

## **BLET supports member, protects FELA before Supreme Court**

CLEVELAND, March 4 — The Brotherhood of Locomotive Engineers and Trainmen and 10 other Rail Labor unions are headed to the U.S. Supreme Court later this month to protect the Federal Employers' Liability Act (FELA).

Oral arguments will be held on March 28 in the case of CSX Transportation Inc. v. Robert McBride. Brother McBride, a member of Division 742, was awarded \$184,000 in damages by a jury, which found that he had been injured on the job in 2004 as a result of negligence on the part of the railroad.

Under the FELA, a railroad worker who is killed or injured on the job may recover damages if the injury or death results in whole or in part from the railroad's negligence. However, the railroads are attempting to make it more difficult for an injured or deceased railroad employee to establish negligence in FELA cases by introducing a higher "proximate cause" standard, which means the injured worker would have to prove that the railroad's negligence was the main or direct cause of the accident.

In an amicus brief filed with the Supreme Court, the BLET and the Rail Labor Coalition argue that such standards would cause safety to suffer.

"The major purpose of FELA was the promotion of safety within the railroad industry," the unions state in their amicus brief. "In light of the safety purposes of the statute, the Court has recognized that FELA imposes a continuing and non-delegable duty on railroads to provide their employees with a reasonably safe place in which to work. The position asserted by the railroad industry in this case, as a practical matter, would mean that railroads no longer have this duty, and that there would be no effective deterrent to their negligence."

The Coalition also provided the Court with casualty data from the Federal Railroad Administration showing that fatalities rates are twice as high in recent years than they were in the late 1970s, when measured as a percentage of all casualties. The Coalition also provided data proving that the railroad industry fatality rate is significantly higher than the national workplace fatality rate, and that operating crews and maintenance of way workers suffer a disproportionate share of fatal injuries. It also pointed to two recent, broad expansions of statutory rights for railroad workers who are involved in or witness accidents and injuries as evidence that Congress understands that the railroads cannot be trusted to place safety before profits.

The 7th U.S. Circuit Court of Appeals affirmed the jury's verdict on March 16, 2010, disagreeing with CSX's contention that proximate causation is required for liability under FELA. Based on a claim of a split among the appellate circuits, the U.S. Supreme Court agreed to hear the case.

"The FELA was the Congressional response to unique railroad industry hazards, one of the most dangerous workplaces in the nation then and now," BLET National President Dennis Pierce said. "Congress desired for injured workers to receive fair compensation for their injuries, and FELA has helped make that happen for over 100 years.

"It is shameful that railroad corporations reaping multi-billion dollar net profits every year are trying to use the Supreme Court to increase their windfall at the expense of worker safety," Pierce added.

The FELA was enacted in 1908, and in virtually every congressional session for nearly 75 years, the BLET and the other Rail Labor Coalition members have been forced to resist lobbying efforts by the railroad industry to abolish or weaken the law, most recently in 2007.

In addition to BLET, the other unions involved are: American Train Dispatchers Association (ATDA); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers & Blacksmiths (IBBB); International Brotherhood of Electrical Workers (IBEW); National Conference of Firemen & Oilers District of Local 32 BJ, SEIU (NCFO); Sheet Metal Workers International Association (SMWIA); Transport Workers Union of America (TWU); Transportation Communications International Union (TCIU); and United Transportation Union (UTU).

The Coalition brief can be read or downloaded [here](#) from the BLET website.