

20-807 LeDURE V. UNION PACIFIC RAILROAD COMPANY

DECISION BELOW: 962 F.3d 907

LOWER COURT CASE NUMBER: 19-2164

QUESTION PRESENTED:

The Seventh Circuit affirmed summary judgment for Union Pacific Railroad Company (UP) on claims brought by its employee, Bradley LeDure, under the Federal Employers' Liability Act (FELA), 45 U.S.C. §51 *et seq.* and Locomotive Inspection Act (LIA), 49 U.S.C. §20701 *et seq.* LeDure's claims arise from injuries he sustained after slipping on the oily passageway of a UP locomotive which was part of a freight train that originated in Chicago and temporarily stopped in a UP railyard before continuing into Missouri. Although a federal safety regulation enacted pursuant to the LIA requires that locomotive passageways be kept free of oil and other slipping hazards and the FELA imposes negligence *per se* liability when that regulation is violated, the courts below held that the locomotive was not "in use" within the meaning of the LIA to trigger application of the regulation and dismissed that claim. As to the general FELA negligence claim, the lower courts held that the oily passageway was not foreseeable to UP even though it failed, for several days before the incident, to perform the mandatory daily inspections of the locomotive.

In holding that the locomotive was not in use, the Seventh Circuit's decision conflicts with the holdings of this Court, as well as those of the First, Second, Third, Fourth, Fifth, Sixth, and Eighth Circuits. In holding that LeDure's injuries were not a reasonably foreseeable consequence of UP's failure to inspect its locomotive, the Seventh Circuit's decision conflicts with this Court's holdings that a jury should be permitted to draw reasonable inferences from circumstantial evidence in FELA cases—and, specifically here, to conclude that it is foreseeable that oil can accumulate as a slipping hazard on a locomotive passageway when the railroad fails to conduct mandatory daily inspections designed to detect and remediate those very hazards.

Two questions are presented:

1. Whether a locomotive is in use on a railroad's line and subject to the LIA and its safety regulations when its train makes a temporary stop in a railyard as part of its unitary journey in interstate commerce, or whether such use does not resume until the locomotive has left the yard as part of a fully assembled train, as held by the Seventh Circuit below, contrary to the decisions of this Court and other circuits.

2. Whether the FELA allows a jury determination on the issue of foreseeability of harm from oil on a locomotive passageway when the railroad failed to conduct federally mandated daily safety inspections intended to discover and cure such hazards in the days before the injury incident, contrary to the longstanding decisions of this Court.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION. JUSTICE BARRETT TOOK NO PART.

CERT. GRANTED 12/15/2021