

1 **13-904. The rule of liability; interstate commerce not an issue.**

2 When an employee of a railroad is [injured] [killed] while engaged in [~~his~~ ~~her~~]their
3 employment in interstate commerce and the [injury] [death] is caused in whole or in part by the
4 negligence of the railroad or by reason of any defect or insufficiency resulting from the railroad[']s
5 negligence, the railroad is liable in damages.

6 USE NOTES

7 This instruction is to be used when it is admitted, or established by the evidence as a matter
8 of law, that the plaintiff was employed by the railroad while engaged in interstate commerce.

9 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
10 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

11 **Committee commentary.** — This instruction is based upon the first paragraph of Section 1 of the
12 act (45 U.S.C.A. § 51).

13 [“]“Injury or death resulting in whole or in part from the negligence . . . [“]” of the railroad means
14 that the slightest negligence is sufficient if it played any part, however small, in causing or
15 contributing to the injury or death (quotation from 45 U.S.C.A. § 51 with emphasis added). *Clinard*
16 *v. [~~Southern~~]S. Pac. Co., 1970-NMSC-093, 82 N.M. 55, 475 P.2d 321[~~-(1970)~~]; *Chavez v.*
17 *Atchison, T. & S.F. Ry.*, 1967-NMSC-012, 77 N.M. 346, 423 P.2d 34[~~-(1967)~~]; *Atchison, T. & S.F.*
18 *Ry. v. Simmons*, 153 F.2d 206 (10th Cir. 1946); *Tillian v. Atchison, T. & S.F. Ry.*, 1935-NMSC-
19 094, 40 N.M. 80, 55 P.2d 34[~~-(1935)~~].*

20 In cases under the Safety Appliance Acts and the Boiler Inspection Acts, the railroad[']s
21 negligence may be immaterial, but the contributory negligence of the employee is a factor, where
22 such contributory negligence is the sole cause. *Schmidt v. Great N. [~~Ry.~~]R.R. Co.*, [~~7 Wash. App.~~
23 ~~40,~~] 497 P.2d 959 (Wash. Ct. App. 1972).

- 1 [Revised~~[, effective March 1, 2005]~~; as amended by Supreme Court Order No. S-1-RCR-2025-
- 2 00126.]