

4/3/01

SUPREME COURT OF LOUISIANA

No. 00-C-2628

TERRY LASYONE

versus

KANSAS CITY RAILROAD, ET AL

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF POINT COUPEE

VICTORY, J., dissenting

Plaintiff was driving an eighteen wheel tractor trailer loaded with 80,000 pounds of asphalt at the time of the accident. According to plaintiff, the only eye witness that testified, when he finally recognized that there was a train in his path, he was only 25-50 feet away from impact. He mashed on his brakes and pulled right simultaneously. At that point he was still going 40-43 mph. Plaintiff claims that when he steered right, he hit the guardrail located only 6 feet off the roadway and was then thrown back into the roadway. He testified that after hitting the guardrail, he was still traveling at least 20 mph when he hit the train.

At his deposition one week before trial, plaintiff's expert agreed that by the time plaintiff hit the train, he was still traveling at 20 mph or greater and that the damage to the train was consistent with the train having been struck at that speed. However by the time of trial, after plaintiff had settled with the railroad, plaintiff's expert formed a new opinion that plaintiff had to have been traveling much slower than plaintiff testified to at trial, that the longitudinal guardrail was

improperly placed, and that plaintiff stuck it, causing plaintiff's truck to be redirected into the path of the train.

In my view, the evidence in this case clearly shows that by the time plaintiff saw the train only 25-50 feet from the point of impact and while he was still traveling at 40-43 mph, it was impossible for him to avoid a collision with the train. The guardrail in question, which is still in place on Highway 1, did not cause or contribute to plaintiff's injuries. Even if plaintiff did hit it, traveling at the speed he testified to and pulling an 80,000 pound load, his truck would have driven through the guardrail and he would have hit the train anyway if he was operating his vehicle in the manner he described at trial.

Accordingly, I respectfully dissent.