

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

DOUGLAS SEAL,)	
)	Case No.: 3:20-CV-462
Plaintiff,)	
)	Judge Thomas A. Varlan
vs.)	
)	Magistrate Judge Jill E. McCook
NORFOLK SOUTHERN RAILWAY)	
COMPANY,)	Jury Trial
)	
Defendant.)	

JOINT PRE-TRIAL ORDER

Come the parties hereto, jointly, by and through counsel, and in accordance with the Scheduling Order previously entered in this matter, submit their joint pre-trial order as follows:

A. Jurisdiction

Jurisdiction is based upon the Federal Employer’s Liability Act, 45 U.S.C. §§ 51 et seq. The parties agree that this Court has jurisdiction of this case and that venue is proper.

B. Pleadings Amended to Conform to Pretrial Order

The pleadings are amended to conform to the pretrial order.

C. Short Summary of Plaintiff’s Theory

Until around May 1, 2016, there were in-floor jacks located at the repair track at the John Sevier yard in Knoxville, Tennessee which were used to lift up train cars to change the wheel sets. This in-floor system was permanently placed on smooth concrete and allowed for easy walking conditions. The jacks, used to lift either end of the train car, were permanently in place and did not require a person to have to lift the jacks to put them in the proper location.

On or around May 1, 2016, the Norfolk Southern chose to idle the John Sevier repair

track, shutting down the tracks that led to the in-floor jacks. Thus, it became necessary to use the “line-of-road method” to lift the cars to remove the wheel sets. Normally in all the major railroad yards, a worker had access to the in-floor jacks because it was much easier to use, was safer, and was time saving. Using the line-of-road method requires the use of a large truck with a boom. The boom was used to unload the 185-pound jacks and place them as close to where a worker would use them as possible.

Normally in the line-of-road method, the jack is on the side of the train car where the large truck is located, so a worker could put the jack close to where it was needed; however, on the opposite side of the train car, that person would have to place the jack as close as possible and then hand carry it to the position to use it. This distance could vary from six feet to ten feet. Each of the two-man crews would line-up on either side of the 185-pound jack, pick it up, and move it. In performing this task, both crewmen are walking on the railroad ballast, which is difficult because the railroad ballast will slide, roll, and shift under the crewmen’s feet while walking.

In addition to the jacks, the worker was required to carry wooden blocks that weighed between 10 to 25 pounds to either side of the car. That worker also had to carry an aluminum pad that weighed around 40 pounds to each side. The process requires the worker to place the aluminum pad first, and then place the wooden blocks before he can place the jack on the pad. Workers are required to manually lift the jack onto the pad and block setting, routinely 6-8 inches, but could be required to lift the jack higher than 12 inches in order to get them set. If there is too much space between the jack and the car, the carman would have to add a jack adapter and spacers. The jack adapter weighs approximately 25 pounds, and the spacers range from approximately 10-25 pounds. As the carman begins jacking the car, he would add safety

collars as he lifted the car to prevent it from falling if one of the jacks failed. This method was very time consuming, very heavy work, and very dangerous.

Prior to April 2018, Plaintiff had only had intermittent aches and soreness in his right shoulder that never caused him significant problems and never caused him enough trouble to miss any work. In April 2018 and over consecutive days, Plaintiff was required to do the jacking procedure in the yard. After several days of jacking cars, Plaintiff woke with severe pain in his right shoulder that Plaintiff had never experienced before, to the point. He could not lift his arm over his head. It was also the first time Plaintiff realized his shoulder was injured as opposed to normal aches and soreness from manual labor work.

During this period of time where Plaintiff was required to use the line-of-road method of jacking, he was required to violate Norfolk Southern's Mechanical Safety Bulletin Number MSB-0085, issued September 4, 2013, which stated that an individual employee was limited to lifting 50 pounds and a pair of employees were limited to 100 pounds. This safety bulletin was modified in November 2019.

Plaintiff suffered a complete tear of his right rotator cuff which required an operation to repair it. He has returned to work for Defendant but has lost approximately \$40,000.00 in wages.

D. Short Summary of Defendant's Theory

A carman inspects and repairs railroad cars. In order to perform this work, it is necessary that the carman use his arms, shoulders, back, hands and legs to perform the work. Plaintiff, an experienced carman, will agree that his work is hard work and he has been well trained to perform this work throughout his work career. In May of 2016, changes were made at John Sevier and parts of the railroad yard were idled. Plaintiff bid on a job using a work truck "*line-of- road*" requiring the carmen on the truck to perform work on cars outside of

Knoxville and in Knoxville. The work included raising or jacking cars to remove and replace wheels not only at John Sevier, but at many other places including Bulls Gap, Loudon, Concord, Oakdale, Clinton, and many other places including the mainline. Plaintiff was well trained to perform the job of replacing a set or sets of wheels underneath the car by the “*line-of-road method*.” Since the Repair Track was temporarily idled, carjacking that would otherwise have been performed at the Repair Track for cars located in the John Sevier Yard, took place in what is known as the No. 13 Pocket Track. Here, the line-of-road method was used. Between May 13, 2016, and July 2, 2018, a time period of over 2 years, there were only between 15 and 19 cars jacked in the No. 13 Pocket Track and there were 56 cars jacked in all of the other yards and places during this time period.

