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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 145 SSM 18
Frederick Bready et al.,
Appellants,
v.
CSX Transportation, Inc.,
Respondent,
et al.,
Defendant.

No. 146 SSM 19
Brandon Harris et al.,
Appellants,
v.
CSX Transportation, Inc.,
Respondent,
et al.,
Defendant.

For Each Case:

Submitted by Edward J. Markarian, for appellants.
Submitted by Dan Himmelfarb, for respondent.

MEMORANDUM:

The order of the Appellate Division in each case,
insofar as appealed from, should be affirmed, with costs.
Assuming without deciding that defendant CSX Transportation, Inc.

owed plaintiffs a higher duty of care under the Federal Employer's Liability Act than under the common law, defendant made a prima facie showing that it did not breach that duty of care. Plaintiffs, in response, failed to establish that a triable issue of fact existed on the issue of breach of the duty of care. Accordingly, the Appellate Division properly granted defendant's motion for summary judgment dismissing the complaint in each case.

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For Each Case: On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided May 3, 2012