Federal Safety Appliances Act is as follows:~~

~~[Quote the relevant provision of the Act,
45 U.S.C. § 1 et seq.]~~

~~If you should find from a preponderance of the evidence that the Defendant violated the provisions of the Federal Safety Appliance Act, as alleged, and that the violation played any part, no matter how small, in bringing about or actually causing injury to the Plaintiff, then the Plaintiff is entitled to recover from the Defendant such damages as the jury shall find from a preponder-~~

PATTERN JURY INSTRUCTIONS

ance of the evidence that the Plaintiff actually sustained as a result of the violation without any requirement of a showing of negligence on the part of the Defendant.

You are further instructed that contributory negligence is not a defense in whole or in part to damages caused by a violation of the Federal Safety Appliance Act.

If you find for the Plaintiff ~~on either of his claims,~~ you should award the Plaintiff an amount of money that will fairly and adequately compensate him for such damage, including any damage the Plaintiff is reasonably certain to experience in the future.

[Enumerate recoverable elements of damage with explanation, as appropriate, of the terms used in describing each element.]

TO: Judge
FROM: Donald
DATE: 6-22-83
RE: 82-398
Matilda Blankenship, et. al. v. Big Sandy Co., Inc.

PC, Thurs., 6-23-83, at 9:30

Synopsis: This is an action to quiet title and to recover damages for the defendant's alleged trespass and removal of coal from plff's property.

Plffs allege that defendant has mined coal from their property without their permission or authorization, and they are seeking \$7.5 Million in damages for the removed coal.

Defendant asserts that title to the minerals was severed in 1887 and that it has title to the minerals, and that if plaintiffs have title to the surface or other minerals (except coal), that all ownership goes back to the same source.

Pending Motions: None.

Substantive Issues:

1. Who owns the mineral title to the property in question?
2. If plffs can prove ownership to the coal, what are they entitled to recover from defendant in damages for trespass and the mining of the coal?

Comments:

1. Earlier defendant moved to dismiss for lack of jurisdiction. Def. is a Mass. corp. and the plffs are all non-Mass. residents.
The Court overruled their motion to dismiss for lack of diversity.
2. Def. still maintains that its principal place of business is Ky., and that therefore it is a citizen of Ky., and that this action should be dismissed.
3. All parties have filed their PC memos.

Sammy Jury