

## Damages – Federal Employee Liability Act

Published: 1:33 pm Wed, February 9, 2011

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Where (1) a plaintiff sought relief under the Federal Employee Liability Act, 45 U.S.C. §51, for so-called “wear-out” injuries to his knees, neck, left elbow and left thumb, and aggravation of injuries to his knees, left elbow and left thumb, all of which he alleged were caused, at least in part, by negligence on the part of the defendants and (2) the defendants moved for judgment as a matter of law on all counts, the motion should be allowed in part and denied in part.

“[T]he court granted judgment as a matter of law in favor of Defendants as to Plaintiff’s claims of injury to his neck and knees and aggravation of injury to his knees, thumb, and elbow because these claims violated the statute of limitations. Following this ruling, remaining for consideration by the jury were Plaintiff’s claims of injury to his thumb and elbow and the separate claim of injury to his forearm. ...

“In addition to the statute of limitations arguments, Defendants also moved for judgment as a matter of law on the ground that Plaintiff had not met his burden of proof in demonstrating that either Defendant was negligent. ...

“The court allowed Plaintiff to proceed on his theory of inadequate manpower based on testimony that Defendants hired fewer workers over the years. A reasonable jury could draw an inference that the presence of fewer coworkers might have required more work on Plaintiff’s part. While admittedly thin, the court found sufficient evidence for Plaintiff to argue to the jury — unsuccessfully, as it turned out — that ‘wear-out’ injuries to his thumb and elbow were the result of overuse due to a lack of manpower.”

*Crowther v. Consolidated Rail Corp., et al. (Lawyers Weekly No. 02-018-11) (8 pages) (Ponsor, J.) (USDC) (C.A. Nos. 09-cv-10334-MAP and 11467-MAP) (Feb. 3, 2011).*

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