

VIRGINIA: IN THE CIRCUIT COURT CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

THEODORE J. HOLLIDAY, JR., :
Plaintiff, :
 :
v. : AT LAW NUMBER
 : CIVIL NO. CL09-430-1
 : JAMES R. FREELS
CSX TRANSPORTATION, INC., :
Defendant. :

TELEPHONIC DEPOSITION UPON ORAL EXAMINATION OF
JAMES R. FREELS

THURSDAY, JULY 2, 2009 - 11:00 A.M.

VIRGINIA BEACH, VIRGINIA

APPEARANCES: SHAPIRO, COOPER, LEWIS & APPLETON, P.C.
By: Randall E. Appleton, Esquire,
Counsel for Plaintiff Holliday.

SETLIFF & HOLLAND
By: Gregory E. Holland, Esquire
Counsel for Defendant CSX.

ALSO PRESENT: CSX Transportation, Inc.
Telephonically By: Andre Smith, Claims
Agent.

Setliff & Holland
Telephonically By: Lindsey W. Stravitz,
Esquire.

KELLY A. WILLIAMS, COURT REPORTER
OLD DOMINION REPORTING
808 PRINCE CHARLES COURT VIRGINIA BEACH VIRGINIA 23452
(757) 631-2008

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EXAMINATION

BY MR. APPLETON:

Q Mr. Freels, could you state your full name, please?

A James Robert Freels.

Q And where do you live, Mr. Freels?

A I live in Kitts Hill, Ohio.

Q Capeville?

A Kitts Hill.

Q Spell it for me.

A K-I-T-T-S, H-I-L-L.

Q And what is your address?

A Address is 96 Private Road 87.

Q Kitts Hill, Ohio?

A Yes, 45645.

Q And you work for CSX?

A Yes.

Q What is your position with CSX today?

A General foreman.

Q Of what department?

A Mechanical. Car operation, mechanical.

Q What is your date of birth?

A July the 5th, 1948.

Q Well, happy birthday.

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Telephonic deposition upon oral examination of JAMES R. FREELS, taken before Kelly A. Williams, Court Reporter and a Notary Public for the Commonwealth of Virginia at Large, pursuant to Notice and Agreement, commencing on Thursday, July 2, 2009, at the address Shapiro, Cooper, Lewis & Appleton, P.C., 1294 Diamond Springs Road, Virginia Beach, Virginia; and these in accordance with the Rules of the Supreme Court of Virginia, 1950, as Amended.

---oOo---

MR. APPLETON: Mr. Holland, for purposes of the record, the defendant is okay with the court reporter being here with us and not with the witness?

MR. HOLLAND: Yes.

JAMES ROBERT FREELS, called as a witness on discovery, having been duly sworn, was examined telephonically and testified as follows:

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A Thank you.

Q And your educational background. Do you have any schooling past high school?

A No.

Q And your employment history. When did you hire on with the railroad?

A I hired on in August of 1978.

Q Trace for me just briefly your railroad history, where you have worked, the jobs that you've held and the years that you were in those various positions.

A Started on the railroad in Barboursville, West Virginia, August of 1978. Worked in the engineering department until 1987 as a -- in that plant. They closed it down, I went out working on work equipment as a heavy equipment mechanic 1987 to 1993; and then was relocated to Richmond, Virginia at Bryan Park in the same position as work equipment mechanic. I worked there until 1998, started working with materials as a warranty officer dealing with outside contractors.

In 2000, I was offered a job in Rocky Mount, North Carolina as assistant departmental foreman in the car operation side. Worked there until 2004, bid on a general foreman job in Richmond, Virginia. Worked there until 2006, and bid on a job as general foreman in Russell, Kentucky and been there ever since.

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1 Q So your title was the same in Richmond as it is in
2 Russell?

3 A Yes.

4 Q All right. Tell me just generally what a general
5 foreman of car operations does?

6 A General foreman of car operations is responsible
7 for repair of freight cars, safety for people that work for
8 me at the shop, line of road train failures, derailments and
9 any other car-related type issue.

10 Q Do you remember doing an inspection on a
11 locomotive in the Clopton Yard in Richmond back in May of
12 '07, which is the subject of this lawsuit?

13 A Yes.

14 Q Explain to me why -- apparently you did the
15 inspection of the locomotive and Mr. Eubank was out there
16 with you when the inspection was done.

17 A Yes. Mr. Eubank called me and asked me if I would
18 go to Clopton Yard with him to look at a locomotive.

19 Q Anything unusual about you doing an inspection on
20 a locomotive?

21 A No. Well, I don't guess the locomotive general
22 foreman was available that day. I was familiar with
23 locomotives when I was in Rocky Mount. I was over in
24 locomotives there also.

25 Q Do you remember who the locomotive general foreman
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1 service -- when I say that, repair, maintain or inspect --
2 the same model locomotive that you inspected on May 2,
3 '07 in Richmond?

4 A We worked on all locomotives, whatever ran through
5 there. We just kind of run a repair facility. If it came
6 in Rocky Mount and we needed to work on it, we worked on it.

