

Norfolk Southern Railway v. Rogers

November 4, 2005

Virginia Supreme Court

In this case the Virginia Supreme Court reversed a verdict for the plaintiff on the grounds that the expert who established causation did not have a sufficient basis on which to ground his opinion.

This is an FELA case in which the plaintiff was a railroad worker who contracted silicosis, at least according to the plaintiff's expert. This diagnosis was hotly contested at trial, but resolved by the jury in the plaintiff's favor. The key issue turned on whether Norfolk Southern was negligent in exposing him to high levels of silica dust. The plaintiff worked at a job fixing the rail bed and was exposed to a great amount of dust. However, the testimony was also that dust alone was not sufficient to prove silica inhalation because the percentage of silica in the rock varies greatly for different kinds of rock, and furthermore only microscopic silica causes silicosis, not large dust particles of whatever origin. No tests were done on the rock that the plaintiff worked with to show silica content. Indeed the railroad showed that most of the work the plaintiff had done was on rail beds using limestone ballast, which had relatively low silica content. There was no evidence that the plaintiff had been exposed to levels of silica higher than allowable levels or that if he had that the railroad was aware of it. Reversed for the defendant.