

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY PORRECA : CIVIL ACTION
 :
 v. :
 :
 NATIONAL RAILROAD PASSENGER :
 CORPORATION : NO. 98-4137

MEMORANDUM AND ORDER

BECHTLE, J.

APRIL , 1999

Presently before the court is defendant National Railroad Passenger Corporation's ("Defendant") motion for summary judgment and plaintiff Anthony Porreca's ("Plaintiff") response thereto. For the reasons set forth below, the court will deny Defendant's motion.

I. BACKGROUND

Defendant is a corporation that owns and operates a system of railroads and railroad properties as a common carrier for hire in interstate commerce. Plaintiff is a citizen and resident of Downingtown, Pennsylvania and at all times relevant to this civil action was employed by Defendant. On August 7, 1998, Plaintiff filed a civil action alleging claims under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60, and the Railroad Safety Appliance Act, 45 U.S.C. § 1, et seq.¹ Plaintiff alleges that on June 19, 1996, during the course and scope of his employment with Defendant, he injured his knee by stepping on "an

1. This court has jurisdiction over this civil action under 28 U.S.C. § 1331.

uneven surface" on a concrete train platform located on one of Defendant's properties in Wilmington, Delaware. (Pl.'s Resp. at 1.) On March 5, 1999, Defendant filed the instant motion for summary judgment. For the reasons set forth below, the court will deny Defendant's motion.

II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).

III. DISCUSSION

Under the FELA, every railroad engaging in interstate commerce is liable in damages to any employee injured during his employment when:

such injury . . . result[ed] in whole or in part from the [railroad's] negligence . . . or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

45 U.S.C. § 51. The employee must show "that the employer, with the exercise of due care, could have reasonably foreseen that a particular condition could cause injury." Emig v. Erie Lackawanna Ry. Co., 350 F. Supp. 986, 988 (W.D. Pa. 1972). In addition to causation, the employee must show that the employer had actual or constructive knowledge of the hazardous condition. Id. The employee need not show actual knowledge "if there is proof that the railroad could by reasonable inspection have discovered the defect." Id. Whether the employer had actual or constructive knowledge of an alleged hazardous condition is determined by the jury. Urie v. Thompson, 337 U.S. 163, 178 (1949).

Defendant moves for summary judgment on the ground that Plaintiff was the sole cause of his injuries and that there is no evidence that Plaintiff's injuries were caused by Defendant's negligence. Defendant argues that Plaintiff's injuries occurred when Plaintiff ran to catch a train at the Wilmington station and that Plaintiff's running caused his injury. Defendant cites a statement given by Plaintiff on June 29, 1996 to support that

argument. In that statement, found within an injury and illness report filled out by Plaintiff for Defendant, Plaintiff describes the cause of the accident as "running." (Def.'s Mot. Summ. J., Ex. C.) Defendant argues that Plaintiff sets forth no other evidence relating to the cause of the injury and that summary judgment should be granted in its favor.

In his response to Defendant's motion for summary judgment, Plaintiff argues that he does present evidence from which a jury could reasonably find that Defendant's negligence caused his injury. In his answers to Defendant's interrogatories, Plaintiff states that his injury was caused by Defendant's failure to "maintain the concrete platform of its Wilmington train station in a reasonably safe manner." (Pl.'s Resp., Ex. A at 3.) Plaintiff further states that in the area where he was injured, "the concrete was broken, cracked and otherwise in a state of disrepair." Id. Plaintiff argues that his injury occurred when his "heel came down on the platform in an area where the concrete was broken and in a state of disrepair." Id. Plaintiff also presents the affidavit of Stevan Roberts, who is also employed by Defendant. Mr. Roberts states that he is familiar with the platform on which Plaintiff's injury occurred and that the concrete was "cracked and broken-up" at the time of Plaintiff's injury. (Pl.'s Resp., Ex. C.) Plaintiff also argues that Defendant knew or should have known that the concrete on the platform where he was injured was in a state of disrepair.

A FELA plaintiff need only present a minimum amount of

evidence in order to defeat a summary judgment motion. Hines v. Consolidated Rail Corp., 926 F.2d 262, 268 (3d Cir. 1991) (citation omitted). See Pehowic v. Erie Lackawanna R.R. Co., 430 F.2d 697, 699-700 (3d Cir. 1970) (stating that a "trial court is justified in withdrawing [FELA] issues from the jury's consideration only in those extremely rare instances where there is a zero probability either of employer negligence or that any such negligence contributed to the injury of an employee"). A jury question of causation exists when there is "evidence that any employer negligence caused the harm, or, more precisely, enough to justify a jury's determination that employer negligence had played any role in producing the harm." Hines, 926 F.2d at 267 (emphasis in original) (citation omitted). The court finds that Plaintiff has presented a sufficient amount of evidence to defeat Defendant's motion for summary judgment.

Defendant also argues that it cannot be held liable because of the manner in which an employee performs his or her job. Specifically, Defendant argues that, although he did not have to, Plaintiff chose to run to catch the train and that if he did not run, he would not have been injured. Courts interpreting the FELA have found that "where [an] injury arises because of the way an employee performs his job, the employer is not liable." Emig, 350 F. Supp. at 988. However, in those cases, the employee's actions were found to be the sole cause of the injury and there was no evidence of negligence on behalf of the Defendant. Id. at 988-989 (discussing cases). In this case, Plaintiff has

presented evidence from which a jury could reasonably find that Defendant's negligence caused Plaintiff's injury. Defendant correctly argues that proof that the employee's own negligence was the sole cause of his or her injury is a valid defense. However, "the test of a [FELA] jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." Hines, 926 F.3d at 267 (citation omitted). Further, "it [is] irrelevant whether the jury could also "with reason, on grounds of probability, attribute the result to other causes, including the employee's contributory negligence." Id. (citation omitted). An employee's contributory negligence is not a complete bar to recovery. Fashauer v. New Jersey Transit Rail Operations Inc., 57 F.3d 1269, 1274 (3d Cir. 1995). FELA contains a comparative negligence scheme which reduces a plaintiff's recovery in proportion to his or her share of responsibility for the injury. Id. at 1282. The determination of comparative negligence, if any, is a question for the jury. Id. Accordingly, the court will deny Defendant's motion for summary judgment.

III. CONCLUSION

For the reasons set forth above, the court will deny Defendant's motion for summary judgment. An appropriate Order follows.

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CORPORATION	:	NO. 98-4137

ORDER

AND NOW, TO WIT, this day of April, 1999, upon
consideration of defendant National Railroad Passenger
Corporation's motion for summary judgment and plaintiff Anthony
Porreca's response thereto, IT IS ORDERED that said motion is
DENIED.

LOUIS C. BECHTLE, J.