

## **David Sharp – Fayetteville – 2000**

From [\*Facebook on August 21, 2020\*](#)

Fayetteville history bit, and of interest to LODD researchers. Court of Appeals lawsuit, filed by the family of David Sharp against CSX Transportation. (The suit was settled in 2004.) Read the text at <https://caselaw.findlaw.com/nc-court-of-appeals/1339696.html>

FFD Engineer Sharp died on March 17, 2000, after being ejected from the 1993 Pierce Arrow aerial tower he was driving, after it was struck by a train at the Cumberland Street crossing between Orange and Ramsey streets, while returning from an automatic fire alarm. He was the lone occupant of the apparatus.

From details as noted in the lawsuit narrative, the crossing gate was down, due to a freight train that had passed, with the last rail car sitting just north of the intersection. The gate remained down, due to the position of the train. The freight train also obscured Sharp's view of the tracks to the north, and acted as a barrier against any sound made by any second train approaching from the north.

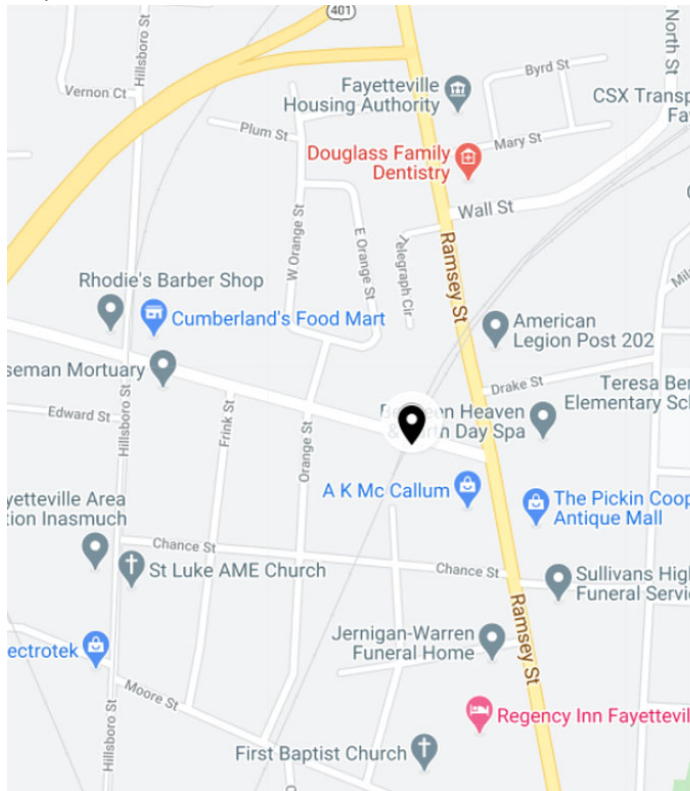
This practice, of freight trains stopping for extended periods of time in proximity to crossing gates, was common and was well-known to residents and travelers in Fayetteville, including Sharp. After waiting for an extended period of time, Sharp apparently believed the gate was remaining lowered only because of the freight training. And because he was alone in the apparatus, he was prohibited by policy from operating the truck in reverse.

As Sharp then crossed the tracks, his apparatus was struck by an Amtrak passenger train, whose approach was obscured by the freight train.

Sharp, 31, was a twelve-year veteran of the Fayetteville FD. His surviving wife was pregnant with their first child. He was operating Truck 1, a rear-mounted platform that was acquired from Bonnie Doone FD.

Unsure when FFD started staffing their ladder trucks with a full crew. Back in the day, say in the eighties, Ladder 1 and Ladder 2 responded on commercial fires, hospital fire alarms, etc., with just a driver. Their

responses were rare.



FIRELAW / CASELAW / NORTH CAROLINA / NC CT APP / SHARP V CSX TRANSPORTATION INC CSX

## SHARP v. CSX TRANSPORTATION INC CSX

Find state:

Court of Appeals of North Carolina.

Dawn SHARP, Personal Representative of the Estate of David Sharp, Plaintiff, v. CSX TRANSPORTATION, INC., CSX Corporation, and R.A. Jones, Defendants.

No. COA02-1094.

Decided: September 02, 2003

Gill & Tobias, L.L.P., by Douglas R. Gill, Southern Pines, for plaintiff-appellant. Millberg, Gordon & Stewart, P.L.L.C., by John C. Millberg and Dena White Waters, Raleigh, for defendants-appellees. In this appeal, appellant Dawn Sharp asks us to reverse the trial court's order granting defendants' motion to dismiss. Defendants have contended that dismissal is appropriate because the complaint establishes contributory negligence as a matter of law. Applying the standards governing a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, we hold that the allegations of the complaint, taken as true, do not necessarily dictate a finding of contributory negligence and, therefore, we reverse.

Plaintiff's complaint alleges the following facts. On 17 March 2000, David Sharp was driving a fire truck owned by the City of Fayetteville Fire Department back to his fire station. Under Fire Department policies, Sharp—who was alone in the truck—was required to return the truck to the fire station directly upon conclusion of a call.

As Sharp approached a railroad crossing on Cumberland Street, a locomotive owned by defendant CSX crossed Cumberland Street causing the crossing gate to descend across the roadway. The locomotive came to a stop with the last car sitting just north of the crossing. Because of where the train stopped, the crossing gate remained in a lowered position. In addition, the train obscured Sharp's view of the tracks to the north and the train acted as a barrier against any sound made by a train approaching from the north.

According to the complaint, defendants have a widely known practice in Fayetteville of stopping their trains for extended periods of time in close proximity to crossing gates thereby causing the gates to remain lowered. This problem has occurred frequently and is widely known to residents and travelers in Fayetteville, including Sharp.

The complaint alleges that Sharp waited for an extended period of time to see if the train would move forward and allow the crossing gate to rise. Sharp believed that the crossing gate was remaining lowered only because of the CSX train. As Sharp was alone in the fire truck, he was prohibited by Fire Department policies from operating the truck in reverse. Since he was unable to back up the truck, Sharp decided to cross the tracks in order to return promptly and directly to the fire station. As Sharp began crossing the tracks, an Amtrak train, whose approach had been obscured by the CSX train, struck the fire truck, killing Sharp.

Sharp's wife, Dawn Sharp, filed suit on 15 March 2002 asserting a claim for negligence against defendants. Pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, defendants moved to dismiss on the grounds that the complaint established contributory negligence as a matter of law. Plaintiff appeals from the trial court's order granting that motion.

When a party files a motion to dismiss pursuant to Rule 12(b)(6), the question for the court is whether the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not. Grant Constr. Co. v. McRae, 146 N.C.App. 370, 373, 553 S.E.2d 89, 91 (2001). The court must