Ankin Law Office LLC
Protecting the Rights of Injured Workers

162 W Grand Ave
Chicago, Illinois 60654, United States

Tel: 312-346-8780 or 800-442-6546
Fax: 312-346-8781
Email: howard@ankinlaw.com
Website: www.ankinlaw.com
Blog: www.thechicago-injury-lawyer.com

Illinois Court Addresses Liability for Train Engineer's Injuries

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Can a locomotive engineer recover for injuries sustained while on a cab car that was not connected to an assembled train? That's one issue considered by the Appellate Court of Illinois, First District, in *Balough v. Northeast Illinois Regional Commuter Railroad Corporation*, No. 1–09–3053 (2011).

In *Balough*, the plaintiff was an employee of the defendant. The testimony at trial established that he was a locomotive engineer at the time that he was injured. His job was to "to coordinate the dispersal of cars after the morning rush hour and to coordinate the assembly of trains for the evening rush hour." He was injured while on a cab car, which he had boarded with the intent to move the car in order to position it for use during rush hour traffic later in the day. As he did so, a trapdoor fell open and struck his head, requiring him to be hospitalized. He received stitches to a cut on his head.

The defendants argued on appeal that the cab car was not "in use" as defined in the Locomotive Inspection Act (LIA) (one of the the statutes that Balough claimed the defendant violated) when Balough was injured. The essence of the defendant's argument was that the car was not "in use" because, at the time of the injury, it did not have a crew, departure was not "imminent" and it was not transporting passengers.

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The Court disagreed after analyzing decisions of other courts that had addressed the issue whether a car was "in use." The Court concluded that precedent required that the totality of the circumstances be considered, including the location of the locomotive at the time of the injury and what the plaintiff was doing when injured. Accordingly, the Court held that the trial court correctly determined that the car was "in use" when the personal injury plaintiff was injured:

Thus, the Mechanical Department was releasing trains and plaintiff was on his way to put car 1579 on a train to be placed in use. Also, although Metra consistently refers to plaintiff as a "hostler," FN2 apparently in an attempt to portray plaintiff's job as consisting of moving trains to service areas, plaintiff's testimony at trial that his position was locomotive engineer and that his duty was to place trains for use on the commuter lines was unrebutted by Metra. There were no blue flags on car 1579 and the car was not going to being moved to a service area but to a commuter line. The Mechanical Department was releasing trains and plaintiff was on his way to put car 1579 on a train for use on the commuter lines. Under our de novo review, we find the train was "in use" under the LIA under the facts of this case. Therefore, the trial court did not err in finding that the car was in use.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles workers' compensation and personal injury cases. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.