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Can a Railroad Be Sued in State Court Under the Federal Employers' Liability Act Anywhere It Does Business?

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Can a Railroad Be Sued in State Court Under the Federal Employers' Liability Act Anywhere It Does Business?

CASE AT A GLANCE

BNSF Railway Company was sued in Montana state court for injuries to employees Robert Nelson and Brent Tyrrell. Neither Nelson nor Tyrrell worked for BNSF in Montana, nor did their injuries occur there. The Montana Supreme Court held that its courts were authorized to assert personal jurisdiction over BNSF by the Federal Employers' Liability Act (FELA). The U.S. Supreme Court will decide whether the FELA authorized personal jurisdiction and, if not, whether the state courts' exercise of personal jurisdiction violated due process.

BNSF Railway Co. v. Tyrrell, et al.
Docket No. 16-405

Argument Date: April 25, 2017
From: The Supreme Court of Montana

by Richard Henry Seamon
College of Law, University of Idaho, Moscow, ID

INTRODUCTION

The Federal Employers' Liability Act (FELA) makes railroads liable in money damages to employees for on-the-job injuries. At issue in this case is an FELA provision that authorizes FELA actions to be brought in the federal court for any district in which the defendant "do[es] business" and that says "[t]he jurisdiction" of the federal courts in FELA actions "shall be concurrent with" that of the state courts. 45 U.S.C. § 56.

ISSUES

Does the FELA authorize a state court to exercise personal jurisdiction over a railroad that does business in that state?

Did the Montana courts violate due process by exercising personal jurisdiction in this case?

FACTS

This case concerns the power of state courts to hear cases brought against railroads under the Federal Employers' Liability Act. The railroad in this case is petitioner BNSF Railway Co., Inc., a Delaware corporation with its principal place of business in Texas. BNSF runs railroad lines in 28 states, including Montana. In Montana, BNSF operates 2,700 miles of railroad, representing 6 percent of its total mileage, and employs 2,100 employees, representing 5 percent of its total payroll.

The case now before the Court arises from two lawsuits, later consolidated, that were brought against BNSF in Montana state courts. Both suits rest on the Federal Employers' Liability Act. In one suit, respondent Robert Nelson, a North Dakota resident, claims

he hurt his knee while working for BNSF in Washington State. In the other suit, the administrator (and wife) of Brent Tyrrell claims Tyrrell was fatally exposed to carcinogenic chemicals while working for BNSF in states other than Montana. The administrator of Tyrrell's estate is a resident of South Dakota.

BNSF moved to dismiss both suits on the ground that the Montana state courts lacked personal jurisdiction over it, i.e., lacked power to hear the lawsuits against it. The two trial courts came to opposite conclusions: The trial court in Nelson's case granted BNSF's motion to dismiss, while the trial court in Tyrrell's case denied it. The latter court certified its decision as final, and both cases were consolidated on appeal to the Montana Supreme Court.

The Montana Supreme Court held by a 6-to-1 vote that Montana courts can exercise personal jurisdiction over BNSF because it does business in Montana. The court first held that the FELA authorizes Montana courts to exercise personal jurisdiction over BNSF. The court based that holding on 45 U.S.C. § 56. Section 56 says that (1) FELA actions "may be brought in a [federal] district court . . . in which the defendant shall be doing business at the time of commencing such action" and (2) the jurisdiction of the federal courts in FELA actions "shall be concurrent with that of" the state courts. The Montana Supreme Court reasoned that BNSF does business in Montana by operating 2,700 miles of railroad and employing 2,100 employees in the state and can therefore under § 56 be sued in a Montana federal or state court.

The court rejected BNSF's argument that personal jurisdiction was barred under the Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). *Daimler* did not control, the court concluded, because it did not involve an FELA claim against a railroad.

The Montana Supreme Court observed that the exercise of personal jurisdiction over BNSF also must be authorized by state law. The court held that state law does provide that authority. Montana’s long-arm statute authorizes jurisdiction over “persons found within . . . Montana.” The court held that BNSF could be “found” in Montana because of its miles of track and employees.

Justice McKinnon dissented. She concluded that the FELA simply does not address the exercise of personal jurisdiction by state courts. She further concluded that under the U.S. Supreme Court’s decision in *Daimler*, the exercise of personal jurisdiction in these cases violated due process.

CASE ANALYSIS

This case revolves mainly around the Federal Employers’ Liability Act. Substantively, the FELA gives railroad employees the right to recover money damages for on-the-job injuries. But this case centers on a procedural provision in the FELA: 45 U.S.C. § 56. Section 56 contains two relevant sentences:

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

In the decision before the Court, the Montana Supreme Court held that § 56 authorized Montana’s state courts to exercise personal jurisdiction over BNSF because BNSF does business in Montana. Respondents Tyrrell and Nelson support that holding. BNSF argues, however, that § 56 simply doesn’t address personal jurisdiction.

Thus, the main issue before the Court is one of statutory interpretation. A second issue arises, though, if the Court interprets § 56 as not addressing personal jurisdiction. In that event, the Montana courts’ exercise of personal jurisdiction must be analyzed under U.S. Supreme Court precedent addressing due process limits on state courts’ exercise of personal jurisdiction. The leading precedent is *Daimler*, a decision whose applicability the parties in this case dispute.

