

SAFETY APPLIANCE AND BOILER INSPECTION

ACTS INTRODUCTION

Certain types of FELA actions are commonly referred to as “Safety Appliance Act” and “Boiler Inspection Act” cases. The actual relationship between the three acts is that all actions for personal injuries by railroad employees falling within the scope of FELA are brought under that Act, but, in instances where violation of either the Safety Appliance Act or the Boiler Inspection Act is involved, the violation of these Acts supplies the wrongful act necessary for liability under the FELA and the question of the railroad's negligence is not involved. The relation between the FELA and either of these two Acts, as well as the issues involved in a FELA action predicated upon one of these Acts, was explained as follows in *Carter v. Atlanta & St. A.B. Ry. Co.*, 338 U.S. 430, 434-35, 70 S.Ct. 226, 229, 94 L.Ed. 236 (1949):

In this situation the test of causal relation stated in the Employers' Liability Act is applicable, the violation of the Appliance Act supplying the wrongful act necessary to ground liability under the F.E.L.A. [Citations.] Sometimes that violation is described as “negligence per se,” [citations]; but we have made clear in the *O'Donnell* case [*O'Donnell v. Elgin, J. & E. R. Co.*, 338 U.S. 384, 70 S.Ct. 200, 94 L.Ed. 187 (1949)] that that term is a confusing label for what is simply a violation of an absolute duty.

Once the violation is established, only causal relation is in issue. And Congress has directed liability if the injury resulted “in whole or in part” from defendant's negligence or its violation of the Safety Appliance Act.

Under the Safety Appliance Act, there are two different categories of violations that serve as a basis upon which liability may be predicated.

The first category consists of violations of the statutory provisions themselves. These include: a prohibition against using any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system or running a train without a sufficient number of cars equipped with sufficient train brakes so that the engineer can control its speed without requiring brakemen to use hand brakes for that purpose, 45 U.S.C.A. § 1; a requirement that cars be equipped with couplers, which couple automatically upon impact and can be uncoupled without the necessity of men going between the ends of the cars, 45 U.S.C.A. § 2; a requirement of secure grab irons on the ends and sides of cars, 45 U.S.C.A. § 4; and the general provision, 45 U.S.C.A. § 11:

All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be

equipped with secure handholds or grab irons on their roofs at the top of such ladders

The second category consists of violations of regulations promulgated by the Secretary of Transportation. Some of the sections under which the Secretary's regulatory powers might be exercised are 45 U.S.C.A. § 5 which prohibits the use of freight cars that do not comply with the "prescribed standards" as to the height of drawbars; section 9, which requires that at least 50% of the cars in any train be equipped with power brakes, subject to the power of the Secretary to increase the percentage, and which further requires that such power brakes conform to the Association of American Railroads standards for such brakes, subject to the Secretary's power to modify such standards for the purpose of achieving safety; and section 12, which requires that the appliances specified in section 4 (secure grab irons and handholds) and section 11 (secure sill steps, efficient hand brakes, secure ladders and running boards, secure grab irons or handholds) of the Act shall conform in number, dimensions, location, and manner of application to the standards fixed, and to be fixed by the Secretary.

Thus, in instructions as to duty in this second class of cases, attention must be given to the applicable rules and regulations, as well as to the statute itself. *See Atchison, T. & S.F. Ry. Co. v. Scarlett*, 300 U.S. 471, 57 S.Ct. 541, 81 L.Ed. 748 (1937) (liability predicated upon violation of rule prescribing standards for ladders; brace rod held not a ladder and rule not applicable); *Williams v. N.Y. Cent. R. Co.*, 402 Ill. 494, 501-03. 84 N.E.2d 399, 403-04 (1949) (ICC rules required boxcars to be equipped with running boards and had no such requirement for gondola cars; another rule provided that special cars should have the same equipment as required for cars of the nearest approximate type; question whether converted boxcar more nearly approximated a boxcar or a gondola car held for the jury).

The section of the Boiler Inspection Act establishing standards imposes a dual requirement that a locomotive, its boiler, tender and all parts and appurtenances (1) shall be in proper condition and safe to operate so that they may be employed in the active service of the carrier without unnecessary peril to life and limb, and (2) shall have been inspected as provided in the Act and be able to withstand the tests prescribed by the Secretary, 45 U.S.C.A. § 23. This latter requirement has been construed as delegating rule making power to the Interstate Commerce Commission (which was the predecessor to the Department of Transportation) under this Act as well. *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 612, 47 S.Ct. 207, 209, 71 L.Ed. 432 (1926).

