

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LEROY PALMER,) No. ED92841
)
 Respondent,) Appeal from the Circuit Court
) of the City of St. Louis
v.)
) Case Number 22052-08703
UNION PACIFIC RAILROAD)
COMPANY,) Honorable Lisa S. Van Amburg
)
 Appellant.) Filed: March 30, 2010

Union Pacific Railroad Company (Union Pacific) appeals from the trial court's judgment entered in accordance with a jury verdict in favor of Leroy Palmer (Palmer) and against Union Pacific in an action brought by Palmer under the Federal Employers' Liability Act (FELA), 45 U.S.C. Section 51 et seq.

AFFIRMED.

Division Four Holds: The trial court did not: 1) err in denying Union Pacific's Motion for Judgment Notwithstanding the Verdict because Palmer presented substantial evidence that Union Pacific was negligent in failing to keep a careful lookout and maintain safe control of a Union Pacific vehicle; 2) abuse its discretion in overruling Union Pacific's Motion for New Trial because Union Pacific did not have the right to discuss the negligence of a third party or to argue that a third party's negligence was the sole cause of the motor vehicle accident, in that the evidence did not support such a claim or defense; 3) abuse its discretion in denying Union Pacific's Motion for a Mistrial following Palmer's cross-examination of a Union Pacific witness concerning a misdemeanor conviction, as the court properly limited Palmer's questions to those that challenged the witness's denial of the conviction; or 4) abuse its discretion in overruling Union Pacific's Motion to Amend the Judgment because allowance of setoff for settlement recoveries received on behalf of a nonrailroad tortfeasor is inconsistent with FELA's intent and contradictory to the act's language.

Opinion by: Gary M. Gaertner, Jr., J.
Kurt S. Odenwald, P.J., and George W. Draper, III, J. concurs.

Attorneys for Appellant: James W. Erwin, Nicholas J. Lamb, and Booker T. Shaw

Attorneys for Respondent: Daniel R. Francis

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.