7 Q Do you remember the locomotive that you inspected
8 with Mr. Eubank?

9 A No.

10 Q Do you remember what model it was?

11 A I don't know what model it was. It was an older
12 locomotive is all I remember. I can't tell you whether it
13 was a GE or EMD locomotive.

14 Q I have a one-page note that has your signature on
15 it that is entitled, "Locomotive Personal Injury
16 Inspection," and it has, "Locomotive," and then it has been
17 filled in with handwriting, "CSX T6090 was inspected at
18 milepost AR 3.2. Location: Clopton, Virginia. Date:
19 5/2/07. Due to personal injury."

20 Then it says, "After inspection of
21 locomotive, following defects were noted:" It says, "No
22 exception taken."

23 Do you remember completing a document that
24 contained that information in it?

25 A Yes.

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1 would have been in Richmond at that time?

2 A K.K. Butler.

3 Q Do you know where Mr. Butler is now?

4 A I'd assume he is still in Richmond, Virginia,
5 general foreman, unless he has retired.

6 Q You said you were familiar with locomotives from
7 the work that you did in Rocky Mount?

8 A Correct.

9 Q And my notes that I wrote down said you were an
10 assistant department foreman?

11 A Assistant department foreman in Rocky Mount, which
12 is the same as a -- it is assistant to the general foreman.

13 Q In what department?

14 A In the car department.

15 Q So working in the car department, how did you
16 become familiar with locomotives?

17 A In Rocky Mount, car department is also responsible
18 for the small team of people that works on locomotive there.
19 You are also there over those people.

20 Q So when you were in Rocky Mount, you had
21 supervisory authority over people in the car department as
22 well as machinists?

23 A As well as pipe fitters, machinists, electricians
24 and locomotive.

25 Q And when you were in Rocky Mount, did you guys
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1 Q Did you complete any other documents in connection
2 with your inspection of that locomotive?

3 A No.

4 Q Do you know if anybody else did?

5 A No.

6 Q Do you recall what your inspection entailed on
7 that day?

8 A General inspection, not on this particular day,
9 but general inspection, when we look at a locomotive like
10 that, we look at everything on a locomotive. We look at the
11 steps, the handholds, the doors, the walking, seats. A
12 general inspection, overall visual inspection is all we do
13 is a visual, hands-on type inspection of the entire
14 locomotive no matter where the injury happened.

15 Q Do you remember if that is the type of inspection
16 you did on this day?

17 A Yes.

18 Q Do you remember why you did the inspection?

19 A Mr. Eubank called and said he had a report of an
20 injury on that locomotive and wanted me to come down and
21 look at the locomotive and see if I see anything wrong with
22 it.

23 Q Did he tell you what had happened or what the
24 employee was saying caused the injury?

25 A He said the employee got struck by a door on the
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1 locomotive.
 2 Q Did he tell you which door?
 3 A It was the one on the car body where you open up
 4 to start the locomotive.
 5 Q And did you look at that door?
 6 A Yes.
 7 Q And obviously you didn't take any exception to it
 8 according to your report?
 9 A No.
 10 Q Do you remember where the fire extinguisher was
 11 located?
 12 A It was on the left doors that opened up where you
 13 stand there.
 14 Q The left door as you are facing the unit?
 15 A Yes.
 16 Q Anything unusual about mounting the fire
 17 extinguisher on that door?
 18 A No.
 19 Q Are the fire extinguishers in that area located or
 20 installed on any other aspect of the locomotive other than
 21 on that door?
 22 A That I couldn't tell you.
 23 Q Do you know how I could find that out?
 24 A Deal with somebody that deals with locomotives
 25 full time.

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1 A I don't remember.
 2 Q Okay. Do you remember if there's any type of
 3 safety device to keep that door from unexpectedly moving?
 4 A I have never, in my experience, found any
 5 locomotive that has any kind of safety device that held the
 6 door open in the ones I have been involved with.
 7 Q And you told me about your experience in Rocky
 8 Mount. Can you give me some type of an idea as to how many
 9 locomotives you may have inspected over your railroad
 10 career?
 11 A No, I couldn't tell you as far as which ones, how
 12 many I have done. No, I could not tell you a number.
 13 Q Is it something that you have done regularly or
 14 was this an unusual occasion?
 15 A Well, just being in Rocky Mount, just whenever
 16 there was an injury with a locomotive or something like
 17 that. I don't know how many there would have been.
 18 Q Okay. Did you take any photographs when you did
 19 your inspection of the locomotive?
 20 A Mr. Eubank had his camera down there and
 21 photographs was taken of the locomotive. Memory wise, I
 22 couldn't tell you what all type photographs were taken.
 23 Q Got any idea roughly as to how many were taken?
 24 A No.
 25 Q When he took the photographs, was he standing up
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1 Q Tell me --
 2 A One of the major locomotive shops, you know. I
 3 don't know whether -- I would say I don't know whether the
 4 fire extinguisher is located in the exact same place on
 5 every locomotive on CSX. I would not be able to tell you
 6 that.
 7 Q Do you think Mr. Butler would know that? You told
 8 me he was the locomotive general foreman.
 9 A He would have more experience with it than I would
 10 because of being associated with them full time.
 11 Q All right. When you did your inspection of the
 12 door, do you remember how you inspected it?
 13 A Just open them up. Fold them open. See if you
 14 see any defects in the hinges, any reason they'd have an
 15 issue with it. Close them back up, latch them down and make
 16 sure they stay secured.
 17 Q In this case, Mr. Holliday says that the door
 18 unexpectedly closed on him. Do you remember if you checked
 19 to see if the door would move unexpectedly?
 20 A I don't know how to answer that question. I don't
 21 know what you mean.
 22 Q Well, you opened the door, right?
 23 A Right.
 24 Q Did you take your hand off of the door once you
 25 opened it?



