Must a Rail Worker Who Is Injured on the Job Prove That the Injury Was Proximately Caused by the Railroad in Order to Recover Under the Federal Employers' Liability Act?

CASE AT A GLANCE

Robert McBride sued CSX Transportation under the Federal Employers' Liability Act (FELA) for an on-the-job injury. At trial, the judge refused CSX's request for jury instructions on proximate cause. The jury awarded McBride damages. On appeal, the Seventh Circuit declined to read proximate cause into FELA. The court refused to rely on the dicta in a concurring Supreme Court opinion, which implied that proximate cause is required. CSX now asks the Court for a definitive ruling on whether proximate cause is required in FELA cases.

CSX Transportation v. McBride
Docket No. 10-235

Argument Date: March 28, 2011
From: The Seventh Circuit

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ISSUE

Does the Federal Employers' Liability Act require an injured employee to prove proximate cause to recover for injuries caused in part by a railroad's negligence?

FACTS

Robert McBride was a "switcher" for CSX Transportation. His job primarily entailed switching, which involved the addition or removal of railway cars on short-term trips between Evansville, Indiana, and Nashville, Tennessee. Switching requires the use of an automatic brake, which slows the train's cars, and an independent brake, which slows the locomotives.

McBride sought a transfer to another division where he would have more regular hours and fewer nights away from home. CSX agreed. During McBride's first qualifying run for the new division, he discovered that he would be switching trains headed by five locomotives: two wide-body cabs followed by three conventional locomotives. McBride was concerned because such wide-body cabs require a different braking technique called "actuating." McBride had never switched using this braking technique. When he expressed his concern about this setup to his yardmaster, the yardmaster told him to take the cabs "as is."

Wide-body cabs require the switcher to press a button to put the independent brake into action. In contrast, to actuate the independent brake on a conventional cab—the technique McBride was accustomed to— the switcher simply repositions the brake handle. Furthermore, longer trains require longer actuating; as a general rule, the switcher pushes the actuator button for four seconds per locomotive. Thus, each time he braked, McBride was required to apply the automatic brake while pressing, with his right thumb, an actuator button on the side of the brake handle. To stop a train headed by five locomotives, McBride had to press the actuator button for 20 seconds to actuate the independent brake.

During his qualifying run, McBride activated both the automatic brake and the actuator button for the independent brake nearly continuously for seven of the ten hours he worked. Because he was not accustomed to using an actuating button, his hand became fatigued. Near the end of the day, McBride reached for the button and accidentally bumped the brake handle with his hand. McBride described the ensuing pain as, "like somebody threw gas on my hand and set it afire." He underwent two surgeries and physical therapy following the incident.

McBride sued CSX for negligence under the Federal Employers' Liability Act (FELA), seeking damages for his injuries. He alleged that if CSX had used the proper train setup (a conventional lead locomotive rather than widebody cab), he would not have had to make the repetitive movements and grips with his right arm that caused his arm to tire.

The trial judge gave the following instructions to the jury: "Defendant 'caused or contributed to' Plaintiff's injury if Defendant's negligence played a part—no matter how small—in bringing about the injury. The mere fact that an injury occurred does not necessarily mean that the injury was caused by negligence." CSX objected to this jury charge because it did not require the jury to find proximate cause. The district court overruled CSX's objections.

The jury awarded McBride damages of $275,000 reduced by 33 percent for McBride's own contributory negligence. CSX appealed on the

ground that FELA requires proximate causation. CSX acknowledged that although FELA does not explicitly require proximate cause, courts have adopted the concept as part of common law.

Courts and commentators often disagree on the definition of "proximate cause"; however, in a general sense it means that the defendant's action was the cause-in-fact of the injury. Some courts use a "but for" test: but for the defendant's conduct, the plaintiff's injury would not have occurred. Others look to see if the negligence was the direct cause of the injury or a substantial factor in causing the injury. In a statute such as FELA, such distinctions appear irrelevant since the railroad will be liable if it caused any part of the injury.

The Seventh Circuit affirmed, stating that the jury instructions "correctly and completely informed the jury of the applicable law." *McBride v. CSX Transportation, Inc.,* 598 F.3d 388 (7th Cir. 2010). The court noted that the pattern jury instructions were based on *Rogers v. Missouri Pacific Railroad Co.,* 352 U.S. 500 (1957), a FELA case in which the Supreme Court applied a relaxed standard of causation without reference to proximate causation.

The appellate court rejected CSX's argument that Justice Souter's concurring opinion in *Norfolk Southern Railway v. Sorrell,* 549 U.S. 158 (2007), made clear that the Supreme Court still requires proximate causation. In *Sorrell,* Justice Souter had distinguished *Rogers* because it did not deal with causation, but instead addressed the issue of when a case with multiple causes should be submitted to a jury. The Seventh Circuit interpreted *Rogers* as stopping short of explicitly overruling prior cases that required proximate cause.

Although the court noted that Justice Souter's concurrence in *Sorrell* had "considerable force," the court declined to rely on the dicta of a concurring opinion because the doctrine of stare decisis, under which courts are required to follow mandatory precedent, admonishes courts "not to anticipate future actions of the Supreme Court." At the same time, the court acknowledged that it was required to respect prior Supreme Court rulings such as *Roberts* that seem to indicate that the Supreme Court has relaxed the causation standard, even if those "pronouncements [are] technically dicta." Finally, the Seventh Circuit noted that all of its sister circuits have interpreted *Rogers* as adopting a relaxed standard of causation. Thus, adopting "Justice Souter's interpretation of *Rogers* … would not only run contrary to our own case law, but would cause a conflict with every other court of appeals, a step that we do not take lightly." Faced with this quandary, the court declined to read proximate cause into FELA and found that the district court did not err in refusing CSX's proffered jury instruction.