(1) Plaintiff purposefully bid on the work truck knowing full well that it involved line-of-road jacking, not only at John Sevier, but in all other yards and places within East Tennessee.

(2) Plaintiff was simply doing what carmen do and there is no other way to perform this work than the way it is done. He never complained about the line-of-road method of jacking cars.

(3) Plaintiff was well trained in the line-of-road method.

(4) Jacking the railroad cars of all types involves the use of a very large work truck with a boom. The truck is positioned on one side of the track where the car is located. All of the tools are prepacked in a box that Mr. Seal and another carman actually invented. To jack a car, portable jacks must be used. A metal jack pad is placed on the ground generally on a set of railroad ties. The pad is located approximately 4’ from the edge of the car. The pad is 3” high. Generally, a piece of wood is placed on top of the jack pad on both

sides, and it is 3” high. On the side of the car where the boom truck is located, the jack is swung over and placed on top of the pad. On the other side of the car, the boom is used to place the jack as close to the leading edge of the car as possible. The jacks have handles and two men generally drag the jack the 4’ and then lift it the approximate 6” to put it on the pad. This takes around 5 or so seconds. After the car has been jacked and the work completed, the jacks have to be removed and this takes another 5 or so seconds. Generally, the jacks are handled between 10 seconds out of an 8-hour workday. There is no other way to perform this work other than the way it was performed and continues to be performed by the Plaintiff.

Plaintiff does not appear to make an accusation of negligence on the part of Norfolk Southern other than the contention relating to the No.13 Pocket Track for 15 to 19 jackings over an excess of 2 years and that on occasion he would be required to lift a jack with the help of another in excess of 100 lbs. pursuant to a bulletin. The bulletin provides that on occasion it may be necessary to lift in excess of this amount of weight and given the fact there is no other way to perform this job, the bulletin was not violated.

The manner in which the jacks would be handled do not involve arm movement of the type and nature that could lead to excess stress to his shoulder and, accordingly, it is not believed that Plaintiff’s claimed shoulder injury would be related to his work on the work truck and his infrequent handling of the jacks for a few seconds during the workday.

Plaintiff was off from work on July 17, 2018, and returned to work on February 13, 2019, and has worked regularly and continuously and without complaint and has continued to jack cars as he did before over the past five (5) years. At all times, Plaintiff was provided with a reasonably safe place to work, and the Defendant was not negligent in any way if such a claim is made.

Plaintiff submitted to a scope procedure to his shoulder because of a shoulder condition peculiar to him. Plaintiff is not entitled to any recovery from the Defendant under any perceived theory.

E. Issues to be Submitted to Trial Judge and the Jury

1. Issues to be Submitted to the Trial Judge:

- (a) Motions in Limine: The Parties are anticipating to file certain Motions in Limine before the deadline from the Court's Scheduling Order, due August 12, 2024.
- (b) There is the potential that the Defendant will present to the Judge issues related to the three (3) year Federal Employer's Liability Act Statute of Limitations.

2. Issues to be submitted to the Jury:

Plaintiff:

- (a) Whether the Plaintiff was injured in any manner;
- (b) Whether Norfolk Southern's negligence caused, in whole or in part, the injuries sustained by Plaintiff; and
- (c) Whether Plaintiff sustained any damages as a result of Plaintiff's injuries in 2018 and, if so, the amount of those damages.

Defendant:

- (a) Whether the Plaintiff injured his right shoulder as a result of the line-of-road method of wheel changes with portable jacks the 15 to 19 times he performed this function at the No. 13 Pocket Track in John Sevier Yard;
- (b) Was Norfolk Southern Railway Company negligent by not providing Plaintiff with a reasonably safe place to work at the No. 13 Pocket Track;
- (c) If Norfolk Southern Railway Company was negligent, did such negligence cause Plaintiff's right shoulder injury;
- (d) Whether Plaintiff's right shoulder injury was as a result of a condition peculiar to him for which the Defendant would not be responsible;
- (e) Did Plaintiff sustain any damages as a result of his right shoulder injury and, if so, the amount of such damages; and

(f) Is Plaintiff's action barred by the Federal Employer's Liability Act three-year Statute of Limitations?

F. Stipulations of Fact

1. Norfolk Southern Railway Company is a corporation engaged in the business and operation of freight transportation and a common carrier by railroad engaged in interstate commerce, within the State of Tennessee.
2. Plaintiff was employed by Defendant starting in 1989 and is presently still an employee.
3. At all times material, the Plaintiff was employed by the Defendant as a carman.
4. The chart showing line-of-road wheel changes between 2016 and 2018.
5. Plaintiff's birthdate is December 30, 1966.

G. Novel or Unusual Questions of Law or Evidence

Plaintiff: None

Defendants: Potentially, 3-year statute of limitation issue.

H. Length of trial

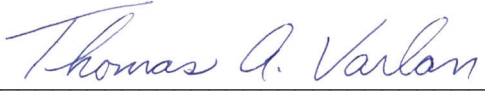
The Parties believe that the trial should not last more than five (5) days.

I. Possibility of Settlement

None

J. Miscellaneous

Nothing at this time.


UNITED STATES DISTRICT JUDGE

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2024, a copy of the *Joint Pre-Trial Order* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ William B. Hicky