

203.59 OPERATOR'S DUTY OF CARE AT RAILROAD CROSSINGS.

When approaching and going over a railroad crossing, a traveler has a duty to exercise that degree of care for *his* own safety which a reasonably careful and prudent person would exercise under the same or similar circumstances.<sup>1</sup> Thus, a traveler must

[keep a proper lookout. *He* must, from a point where *his* lookout will be effective, look in both directions and listen for approaching trains before going upon or crossing the track.<sup>2</sup> *He* must look, listen, and take every reasonable precaution to avoid a collision<sup>3</sup>]

[keep *his* vehicle under proper control<sup>4</sup>]

[yield the right-of-way to a train approaching or already in the crossing when *he* knows or, in the exercise of ordinary care, should know of the existence of the crossing<sup>5</sup>]

*In the event the railroad is alleged to have failed to give reasonable warning, use one or more of the following as appropriate:*

(Even though the railroad has a duty to give a traveler timely warning of the approach of its train to a crossing and the traveler may reasonably expect such warning, the railroad's failure to give such a warning does not relieve the traveler of *his* duty.<sup>6</sup>)

(A traveler may reasonably place some reliance upon an automatic signalling device (especially if *his* view is obstructed).<sup>7</sup> Thus, when the crossing is protected by an automatic signalling device, the traveler may reliably proceed if the warning signal is not being given.<sup>8</sup> However, the fact that an automatic signalling device is not working does not relieve

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the traveler of *his* duty to look and listen for approaching trains when, from a safe position, looking, and listening would warn *him* of the danger.<sup>9)</sup>

A violation of [this duty] [any one of these duties] is negligence.

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1. *Price v. Railroad*, 274 N.C. 32, 40 (1968); *Irby v. R.R.*, 246 N.C. 384, 390 (1957); *Godwin v. R.R.*, 220 N.C. 281 (1941).

2. *Neal v. Booth*, 287 N.C. 237, 242 (1975); *Jernigan v. R.R. Co.*, 275 N.C. 277, 281 (1969); *Johnson v. R.R.*, 255 N.C. 386, 388 (1961); *Arvin v. McClintock*, 253 N.C. 679, 684 (1961); *Irby v. R.R.*, 246 N.C. 384, 390 (1957).

3. *Id.*

4. *Cox v. Gallamore*, 267 N.C. 537, 543 (1966).

5. *Price v. Railroad*, 274 N.C. 32, 40 (1968); *Southern Railway Co. v. O'Boyle Tank Lines*, 70 N.C. App. 1, 7 (1984).

6. *Neal v. Booth*, 287 N.C. 237, 242 (1975); *Brown v. R.R. Co.*, 276 N.C. 398, 403 (1970); *Price v. Railroad*, 274 N.C. 32, 40 (1968); *Cox v. Gallamore*, 267 N.C. 537, 543 (1966); *Johnson v. R.R.*, 255 N.C. 386, 388 (1961); *Irby v. R.R.*, 246 N.C. 384, 390 (1957); and *Goodwin v. R.R.*, 220 N.C. 281, 286 (1941).

7. *Neal v. Booth*, 287 N.C. 237, 242 (1975); *Johnson v. R.R.*, 255 N.C. 386, 388 (1961).

8. *Johnson v. R.R.*, 255 N.C. 386, 388 (1961).

9. *Neal v. Booth*, 287 N.C. 237, 242 (1975).