

The Burger Court Opinion Writing Database

Norfolk & Western Railway Co. v. Liepelt
444 U.S. 490 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 3, 1980

Re: 78-1323 - Norfolk & Western Railway Company
v. Liepelt

Dear John:

This will confirm my "join".

Regards,
WRD

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 12, 1980

RE: No. 78-1323 Norfolk & Western Rwy v. Liepelt

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 2, 1980

Re: 78-1323 - Norfolk & Western Railroad Co. v. Liepelt

Dear John:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1980

Re: No. 78-1323 - Norfolk and Western
Railway Co. v. Liepelt, etc.

Dear John,

I agree.

Sincerely yours,



Mr. Justice Stevens
Copies to the Conference
cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 12, 1980

Re: No. 78-1323 - Norfolk & Western Railway Co.
v. Liepelt

Dear Harry:

Please join me in your dissent.

Sincerely,

JM

T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 2, 1980

Re: No. 78-1323 - Norfolk & Western Railroad Co. v. Liepelt

Dear John:

I shall try my hand at a short dissent in this case. It will be around in due course.

Sincerely,

Harry
[Signature]

Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Blackmun
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: FEB 12 1980

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1323

Norfolk and Western Railway
 Company, Petitioner,
 v.
 Kandythe J. Liepelt,
 Administratrix, etc.

On Writ of Certiorari to the
 Appellate Court of Illinois
 for the First District.

[February —, 1980]

MR. JUSTICE BLACKMUN, dissenting.

In this action for wrongful death arising under the Federal Employers' Liability Act, 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60, the Court today holds that if an award is granted, federal income taxes on the decedent's lost earnings are to be taken into account and are to reduce the amount of the award. The Court further holds that, on request, the jury must be instructed that the award is not subject to federal income tax.

I agree with neither ruling. In my view, by mandating adjustment of the award by way of reduction for federal income taxes that would have been paid by the decedent on his earnings, the Court appropriates for the tortfeasor a benefit intended to be conferred on the victim or his survivors. And in requiring that the jury be instructed that a wrongful death award is not subject to federal income tax, the Court opens the door for a variety of admonitions to the jury not to "misbehave," and unnecessarily interjects what is now to be federal law into the administration of a trial in a state court.

In this day of substantial income taxes, one is sorely tempted, in jury litigation, to accept the propriety of admitting evidence as to a tort victim's earnings *net* after estimated income taxes, and of instructing the jury that an award will be tax-free. This, it could be urged, is only common sense and a recognition of financial realities.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1980

78-1323 N&W v. Liepelt

Dear John:

Please join me in your opinion.

I do make this suggestion. The full paragraph on page 5, notes respondents' argument that if the jury is to consider the effect of taxes on a decedent's estimated future earnings, it also should consider the effect of taxes on interest income from the jury's award. Your opinion acknowledges the logic of respondents' contention, but leaves it for resolution at a later time.

As I recall, this contention was not included within the precise questions in our grant of certiorari. Yet, the tax treatment of interest from the award is a sufficiently close corollary question that I would think a ruling on it would not be inappropriate. The same arguments you have marshaled as to the ability of bench and bar to deal with tax complexities would apply equally to the tax treatment of interest income from jury award.

In sum, although I am happy to join your opinion as written, I would prefer also to decide this closely related question.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1980

Re: No. 78-1323 - Norfolk and Western Railway
v. Liepelt

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: DEC 27 79

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1323

Norfolk and Western Railway
Company, Petitioner, }
v. } On Writ of Certiorari to the
Kandythe J. Liepelt, } Appellate Court of Illinois
Administratrix, etc. } for the First District.

[January —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In cases arising under the Federal Employer's Liability Act, most trial judges refuse to allow the jury to receive evidence or instruction concerning the impact of federal income taxes on the amount of damages to be awarded. Because the prevailing practice developed at a time when federal taxes were relatively insignificant, and because some courts are now following a different practice, we decided to answer the two questions presented by the certiorari petition in this wrongful death action: (1) whether it was error to exclude evidence of the income taxes payable on the decedent's past and estimated future earnings; and (2) whether it was error for the trial judge to refuse to instruct the jury that the award of damages would not be subject to income taxation.

In 1973 a fireman employed by petitioner suffered fatal injuries in a collision caused by petitioner's negligence.¹ Respondent, as administratrix of the fireman's estate, brought suit under the FELA to recover the damages that his

¹ The issue of liability was vigorously contested at the trial and was the subject of extensive consideration by the Appellate Court of Illinois, First District. See 62 Ill. App. 3d 653, 378 N. E. 2d 1232 (1978). No aspect of that issue, however, is now before us.

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
- JUSTICE JOHN PAUL STEVENS

January 2, 1980

Re: 78-1323 - Norfolk and Western Railway
v. Liepelt

Dear Lewis:

Thanks for your suggestion which I am happy to
adopt.

