

Personal injury lawyer Michael Avery comments on the Norfolk Southern Railway Co. case involving FELA

A recent Virginia Supreme Court case addressed the standard of proof in a Federal Employers' Liability Act (FELA) matter. Michael Avery, Esq. reviews.

FAIRFAX, VIRGINIA, UNITED STATES, April 30, 2019 /EINPresswire.com/ -- Personal Injury Attorney [Michael Avery](#), in his most recent article, comments on the Virginia Supreme Court case Norfolk Southern Railway Co. v. Sumner, available on his blog at <https://michaelayesq.law.blog>. The central issue on appeal was "sufficient proof of causation."



Michael Avery, attorney in Fairfax, Virginia

“On February 26, 2013, the plaintiff was working as the conductor of a northbound Norfolk Southern freight train running from Greensboro, North Carolina through Danville, Virginia and points north. The temperature was in the 30’s and it was cloudy with light mist or rain. The yardmaster at Greensboro warned the train’s engineer, Teddy Lester, that some ice might be encountered farther north.” Plaintiff’s duties as a conductor “required him to dismount the last car in the ‘cut’ and walk south, away from the locomotive, turning off an electric timing device on the switch, and continue walking south nearly 200 feet to release the ‘derail,’ a protective device to prevent movement of cars on the side track. He would then return north to throw the switch and call the engineer to back the ‘cut’ onto the side track.”

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The central issue on appeal was whether there was sufficient proof of causation. The Court explained that in FELA cases, causation may be proved by circumstantial evidence alone”

Michael L. Avery, personal injury attorney, Fairfax, Virginia

When the engineer did not hear back from the Plaintiff as expected, he went to investigate and found the Plaintiff at the bottom of a steep embankment, very disoriented with injury and no

memory as to how he got there. Plaintiff had a fractured collarbone and three fractured ribs. Plaintiff's expert testified at trial that the walkway near the fall was too narrow and covered with inappropriate large crushed rock and it contributed to the injury. After a three-day jury trial in circuit court, the Plaintiff was awarded \$336,293.

Federal Employers' Liability Act (FELA) "was enacted by Congress in 1908, and has since been amended to serve the humanitarian purpose of imposing on railroads engaged in interstate commerce as common carriers the duty to provide their employees a safe place to work. Railroad employees who suffer injuries or death, to which a breach of that duty contributed, even to the slightest degree, were granted a remedy by way of a civil action for damages against the employer. The federal and state courts were given concurrent jurisdiction to adjudicate such actions." The Court noted that "[u]nder the FELA, a railroad has a non-delegable and continuing duty to use reasonable care to furnish its employees a safe place to work. The employer must perform inspections to discover dangers in the place where employees are required to work and after discovering the existence of dangers the employer must take precautions for the employees' safety." The Court went on to explain that standard of proof and proximate cause in a FELA case is more lenient than a traditional tort case.

The central issue on appeal was whether there was sufficient proof of causation. The Court explained that "[i]n FELA cases,



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causation may be proved by circumstantial evidence alone and does not require direct evidence.” Therefore, the Court concluded that “[t]here was evidence to support the inference that the defendant’s negligence played a part, however small, in causing the fall which was the source of the plaintiff’s injury. The evidence may also have been sufficient to support an inference that the plaintiff’s fall resulted from causes unrelated to the defendant’s negligence. Under the settled principles governing FELA cases, that juxtaposition created a jury issue as to which inference should be drawn.” Thus, there was sufficient evidence to support the jury’s verdict and judgment was affirmed.

The case is Norfolk Southern Railway Co. v. Sumner, Record No. 180121.



Michael L Avery, attorney Fairfax, Virginia

About [Michael L. Avery, Sr.](#)

[Michael Leon Avery, Sr.](#), is a personal injury attorney in Fairfax, Virginia. Michael Avery has over 20 years of experience in advocating for clients who have been injured in a wide array of accidents—from car and truck accidents to bicycle crashes to accidents caused by drunk drivers. He became a lawyer after a distinguished career in the U.S. Marine Corps.

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