



Of Counsel
Richard J. Dinsmore & Associates

**WISCONSIN
COURT OF
APPEALS AFFIRMS
\$1.2 MILLION
JURY AWARD**

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The Wisconsin Court of Appeals affirmed a jury’s award of \$1.2 million in a lawsuit brought under the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. §§ 51-60, in *Dalka v. Wisconsin Central, Ltd.*, ___ WI APP ___, ___ Wis.2d ___, ___ N.W.2d ___. After five days of trial, the jury returned the verdict after deliberating for 45 minutes. The underlying facts of the case involved the plaintiff, Bruce Dalka, working as a conductor for

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Wisconsin Central at its yards in North Fond du Lac, Wisconsin during the evening of June 15, 2005. Dalka was part of a switch crew at the yards. While performing his job, Dalka noticed a fast moving motor vehicle turn off a public street into the yard. He immediately radioed a supervisor located in a yard tower to notify him of the trespasser. Dalka monitored the situation while on the ground and reported the vehicle’s movement to the tower.

While monitoring the vehicle, the vehicle came straight at Dalka, and as he retreated he tripped. Dalka fell hard but got up immediately, and with the help of his coworker and engineer, they pulled the driver out of the vehicle after it crashed into a pile of rails. Dalka and his coworker controlled the driver until the police came. The driver was intoxicated.

The vehicle in question was stolen from the yard’s parking lot. The lot was located next to the yard tower, and had no parking attendant, gate or access control. The vehicle was owned by a woman employed by a company under contract with Wisconsin Central to transport train crews in the yard. The owner had left the keys in a cup holder in the vehicle.

As a result of the incident, Dalka injured his low back, which resulted in five separate surgeries.

Randal W. LeNeave of the firm tried the case, and the jury returned a verdict where it found Wisconsin Central 100% at fault, and awarded \$1,194,000 in damages.

After the trial court denied Wisconsin Central’s post-trial motions, the railroad appealed the case and asked the appellate court to review several issues. The main issue asserted by Wisconsin Central was the contention that the trial court erred when it denied the railroad’s multiple motions brought before, during and at the end of trial that there was insufficient evidence to establish a FELA violation and to

submit the case to the jury. Specifically, Wisconsin Central argued there was insufficient evidence to establish that it was reasonably foreseeable that a trespasser would come onto its property, steal a vehicle out of its parking lot, drive the vehicle in its yard and injure one of its employees. Applying well-established FELA law, the appellate court held there was sufficient evidence introduced by Dalka establishing foreseeability. The evidence the court relied on included prior complaints related to trespassers coming into the yard, and Wisconsin Central’s own brochures and policies that discussed the problem of trespassers coming onto the property. The evidence also established that Wisconsin Central had no policies in place to secure the yard other than telling its employees to report trespassers to supervisors after they were on the property.

Wisconsin Central’s primary argument concerning foreseeability was based on an extremely narrow reading of a 1947 United States Supreme Court decision. The court rejected the argument. Had the appellate court accepted Wisconsin Central’s argument, FELA’s special provisions would have been seriously weakened. The special provisions contained in the FELA derive from Congress’ intent in passing the FELA, which included providing injured railroad workers with a broad remedy when injured on the job. Courts looking at the FELA, including the United States Supreme Court, have interpreted the federal statute in a manner consistent with Congress’ intent. By rejecting Wisconsin Central’s argument related to foreseeability, the Wisconsin Court of Appeals’ decision in *Dalka* keeps the FELA a strong federal statute providing protection to injured railroad workers.

*All court submissions and briefs were authored by Richard L. Carlson of the firm.