

1 **13-902. Special F.E.L.A. statement of the case issues; claims; formula.**

2 The plaintiff claims that [~~he~~][~~she~~]they sustained damages from personal injuries. [The  
3 plaintiff, as personal representative, claims damages because of the death of \_\_\_\_\_  
4 (*name of deceased worker*).

5 Plaintiff also claims that one or more of the following claimed acts of negligence caused  
6 or contributed to the [injury] [death] and resulting damages.

7 (NOTE: Here set forth, in simple form, the specific acts of negligence which are supported  
8 by the evidence, as in UJI 13-302A to 13-302F NMRA or the following examples:

9 (1) The defendant railroad failed to furnish the plaintiff with a reasonably safe  
10 place in which to work;

11 (2) The defendant railroad failed to provide the plaintiff reasonably safe tools  
12 with which to work;

13 (3) The defendant railroad failed to provide plaintiff with a sufficient number  
14 of [~~fellow~~] employees to safely perform the work assigned; and

15 (4) The defendant railroad[']s engineer was not keeping a proper lookout for  
16 workers on the track.)

17 The burden is on the plaintiff to prove, by the greater weight of the evidence, the following  
18 facts:

19 (A) That the defendant railroad was negligent in one of the particulars alleged; and

20 (B) That the defendant railroad[']s negligence caused or contributed to the [injury]  
21 [death] and resulting damage to the plaintiff.

22 The defendant railroad denies the plaintiff[']s claims and in addition asserts, as a further  
23 defense, that plaintiff was contributorily negligent in that:

1 (NOTE: Here set forth, in simple form, the acts of contributory negligence relied upon by  
2 the defendant which are supported by the evidence such as:

3 (1) The plaintiff failed to request additional help to perform ~~[[his]-[her]]~~their  
4 work, which would have been given to ~~[[him]-[her]]~~plaintiff; and

5 (2) The plaintiff failed to heed the whistle of the oncoming train and to exercise  
6 ordinary care to remove plaintiff from danger.)

7 The defendant railroad has the burden of proving, by the greater weight of the evidence,  
8 that the plaintiff was contributorily negligent.

9 The issues to be determined by you in this case are these:

10 (1) Was the defendant railroad negligent in any one of the particulars claimed?

11 If your answer to this question is  "no", you will return a verdict for the defendant; but  
12 if your answer is  "yes", you then have a second issue to determine, namely:

13 (2) Did the negligence of the defendant railroad cause or contribute to any injury and  
14 damage to the plaintiff?

15 If your answer to this question is  "no", you will return a verdict for the defendant  
16 railroad; but if your answer is  "yes", you must then find the answer to a third question,  
17 namely:

18 (3) Was the plaintiff guilty of some contributory negligence?

19 If your answer to this question is  "no", then you will proceed to determine the amount  
20 of plaintiff's damages and return a verdict in the plaintiff's favor for that amount.

21 On the other hand, if you should find that the [plaintiff] [plaintiff's decedent] was guilty  
22 of some negligence and that ~~[[his]-[her]]~~plaintiff's negligence contributed to ~~[[his]-[her]]~~plaintiff's

1 [injuries] [death], then you must return a verdict for the plaintiff for a reduced amount based upon  
2 a comparison of the negligence of the parties, as I will further instruct you.

3 USE NOTES

4 The paragraphs referring to contributory negligence are not applicable if the Safety  
5 Appliance Acts, 45 U.S.C.A. §§ 1-16, or the Boiler Inspection Acts, 45 U.S.C.A. §§ 23-24, are  
6 applicable.

7 This follows the format of UJI 13-302A to 13-302F, and should be the first instruction  
8 given to the jury at the close of the evidence and before final argument - following UJI 13-301  
9 NMRA.

10 The form, above, includes only contributory negligence as an affirmative defense, and  
11 contributory negligence is not an [“]“absolute defense[”] in F.E.L.A. cases. Assumption of risk  
12 and fellow-servant doctrine are not available as affirmative defenses in F.E.L.A. actions.

13 Should the trial judge treat such defenses as [“]“act of God[”] or [“]“independent  
14 intervening cause[”] as absolute, affirmative defenses, rather than as [“]“denials of causation, [”]”  
15 then the affirmative defense format found in UJI 13-302A to 13-302F can be utilized.

16 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
17 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

18 **Committee commentary.** — The court should not instruct on a specific claim of negligence unless  
19 there is some indication that such negligence could have caused the accident. *See Idzotic v.*  
20 *Pennsylvania R.R.*, 47 F.R.D. 25 (D.C. Pa. 1969). *See also* UJI 13-302A to 13-302F.

21 It will be noted that this instruction does not include the elements of [“]“proximate cause[”]”. This  
22 is in line with the suggestion found in Devitt & Blackmar, *Federal Jury Practice and Instructions*,

1 notes to Section 89.12 and cited cases. *See also Eidson v. Atchison, T. & S.F. Ry.*, 1969-NMSC-  
2 039, 80 N.M. 183, 453 P.2d 204[~~(1969)~~]; [~~and~~] Federal Jury Practice and Instructions § 84.19.  
3 [~~Revised~~], ~~effective March 1, 2005~~; as amended by Supreme Court Order No. S-1-RCR-2025-  
4 00126.]