

**Case Name:** Andrew L. Neloms, Jr. v. BNSF Railway Co.

**Date Decided:** March 17th, 2011

**Originally Filed in:** Texas (state)

**Decided by:** Texas 2nd District Court of Appeals (State)

**Court:** Court of Appeals of Texas, Second District

**Judge:** Judge Gardner

**Citation:** 2011 WL 944434

**Background:**

Andrew L. Neloms ("Neloms") worked for BNSF Railway Co. ("BNSF") as a [conductor](#). On October 19, 2004 Neloms suffered injuries to his hand when he tripped over a partially buried tie plate at BNSF's Clear Creek [railroad](#) yard. Neloms filed suit against BNSF under the [Federal Employers' Liability Act](#) ("FELA"), 45 U.S.C. Â§ 51 *et seq.* alleging BNSF was negligent and seeking damages for lost wages and physical injury. The case proceeded to trial. Following the close of arguments, the trial court instructed the jury as to the applicable standard of causation in a FELA negligence action. In relevant part, the instruction stated: "Negligence is a legal cause of damage if it played any part, no matter how small, in bringing about or actually causing the injury or damage." The jury returned a verdict for BNSF and judgment was entered accordingly. Neloms appeals the verdict arguing the trial court failed to instruct the jury as to the appropriate FELA causation standard.

**Issue:**

Did the trial court commit reversible error when it instructed the jury regarding the applicable standard of causation in this FELA negligence action?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Procedural Issues - State*
- *Insufficient Evidence of Negligence*
- *Applicability of FELA at Issue*

**Held:**

No, the Court upheld the trial court's instruction. FELA imposes a statutory duty upon railroads to use reasonable care under the circumstances to protect its employees from injury. To prevail in a FELA negligence action, the injured employee must show the railroad breached its duty of reasonable care, and that the breach caused the alleged injury. Under FELA, the standard of causation, or what the employee must show to prove the railroad's breach caused the injury, is a relaxed or "feather weight" standard. Under this standard, the injured employee is only required to prove the railroad's negligence "played any part, even in the slightest, in producing the injury." Here, Neloms argues the trial court's instruction to the jury was not an accurate reflection of the feather weight standard of causation. The Court rejected Neloms

argument. It explained that pursuant to the United States Supreme Court's holding in *Norfolk Southern Railway Co. v. Sorrell*, there are no "pattern jury charges in FELA cases brought in state courts." Put another way, state courts are not required to instruct the jury using the federal model charges regarding the FELA standard of causation verbatim; state courts' jury instructions will be upheld if the substance of the matter is contained in the instruction, and requested instructions may be rejected if they are unnecessarily duplicative. Here, the Court held that Neloms' requested jury instruction was validly rejected reasoning the trial court's instruction was an accurate statement of the FELA causation standard, and that Neloms' instruction was unnecessarily duplicative. Judgment AFFIRMED.

**Comments:**