The FELA itself provides for a further differentiation between actions based in part on the Safety Appliance and Boiler Inspection Acts and other actions based entirely on the FELA. Where violations of the Boiler Inspection and Safety Appliance Acts are involved, contributory negligence may not be considered in mitigation of damages, 45 U.S.C.A. § 53. In addition to the general section of the FELA abolishing the defense of assumption of risk, 45 U.S.C.A. § 54, the Safety Appliance Act contains a section also abolishing assumption of risk where the employee is injured even though the employee has actual notice of the violation, 45 U.S.C.A. § 7, and a specific provision saving actions for personal injury to employees in situations where the penal provisions of the act are not enforceable, 45 U.S.C.A. § 13.

A further difference arises in the manner of proof of cases based partly on the Safety Appliance and Boiler Inspection Acts. As expressed in *Myers v. Reading Co.*, 331 U.S. 477, 483,

67 S.Ct. 1334, 1338, 91 L.Ed. 1615 (1947), quoting from *Didinger v. Pa. R. Co.*, 39 F.2d 798, 799 (6th Cir. 1930):

‘There are two recognized methods of showing the inefficiency of hand brake equipment. Evidence may be adduced to establish some particular defect, or the same inefficiency may be established by showing a failure to function, when operated with due care, in the normal, natural, and usual manner.’

See also Spokane & I. E. R. Co. v. Campbell, 241 U.S. 497, 505, 36 S.Ct. 683, 687, 60 L.Ed. 1125 (1916), for an illustration of the kind of evidence that establishes a violation of the Safety Appliance Act. The terms efficient and inefficient as used in 45 U.S.C.A. § 11 have been defined as follows: “Efficient means adequate in performance; producing properly a desired effect. Inefficient means not producing or not capable of producing the desired effect: incapable; incompetent; inadequate.” *Spotts v. Baltimore & O.R. Co.*, 102 F.2d 160, 162 (7th Cir.1938).

In *O'Donnell v. Elgin, J. & E. Ry. Co.*, 338 U.S. 384, 394, 70 S.Ct. 200, 206, 94 L.Ed. 187 (1949), the Supreme Court, in holding that plaintiff was entitled to a preemptive instruction that equipping a car with a coupler that broke was a violation of the Safety Appliance Act, in effect held that proof of malfunction was sufficient evidence of a violation, indicating, by means of a footnote, that the only defense would be proof that the failure was caused through something other than the inadequacy or defectiveness of the appliance. *See also Coleman v. Burlington N., Inc.*, 681 F.2d 542 (8th Cir. 1982), where the court held that where there is no factual issue as to the failure of a safety appliance required by the Act to function properly, the jury must be given a preemptive instruction that said failure did constitute a violation of the Act.

Finally, sections 1, 2, 6 and 11 of the Safety Appliance Act as well as language in the Boiler Inspection Act (§ 23) limit their applicability to equipment which is hauled or used on the carrier's line. *Tisneros v. Chi. & N.W. Ry. Co.*, 197 F.2d 466 (7th Cir. 1952), *cert. denied*, 344 U.S. 885, 73 S.Ct. 184, 97 L.Ed. 685 (1952) (fire knocker, injured while climbing engine to either extinguish or build up fire in engine standing in roundhouse, denied recovery); *Lyle v. Atchison, T. & S.F. Ry. Co.*, 177 F.2d 221 (7th Cir. 1949), *cert. denied*, 339 U.S. 913, 70 S.Ct. 574, 94 L.Ed. 1339 (1950) (hostler's helper servicing locomotives to prepare them for use, denied recovery); *Baltimore & Ohio R. Co. v. Hooven*, 297 F. 919 (6th Cir. 1924) (Safety Appliance Act case; locomotive in roundhouse for monthly inspection and repairs held not in use). *But see Jenkins v. Chi. & E. Ill. R.R.*, 5 Ill.App.3d 954, 284 N.E.2d 392 (1st Dist.1972) (prior use is not a sufficient basis for liability, but a car held to be “in use” even though it had been delivered to a user on its own spur track for loading and unloading); *Angell v. Chesapeake & O. Ry. Co.*, 618 F.2d 260 (4th Cir. 1980) (engine held “in use” even though it was on a service and maintenance track when maintenance was completed and engine was being returned to active track).

