

Chapter 9. Federal Employers' Liability Act

Introduction

This subject is governed by N.M. Const., Article 20, Section 16, and Article 22, Section 2, and, by reference, it is covered by the Federal Employers' Liability Act, being 45 U.S.C.A. §§ 51 to 60. Constitutional provision Article 20, Section 16, according to its own language, "shall not be construed to affect the provisions of Section Two of Article Twenty-Two of this constitution, being the article upon Schedule".

N.M. Const., Article. 20, Section 16 applies to "Every person, receiver or corporation owning or operating a railroad within this state" (emphasis added). The Federal Employers' Liability Act applies to "Every common carrier by railroad while engaging in commerce between any of the several States or Territories". 45 U.S.C.A. § 51 (emphasis added).

This chapter, then, applies only to common carriers by railroad, engaging in interstate commerce. The liability of an intrastate railroad in New Mexico is within the provisions of N.M. Const., Article 20, Section 16 and is governed by that section.

The following matters should be noted relative to this chapter.

A. The Federal Employers' Liability Act, 45 U.S.C.A. § 51, et seq.

1. Negligence of railroad

The railroad is liable in damages to any employee suffering injury or death, "for such injury or death resulting in whole or in part from the negligence of " the railroad. 45 U.S.C.A. § 51 (emphasis added).

2. Contributory negligence

Contributory negligence of the employee does not bar recovery. Damages shall be "diminished by the jury in proportion to the amount of negligence attributable to such employee." 45 U.S.C.A. § 53. According to some authority, evidence of contributory negligence is admissible for reduction of damages, even though not pleaded as a defense. *Kansas City S. Ry. v. Jones*, 241 U.S. 181, 36 S. Ct. 513, 60 L. Ed. 943 (1916).

There is a proviso in 45 U.S.C.A. § 53 to the effect that contributory negligence will not defeat or diminish a recovery for damages where the death or injury is found to have been caused or contributed to by the violation by the common carrier of any statute enacted for the safety of employees. (As in the Safety Appliance Acts and the Boiler Inspection Acts, *infra*.)

3. Assumption of risk

Assumption of risk by an employee has been abolished where injury or death resulted in whole or in part from negligence of the railroad. 45 U.S.C.A. § 54. *Chavez v.*

Atchison, T. & S.F. Ry., 79 N.M. 401, 444 P.2d 586 (1968).

4. Common-Law fellow-servant doctrine

"The common-law fellow-servant doctrine has been abrogated in this jurisdiction as to railroads by section 16 of article 20 of the constitution, . " *Morstad v. Atchison, T. & S.F. Ry.*, 23 N.M. 663, 170 P. 886 (1918).

5. Causation

No mention, whatever, of causation should be made to the jury. *Eidson v. Atchison, T. & S.F. Ry.*, 80 N.M. 183, 453 P.2d 204 (1969). California uses the term "proximate cause."

6. No Third Party Involved

These proposed instructions relate only to plaintiff and defendant, and not to any third party charged with negligence. The other UJI - Civil instructions should apply to a third-party defendant.

7. Note All Sections of F.E.L.A.

45 U.S.C.A. §§ 51 to 60 should be noted. There are a vast number of cases on F.E.L.A.

8. Law of New Mexico Applies to Procedural Matters

The Supreme Court has held that " . all procedural matters, including review of verdicts for excessiveness, are governed by the law of the forum and not by the Federal Decisional Law", **Rivera v. Atchison, T. & S.F. Ry.**, 61 N.M. 314, 299 P.2d 1090 (1956); **Vivian v. Atchison, T. & S.F. Ry.**, 69 N.M. 6, 363 P.2d 620 (1961), or are governed by the common law. **Rival v. Atchison, T. & S.F. Ry.**, 62 N.M. 159, 306 P.2d 648, 64 A.L.R.2d 1098 (1957).

