

**1405 RAILROADS: DUTY OF TRAIN CREW APPROACHING CROSSING**

It is the duty of the railroad employees in charge of a locomotive to keep a proper lookout as to the track and the intersecting streets and highways and to observe the streets and highways adjacent to the tracks to ascertain whether persons or vehicles are in dangerous proximity to the track. If any persons or vehicles are in danger of being struck, the railroad employees must do what ordinarily careful and prudent employees would do under the same or similar circumstances to avoid injuring these persons or vehicles.

However, the railroad employees have a right to assume that travelers on a highway approaching a railroad track will look and listen, up to the last opportunity, before entering upon the track and that they will not go onto the track when it is apparent a train is approaching. A railroad employee is entitled to continue in that assumption until the contrary becomes apparent to a person in the position of a member of the railway crew exercising ordinary care.

**COMMENT**

The instruction and comment were originally published in 1967 and revised in 2005.

The first paragraph is taken from Hynek v. Kewaunee, G.B. & W. Ry., 251 Wis. 319, 321, 29 N.W.2d 45 (1947). See also Dombeck v. Chicago, M. St. P. & P. Ry., 24 Wis.2d 420, 426, 129 N.W.2d 185 (1964). In Van Gheem v. Chicago & N.W. Ry., 33 Wis.2d 231, 243, 147 N.W.2d (1967), the court discussed the Hynek and Dombeck decision in the following manner:

Hynek and Dombeck stand for the rule that although a railroad may be negligent as to lookout in approaching a crossing which an automobile is approaching at a slow rate of speed, that negligence as a matter of law may not be causal because the engine crew has a right to assume that the driver of an automobile traveling at a comparatively low rate of speed toward a grade crossing will stop his automobile in a place of safety. Hynek, supra at page 322; Dombeck, supra at pages 426-430. This proposition is based upon the physical fact that trains confronted with an emergency

cannot effectively slow down or stop within a short distance and upon the duty of the driver of the car to look and listen before crossing the railroad track.

The second paragraph is based upon Keegan v. Chicago, M. & St. P. R.R., 251 Wis. 7, 27 N.W.2d 739 (1947); and Bellrichard v. Chicago & N.W. Ry., 247 Wis. 569, 20 N.W.2d 710 (1945).

The second paragraph should be omitted in a fact situation where the evidence indicated no member of the crew saw, or saw too late, to take protective action. For example: (1) where no warning by bell or whistle was given, Van Gheem v. Chicago & N.W. Ry., supra at 244-45; (2) where the evidence would permit the inference that though the bell or whistle or both were first sounded the instant the danger was seen, an earlier observation would have resulted in an earlier warning, Gallagher v. Chicago & N.W. Ry., 255 Wis. 15, 18, 20, 37 N.W.2d 863 (1949).