More extended discussions of the problems involved in actions predicated upon violations of these two Acts are contained in the articles cited in the introduction to the FELA at IPI 160.00.

These instructions do not cover the following factual issues: whether the locomotive was being “used on its line” by the railroad, whether the plaintiff or decedent was an employee, or the question of interstate commerce. Where such an issue exists, the instructions should be modified or supplemented, if and to the extent that the court determines that the issue is one for the jury.

170.1.1 Safety Appliance Act--Statutory Provisions

At the time of the occurrence, there was in force a federal statute known as the Safety Appliance Act. That Act imposed upon the railroad the absolute duty to have all cars that it hauls or permits to be hauled or used on its line [equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of persons going between the ends of the cars] [equipped with efficient hand brakes] [equipped with secure and adequate grab irons or handholds at the ends and sides of each car (and on the roof at the top of the ladder on each car)].

This statute is violated when [a coupler fails to function properly while (used) (operated) in the usual and customary manner] [a coupler fails to function properly because of a defect] [hand brakes fail to perform properly while (used) (operated) in the usual and customary manner] [hand brakes fail to perform properly because of a defect] [a car does not have the required grab irons or handholds] [a car grab iron or handhold on a car is not secure or adequate for use].

The statute provides that railroads violating the Act are liable to persons covered under the Act for [injuries] [death] when the violation caused or contributed to cause the [injuries] [death].

The statute further provides that neither negligence on the part of the employee nor the absence of negligence on the part of the railroad is a defense to liability under this Act.

Notes on Use

This instruction is a combination of, and replaces, former IPI instructions 170.01, 170.02, and 170.03.

A violation of the Act is proved by establishing a specific defect or by proof that the coupler or brake failed to function properly when used with due care in the normal and usual manner. *See* Introduction. The bracketed terms in paragraph two of the instruction should be used to make the instruction conform to the evidence.

Comment

The instruction follows the language of the statutory sections except for the phrase “absolute duty” and the use of this paragraph, including that phrase is proper. *Howard v. Baltimore & O. C. T. R. Co.*, 327 Ill.App. 83, 63 N.E.2d 774 (1st Dist.1945). The second paragraph states the way in which the violation may be proved. *See* Introduction. Where the evidence tends to support both allegations of negligence and violation of the Act, a plaintiff is entitled to have the instruction given. *O'Donnell v. Elgin, J. & E. Ry. Co.*, 338 U.S. 384, 70 S.Ct. 200, 94 L.Ed. 187 (1949).

It is reversible error if the court does not separate the negligence claim from the claim for violation of the Act and make it clear that neither evidence of negligence nor due care can be considered in determining a defendant's liability under the Act. *Trout v. Pa. R. Co.*, 300 F.2d 826 (3d Cir. 1962).

If the evidence establishes that the plaintiff or decedent was engaged in the “coupling process” when injured or killed, the evidence is sufficient as a matter of law to constitute cause in fact, and there is no issue of proximate cause to be decided by the jury. *Reynolds v. Alton & S. Ry. Co.*, 115 Ill.App.3d 88, 450 N.E.2d 402, 70 Ill.Dec. 929 (5th Dist.1983).

In *Spotts v. Baltimore & O. R. Co.*, 102 F.2d 160, 162 (7th Cir. 1938), the court defined the terms efficient and inefficient under this section as follows: “Efficient means adequate in performance; producing properly a desired effect. Inefficient means not producing or not capable of producing the desired effect; incapable; incompetent, inadequate.”

Instruction revised November 2018.

170.1.2 Safety Appliance Act--Issues Made by the Pleadings

[The plaintiff claims that he was injured and sustained damages while he was engaged in the course of his employment by the railroad.]

[The plaintiff claims that [decedent's name] was killed while [decedent's name] was engaged in the course of his employment by the railroad, and that [names of beneficiaries] sustained damages by reason of [decedent's name]'s death.]

The plaintiff further claims that the railroad violated the Safety Appliance Act in [that] [one or more of the following respects]:

[1.] [The coupler (on a car used on its line) (on one of its cars) failed to function properly] [when it was (used) (operated) in the usual and customary manner].

[2.] [The coupler (on a car used on its line) (on one of its cars) failed to function properly because of a defect.]

[3.] [The hand brakes (on a car used on its line) (on one of its cars) failed to perform properly when they were (used) (operated) in the usual and customary manner.]

[4.] [The hand brakes (on a car used on its line) (on one of its cars) failed to perform properly because of a defect.]

