

IN THE COURT OF APPEALS 04/08/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00882 COA

ARTHUR RAY BYNOG

APPELLANT

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. FRANK G. VOLLOR

COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

WILLIAM W. RAMSEY

C.E. SOREY, II

ATTORNEYS FOR APPELLEE:

CHARLES T. OZIER

RACHAEL HETHERINGTON LENOIR

NATURE OF THE CASE: PERSONAL INJURY

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT FOR DEFENDANT

BEFORE BRIDGES, C.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

Arthur Ray Bynog (Bynog), the Appellant, filed a complaint in the Warren County Circuit Court under the Federal Employers' Liability Act (FELA) and the Federal Safety Appliance Act (FSAA) for the recovery of damages for personal injuries he sustained while working for Kansas City Southern Railway Company (KCS). The lower court granted KCS' motion for summary judgment. Aggrieved, Bynog appeals to this Court asserting that the lower court erred in granting summary judgment. Bynog claims that his injuries resulted because the tank car was unsafe and therefore insecure because of its distance between the hand hold and the stirrup or sill step, and therefore, in violation of the Federal Safety Appliance Act. Finding no reversible error, we affirm.

FACTS

Bynog was employed by KCS as a brakeman in its yard located in Mossville, Louisiana. The Mossville Yard is a flat switch yard where cars are detached from a train so that they can roll freely in order to connect to another "string of cars" or train. On June 28, 1993, Bynog was switching and lining cars in the yard. Part of his duties required him to properly align drawbars of rail cars to permit coupling, and to check rail cars to ensure they were properly coupled. That afternoon, Bynog and other crew members were "kicking" cars onto a particular track. Once the cars were properly coupled and the engineer began pulling the cars out of the switch track, Bynog boarded a 2400 Series "PPG tank car" in order to ride it out to the end of the track so that he would not have had to walk the distance. As he stepped into the stirrup on the corner of the car, he placed one hand on a side handhold above the stirrup and his other hand on top of the platform car in order to pull himself up. As he did, he felt a strain in his back.

Eddie Swain, an Assistant Superintendent of Cars for KCS reviewed a photograph of an identical tank car to the one on which Bynog was injured, Swain also inspected the photographed car itself. According to Swain, the handholds, sill steps and safety railings on the car complied with all the requirements of the Federal Railroad Administration.

DISCUSSION

Bynog asserts that the handhold on the tank car was not designed or positioned in a safe or secure manner. He does not assert that the handhold was loose, slippery or that other structural features were improper. It is undisputed that the handhold was in compliance with the requirements set forth by the Federal Railroad Administration.

In *Atchison, Topeka & Santa Fe Railway Co. v. Scarlett*, the plaintiff, a brakeman sued the railway company when his foot slipped off of a round brace rod attached to the side of a boxcar that he was climbing down. As a result, he fell and injured himself. Although neither the ladder he was climbing, nor the round brace rod were defective, the plaintiff alleged that the ladder and the round brace rod combined to constitute an unsafe appliance. *Scarlett*, 300 U.S. 471, 473 (1937). The Supreme Court reversed a jury verdict in favor of the plaintiff holding that the railway company had fully discharged its duty so far as the ladder requirement by complying with the terms and requirements of the Safety Appliance Act as adopted by the Interstate Commerce Commission. *Id.* at 474. The judgment of the trial court and the jury cannot be substituted for that of the commission when the appliances comply with the applicable regulations. *Id.*, *Taluzek v. Ill. Cent. Gulf R. Co.*, 255 Ill. App. 3d 72, 80 (Ill.

1993).

It is uncontested in this case that the handhold was in compliance with federal regulations. Therefore, applying the rationale stated in *Scarlett*, we find no error in the proceedings below.

THE JUDGMENT OF THE WARREN COUNTY CIRCUIT COURT GRANTING SUMMARY JUDGMENT IN FAVOR OF KANSAS CITY SOUTHERN RAILWAY COMPANY IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.