On the issue of § 56’s interpretation, BNSF argues that each of the two sentences from § 56 quoted above serves a function other than authorizing state courts to exercise personal jurisdiction.

BNSF argues that § 56’s first sentence governs the venue, i.e., the proper location, for FELA suits filed in federal court. As BNSF observes, the requirement that a lawsuit be brought in the proper venue is separate from the requirement that the court in which a lawsuit is brought have personal jurisdiction over the defendant. To support its argument that § 56’s first sentence addresses venue, not personal jurisdiction, BNSF cites Supreme Court opinions and legislative history describing the first sentence as a “venue” provision. BNSF also relies on the history of § 56’s first sentence. Congress added it to the FELA in 1910. Before that, venue in FELA actions was governed by the general federal venue statute, under which venue in federal civil actions was proper only in the state in

which a corporation was incorporated. In BNSF’s view, Congress added § 56’s first sentence to authorize additional, more convenient venue options for FELA plaintiffs.

Section 56’s second sentence, according to BNSF, clarifies that the federal courts do not have exclusive subject-matter jurisdiction over FELA suits; state courts can hear them, too. BNSF cites Supreme Court cases and academic commentary suggesting that Congress added the second sentence to overrule a state supreme court decision holding that only federal courts could hear FELA suits. BNSF also points out that the term “concurrent jurisdiction,” which appears in the second sentence, is always used in the law to refer to subject-matter jurisdiction, not personal jurisdiction. In sum, BNSF interprets § 56 as addressing venue and subject-matter jurisdiction instead of personal jurisdiction.

To challenge BNSF’s interpretation, respondents Tyrrell and Nelson rely mostly on one piece of legislative history and several Supreme Court decisions. The legislative history consists of a statement by Senator William Borah, the sponsor of the bill that became § 56’s first sentence. When the bill was reported out to the Senate, Senator Borah said on the Senate floor that it was meant to enable the FELA plaintiff suing a railroad corporation “to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action, if he chooses to do so.”

Senator Borah’s statement about § 56 was quoted with approval by the U.S. Supreme Court in *Baltimore & Ohio R.R. Co. v. Kepner*, 314 U.S. 44 (1941). In addition to *Kepner*, respondents cite several other cases in which the Court has seemingly relied on § 56 to allow state courts to hear FELA actions against railroads doing business in the state, even though the actions were brought by nonresidents for injuries that occurred outside the state.

BNSF argues that neither Senator Borah’s statement nor the Supreme Court decisions cited by respondents support their interpretation of § 56. BNSF observes that neither Borah’s statement nor the decisions mention the term “personal jurisdiction.” Instead, BNSF contends, Senator Borah referred to § 56’s first sentence as addressing venue and its second sentence as addressing subject-matter jurisdiction. The Supreme Court cases cited by respondents, in BNSF’s view, address issues other than personal jurisdiction.

If the Court agrees that § 56 does not address personal jurisdiction, the Court must decide whether the Montana Supreme Court’s exercise of personal jurisdiction over BNSF, which was based on state law, violated the Due Process Clause of the Fourteenth Amendment. The Court has issued many decisions addressing due process limits on the state courts’ exercise of personal jurisdiction over nonresident corporations, as the Montana Supreme Court did here.

The Court’s most relevant decisions concern what is called “general personal jurisdiction” or just “general jurisdiction.” A state court exercises “general jurisdiction” over a corporation when it hears a case arising from events that don’t relate to the corporation’s contacts with the state. Here, for example, the Montana state courts sought to exercise “general jurisdiction” over BNSF because

Nelson’s and Tyrrell’s suits arose from injuries that occurred in other states. If, in contrast, their suits arose from injuries that occurred in Montana, Montana courts would be exercising what is called “specific” personal jurisdiction (or just “specific jurisdiction”) over BNSF.

The earliest major case on general jurisdiction was *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984). *Helicopteros* held that for a corporation to be subject to general jurisdiction in a state court, the corporation had to have “continuous and systematic contacts” with the state. In a more recent case, the Court clarified that this “continuous and systematic contacts” standard is much harder to meet than most courts, commentators, and lawyers had believed. That recent case is *Daimler AG v. Bauman*.

In *Daimler*, Argentinian residents sued Daimler, a German corporation, in California. They alleged that Daimler’s wholly owned Argentinian subsidiary collaborated with Argentinian officials to torture and kill the plaintiffs or their relatives during Argentina’s “Dirty War.” The Court held that Daimler was not subject to general jurisdiction in California even assuming the contacts of its U.S. subsidiary, Mercedes-Benz USA, could properly be imputed to it. Mercedes-Benz USA was the largest supplier of luxury cars to the California market. Even so, the Court held that this was not enough to subject Daimler to general jurisdiction in California. The Court held that a corporation is subject to general jurisdiction only if its contacts with a state are “so ‘continuous and systematic’ as to render [it] essentially at home in the [that] State.” The Court added that, aside from “exceptional cases,” a corporation meets the “essentially at home” standard only in the state in which it is incorporated or in which it has its principal place of business (such as its headquarters). A corporation almost certainly wouldn’t be considered “essentially at home” in a state merely because it was treated under state law as one that “does business” in the state.

