

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 3, 2009

\_\_\_\_\_  
No. 08-10917  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

KEVIN RAINS

Plaintiff-Appellant

v.

BNSF RAILWAY COMPANY, doing business as The Burlington Northern  
and Santa Fe Railroad Company

Defendant-Appellee

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:06-CV-858  
\_\_\_\_\_

Before JONES, Chief Judge, and HIGGINBOTHAM and HAYNES, Circuit  
Judges.

PER CURIAM:\*

Kevin Rains sued his employer, BNSF Railway Company (“BNSF”), under the Federal Employer’s Liability Act (“FELA”), 45 U.S.C. § 51, for injuries he suffered from falling while inspecting a train stopped on a bridge. The district court granted summary judgment for BNSF after finding no evidence that BNSF’s negligence caused Rains’s fall and injuries. Rains appeals.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

We find that the district court erred in construing the complaint to include only allegations that BNSF's negligence caused Rains's fall. Rains adequately pled the theory that BNSF's negligence increased his injuries, and the district court should have considered this in analyzing BNSF's motion for summary judgment.

Having reviewed the briefs, pertinent portions of the record, and oral argument, and mindful of the weakened proximate-cause standard applied in FELA cases, a genuine issue of material fact exists as to whether BNSF's negligence played a part in producing Rains's injuries. We therefore reverse the grant of summary judgment and remand for trial.

**REVERSED AND REMANDED.**