

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JEROME BROWNE,)
)
 Plaintiff,)
 v.) C.A. No. N26C-04-167 FJJ
)
 CSX TRANSPORTATION, INC.,)
)
 Defendant.)

SUBMITTED: May 28, 2026
DECIDED: June 4, 2026

ORDER

On Defendant’s Motion to Dismiss
GRANTED in part; DENIED in part.

This 4th day of June, 2026, upon consideration of Defendant’s Motion to Dismiss, Plaintiff’s response and Defendant’s Reply, it appears to the Court that:

1. Plaintiff has filed a complaint in this matter under the Federal Employers’ Liability Act (“FELA”),¹ the Federal Safety Appliance Act (“FSAA”)² and the Locomotive Inspection Act (“LIA”).³ The complaint is a negligence action. The Complaint alleges in part that:

5. At all times material hereto and for some time prior thereto, Plaintiff was in the employ of Defendant as a Railroad Conductor in furtherance of the carriers’ business of interstate commerce and transportation by railroad;...

¹ 45 U.S.C. §51 *et seq.*

² 49 U.S.C. §20301 *et seq.*

³ 49 U.S.C. §20701 *et seq.*

7. On or about July 6, 2023 Plaintiff was working on Track 29 in the Defendant's West Yard facility, when he was caused to ride on the side of a boxcar with a bent and/or defective ladder, which caused him to sustain significant personal injuries;
8. Plaintiff's injuries were caused directly and proximately by the negligence, gross negligence, carelessness, recklessness and/or unlawful conduct of the Defendant (and the Plaintiff goes on to allege 24 specific acts of malfeasance justifying a finding of negligence, gross negligence, carelessness and/or recklessness);
9. As a direct and proximate result of the negligence, carelessness, recklessness and/or unlawful conduct of the Defendant, as more fully set forth above, Plaintiff was caused to suffer severe and permanent injuries, severe shock to his nerves and nervous system, aggravation, acceleration and/or activation of any and all pre-existing ailments and/or conditions, and more particularly, but not in limitation of, any other personal injuries he may have sustained, Plaintiff suffered a hernia, by reason of which he has suffered great physical pain and mental distress which he yet suffered and will continue to suffer in the future.

2. Defendant has moved to dismiss the complaint or to require the Plaintiff to file an amended complaint satisfying the pleading requirements for a FELA action. Defendant maintains that the complaint is subject to the particularity requirements of Superior Court Civil Rule 9(b) and the complaint does not comply with the requirements of Rule 9(b).

3. When considering a motion to dismiss, the Court must read the complaint generously, accept all of the well-pled allegations contained therein as true, and draw all reasonable inferences in a light most favorable to the non-moving party.⁴ “A complaint is ‘well-plead’ if it puts the opposing party on notice of the claim being brought against it.”⁵ A Plaintiff asserting a theory based upon negligence must set forth “‘acts or omissions by which it is alleged that a duty has been violated in order’ to enable the preparation of a defense.”⁶ “To satisfy this purpose, ‘it is usually necessary to allege only sufficient facts out of which a duty is implied and a general averment of failure to discharge that duty.’”⁷

4. Plaintiff’s complaint is grounded on the FELA.⁸ The FELA is a negligence-based statute and, as such, Plaintiff must comply with Superior Court Rule 9(b). In order to state a claim under the FELA the Plaintiff must plead and prove “(1) he was injured within the scope of his employment; (2) his employment was in furtherance of [the Defendant]’s interstate transportation business; (3) that [the Defendant] was negligent; and (4) that ... negligence played some part in causing the injury for which he seeks compensation under FELA.”⁹

⁴ *In Re: Gen Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

⁵ *Lagrone v. Am. Mortell Corp.*, 2008 WL 4152677, at *4 (Del. Super. Ct. Sept. 4, 2008) (citing *Precision Air v. Standard Chlorine of Del.*, 654 A.2d 403, 406 (Del. 1995)).

