

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>JOSHUA STEELE,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b><i>Docket No. 97-195-P-DMC</i></b>
	)	
<b>CASCO BAY ISLAND TRANSIT</b>	)	
<b>DISTRICT, d/b/a CASCO BAY LINES,</b>	)	
	)	
<i>Defendant</i>	)	

**MEMORANDUM DECISION ON DEFENDANT’S MOTION  
FOR CLARIFICATION CONCERNING THE COURT’S DENIAL OF ITS MOTION  
IN LIMINE TO PRECLUDE THE PLAINTIFF FROM INTRODUCING EVIDENCE  
CONCERNING INCIDENTS PRIOR TO MAY 30, 1994**

The defendant has asked this court to clarify its endorsement dated May 27, 1998 denying its Motion in Limine to Preclude the Plaintiff from Introducing Evidence Concerning Incidents Prior to May 30, 1994 (Docket No. 15). The defendant seeks specification concerning “what evidence the plaintiff will be allowed to introduce concerning the incidents prior to May 30, 1994,” Defendant’s Motion for Clarification Concerning the Court’s Denial of its Motion in Limine to Preclude the Plaintiff from Introducing Evidence Concerning Incidents Prior to May 30, 1994 (Docket No. 25) at 2, the deadline imposed by the applicable three-year statute of limitations in this case, 46 U.S.C. App. § 763a. The plaintiff objects to the motion on several grounds: (i) as “a poorly disguised attempt by the Defendant to reargue the Motion in Limine,” Plaintiff’s Response to Defendant’s Motion for Clarification, etc. (Docket No. 26) at 1; (ii) he is seeking to recover for a

cumulative trauma injury in addition to two injuries occurring within the limitations periods, on May 31, 1994 and September 2, 1994; (iii) the defendant has proposed that reports regarding these earlier injuries be admitted into evidence as part of the plaintiff's medical records; and 4) the defendant has not cited any case law in support of its position.

In opposing the motion in limine the plaintiff relied on *Urie v. Thompson*, 337 U.S. 163 (1949), a case which dealt with the application of the statute of limitations to cases of cumulative injury under the Federal Employers' Liability Act ("FELA"). The Jones Act, the statute invoked by the plaintiff in this case, incorporates the FELA statute of limitations by reference, *McKinney v. Waterman Steamship Corp.*, 925 F.2d 1, 2 n.2 (1st Cir. 1991), and courts have routinely referred to FELA case law in interpreting the Jones Act statute of limitations, *e.g.*, *Maxwell v. Swain*, 833 F.2d 1177, 1178 (5th Cir. 1987). A cause of action under the Jones Act accrues "when a plaintiff has had a reasonable opportunity to discover his injury, its cause, and the link between the two." *Crisman v. Odeco, Inc.*, 932 F.2d 413, 415 (5th Cir. 1991).

The fact that the defendant has proposed the use of the plaintiff's medical records as exhibits without insisting that reports of the plaintiff's prior work-related injuries be redacted does not appear surprising to me in light of my earlier ruling and does not bar its request for clarification. Upon reflection and in light of the plaintiff's response to it, the request for clarification appears to be particularly helpful under the circumstances of this case, providing an opportunity to set parameters for trial on this issue. The fact that the defendant has not found any case law to support its position is unremarkable and has no bearing on its entitlement to clarification of my earlier ruling. Indeed, my own research has failed to located authority on point in support of either party's position on this issue.

In order to proceed before the jury with his claim of a cumulative trauma injury separate and distinct from the injuries alleged to have occurred on May 31 and September 2, 1994, the plaintiff must offer evidence that he did indeed suffer such an injury for which he could recover damages even if the May 31 and September 2, 1994 incidents had not occurred, *see Aparicio v. Norfolk & Western Ry. Co.*, 84 F.3d 803, 814-15 (6th Cir. 1996),<sup>1</sup> and that he was not aware prior to May 30, 1994 of the injury to his back and that the circumstances did not put him sufficiently on notice before that date that he should have made inquiry about the possible existence of such an injury. *See Urie*, 337 U.S. at 170-71. It will be necessary to determine, out of the presence of the jury, whether the plaintiff has made such showings before evidence concerning the earlier injury incidents may be presented to the jury.

If in light of this clarification the plaintiff continues to feel that he has a provable claim of cumulative trauma injury to present at trial, his counsel is directed to so notify the court by contacting the clerk's office as soon as possible. In that event, the court will schedule a telephone conference to discuss further proceedings, to be conducted in a manner so as not to interfere with or delay the jury trial.

Dated this 17th day of August, 1998.

---

David M. Cohen  
United States Magistrate Judge

---

<sup>1</sup> I am also persuaded by the holding in *Aparicio* that aggravation of an existing injury does not constitute a separate injury under *Urie*, should that be an issue in this case.