STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL S. LONG,

Plaintiff-Appellant,

v

CONSOLIDATED RAIL CORPORATION,

Defendant-Appellee.

UNPUBLISHED
September 4, 1998

No. 201494
Wayne Circuit
LC No. 95-526807

Before: Holbrook, Jr., P.J., and White and J. W. Fitzgerald,* JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition. We reverse.

On April 20, 1994 plaintiff was employed by defendant as a signal maintainer at defendant's facility in Wayne County. Plaintiff's duties included testing and maintaining twenty-nine switches used to switch rail traffic from one track to another. The testing procedure involved some strenuous physical work. It normally took plaintiff five days to test all twenty-nine switches. Plaintiff alleged that on April 20, 1994, he was required to perform sixty tests on twenty-seven switches in three hours as part of an "FRA" inspection. Plaintiff filed a complaint under the Federal Employers' Liability Act (FELA), 45 USC 51-60, alleging that he suffered injuries to his shoulder, back, neck and elbow as a result of having to test twenty-seven switches in a three-hour period without adequate assistance. Defendant sought summary disposition, which was granted.

Plaintiff contends that the circuit court erred in ruling that he failed to state a claim under FELA, where plaintiff established that defendant negligently caused plaintiff's injuries by requiring him to perform sixty tests on twenty-seven switches in three hours. Plaintiff contends that this task was outside his normal job responsibilities and beyond his physical capabilities. Plaintiff argues that the trial court erred in distinguishing the instant case from *Blair v Baltimore & O R Co*, 323 US 600; 65 S Ct 545; 89 L Ed 490 (1944), and in relying on *Consolidated R Co v Gottshall*, 512 US 532; 114 S Ct 2389; 129 L Ed 2d 427 (1994). We agree.

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* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Blair, supra, and *Stone v NewYork C & St L R Co*, 344 US 407; 73 S Ct 358; 97 L Ed 441 (1952), support plaintiff's claim. Like the plaintiffs in *Blair*[1] and *Stone*,[2] plaintiff was performing a task that was part of his ordinary work, but was directed to perform the task in an "extraordinary manner." Plaintiff had performed tests 382 and 103 numerous times. However, while it normally took plaintiff five days to test all twenty-nine switches in the West Detroit location, on April 20, 1994, plaintiff was required to test twenty-seven of the switches in three hours. Plaintiff testified that substantial strength is required just to open a switch.

Relying on *Gottshall, supra,* the circuit court concluded that, like the plaintiff Carlisle in *Gottshall*, plaintiff complains merely of "too much," not "too dangerous" work, and therefore his claim is not actionable under FELA. However, in *Gottshall, supra* at 129 L Ed 2d 449, the Supreme Court addressed a claim of negligent infliction of emotional distress and found that Carlisle was complaining of stress arising in the ordinary course of employment, and that such injury is not compensated by FELA. Subsequent cases applying *Gottshall* have held that *Gottshall* precludes claims for injuries under FELA resulting from general stress and overwork. This conclusion was expressed in *Walsh v Consolidated R Co*, 937 F Supp 380, 388-389 (ED Pa, 1996):

> . . . several courts have relied on [*Gottshall*] when refusing to recognize a cause of action under FELA to compensate for stress arising in the ordinary course of employment. Decisions subsequent to *Gottshall* exclude claims for injuries resulting from general, work related stress.
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> Courts will not find a FELA claim when plaintiff alleges that the cumulative effect of the job's responsibilities created a stressful environment which caused injury, i.e. "too much work."
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> * * *
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> In cases falling on the "too dangerous" side of the equation, plaintiffs pointed to discrete and specific tasks which were too dangerous to perform.

In the instant case, plaintiff does not claim that the "cumulative effect of the job's responsibilities created a stressful environment which caused injury." Rather, he claims he received actual physical injuries from the physical consequences of performing the work assigned. Plaintiff claims that the discrete and specific task of performing sixty tests on twenty-seven switches in three hours is extraordinary work, and is unreasonably dangerous where the work is strenuous and it would normally take plaintiff five days to test twenty-nine switches. We conclude that plaintiff's FELA claim is not precluded by *Gottshall,* and is actionable under *Blair* and *Stone*.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ John W. Fitzgerald

[1] In *Blair, supra,* the plaintiff was injured while unloading three greased, one-thousand pound, thirty-foot tubes from a freight car. The plaintiff's ordinary duties were to load and unload inbound and outbound freight. However, it was not customary to move freight of this kind or weight in the manner in which the plaintiff was required to move the tubes.

[2] The plaintiff in *Stone, supra,* was injured when he was required to remove a railroad tie without sufficient help.