

hook

2-6-17

Chavies, Ky., Janu 22nd, 1917.

Messrs Morgan & Nuckols,

Attorneys, Hazard Ky.

Dear Sir,

In connection with the case of John Calloway Vs L & N,  
Perry Circuit Court, I have just been reading the case of Southern  
Railway Co. Vs Buford, decided Nov. 16th, 1916, 90 SE 616.

Buford was one of three section hands cutting a rail with  
a coal chisel. One was holding the chisel, another was striking  
it, and Buford a few feet away was holding and turning the rail.  
The head of the chisel was battered with little frazzles sticking off  
the edge. A sliver of steel prob bly from the head of the chisel  
put out Buford's eye. Denying his right to recover, the Court said:

" These men were engaged in a very ordinary simple  
operation, with simple tools, that required, in the use,  
no experience or skill. The part taken by the plaintiff  
in the work was so simple that any child with sufficient  
strength could have held the rail and turned it when told.  
The battered condition of the head of the chisel was open  
and obvious. It was a condition that resulted from its use  
and was necessarily better known to those who used it than  
to the master. It is well settled that the employer is under  
no obligations to his servants to inspect, during their use,  
those common tools and appliances with which everyone is  
conversant, and that it is not the master's duty to repair  
defects arising in the daily use of such appliances. "

Holding also that Buford assumed the risk the Court said:

"The plaintiff says that he did not see the chisel that was  
being used to cut the rail, and therefore did not know its  
condition. In view of the positions of these three men at the  
time of the accident, this statement is scarcely credible. It  
is however, immaterial whether he saw it or not; there is no  
question that he could have seen it by a mere glance if he had  
looked. Having the opportunity to see and know, he assumed  
the risk of those dangers incident to his employment which  
were open and obvious, and cannot excuse himself by failure  
to look and to see. The plaintiff had, to say the least,  
equal means with the master of knowing the condition of the  
chisel, and that condition could have been discovered without  
special skill or knowledge."

The Ohio Valley case in Kentucky is along the same lines but as to  
above is on all fours with the Calloway case thought would give you refer

Yours truly,

Cy S. M. W.