9. Substantive law governed by decisions of Supreme Court of United States.

Issues of negligence and contributory negligence are substantive and governed by decisions of the Supreme Court of the United States. *Chavez v. Atchison, T. & S.F. Ry.*, 77 N.M. 346, 423 P.2d 34 (1967); *Vivian v. Atchison, T. & S.F. Ry.*, 69 N.M. 6, 363 P.2d 620 (1961). Also, whether the employer and employee are engaged in interstate commerce and whether an employee is acting within the scope or course of his employment would seem to be questions of substantive law, governed by federal decisions.

10. UJI - Civil

All instructions now used in UJI - Civil should be used to supplement F.E.L.A. where necessary. The UJI - Civil instructions "Accident alone not negligence" and "corporation a party" are examples of the applicability of general UJI - Civil instructions to this chapter.

11. No affirmative defenses in F.E.L.A.

Granotis v. New York Cent. R.R., 342 F.2d 767 (6th Cir. 1965): "One of the purposes of the Federal Employers' Liability Act, as amended, was to abolish the common law defenses of assumption of risk, fellow servant rule and contributory negligence".

B. Safety Appliance Acts, 45 U.S.C.A. §§ 1-16.

Liability under the Federal Employers' Liability Act may be predicated on a carrier's violation of the Safety Appliance Acts, which were enacted to require carriers, engaged in interstate commerce, to equip their locomotives and cars with various safety devices and appliances and to maintain these in efficient condition.

The critical difference between the liability provisions of F.E.L.A. and the Safety Appliance Acts is this: Whereas F.E.L.A. requires proof of some negligence on the part of the railroad which caused or contributed to the employee's injuries, the obligations imposed on railroad carriers by the Safety Appliance Acts are absolute in nature and are not limited to the exercise of reasonable care in maintaining the prescribed appliances. Nor is liability excused by the use of even the highest degree of care if the prescribed standards are not met. Although a breach of the Safety Appliance Acts may constitute negligence under the general liability provisions of the Federal Employers' Liability Act, the violation of any specific safety requirement, resulting in injuries to an employee, gives rise to liability on the part of the railroad, irrespective of a showing of negligence on its part.

Under the Safety Appliance Acts, to justify a recovery of damages for injury or death of an employee on the basis of the railroad's violation of the provisions of the Safety Appliance Acts, it must be shown that there was a causal connection between the injury or death and the railroad's failure to comply with the safety requirements. However, the causal relationship requirement is met when the violation at issue was the cause, in whole or in part, of the alleged injury or death.

A railroad employee who has sustained injury as a result of a violation of the Safety Appliance Acts is not barred from recovery, or even subject to diminution of damages, on the basis of contributory negligence.

C. Boiler Inspection Acts, 45 U.S.C.A. §§ 22-34.

Other statutes enacted for the safety of the railroad employees and the general public are commonly known as the Boiler Inspection Acts (45 U.S.C.A. §§ 22-34). These acts prohibit the use of any locomotive, including its parts and appurtenances, such as boilers and tenders, which is not in proper condition and safe to operate, and which has not been subjected to, and passed, periodic safety inspections. It has been said that, by these acts, the carrier is absolutely bound to furnish what under the common law, was its duty to exercise only ordinary care to provide. *Baltimore & O.R.R. v. Groeger*, 266 U.S. 521, 45 S. Ct. 169, 69 L. Ed. 419 (1925). However, the carrier is not liable for failure to furnish the best mechanical contrivances and inventions, provided that the equipment used is in proper condition and safe to operate, as required by statute. *Baltimore & O.R.R. v. Groeger, supra*.

Provided that the necessary causal relationship is found to exist, a violation of these acts constitutes negligence per se on the part of the defendant railroad. Contributory negligence on the part of the injured employee does not operate to bar his recovery nor to diminish the damages recoverable.

For other references to other jury instructions in F.E.L.A. cases, see: Federal Jury Practice And Instructions, Chapter 84; Illinois Pattern Jury Instructions, 2nd Ed., Chapter 160; Kansas Pattern Instructions, 2nd Ed., Chapter 16; Missouri Approved Jury Instructions, Chapter 24; Virginia Jury Instructions, Chapter 40.