Respectfully,



Mr. Justice Powell

Copies to the Conference

Stylistic changes p. 1, 5-8

Footnotes numbered.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated:

JAN 3 '80

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1323

Norfolk and Western Railway Company. Petitioner, v. Kandythe J. Liepelt, Administratrix, etc.	On Writ of Certiorari to the Appellate Court of Illinois for the First District.
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[January —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In cases arising under the Federal Employer's Liability Act,¹ most trial judges refuse to allow the jury to receive evidence or instruction concerning the impact of federal income taxes on the amount of damages to be awarded. Because the prevailing practice developed at a time when federal taxes were relatively insignificant, and because some courts are now following a different practice, we decided to answer the two questions presented by the certiorari petition in this wrongful death action: (1) whether it was error to exclude evidence of the income taxes payable on the decedent's past and estimated future earnings; and (2) whether it was error for the trial judge to refuse to instruct the jury that the award of damages would not be subject to income taxation.

In 1973 a fireman employed by petitioner suffered fatal injuries in a collision caused by petitioner's negligence.² Respondent, as administratrix of the fireman's estate, brought suit under the FELA to recover the damages that his

¹ 35 Stat. 65, 45 U. S. C. § 51 *et seq.*

² The issue of liability was vigorously contested at the trial and was the subject of extensive consideration by the Appellate Court of Illinois, First District. See 62 Ill. App. 3d 653, 378 N. E. 2d 1232 (1973). No aspect of that issue, however, is now before us.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

P.6

Footnote renumbered

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: FEB 13 '80

SUPREME COURT OF THE UNITED STATES

No. 78-1323

Norfolk and Western Railway
 Company, Petitioner,
 v.
 Kandythe J. Liepelt,
 Administratrix, etc.

On Writ of Certiorari to the
 Appellate Court of Illinois
 for the First District.

[January —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In cases arising under the Federal Employer's Liability Act,¹ most trial judges refuse to allow the jury to receive evidence or instruction concerning the impact of federal income taxes on the amount of damages to be awarded. Because the prevailing practice developed at a time when federal taxes were relatively insignificant, and because some courts are now following a different practice, we decided to answer the two questions presented by the certiorari petition in this wrongful death action: (1) whether it was error to exclude evidence of the income taxes payable on the decedent's past and estimated future earnings; and (2) whether it was error for the trial judge to refuse to instruct the jury that the award of damages would not be subject to income taxation.

In 1973 a fireman employed by petitioner suffered fatal injuries in a collision caused by petitioner's negligence.² Respondent, as administratrix of the fireman's estate, brought suit under the FELA to recover the damages that his

¹ 35 Stat. 65, 45 U. S. C. § 51 *et seq.*

² The issue of liability was vigorously contested at the trial and was the subject of extensive consideration by the Appellate Court of Illinois, First District. See 62 Ill. App. 3d 653, 378 N. E. 2d 1232 (1978). No aspect of that issue, however, is now before us.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1980

MEMORANDUM TO THE CONFERENCE

Re: 78-1323 - Norfolk v. Liepelt

I have revised footnote 10 to read as follows:

¹⁰The dissent takes the position that § 104 (a)(2) of the Internal Revenue Code, see nn. 11-12, *infra*, which makes personal injury awards nontaxable, "appropriates for the tortfeasor a benefit intended to be conferred on the victim or his survivors." *Post*, at 1. But we see nothing in the language and are aware of nothing in the legislative history of § 104 (a)(2) to suggest that it has any impact whatsoever on the proper measure of damages in a wrongful death action. Moreover, netting out the taxes that the decedent would have paid does not confer a benefit on the tortfeasor any more than netting out the decedent's personal expenditures. Both subtractions are required in order to determine "the pecuniary benefits which the beneficiaries might have reasonably received. . . ." *Michigan Cent. R. Co. v. Vreeland*, *supra*, 227 U. S., at 70.

Respectfully,



To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice O'Connor

From: Mr. Justice Stevens

Circulated: _____

4th DRAFT

Recirculated: FEB 15 '80

SUPREME COURT OF THE UNITED STATES

No. 78-1323

Norfolk and Western Railway
 Company, Petitioner, } On Writ of Certiorari to the
 v. } Appellate Court of Illinois
 Kandythe J. Liepelt, } for the First District.
 Administratrix, etc.

[January —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In cases arising under the Federal Employer's Liability Act,¹ most trial judges refuse to allow the jury to receive evidence or instruction concerning the impact of federal income taxes on the amount of damages to be awarded. Because the prevailing practice developed at a time when federal taxes were relatively insignificant, and because some courts are now following a different practice, we decided to answer the two questions presented by the certiorari petition in this wrongful death action: (1) whether it was error to exclude evidence of the income taxes payable on the decedent's past and estimated future earnings; and (2) whether it was error for the trial judge to refuse to instruct the jury that the award of damages would not be subject to income taxation.

In 1973 a fireman employed by petitioner suffered fatal injuries in a collision caused by petitioner's negligence.² Respondent, as administratrix of the fireman's estate, brought suit under the FELA to recover the damages that his

¹ 35 Stat. 65, 45 U. S. C. § 51 *et seq.*

² The issue of liability was vigorously contested at the trial and was the subject of extensive consideration by the Appellate Court of Illinois, First District. See 62 Ill. App. 3d 653, 378 N. E. 2d 1232 (1978). No aspect of that issue, however, is now before us.