[5.] [A car used on its line] [One of its cars] [did not have the required grab irons or handholds.]

[6.] [The grab iron or handhold (on a car used on its line) (on one of its cars) was not secure or adequate for use.]

The plaintiff further claims that [one or more of] the alleged violation[s] of the Act, caused, or contributed to cause, the [injury] [death].

The railroad denies [that it violated the Safety Appliance Act as claimed by the plaintiff] [or] [and] [that (plaintiff) (decedent) was engaged in the course of his employment for the railroad at the time of the alleged occurrence].

[The railroad further denies that any violation of the Act caused, or contributed to cause (any of the alleged injuries) (the death).]

[The railroad further denies that the plaintiff was injured or sustained damages (to the extent claimed).]

Notes on Use

This instruction is new. The former Safety Appliance Act instructions did not include an issues instruction.

The first two paragraphs are alternatives.

The numbered bracketed terms should be used to make the instruction conform to the evidence and the statutory violation alleged. For example, [1] and [2] are for use with alleged violations of 45 U.S.C.A. § 2; [3] and [4] are for use with alleged violations of 45 U.S.C.A. § 11; and [5] and [6] are for use with alleged violations of 45 U.S.C.A. § 4.

Factual issues as to whether the car was being “used on its line” by the railroad, whether the plaintiff or decedent was an employee, or whether there was the requisite nexus with interstate commerce are not covered by this instruction. Where such issues exist and the court rules that the issue is one for the jury, the instruction should be modified accordingly.

Instruction revised November 2018.

170.1.3 Safety Appliance Act--Burden of Proof

The plaintiff has the burden of proving each of the following propositions:

First, that the [plaintiff was injured] [decedent was killed] while the [plaintiff] [decedent] was engaged in the course of his employment by the railroad.

Second, that the railroad violated the Safety Appliance Act in one of the ways claimed by the plaintiff as stated in these instructions.

Third, that a violation of the Safety Appliance Act caused, or contributed to cause [plaintiff's injury] [decedent's death].

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the railroad.

Notes on Use

The former Safety Appliance Act instructions did not include a burden of proof instruction.

Instruction revised November 2018.

170.03 Safety Appliance Act –Locomotive Inspection Act – Definition of Causation

Defendant “caused or contributed to cause” plaintiff’s [injury] [death] if the violation of the Act played a part – no matter how small – in bringing about the [injury] [death]. [There can be more than one cause contributing to an [injury] [death].]

Comment

See the Comment to IPI 160.2.2 regarding the FELA causation standard.

Instruction and Comment approved November 2018.

170.4 Safety Appliance Act--Locomotive Inspection Act--No Assumption of Risk by Employee

At the time of the occurrence there was in force a federal statute known as the [Safety Appliance Act] [Locomotive Inspection Act] which provided that in any action brought against a railroad to recover damages for [injury to] [the death of] an employee, the employee shall not be held to have assumed the risks of his employment in any case where the violation by the railroad of the Act caused, or contributed to cause, the [injury to] [death of] the employee.

Comment

This instruction paraphrases that portion of 45 U.S.C.A. § 54 applicable to cases based upon Safety Appliance Act and Boiler Inspection Act violations.

Instruction revised November 2018.

**170.5 Combined FELA & Safety Appliance Act or Locomotive Inspection Act
Case--No Assumption of Risk by Employee**

At the time of the occurrence there was in force a federal statute which provided that in any action brought against a railroad to recover damages for [injury to] [the death of] an employee, the employee shall not be held to have assumed the risks of his employment in any case where the negligence of any of the officers, agents, or employees of the railroad or where the violation by the railroad of any statute enacted for the safety of the employee caused, or contributed to cause, the [injury to] [death of] the employee.

Notes on Use

This instruction combines the portion of 45 U.S.C.A. § 54 applicable to FELA negligence actions with those applicable to actions based on violations of the Safety Appliance Act or Boiler Inspection Act. It should be given in lieu of IPI 160.09 and 170.04 when both types of action are submitted to the jury.

Comment

See Comment to IPI 160.09.

Instruction revised November 2018.

170.6 Locomotive Inspection Act--Statutory Provisions

At the time of the occurrence, there was in force a federal statute known as the Locomotive Inspection Act. That Act imposed upon the railroad the absolute duty to have every locomotive used or permitted to be used on its line, together with [the (boiler) (tender)] all parts and appurtenances of any such locomotive, in a proper and safe condition for operation on the railroad without unnecessary danger to life or limb.

