

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

WINFER “D.D.” ABERNATHY

PLAINTIFF

v.

4:08CV04187-BRW

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

ORDER

Pending is Defendant’s Motion *in Limine* to Exclude Evidence of Prior Injury Reports or Claims (Doc. No. 108). Plaintiff has responded.¹ For the reasons set forth below, the Motion is DENIED.

Defendant seeks an order excluding evidence of prior injury reports or claims of other employees on the grounds of (1) irrelevance, because Plaintiff cannot make the required showing that these other injuries were substantially similar to the events at issue here, and (2) that the probative value would be outweighed by the risks of unfair prejudice and jury confusion, as well as considerations of undue delay and waste of the Court’s time and resources. Defendant contends that without a blanket exclusion “[t]he trial would become needlessly mired in mini-trials on each and every one of these other claims.”²

Reports or claims of substantially similar injuries by other employees could be relevant to whether Defendant was negligent. Specifically, this evidence could show that Defendant had notice of unsafe work conditions—i.e., that it was reasonably foreseeable that employees working in Plaintiff’s capacity were at risk of cumulative injury. I find that a complete exclusion of potentially relevant evidence is not appropriate.

¹Doc. No. 143.

²Doc. No. 109.

Accordingly, Defendant's Motion is DENIED, as I will be in a better position to rule on the admissibility of reports or claims of similar injuries to at trial.

IT IS SO ORDERED this 5th day of May, 2011.

/s/Billy Roy Wilson
UNITED STATES DISTRICT JUDGE