Respondents Nelson and Tyrrell appear to concede that BNSF would not be considered “essentially at home” in Montana under the *Daimler* standard. Respondents argue, however, that they need not meet that standard because *Daimler* doesn’t apply here. Respondents argue that *Daimler* only addresses the power of state courts to exercise personal jurisdiction under state law. Here, they contend, the exercise of personal jurisdiction is authorized by a federal law—namely, by § 56 of the FELA, which authorizes personal jurisdiction anywhere a corporate defendant “do[es] business.” It is undisputed that BNSF “do[es] business” in Montana for purposes of § 56.

Besides disputing respondents’ view that § 56 addresses personal jurisdiction, BNSF says that if § 56 did authorize state courts to exercise personal jurisdiction in Nelson’s and Tyrrell’s suits, § 56 would violate due process. In BNSF’s view, Congress can’t authorize state courts to exercise personal jurisdiction in cases where due process would bar them from doing so under state law.

Respondents disagree. They observe that Congress could authorize a Montana federal court to exercise personal jurisdiction over BNSF based on its doing business there. Therefore, they argue, Congress could also authorize the Montana state courts to do so (as respondents argue Congress has done in § 56 of the FELA).

The Court hasn’t addressed whether Congress can authorize state courts to exercise personal jurisdiction when due process would prevent the state courts from doing so under state law. The Court must address the issue in this case if it interprets § 56 of the FELA to authorize personal jurisdiction in respondents’ suits. That is because, as mentioned above, there appears to be no dispute that BNSF did not meet the “essentially at home” standard the Court’s due process ruling in *Daimler* prescribes for a state court’s exercise of general personal jurisdiction.

SIGNIFICANCE

This case has significance for FELA actions and for the law of personal jurisdiction. Although the subject of personal jurisdiction will strike many nonlawyers as esoteric, actions under the FELA shows that the issue has great practical significance because where a defendant can be sued can affect who wins the suit (or so lawyers believe).

The FELA covers on-the-job injuries to railroad employees nationwide. According to the U.S. Bureau of Labor Statistics, 113,300 people worked for railroads in 2014 (<https://www.bls.gov/ooh/transportation-and-material-moving/railroad-occupations.htm>). According to the U.S. Department of Transportation’s statistics, railroad employees collectively suffered 4,446 on-the-job injuries in 2014, plus 10 deaths (U.S. Dep’t of Transp., Bureau of Transp. Statistics, Table 2-44, https://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_02_44.html). According to amicus the Association of American Railroads (AAR), these on-the-job injuries generate hundreds of FELA suits each year on which railroads collectively spend hundreds of millions of dollars defending themselves or paying out damages awards.

The issue of where a FELA lawsuit can be brought is important not only because some locations are more convenient than others but also because there is at least a perception that some locations are more favorable to FELA plaintiffs than others. AAR contends that many FELA suits are filed in locations that are thought to have plaintiff-friendly juries and judges. According to AAR, “a few states, including Montana, Missouri, Illinois and Pennsylvania, appear to be magnet jurisdictions for FELA litigation against nonresident railroads.” BNSF claims that the Montana Supreme Court, in particular, “has repeatedly and consistently ruled against railroad defendants in FELA cases.” Not coincidentally, BNSF adds, it “has recently faced 36 FELA lawsuits in Montana state court that have no connection whatsoever to Montana.”

FELA plaintiffs will have a wide choice of forums for their lawsuits if the Court agrees with respondents that § 56 exposes railroads to suits in any state where they do business. (For example, BNSF qualifies as “doing business” in at least 28 states.) In contrast, if the Court sides with BNSF, a FELA plaintiff generally will only be able to sue a railroad in (1) the railroad’s state of incorporation; (2) the state where the railroad has its principal place of business (e.g., its corporate headquarters); or (3) the state where the injury occurred. According to AAR, there are at least 170 FELA lawsuits pending nationwide that don’t fall into any of these categories, and that would therefore be dismissed for lack of personal jurisdiction if BNSF wins.

The large number of lawsuits that would be dismissed if BNSF wins at least partly reflects that the three possible forums described above will not be convenient for some FELA plaintiffs. For example, as respondents point out, these options would not allow Montana residents to sue BNSF in Montana for an injury suffered in other states, even though Montana would usually be their most convenient forum. Moreover, plaintiffs often file suit in their home states in the reasonable belief that they will be favored over an out-of-state corporation.

Whether BNSF or respondents Nelson and Tyrrell win, the Court will address due process limits on the state courts' exercise of personal jurisdiction. If BNSF wins, the Court is likely to rely on *Daimler* and to clarify that its "essentially at home" standard for general jurisdiction applies to U.S. as well as overseas corporations. If respondents win, the Court must address whether Congress can authorize state courts to hear lawsuits that due process would not allow them to hear if they were acting under state law alone.

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PREVIEW of United States Supreme Court Cases, pages 232–235.
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