

**Case Name:** Dwight Compton v BNSF Railway Company (3rd party plaintiff) v Claremore Regional Hospital, LLC (3rd party defendant)

**Date Decided:** Not Available

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. Northern District of Oklahoma

**Judge:** Judge Kern

**Citation:** 2009 WL 1765968 (N.D.Okla.)

**Background:**

Third Party Plaintiff, BNSF Railway Company ("BNSF"), moved to exclude in limine all of Plaintiff's evidence regarding future lost wages for failure to list, in its witness and exhibit list, any evidence that would assist a jury in reducing future lost wages to present value.

**Issue:**

Which party bears the burden of producing evidence to assist the jury in reducing any award of future lost wages to present value in a case arising under the Federal Employer Liability Act ("Act").

**Overall Issues Discussed or Touched Upon in this Case:**

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**Held:**

Under a FELA action, a plaintiff may recover future lost wages, meaning he is entitled to the difference between what he was able to earn prior to his injury and what he earned or could have earned thereafter. Moreover, an award for damages under FELA must be reduced to present value. BNSF argues that, in a FELA action, (1) A jury must be instructed to reduce an award of future lost wages to present value, (2) plaintiff bears the burden of producing evidence to assist the jury in making this reduction, and (3) if no evidence is presented of a discount rate or other evidence to assist the jury in making a present value calculation, the court should not permit an award for future lost wages at all. Compton, the plaintiff, contends he need not present any expert testimony or any other evidence in order to assist the jury. ' This Court, after examining a divided precedent, ultimately holds that in a FELA action: (1) The Court must instruct the jury to reduce any award for future lost wages to present value. (2) In the absence of evidence from either party to assist the jury in reducing the future lost wages to present value, the court must instruct on present value and allow the jury to make the award based on its own experience. Therefore, Plaintiff's failure to present evidence to assist the jury in reducing a future lost wage award to its present value will not preclude a future lost damages award in this case.

**Comments:**

Under FELA, both parties can submit evidence that will support what they should be paid, or in the case of a defendant, what they should pay out under recovery of lost wages. The defendant bears the burden to produce evidence if it wishes the jury to consider a reduction of future lost earnings. The plaintiff, if he wants the jury to consider an increase of inflation, bears the burden of producing evidence. Steve Gordon <http://www.gordon-elias.com>