

Summary of SC93591, *Lawrence Mickey v. BNSF Railway Company and Safeco Insurance Company of America*

Appeal from the St. Louis City Circuit Court, Judge John J. Riley

Argued and submitted February 4, 2014; opinion issued July 8, 2014

Attorneys: The railway and insurance companies were represented by William A. Brasher and Thomas P. McDermott of Boyle Brasher LLC in St. Louis, (314) 621-7700; and Mickey was represented by Michael A. Wolff, Jerome J. Schlichter, Roger C. Denton and Elizabeth M. Wilkins of Schlichter Bogard & Denton LLP in St. Louis, (314) 621-6115. The United States, which participated in arguments in the case as a friend of the Court, was represented by United States Attorney Richard G. Callahan and Nicholas P. Llewellyn of the United States attorney's office in St. Louis, (314) 539-7637; and Kathryn Keneally, Jonathan S. Cohen and Marion E.M. Erickson of the department of justice in Washington, D.C., (202) 514-9861.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A railway company lost a negligence suit against an employee who alleged he was injured by the company's negligence. The railway company paid most of the judgment but withheld the portion of the judgment that it claimed was due to the IRS for the railroad retirement taxes that railroad workers and employers pay in lieu of Social Security and Medicare taxes. The trial court found that the judgment was not taxable and ordered the railway company's surety to pay the missing part of the judgment. The railway company and surety appeal. In a unanimous opinion by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the judgment. Awards for personal injury to railroad employees are not subject to income or retirement taxes even when part of the award is for lost wages due to lost earning capacity resulting from the injury. When the jury enters a general damages award and does not allocate part to lost wages, there is no way to know what, if any, part of the award is for lost wages.

Facts: Lawrence Mickey worked as a yard conductor and switchman for BNSF Railway Company for 40 years. He suffered disabling injuries that prevented him from returning to work, and he sued BNSF under the Federal Employers Liability Act (FELA) for damages stemming from those injuries. The jury returned a general verdict of \$345,000 in Mickey's favor. BNSF appealed and filed a bond with Safeco Insurance Company as surety. The court of appeals affirmed the judgment, and BNSF subsequently paid Mickey the amount of the judgment plus costs and post-judgment interest, but it withheld \$12,820.80, which it claimed was Mickey's share of railroad retirement taxes that BNSF was obligated to withhold under the federal Railroad Retirement Tax Act (RRTA) because part of the award constituted pay for lost wages. The trial court found BNSF failed to satisfy the judgment and entered judgment against Safeco for the missing \$12,820.80 and post-judgment interest. It also overruled a motion the companies later filed to vacate and modify the judgment as fully satisfied. BNSF and Safeco appeal.

AFFIRMED.

Court en banc holds: The trial court did not err in finding that BNSF did not satisfy the judgment or in entering judgment on the bond against Safeco. Personal injury awards, regardless of whether they include pay for lost wages, are not subject to income tax or Social Security or Medicare withholding taxes that are imposed by the Federal Insurance Contributions Act (FICA). Although railroad workers are subject to RRTA rather than FICA withholding taxes, a similar exclusion applies to RRTA taxes. BNSF contends that the Railroad Retirement Act (RRA) renders Mickey's entire award subject to RRTA taxes as "compensation," but the RRTA, not the RRA, governs the tax issue here. Further, even were BNSF correct that the RRA definition of "compensation" governs, it does not authorize withholding of RRTA taxes here. It applies only if a court presumes that some part of the jury award is for lost wages if lost wages were requested. If there is such a presumption, the RRA then would require that the entire award be considered to be for lost wages unless it specifically says otherwise. The Court rejects this approach for two reasons. First, it would make little sense for this Court to presume that some of all types of damages requested must have been included in the award, only so that the Court can deem all of the award as being for lost wages and, therefore, hold that all types of damages requested were not included in the award. Second, where, as here, the jury returns a general verdict, Missouri law does not presume that the verdict includes some of each type of damage sought. Only the jury knows what damages contributed to the amount of its general verdict, and Missouri courts do not speculate about the jury's apportionment of damages. This Court, therefore, will not presume that a portion of Mickey's award is for lost wages merely because lost wages were among the many types of damages he requested.