CASE ANALYSIS

FELA §1 provides that "every common carrier by railroad … shall be liable in damages to any person suffering injury [or death] while he is employed by such carrier … for such injury or death resulting in whole or in part from the negligence … of such a carrier."

McBride asserts that the plain language of FELA § 1 indicates that an injury is compensable if any part of the injury is a "result" of the employer's negligence. This language does not require proximate cause, alleges McBride. Instead, the railroad is liable if it caused any part of the injury. Section 3 limits recovery to the portion of the damages attributable to the railroad's negligence. McBride argues that if Congress had wanted to incorporate proximate cause into FELA, then it could have done so explicitly or by adding language such as "foreseeably," "directly," or "probably" to qualify the word "result," rather than relying on common law principles of causation.

McBride notes that before the Supreme Court decided *Rogers* in 1957, both the Supreme Court, in dicta, and the courts of appeal had recognized that FELA does not require proximate cause. In *Rogers,* the Supreme Court confirmed this, stating that the statutory requirements are met as long as the railroad played "any part" in the employee's injury.

McBride gains additional support from FELA's legislative history. McBride cites legislative history to argue that Congress adopted FELA "to change the common-law liability of employers … for personal injuries received by employees," thereby increasing railroad safety and providing just compensation for workers injured or killed on the job, as well as their families." The Supreme Court has acknowledged the purpose of FELA, stating, "Cognizant of the physical dangers of railroading that resulted in the death or maiming of thousands of workers every year, Congress crafted a federal remedy that shifted part of the 'human overhead' of doing business from employees to their employers." *Consolidated Rail Corp. v. Gottshall,* 512 U.S. 532 (1994).

CSX counters that because FELA addresses only the causes of the injury not the directness of the cause, courts must look to common law to define proximate cause. According to CSX, proximate cause must be defined by the directness of the injury. CSX relies on *Milwaukee & St. Paul Ry. v. Kellogg,* 94 U.S. 469 (1876), in which the Supreme Court defined proximate cause under FELA to mean any cause that "in natural or probable sequence, produced the injury complained of." CSX further contends that "but for" causation is insufficient to prove proximate cause because it goes to the cause, not the directness, of the injury. In other words, CSX claims that an employee cannot recover for injuries created by an incidental situation. Thus, CSX appears to argue that the setup of the train cannot be a proximate cause for McBride's injury.

CSX relies on Justice Souter's concurring opinion in *Sorrell,* which stated, "[d]espite some courts' views to the contrary, *Rogers* did not address, much less alter, existing law governing the degree of causation necessary for redressing negligence as the cause of negligently inflicted harm; the case merely instructed courts how to proceed when there are multiple cognizable causes of an injury."

The gist of CSX's argument is that the Supreme Court has never swayed from the common law standard, and that any language that appears to have done so was dicta. CSX argues that Justice Souter's concurring opinion is "correct, and the decision below is wrong." CSX claims that proximate causation continues to be defined by common law and that plaintiffs must establish that the injury was proximately caused, in whole or part, by the defendant's negligence.

SIGNIFICANCE

A ruling in favor of McBride would confirm that in *Rogers* the Supreme Court held that FELA's proximate cause standard was more relaxed than the common law causation standard. Such a ruling

would maintain the large berth that many commentators believe FELA was meant to provide for injured railway workers.
The Association for American Railroads, in its amicus brief, claims that FELA has become so watered down that it approaches the no-fault standard in workers' compensation statutes, even though Congress showed no intention of eliminating the causation standard. In fact, attempts to amend FELA to provide a no-fault system were rejected in the 1910s, 1930s, and 1990s. Congress rejected these attempts to eliminate causation for several reasons. Unlike workers' compensation, recovery under FELA is unlimited. State legislatures imposed a cap on workers' compensation damages to offset the lack of a causation requirement. Thus under workers' compensation schemes, workers can easily prove entitlement to compensation, but damages are limited. CSX and its amicus claim that if the causation requirement is watered down without imposing a cap on damages, workers will have an unfair advantage over the railroad.

Reversal of the Seventh Circuit's decision in favor of McBride would represent a significant step backward in the application of proximate cause in railroad workplace negligence cases. FELA was designed to broaden the range of negligence cases for which injured railroad workers can recover. One of the main ways FELA purports to widen its scope is by reducing the standard for proximate cause in negligence cases from the entire or sole cause of the injury, to any part of the injury. If the Court rules in favor of CSX, many potentially successful plaintiffs would be barred from being awarded compensation.

Although the number of rail workers injured on the job has decreased in the decades since the enactment of the FELA, railroads remain hazardous. In its amicus brief, the Rail Labor Coalition complains that self regulation of the railroad industry has resulted in increased harassment of workers, with the result that railroads systematically underreport employee injuries. In a 2007 report, Congress identified methods railroads use to "chill" reporting of injuries: "supervisors discouraging employees from filing accident reports; supervisors attempting to influence medical care rendered to injured employees in an attempt to either inject doubt into the workplace nexus for the injury or to reduce the medical treatment rendered the worker to a level below which reporting to [the Federal Railroad Administration] is not required." Because FELA has been the "most effective incentive for railroads to maintain a safe workplace," the adoption of a proximate cause standard would encourage railroads to "continue to cut corners and endanger lives."

The Supreme Court's opinion is likely to have an added benefit: discussion of the role of dicta within the confines of stare decisis, which should prove to be interesting.

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PREVIEW of United States Supreme Court Cases, pages 269–271.

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