

1 **13-905. The rule of liability; interstate commerce an issue.**

2 When an employee of a railroad is [injured] [killed] while engaged in [[his]–[her]]  
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 An employee is considered as being employed by a railroad while engaging in interstate  
7 commerce when any part of [[his]–[her]] that employee's duties shall be in the furtherance of  
8 interstate commerce or shall, in any way, directly or closely and substantially affect such  
9 commerce.

10 USE NOTES

11 This instruction is to be used only when interstate commerce is an issue.

12 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
13 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

14 **Committee commentary.** — The question as to whether the employee was injured or killed while  
15 the railroad was engaging in interstate commerce, as distinguished from the question of whether  
16 the employee was acting in the scope or course of employment at the time of the injury, does not  
17 seem to have been an issue in any reported New Mexico case, with the exception of *Rivera v.*  
18 *Atchison, T. & S.F. Ry.*, 1956-NMSC-072, 61 N.M. 314, 299 P.2d 1090[–(1956)]. A careful reading  
19 of *Rivera*, however, indicates that the basic question was whether the after-hours activity of the  
20 employee, while returning from an outdoor toilet, was within the course or scope of his  
21 employment [“]“in interstate commerce[“]”.

22 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]