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1 on the running board by the door?
 2 A He has taken, as well as I can recall, pictures
 3 while he was on the running board, while he was on the
 4 ground. I do remember he asked me to take pictures of him
 5 while he was on the running board.
 6 Q Do you know if Mr. Eubank tried to recreate this
 7 incident?
 8 A No, I don't recall.
 9 Q Did you inspect that locomotive any other time
 10 than the one time that is reflected on that report that I
 11 read to you?
 12 A Just the one, that is the only time I recall.
 13 Q Do you remember how long you were out there? Give
 14 me an idea as to how long the inspection took.
 15 A About an hour or so.
 16 Q And other than Mr. Eubank, anybody else present?
 17 A Don't recall.
 18 Q Mr. Eubank called you and told you that he needed
 19 to get that locomotive inspected and that is why you went
 20 out there?
 21 A Yes.
 22 Q Do you remember where you were when you took the
 23 call?
 24 A I was in the car office in Richmond.
 25 Q And drove over on the highway?
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1 A Yes.
 2 Q By yourself?
 3 A That I don't remember, whether I went with
 4 Mr. Eubank or whether I drove myself. I do not recall.
 5 Q Got any idea as to how long it took you to get
 6 over there?
 7 A No. From the time he called me to the time we got
 8 there, no.
 9 Q Any conversations with Mr. Eubank about this
 10 incident on the way over to the site?
 11 A I don't recall, but I'm sure he would have told
 12 me, explained to me while we was going over there en route,
 13 but I don't recall the conversation, no.
 14 Q Do you remember whether or not the fire
 15 extinguisher was mounted on the access door when you did the
 16 inspection?
 17 A No. There was a bracket there and I believe the
 18 fire extinguisher was in it, but I could not tell you
 19 absolutely it was still in the thing. I'm not sure.
 20 Q And other than talking to Mr. Eubank when he
 21 called you and asked you to do the inspection and possibly
 22 talking to him on the way to the inspection, and then
 23 obviously talking to him at the site, have you talked to any
 24 other CSX employee about your findings?
 25 A About my findings?
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1 to waive your signature to the deposition. I
 2 recommend to you that you waive, but that is up
 3 to you.
 4 THE WITNESS: Okay.
 5 MR. HOLLAND: Do you waive?
 6 THE WITNESS: Yes, that is fine.
 7 (Deposition concluded.)
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1 Q Yes, sir, about your findings with the inspection.
 2 In other words, I assume you reported to Mr. Eubank that you
 3 didn't take any exception to the locomotive?
 4 A Correct. We did all of that together at the same
 5 time.
 6 Q Right. I'm just asking, did you tell anybody else
 7 that or anything else about the inspection?
 8 A No.
 9 Q When you did the inspection of the locomotive, do
 10 you remember if it was running?
 11 A It was not running, I don't believe.
 12 Q Do you remember if it was -- if it was connected
 13 to any other locomotives or any other cars?
 14 A No.
 15 Q No, you don't remember or no, it wasn't?
 16 A I don't remember for sure whether it was or not.
 17 Q And you didn't interview Mr. Holliday or any of
 18 his crew members, did you?
 19 A No.
 20 MR. APPLETON: Mr. Freels, I don't have any
 21 other questions for you. Mr. Holland may. Thank
 22 you for your time.
 23 MR. HOLLAND: I have no questions.
 24 Mr. Freels, you have got a right to read and sign
 25 this deposition once it is typed or you can agree
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1
 2 CERTIFICATE OF NOTARY PUBLIC
 3
 4 I, Kelly A. Williams, do hereby certify that
 5 the transcription that appears in the foregoing
 6 transcript was duly sworn by me; that the testimony of
 7 JAMES R. FREELS was taken by me in stenotype and
 8 thereafter reduced to typewriting under my direction;
 9 that said transcription is a true record of the
 10 testimony given by said witness; that I am neither
 11 counsel for, related to, nor employed by any of the
 12 parties to the action; and further, that I am not a
 13 relative or employee of any attorney or counsel
 14 employed by the parties hereto, nor financially or
 15 otherwise interested in the outcome of this action.
 16
 17  
 Kelly A. Williams
 Notary Public for the
 State of Virginia at Large
 Registration Number: 207445
 18
 19 My Commission expires: September 30, 2012
 20
 21
 22
 23
 24
 25

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