

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ROGER L. TARRANT, ET AL. §
v. § CIVIL ACTION NO. 9:07cv80
UNION PACIFIC RAILROAD COMPANY §

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The [Report and Recommendation](#) of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation recommends that Defendant's Second Motion for Summary Judgment as to Plaintiff Robert Amrein (document [#144](#)) be granted and that Amrein's remaining claims be dismissed with prejudice. Plaintiff Robert Amrein filed [written objections](#) to the Report and Recommendation on September 23, 2008.

Having made a *de novo* review of the written objections filed by Plaintiff, the Court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. The Report and Recommendation sets forth the appropriate summary judgment standard. Plaintiff's assertion that the Report and Recommendation erroneously failed to include a case styled *Rivera v. Union Pacific Railroad Company*, 378 F.3d 502 (5th Cir.2004) lacks merit. The standard that Plaintiff cites from *Rivera* was applied in the context of a directed verdict at trial and requires "a complete absence of probative facts" supporting a plaintiff's position for the court to take the case

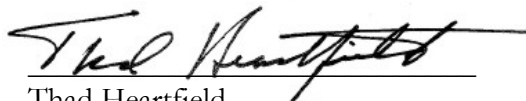
from the jury and enter judgment as a matter of law. The summary judgment evidence in this case reveals that Amrein's remaining FELA claims, including his claim of a violation of the LIA, for injury to his lower back are barred by the applicable statute of limitations. He does not have a separate cause of action for aggravation. It is unnecessary to consider Plaintiff's arguments concerning the timeliness of his response to the motion for summary judgment because the response was expressly considered in the Report and Recommendation. The Court adopts the findings and conclusions of the Magistrate Judge as those of the Court.

In light of the foregoing, it is

ORDERED that Defendant's Second Motion for Summary Judgment as to Plaintiff Robert Amrein (document [#144](#)) is **GRANTED** and Robert Amrein's remaining claims are **DISMISSED** with prejudice. It is further

ORDERED that the referral order is **VACATED**. The case is ready for trial and the purpose of the referral has been accomplished.

SIGNED this the 3 day of **October, 2008**.



Thad Heartfield
United States District Judge