

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5148

Summary Calendar

MICHAEL W. GUTHRIE,

Plaintiff-Appellee,

versus

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
2 91 CV 73

(May 25, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

HIGGINBOTHAM, Circuit Judge:*

Michael Guthrie filed this suit against St. Louis Southwestern Railway Company, his employer, after he was injured while working as a brakeman on one of the railroad's trains. The railroad appeals from a jury verdict in favor of Guthrie, contending that the district court committed reversible error in instructing the jury. We disagree and therefore affirm the judgment.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Michael W. Guthrie is a former employee of the St. Louis Southwestern Railway Company. In the early morning hours of August 29, 1988, Guthrie was working as a brakeman on the railroad's train en route from Herrington, Kansas to Pratt, Kansas. Some thirty miles after departure, the train experienced a loss of air brake pressure and came to a stop near Canton, Kansas. As the train was slowing down, Guthrie rose from his seat on the locomotive to look out the window. The seat collapsed, however, and Guthrie tumbled to the floor, injuring his head, neck, back, and knee.

After the accident, Guthrie's fellow workers inspected the seat and the bracket from which it had dislodged. Engineer Bates discovered that a pin had been placed through the top hole of the bracket's sleeve pipe. This location of the pin prevented the seat pedestal from sliding down the sleeve to a secure position and thus caused the seat to topple onto the locomotive floor at the time of the accident.

Guthrie filed this suit in the U.S. District Court for the Eastern District of Texas, claiming, inter alia, that the railroad had failed to maintain the locomotive seat in "proper condition," in violation of the Boiler Inspection Act, 45 U.S.C. § 23. The railroad in turn asserted that Guthrie himself had rendered the seat unsafe by misadjusting it at the beginning of his shift. The jury returned a verdict in favor of Guthrie and awarded \$525,000 in damages. After the trial court denied its motion for a new trial, the railroad filed a timely notice of appeal.

II.

The railroad's sole claim on appeal centers on a single sentence contained in the jury instructions. Guthrie claimed at trial that his injuries suffered after the collapse of his seat were attributable to the railroad's failure to comply with the Boiler Inspection Act, 45 U.S.C. § 23, which imposes on railroads an absolute duty to ensure that its equipment is "in proper condition and safe to operate." The railroad did not contest Guthrie's assertion that the locomotive seat was unsafe at the time of the accident, but contended that Guthrie was responsible for creating this dangerous condition placing the pin in the top hole of the sleeve pipe. While Guthrie denied that he had misadjusted the seat, the railroad argued that these actions could be inferred from the testimony of employees who had occupied the locomotive immediately before Guthrie, which, it was urged, established that the seat was in proper condition when Guthrie began his shift. The district court purportedly precluded the jury from considering this defense, however, by instructing that "[w]hether the locomotive seat was in proper condition and safe before or after the specific occurrence is not relevant." "The insidious effect of the Court's instruction," the railroad asserts, "was to render moot any contention by the Railroad that Guthrie's misadjustment was the sole cause of his injury." As such, the railroad concludes, its inclusion in the charge constitutes reversible error.

We disagree. Trial courts enjoy "broad discretion in formulating the jury charge." Bradshaw v. Freightliner Corp., 937

F.2d 197, 200 (5th Cir. 1991) (citing Barton's Disposal Service, Inc. v. Tiger Corp., 886 F.2d 1430, 1434 (5th Cir. 1989)). Consequently, we review challenged instructions "with deference." Hall v. State Farm Fire & Casualty Co., 937 F.2d 210, 214 (5th Cir. 1991) (citing Treadaway v. Societe Anonyme Louis-Dreyfus, 894 F.2d 161, 167 (5th Cir. 1990)). The charge must be considered as a whole, and we will upset a verdict only when our review "leaves us with substantial and ineradicable doubt whether the jury has been properly guided in its deliberations." Stine v. Marathon Oil Co., 976 F.2d 254, 259 (5th Cir. 1992); Bradshaw, 937 F.2d at 200; Treadaway, 894 F.2d at 168.

In accordance with the standards, the particular instruction challenged by the railroad must be examined in the context of the entire jury charge. The trial court advised the jury, in relevant part:

The Boiler Inspection Act imposes upon the railroad certain absolute standards of maintenance and equipment of its locomotives.

The relevant provision of the Federal Boiler Inspection Act is as follows, and I am quoting: "It shall be unlawful for any railroad to use or permit to be used on its line any locomotive unless said locomotive . . . and all its parts and appurtenances are in proper condition and safe to operate without unnecessary peril to life or limb."

Federal law also requires that all locomotive cab seats must be securely mounted and braced.

Plaintiff claims that the railroad violated the Act on the occasion in question because the railroad provided to Plaintiff a locomotive seat which collapsed while it was in use because it was not securely mounted and braced and not in proper condition and safe to use.

In determining whether the absolute duty imposed by federal law was violated, your inquiry should focus on the particular occasion in question. Whether the locomotive seat was in proper condition and safe before or after the specific occurrence is not relevant. The question is, was the seat in proper condition and safe for Plaintiff's use without unnecessary peril to life or limb on this occasion.

In connection with the alleged violation of the Boiler Inspection Act, you need not consider whether the railroad was negligent, whether the railroad exercised due care or whether the railroad knew of a defect in the equipment. These matters are not relevant to the claim that the Defendant violated the Boiler Inspection Act, since the Act imposes an absolute duty on the railroad for injuries caused in whole or in part by violations of the Act.

If you should find from a preponderance of the evidence that the Defendant violated the provision of the Boiler Inspection Act as alleged, and that the violation played any part in bringing about or actually causing injury to the Plaintiff, then Plaintiff is entitled to recover from the Defendant. The Defendant is liable for the damages caused by the violation, although the Defendant may not have been negligent.

The contributory negligence of the Plaintiff, if any, is not a defense and does not reduce the recovery to Plaintiff for any damages caused by violation of the Federal Boiler Inspection Act. However, if Plaintiff's negligence was the sole cause of the incident, then Plaintiff is not entitled to recover.

Guthrie maintains that the instruction cited by the railroad-- "Whether the locomotive seat was in proper condition and safe before or after the specific occurrence is not relevant"--is a correct statement of the law and therefore not subject to challenge. This argument finds support in several cases which have approved identical or similar language. See Texas & Pacific Railway Co. v. Griffith, 265 F.2d 489 (5th Cir. 1959) (Wisdom, J.). See also Affolder v. New York, Chicago, & St. Louis Railroad Co., 339 U.S. 96 (1950); Carter v. Atlanta & St. Andrews Bay Railway

Co., 338 U.S. 430, 433 (1949); Spotts v. Baltimore & Ohio Railway, 102 F.2d 160, 162 (7th Cir. 1938), cert. denied, 307 U.S. 641 (1939).

We need not rest our decision on this basis, however. The railroad contends that the district court's instruction "effectively negated" its defense that Guthrie's alleged misalignment of the locomotive seat was the sole cause of the accident "by telling the jury not to give it any weight." But the court expressly informed the jury that it should weigh this argument in advising that "if Plaintiff's negligence was the sole cause of the incident, then Plaintiff is not entitled to recover." Despite its recognition that jury instructions must be read as a whole, the railroad nowhere addresses the effect of this statement or even acknowledges its inclusion in the charge. In light of the district court's entire instruction and the evidence before the jury, we are of the view that the railroad's theory that Guthrie's negligence was the sole cause of the accident received all of the consideration to which it was entitled. The judgment is AFFIRMED.