⁶ *State Farm Fire & Cas. Co. v. Gen. Elec. Co.*, 2009 WL 5177156, at *5 (Del. Super. Ct. Dec. 1, 2009) (quoting *Riggs Nat. Bank v. Boyd*, 2000 WL 303308, at *3 (Del. Super. Ct. Feb. 23, 2000)).

⁷ *Id.* (quoting *Riggs Nat. Bank v. Boyd*, 2000 WL 303308, at *3 (Del. Super. Ct. Feb. 23, 2000)).

⁸ In its reply, Plaintiff also alleges that the complaint is based on the Federal Safety Appliance Act, 49 U.S.C. §20301 *et. seq.*

⁹ *Van Gorder v. Grand Truck Western R.R. Inc.*, 509 F.3d 265, 269 (6th Cir. 2007) (citing *Green v. River Terminal Ry. Co.*, 763 F.2d 805, 808 (6th Cir. 1985)).

5. I find that the complaint as pled states a valid cause of action under the FELA and is sufficiently pled to put the Defendant on adequate notice of the Plaintiff's claim. I reject the argument that the complaint fails to satisfy the particularity requirement of Rule 9(b). I draw the parties attention to paragraphs 5, 7 and 8 of the complaint. I also reject the argument that the complaint has not adequately pled causation and refer the parties to the paragraphs 8 and 9 of the complaint. I find the complaint satisfies the particularity requirement of Rule 9(b). Defendant's motion to dismiss or to require the Plaintiff to file an amended complaint satisfying the particularity requirements of Rule 9(b) is DENIED,

6. Defendant has also moved to dismiss Plaintiff's punitive damages claim. I will GRANT the motion to dismiss as to the punitive damages. Plaintiff has not responded to the Defendant's argument that punitive damages are not recoverable under the FELA and the law appears clear that punitive damages are not recoverable under the FELA.¹⁰

7. Next, Defendant has moved to dismiss Plaintiff's gross negligence claim. Plaintiff does not oppose the Defendant's request.¹¹ If Plaintiff cannot satisfy the gross negligence standard then he cannot satisfy the claims based on

¹⁰ *Kozar v. Chesapeake & O.R. Co.*, 449 F.2d 1238, 1242-43 (6th Circuit 1971); *Matter of Mardoc Asbestos Case Clusters 1, 2, 5 & 6*, 768 F. Supp. 595, 597 (E.D. Mich. 1991) ("It has long been held that punitive damages are not available under FELA.").

¹¹ See Paragraph 13 of the Plaintiff's response to the Defendant's Motion to Dismiss.

recklessness as that is a higher standard for Plaintiff to meet than gross negligence. The claims based on gross negligence or recklessness are DISMISSED.

8. Defendant's final argument is that any claims based on the FSAA and LIA should be dismissed as these acts do not provide a private right of action.¹² Plaintiff admits that the FELA provides the exclusive remedy for railroad workers injured in the course and scope of their employment due to their employer's negligence. Plaintiff also admits that the SAA and LIA does not provide him a private right of action.¹³ However, Plaintiff maintains that the SAA imposes a standard of care for his claim under the FELA. It appears to the Court that the parties are not in disagreement over the role of the SAA in this case. In short, the SAA does not create a private right of action for the Plaintiff, but it does assist in setting the standard of care that the Defendant had to meet.

IT IS SO ORDERED.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: *Counsel via File & ServeXpress*

¹² *Est. of Schroeder by & through Tucker v. Port Auth. Transit Corp.*, 149 F.4th 341, 345, n. 1 (3d Cir. 2025) (“[Plaintiff] also asserted federal claims under the federal Locomotive Inspection Act, 49 U.S.C. § 20701 *et seq.*, and the Federal Safety Appliance Act, 49 U.S.C. § 20301 *et seq.*, but those statutes do not provide private rights of action.”); *Delaware & Hudson Ry. Co. v. Knoedler Mfrs., Inc.*, 781 F.3d 656, 659 (3d Cir. 2015).

¹³ Plaintiff's Response at ¶10.