

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORFOLK SOUTHERN RAILWAY CO. v. SORRELL**CERTIORARI TO THE COURT OF APPEALS OF MISSOURI**

No. 05–746. Argued October 10, 2006—Decided January 10, 2007

Respondent Sorrell was injured while working for the petitioner railroad (Norfolk), and sought damages for his injuries in Missouri state court under the Federal Employers' Liability Act (FELA), which makes a railroad liable for an employee's injuries "resulting in whole or in part from [the railroad's] negligence," Section 1. FELA reduces any damages awarded to an employee "in proportion to the amount [of negligence] attributable to" the employee, Section 3. Missouri's jury instructions apply different causation standards to railroad negligence and employee contributory negligence in FELA actions. An employee will be found contributorily negligent if his negligence "directly contributed to cause" the injury, while railroad negligence is measured by whether the railroad's negligence "contributed in whole or in part" to the injury. After the trial court overruled Norfolk's objection that the instruction on contributory negligence contained a different standard than the railroad negligence instruction, the jury awarded Sorrell \$1.5 million. The Missouri Court of Appeals affirmed, rejecting Norfolk's contention that the same causation standard should apply to both parties' negligence.

Held:

1. Norfolk's attempt to expand the question presented to encompass *what* the FELA causation standard should be, not simply whether the standard should be the same for railroad negligence and employee contributory negligence, is rejected. This Court is typically reluctant to permit parties to smuggle additional questions into a case after the grant of certiorari. Although the Court could consider the question of what standard applies as anterior to the question whether the standards may differ, the substantive content of the causation standard is a significant enough issue that the Court prefers not to address it when it has not been fully presented. Pp. 4–6.

Syllabus

2. The same causation standard applies to railroad negligence under FELA Section 1 as to employee contributory negligence under Section 3. Absent express language to the contrary, the elements of a FELA claim are determined by reference to the common law, *Urie v. Thompson*, 337 U. S. 163, 182, and unless common-law principles are expressly rejected in FELA’s text, they are entitled to great weight, *Consolidated Rail Corporation v. Gottshall*, 512 U. S. 532, 544. The prevailing common-law view at the time FELA was enacted was that the causation standards for negligence and contributory negligence were the same, and FELA did not expressly depart from this approach. This is strong evidence against Missouri’s practice of applying different standards, which is apparently unique among the States. Departing from the common-law practice would in any event have been a peculiar approach for Congress to take in FELA: As a practical matter, it is difficult to reduce damages “in proportion” to the employee’s negligence if the relevance of each party’s negligence is measured by a different causation standard. The Court thinks it far simpler for a jury to conduct the apportionment FELA mandates if the jury compares like with like. Contrary to Sorrell’s argument, the use of the language “in whole or in part” with respect to railroad negligence in FELA Section 1, but not with respect to employee contributory negligence in Section 3, does not justify a departure from the common-law practice of applying a single causation standard. It would have made little sense to include the “in whole or in part” language in Section 3; if the employee’s contributory negligence contributed “in whole” to his injury, there would be no recovery against the railroad in the first place. The language made sense in Section 1, however, to clarify that there could be recovery against the railroad even if it were only partially responsible for the injury. In any event, there is no reason to read the statute as a whole to encompass different causation standards, since Section 3 simply does not address causation. Finally, FELA’s remedial purpose cannot compensate for the lack of statutory text: FELA does not abrogate the common-law approach. A review of FELA model instructions indicates that there are a variety of ways to instruct a jury to apply the same causation standard to railroad negligence and employee contributory negligence. Missouri has the same flexibility as other jurisdictions in deciding how to do so, so long as it now joins them in applying a single standard. On remand, the Missouri Court of Appeals should address Sorrell’s argument that any error in the jury instructions was harmless, and should determine whether a new trial is required. Pp. 6–14. 170 S. W. 3d 35, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS,

Syllabus

SCALIA, KENNEDY, SOUTER, THOMAS, BREYER, and ALITO, JJ., joined. SOUTER, J., filed a concurring opinion, in which SCALIA and ALITO, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment.