

FELA Reporter

and Railroad Liability Monitor

The Independent Monthly News Journal of Railroad Litigation From the Publisher
of RAILAW, The National Database of Railroad Liability Cases

Section 3: FELA Verdicts and Settlements

Back Injury When Air Brake Reservoir Slips While Being Lifted by Two Men — \$1.3 Million Missouri Verdict. We thank Joseph Bauer, Jr., attorney for the plaintiff, for sending us a report of this case. The plaintiff was working as a carman for the defendant in February 1992 when he was instructed to install an air brake reservoir with one co-worker. The reservoir weighed over 250 pounds and the two employees were not provided with any mechanical device to assist them in attempting to raise the reservoir into place underneath a gondola car. After the two carmen had put one end of the reservoir on the bracket to hold it and were attempting to lift the other side and put it into place, the reservoir slipped off the bracket and fell onto the plaintiff, who felt immediate pain in his low back. The plaintiff ultimately underwent a lumbar discectomy. After approximately thirty days, the plaintiff returned to work at light duty, but was sent home after a thirty days light duty period and told not to return until he could do the full duties of a carman. He has never returned to work.

The plaintiff claimed that the railroad was negligent in failing to provide reasonably adequate help, reasonably safe conditions for work and reasonably safe methods of work. The plaintiff's safety expert maintained that a safety analysis should have been performed for this job and that the nationally accepted standards in existence since 1967 concerning the amount of weight which can safely be lifted manually were violated by the railroad. The railroad claimed that the plaintiff was negligent in performing the job as he did, and further disputed the amount of damages claimed. The trial judge admitted into evidence the fact that the plaintiff is receiving Railroad Retirement Board occupational disability benefits which the defendant argued should substantially reduce the plaintiff's damages. The jury returned a \$1.3 million verdict. Plaintiff's Experts: James "Red" Coble, former carman (co-worker in incident), Springfield, MO. George Schoedinger, M.D., orthopedic surgery, St. Louis, MO. Donald Ostrum, safety expert, Minneapolis, MN. Kenneth E. Byrd v. Burlington Northern RR Co., St. Louis City (MO) Circuit Court, Case No. 922-9869. Joseph L. Bauer, Jr. and Michael L. Nepple, Bauer and Baebler, St. Louis, MO for the plaintiff. Gerard Hempstead and Edward Radetic, Brasher Law Firm, St. Louis, MO for the defendant.