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No Early Win For New Orleans Rail Co. In Worker Injury Suit

By **Ryan Harroff**

Law360 (February 23, 2022, 5:51 PM EST) -- A Louisiana federal judge allowed a rail worker to proceed with his case over back injuries on the job, finding Wednesday that his New Orleans-based employer shouldn't be off the hook just because the train cars he was repairing were stopped when he was hurt.

U.S. District Judge Sarah S. Vance was unconvinced by New Orleans Public Belt Railway Corp.'s argument that former carman Richard Cordes' claims under the Federal Safety Appliance Act fail because he was injured on a stationary car, saying that the train car was still formally in use despite being motionless.

The idle car was "still 'in use' because the railcar 'had not been withdrawn from use,' nor 'reached a place of repair,'" Judge Vance said, citing the Supreme Court's 1938 decision in *Brady v. Terminal Railroad Association of St. Louis*.

Cordes sued in March 2021 seeking damages for alleged violations of the FSAA and the Federal Employers Liability Act related to an injury to his sciatic nerve in his lower back while working at the New Orleans port area railway, and then exacerbating that injury while moving and operating parts of a train car to account for malfunctioning parts, the order states. The first incident occurring in 2018 and the second in 2020, according to the order.

If the railway's partial summary judgment bid had succeeded, it would have barred FSAA's liability standards, opening the door for the railway to argue contributory negligence and potentially lowering damages if the jury decided Cordes was partially at fault for his injuries.

The railway's second argument — that a malfunctioning hand brake and coupling mechanism that Cordes hurt himself trying to work around were not legally "ineffective" as they would have to be for a FSAA claim — also failed before Judge Vance, despite the company's reliance on Cordes' testimony that those parts malfunctioning "was a routine part of his job" he expected to have to work around. According to the order, physical defects in the train parts are not necessary for a FSAA claim, and to avoid summary judgment Cordes needed only to allege that they were not working properly.

Joseph Miller, counsel for Cordes, told Law360 on Wednesday that Judge Vance's ruling bolsters his client's case by preventing the railway from arguing that a worker could be partially at fault for their injuries through contributory negligence.

"Congress one hundred years ago said specific equipment has to work all the time," he said. "When it's being used, and when railroad workers are being asked to use certain equipment, it has to work all the time and there's absolute liability."

Michelle Scelson, counsel for the railway, expressed optimism in a Wednesday statement to Law 360 for the case's trial on March 14 despite today's events.

"The court found that there are disputed issues of fact that made summary judgment unavailable," she said. "While we are disappointed with the ruling, we are confident that we will prevail at trial."

Cordes' case could be among the last cases on railway liability before the U.S. Supreme Court hears

oral argument March 28 on whether an idle train constitutes one that is not in use. The high court will hear the appeal of a Seventh Circuit ruling that Union Pacific Railroad Co. was not liable for an injury because the train it occurred on was stopped.

The federal government and two rail worker unions **have argued to the justices** that the Seventh Circuit violated the same kind of high court precedent Judge Vance cited in her decision Wednesday.

Representatives for New Orleans Public Belt Railway did not reply to a request for comment.

Cordes is represented by Joseph M. Miller and Benjamin B. Saunders of Davis Saunders & Miller PLC.

New Orleans Public Belt Railway is represented by Michelle W. Scelson, Jean-Paul A. Escudier and Gina M. Palermo of the Port of New Orleans.

The case is Cordes v. New Orleans Public Belt Railroad Corp., case number 2:21-cv-00432, in the U.S. District Court for the Eastern District of Louisiana.

--Editing by Adam LoBelia.

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