

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STEVEN BAUER,

*Plaintiff,*

*v.*

METRO-NORTH      COMMUTER      RAILROAD  
COMPANY,

*Defendant.*

Civil No. 3:13cv749 (JBA)

June 17, 2015

**ENDORSEMENT ORDER**

This is an action by Plaintiff Steven Bauer alleging that Defendant Metro-North Commuter Railroad Company (“Metro-North”) is liable under the Federal Employers’ Liability Act (“FELA”) for injuries he sustained during the May 17, 2013 derailment in Bridgeport, Connecticut. Plaintiff filed his complaint on September 22, 2014. On October 30, 2014, Metro-North filed its Answer, which includes a single affirmative defense—preemption. Four and a half months later, Defendant moved [Doc. # 160] to amend its answer to add two additional affirmative defenses—set-off and mitigation. Plaintiff opposes on the grounds that the amendments would “result[] in unfair surprise and prejudice.” (Opp’n [Doc. # 164] at 5.)

Under Federal Rule of Civil Procedure 15(a)(2), “[t]he court should freely give leave” to amend a pleading “when justice so requires.” In this Circuit, leave is granted “[i]n the absence of any apparent or declared reason . . . such as undue delay, bad faith or dilatory motive on the part of the movant . . . [or] undue prejudice to the opposing party by virtue or allowance of the amendment.” *Kroshniyi v. U.S. Pack Courier Servs., Inc.*, 771 F.3d 93, 109 (2d Cir. 2014). Plaintiff appears to argue undue prejudice but he does not spell out in what ways he will be unduly prejudiced by Defendant’s proposed amendment.

