

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PATRICK BOEDIGHEIMER,

Plaintiff-Appellant,

v

ROBERT WALLEN and NORFOLK & WESTERN  
RAILWAY,

Defendant-Appellees.

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UNPUBLISHED  
February 11, 1997

No. 182455  
Wayne Circuit Court  
LC No. 94-402569-NO

Before: Jansen, P.J., and Young and R.I. Cooper,\* JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court order that granted summary disposition to defendants pursuant to MCR 2.116(C)(10) and dismissed plaintiff's negligence claim. We affirm.

The trial court properly granted summary disposition to defendants on the ground that the danger of standing between two coupled rail cars in the railyard was open and obvious, and therefore defendants did not have duty to warn the trespassing plaintiff of such danger. *Riddle v McLouth Steel Products Corp*, 440 Mich 85; 485 NW2d 676 (1992); *Nagy v Detroit, Toledo & Ironton RR*, 241 Mich 134; 216 NW 394 (1927); *Wexel v Grand Rapids & Indiana Ry*, 190 Mich 469; 157 NW 15 (1916). Plaintiff urges this Court to adopt a new rule of common law recognizing the duty of care to unknown trespassers under 2 Restatement of Torts, § 334. We decline to do so because this case is controlled by *Lindstrom v Duluth, South Shore & Atlantic Ry Co*, 267 Mich 104, 109; 255 NW 169 (1934).

Affirmed.

/s/ Kathleen Jansen  
/s/ Robert P. Young, Jr.  
/s/ Richard I. Cooper

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\* Circuit judge, sitting on the Court of Appeals by assignment.

