

**[J-49-2021] [MO: Baer, C.J.]  
IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| ROBERT MALLORY,          | : | No. 3 EAP 2021                   |
|                          | : |                                  |
| Appellant                | : | Appeal from the Order Entered    |
|                          | : | February 7, 2018 in the Court of |
| v.                       | : | Common Pleas of Philadelphia     |
|                          | : | County, Civil Division at No:    |
|                          | : | 170901961.                       |
|                          | : |                                  |
| NORFOLK SOUTHERN RAILWAY | : | ARGUED: September 21, 2021       |
| COMPANY,                 | : |                                  |
|                          | : |                                  |
| Appellee                 | : |                                  |

**CONCURRING OPINION**

**JUSTICE MUNDY**

**Decided: December 22, 2021**

I join the Majority Opinion in full. I write separately to note the unique jurisdictional expanse under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.* The FELA provides that "[e]very common carrier by railroad ... shall be liable in damages to any person suffering injury while he is employed by such carrier ... for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier." 45 U.S.C. § 51. Section 56 of the FELA states, in part:

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states.

45 U.S.C. § 56. A reasonable interpretation of this language is that Congress conferred to the several states personal-jurisdiction over railroads doing business within their borders, providing employees an avenue to pursue FELA claims. The Supreme Court

addressed this issue in *BNSF Railway Co. v. Tyrell*, 137 S.Ct. 1549 (2017), and determined otherwise. According to the High Court, the first quoted sentence of Section 56 does not address jurisdiction at all, but, rather, is a venue provision setting out the proper locations for FELA suits filed in federal court. *Id.* at 1553. The Court further determined the term “concurrent jurisdiction” in the second sentence refers to subject-matter rather than personal-jurisdiction and simply clarifies that state courts can hear FELA claims. *Id.* Therefore, a state must still satisfy the due process requirements set out in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) and *Daimler AG v. Bauman*, 571 U.S. 117 (2014) to exercise personal-jurisdiction over a defendant in an FELA action, notwithstanding Section 56.