

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT GIVENS,

Plaintiff,

ORDER

v.

14-cv-156-jdp

WISCONSIN CENTRAL, LTD.,

Defendant.

Plaintiff Robert Givens worked for defendant Wisconsin Central, Ltd. as a railroad trackman on a mobile rail gang in Wisconsin. He filed a complaint against Wisconsin Central in March 2014, alleging that the company violated the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109 *et seq.* FRSA protects an employee who notifies the railroad of a work-related injury from being retaliated against by the railroad. Givens now seeks to amend his complaint to add a claim under the Federal Employers Liability Act (FELA), 45 U.S.C. § 51 *et seq.*, seeking recovery for the injury underlying his FRSA claim. FELA provides compensation for railway workers whose on-the-job injuries are the result of the railroad's negligence. The court will allow Givens to amend his complaint and add the FELA claim because the litigation is still in its early stages and it will be more efficient to litigate the issues related to the underlying injury and the alleged retaliation for reporting the injury in the same case.

Wisconsin Central opposes the motion in a lengthy brief, the gist of which is that Givens's claims cannot be appropriately litigated together and he has not shown good cause under Federal Rule of Civil Procedure 16(b). Rule 16(b) governs scheduling orders; it requires good cause and the court's consent to modify a scheduling order. According to the scheduling order in this case, the parties had a deadline of June 30, 2014, to amend their pleadings "without leave of court," Dkt. 7, and Givens did not propose the amendment until July 24. But

Wisconsin Central invokes the wrong standard: Givens is not asking the court to adjust any of the deadlines in the scheduling order. He has simply passed the deadline to amend without leave of court. Thus, he seeks leave to amend his complaint and his motion is governed by Rule 15(a)(2), which directs courts to “freely give leave when justice so requires.” *See also E. Natural Gas Corp. v. Aluminum Co. of Am.*, 126 F.3d 996, 999 (7th Cir. 1997) (“[I]n the absence of undue delay, undue prejudice to the party opposing the motion, or futility of the amendment, leave should be freely given.”) (citations omitted).

Givens explains the delay in adding the FELA claim as a miscommunication with his counsel, who thought that Givens had another attorney for his FELA claim. When his counsel learned that Givens needed representation for the FELA claim, he sought Wisconsin Central’s consent add to the case. Givens’s explanation is plausible. He may not have moved lickety-split to amend his complaint, but it is early in the case and he was only 24 days after the free-amendment cut-off. Givens did not unduly delay.

Wisconsin Central’s argument that the amendment would be futile or that it would cause undue prejudice is not persuasive. Wisconsin Central makes a great effort to show that the two claims *could* be severed under Rule 21, but it fails to show that severance would be either necessary or efficient. The FELA and FRSA claims are appropriately litigated together because the facts and evidence substantially overlap even if the legal issues are different. Wisconsin Central cites a few older cases for the proposition that evidence of the worker’s discharge would be prejudicial in a FELA case, but it does not cite any authority that FELA and FRSA claims arising from the same alleged injury should not be litigated together. Givens cites contemporary examples in which they are. Forcing Givens to litigate his FELA claim in a separate case would be highly inefficient, and Wisconsin Central has pointed out no prejudice that would arise from the proposed amendment that cannot be appropriately addressed with the jury instructions.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert Givens's motion to amend his complaint, Dkt. 8, is GRANTED.
2. Givens is instructed to file his proposed amended complaint, Dkt. 8-3, and its exhibits to make it the operative pleading in this case.

Entered this 29th day of October, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge