

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

KENNETH W. PETERSEN, JR.,

Plaintiff,

vs.

RAPID CITY, PIERRE & EASTERN  
RAILROAD, INC.

Defendant.

5:22-CV-5064

**JURY INSTRUCTIONS**

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

You must discharge your duties as jurors in your deliberations and rendering of a verdict without discrimination or bias against any party, witness, or counsel regarding race, color, ethnicity, national origin, religion, lack of religion, gender, gender identity, sexual orientation, disability, or economic circumstances.

## INSTRUCTION NO. 2

This is a civil case brought by plaintiff Kenneth Petersen, Jr. against defendant Rapid City, Pierre & Eastern Railroad, Inc. Plaintiff alleges damages under the Federal Employers' Liability Act for personal injuries alleged to have been suffered as a result of the negligence of Defendant Rapid City, Pierre & Eastern Railroad. It has been admitted that Rapid City, Pierre & Eastern Railroad was negligent in this matter. Now, Rapid City, Pierre & Eastern Railroad disputes the nature, extent, and scope of Plaintiff's injuries and damages. It will be your duty to assess from the evidence what damages Plaintiff has incurred.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not. You have taken an oath to follow the law that I give you in my instructions.

### INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, facts that I tell you the parties have agreed are true, and any other facts that I tell you to accept as true.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits are not evidence.

3. Objections are not evidence. Parties have a right – and sometimes a duty - to object when they believe something should not be part of the trial. Do not be influenced one way or the other by objections.

If I sustained an objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.

5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it unless I specifically tell you otherwise during the trial.

If a particular item of evidence was received for a limited purpose, you must follow that instruction.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between the weight to be given to direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

#### INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood. That may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 5

During trial, some testimony was presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testified here in person.



INSTRUCTION NO. 6

You have heard testimony from persons described as being experts. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all other evidence in this case.

INSTRUCTION NO. 7

If any reference by the Court or by the parties to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of the parties.

You are the sole judges of the evidence received in this case.

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.



INSTRUCTION NO. 8

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 9

You must decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

## INSTRUCTION NO. 10

In this case, Plaintiff seeks to recover compensation under the Federal Employers' Liability Act, sometimes called FELA. That Act is the method for compensating employees of the railroad for on-the-job injury.

INSTRUCTION NO. 11

Section 1 of the Federal Employers' Liability Act under which Plaintiff claims the right to recover damages in this action for his alleged injury, provides in part that:

Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier. . . .

INSTRUCTION NO. 12

You must treat the following facts as having been proved:

1. That at the time in question, August 2, 2019, Defendant was a railroad common carrier engaged in interstate commerce;
2. That at the time in question, August 2, 2019, Plaintiff was an employee of Defendant working as a conductor;
3. At the time of the subject incident on August 2, 2019, Plaintiff was working in the course and scope of his employment for Defendant in furtherance of Defendant's interstate commerce;
4. On August 2, 2019, Defendant was negligent resulting in the derailment of the train Plaintiff was working within; and
5. Defendant's negligence caused Plaintiff to sustain some injury.

It will be your duty to determine the nature, extent, and scope of Plaintiff's injuries and damages resulting from the subject train derailment.

INSTRUCTION NO. 13

Defendant contends that some of the damages sustained by Plaintiff did not result from injuries caused by the August 2, 2019, train derailment, but rather are a direct result of preexisting conditions that were not aggravated by the subject train derailment.

Defendant must prove by the greater weight of the evidence that damages sustained by Plaintiff were a direct result of a preexisting condition that was not aggravated by the subject train derailment.



INSTRUCTION NO. 14

If you find in favor of Plaintiff, then you must award Plaintiff such sum as you find will fairly and justly compensate Plaintiff for any damages you find Plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the August 2, 2019, train derailment. Plaintiff bears the burden of proving by a greater weight of the evidence that any damages he sustained were a direct result of the August 2, 2019, train derailment. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering Plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent, and whether any resulting disability is partial or total;
2. The present value of reasonably necessary counseling reasonably certain to be received in the future;
3. The earnings Plaintiff has lost to date and the present value of earnings Plaintiff is reasonably certain to lose in the future.

If you find that Defendant has proved that Plaintiff has failed to take reasonable steps to minimize his damages, then your award must not include any sum for any amount of damage which you find Plaintiff might reasonably have avoided by taking such steps.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 15

If you find that the August 2, 2019, train derailment caused harm to Plaintiff that, because of a preexisting physical or mental condition, is of greater magnitude or different type than might reasonably be expected, Defendant is nevertheless subject to liability for all such harm to Plaintiff.

INSTRUCTION NO. 16

You have heard opinion evidence in the form of a witness's expert testimony about the life expectancy of Mr. Petersen from and after the August 2, 2019, train derailment. According to the life expectancy evidence presented at trial, the average life expectancy of Mr. Petersen is 26 more years.

The life expectancy of any individual person depends more upon the circumstances of his or her own life than it does upon the expectancy of the lives of others. The life expectancy evidence you have heard are not to be accepted by you as establishing the life expectancy of anyone, including Mr. Petersen. Such evidence has been received in evidence only to aid you, the jury, in your decision of what Mr. Petersen's life expectancy might reasonably be expected to be, in view of all the circumstances of his life only for the purpose of your determining damages in this case. In this regard, you must consider all the evidence received by the court and all the instructions the court has given you and will give you in this case.

INSTRUCTION NO. 17

If you find that Plaintiff will sustain lost future earning or future counseling expenses, then you must reduce those future damages to their present value.

The present value of future damages is the amount of money that will fully compensate Plaintiff for future damages, assuming that amount is invested now and will earn a reasonably risk-free rate of interest for the time that will pass until the future damages occur.

You must not reduce to present value any non-economic damages you find that Plaintiff is reasonably certain to sustain in the future, such as for pain and suffering, or mental anguish.

INSTRUCTION NO. 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, your verdict must be the unanimous decision of all jurors. Therefore, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be true.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But, do not come to a decision simply because other jurors think it is right, or simply to reach a unanimous verdict. Remember you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, during your deliberation, including during any recess taken during deliberations, you must not, directly or indirectly, communicate with or provide any information to anyone by any means or by any medium, about anything relating to this case, until I accept your verdict and discharge you from further service in this case.

*Fourth*, as stated in my instructions at the beginning of the trial, you may not in any manner seek out or receive any information about the case from any source other than the evidence received by the court and the law of the case I have provided to you. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the



INSTRUCTION NO. 18 (continued)

same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or parties in this case. This would unfairly and adversely impact the judicial process.

*Fifth*, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone, including me, how your vote stands numerically.

*Sixth*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

*Finally*, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.



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**Complete this form by filling in the blanks.**

We the jury, duly impaneled in the above-entitled action and sworn to try the issue therein, find that Plaintiff Kennth W. Petersen, Jr. is entitled to recover the following damages from Defendant:

\$\_\_\_\_\_. (stating amount, or if none, write the word “none”).

**Have your foreperson sign and date the Verdict Form below.**

Dated this \_\_\_\_\_ day of November, 2024.

\_\_\_\_\_  
Foreperson