The statute provides that railroads violating the Act are liable to persons covered under the Act for [injuries] [death] when the violations caused or contributed to cause the [injuries] [death].

The statute further provides that neither negligence on the part of the employee nor the absence of negligence on the part of the railroad is a defense to liability under this Act.

Notes on Use

The second paragraph has been added to make it clear that the statute is violated if the equipment is unsafe in use despite the fact that no actual defect in the equipment is shown.

Comment

This instruction covers a violation of 45 U.S.C.A. § 23, the Boiler Inspection Act. The comment under IPI 170.01.01 is applicable since the Act is given the same construction as the Safety Appliance Act. *Lilly v. Grand Trunk W. R. Co.*, 317 U.S. 481, 485-88, 63 S.Ct. 347, 350-52, 87 L.Ed. 411 (1943); *Calabritto v. N.Y., N.H. & H.R. Co.*, 287 F.2d 394 (2d Cir. 1961, *cert. denied*, 366 U.S. 928, 81 2.Ct. 1649, 6 L.Ed.2d 387 (1961)).

Dangerous conditions caused by foreign substances (such as ice or sand and oil) may give rise to liability under the Boiler Inspection Act even in the absence of a violation of federal safety regulations. *Whelan v. Penn Cent. Co.*, 503 F.2d 886 (2d Cir. 1974).

In *Bankston v. Chesapeake & Ohio Ry. Co.*, 128 Ill.App.3d 166, 470 N.E.2d 512, 83 Ill.Dec. 386 (1st Dist.1984), there was evidence that oil was on the exterior catwalk of the locomotive and that the plaintiff slipped on the oil. This instruction was given without objection. The court held that this evidence supported the jury's findings that the railroad had violated 45 U.S.C.A. § 23 and was liable to the plaintiff.

Instruction revised November 2018.

170.6.1 Locomotive Inspection Act--Issues Made by the Pleadings

[The plaintiff claims that he was injured and sustained damages while he was engaged in the course of his employment by the railroad.]

[The plaintiff claims that [decedent's name] was killed while [decedent's name] was engaged in the course of his employment by the railroad, and that [names of beneficiaries] sustained damages by reason of [decedent's name]'s death.]

The plaintiff further claims that the railroad violated the Locomotive Inspection Act in that the locomotive used or permitted to be used on its line together with [the boiler, tender, and] all parts and appurtenances of the locomotive was not in a proper and safe condition for operation on the railroad and was a danger to life or limb.

The plaintiff further claims that the alleged violation[s] of the Act caused, or contributed to cause, the [injury] [death].

The railroad [denies that it violated the Locomotive Inspection Act as claimed by the plaintiff] [and] [denies that the (plaintiff) (decedent) was engaged in the course of his employment for the railroad at the time of the alleged occurrence.]

[The railroad further denies that any violation of the Act caused, or contributed to cause (any of the alleged injuries) (the death).]

[The railroad further denies that the plaintiff (was injured) (or) (sustained damages) (to the extent claimed).]

Notes on Use

The former Boiler Inspection Act instructions did not include an issues instruction.

The first two paragraphs are alternatives.

Instruction revised November 2018.

170.6.2 Locomotive Inspection Act--Burden of Proof

The plaintiff has the burden of proving each of the following propositions:

First, that the [plaintiff was injured] [decedent was killed] while the [plaintiff] [decedent] was engaged in the course of his employment by the railroad.

Second, that the railroad violated the Locomotive Inspection Act in one of the ways claimed by the plaintiff as stated in these instructions.

Third, that a violation of the Locomotive Inspection Act caused, or contributed to cause, [plaintiff's injury] [decedent's death].

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the railroad.

Notes on Use

The former Boiler Inspection Act instructions did not include a burden of proof instruction.

Instruction revised November 2018.

170.07 Damages--Contributory Negligence Not a Bar and Does Not Diminish Damages Where Injury or Death Caused by Violation of Safety Appliance or Locomotive Inspection Act

If you find that the railroad violated the [Safety Appliance Act] [Locomotive Inspection Act], and that such violation caused, or contributed to cause, [plaintiff's injuries] [decedent's death] then contributory negligence of the [plaintiff] [decedent] shall neither bar a recovery nor reduce the amount of the plaintiff's damages.

Comment

This instruction states the applicable provisions of 45 U.S.C.A. § 53.

Instruction revised November 2018.