

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LARRY L. KOGER,

Plaintiff,

v.

CIVIL ACTION NO. 1:08-0909

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's motion in limine to bar any evidence, interrogation, argument, etc. regarding plaintiff's alleged failure to mitigate his damages. (Doc. # 82). Plaintiff contends that defendant failed to plead failure to mitigate as an affirmative defense. As the court informed the parties at the pretrial conference, that motion is DENIED as defendant did plead failure to mitigate as an affirmative defense.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 12th day of November, 2009.

ENTER:



David A. Faber

Senior United States District Judge