

Ruling leaves derailment victims with nobody to sue

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The dozens of passengers injured in the 1995 derailment of an Amtrak train west of Phoenix are out of luck if they want to sue someone for their damages.

In a unanimous ruling the 9th U.S. Circuit Court of Appeals has concluded that neither Amtrak nor the railroads that owned the tracks have any liability for the nighttime wreck that left an Amtrak employee dead and 78 others hurting. The judges said there was nothing that anyone could have done to prevent the mishap, which was an apparent act of sabotage.

Unless overturned, the new ruling leaves the victims without legal recourse: Attorney James P. Watts said that since no one was ever charged in connection with the incident, there is no one else to sue.

The Sunset Limited derailed on Oct. 9, 1995 after it hit a stretch of track which had been bent away. The train toppled 30 feet from a trestle into a dry gulch, killing a crew member.

A note found at the site made references to federal standoffs at Waco, Texas, and Ruby Ridge, Idaho, both rallying cries for right-wing extremist groups. It was signed by "Sons of the Gestapo."

Evidence gathered at the site showed that whoever derailed the train was familiar with the safety systems used by the railroads.

Specifically, there is a low-grade current running through the rails. Thus, if there is a break in the tracks, the current stops and the signal lights would turn red.

Where two stretches of track connect, the rails are linked with a bond wire.

But the saboteurs, while prying apart two stretches of track, used a cable to trick the system into thinking the track was still intact — and into showing a green light when the train approached at about 50 miles per hour.

The lawsuit contends the railroads did not properly inspect, maintain and repair the tracks. It also argued that this stretch should have been upgraded with continuously welded rail, as is used along most other stretches of the Southern Pacific main line.

This stretch, between Phoenix and the main line, was little used, with the passenger service being one exception. It has since been abandoned; Phoenix area residents must now drive to Maricopa to catch the train.

Separately, the lawsuit said Amtrak failed to keep a proper lookout, properly train the crew, slow to an appropriate speed and provide crashworthy cars.

When a trial judge threw out those claims, the plaintiffs appealed — but solely on the issue of negligence of Amtrak workers to properly keep a lookout. They specifically complained that Judge Robert Broomfield rejected testimony of three hired experts.

But appellate Judge Alfred Goodwin said there was no reason to consider what they had to offer.

For example, he said, one expert, Charles Culver, talked about the standard of care that a locomotive engineer should follow, including the need to look for problems with the track.

"Culver assumed that the saboteurs had left behind something visible to anyone keeping a proper lookout," Goodwin wrote. "That assumption finds no support in the physical facts as described by the reports and other evidence in the record."

Goodwin reached the same conclusion with other experts.

"The circumstantial evidence that the saboteurs had carefully concealed their handiwork by circumventing the electric warning system suggests that they likewise took care not to leave visible evidence of track displacement for the engineers to see as they approached the disconnected rail at night, no matter how closely they watched the forward track," he said.

Similarly, Goodwin said testimony that the engineer should have applied the brakes 400 feet before the point of derailment would only have been relevant "if it had been based on evidence that the defective rail could have been seen at 400 feet," something

not shown.

An FBI spokesman said the wreck remains "an open, active investigation." Rewards totaling \$320,000 have gone unclaimed.

— Arizona Daily Sun