STATE OF MINNESOTA

IN SUPREME COURT

A17-1242

Court of Appeals

Thissen, J.
Dissenting, Anderson, J., Gildea, C.J.

James Alby,

Appellant,

vs.

Filed: October 30, 2019
Office of Appellate Courts

BNSF Railway Company,

Respondent.

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S Y L L A B U S

Postjudgment interest in an action brought under the Federal Employers' Liability Act in Minnesota courts is calculated in accordance with Minn. Stat. § 549.09, subd. 1(c) (2018).

Reversed and remanded.

O P I N I O N

THISSEN, Justice.

Appellant James Alby sued his employer, respondent BNSF Railway Company (BNSF), under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51–60 (2012). Alby claimed that he suffered cumulative trauma to his back resulting from his 20 years of employment as a conductor and engineer with the railroad.

The jury decided in Alby's favor and the district court awarded him damages. The district court also awarded postjudgment interest and applied the federal postjudgment interest rate of 0.58 percent per year, *see* 28 U.S.C. § 1961 (2012), rather than the state rate of 10 percent per year, *see* Minn. Stat. § 549.09, subd. 1(c)(2) (2018). The court of appeals affirmed the district court's use of the federal postjudgment interest rate. *Alby v. BNSF Ry. Co.*, 918 N.W.2d 562, 569 (Minn. App. 2018).

The decision to use the federal interest rate is significant. Postjudgment interest on the judgment awarded to Alby using the federal interest rate is approximately $18,500. Had the district court used the state interest rate, postjudgment interest would be approximately $320,000.

We are asked to decide whether the federal postjudgment interest rate or the state postjudgment interest rate applies. Because we conclude that the state postjudgment interest rate applies, we reverse the decision of the court of appeals and remand to the district court for further proceedings.

ANALYSIS

There are no factual disputes in this appeal. The question of whether the state or federal postjudgment interest rate applies is a question of law, which we review de novo. *Kinworthy v. Soo Line R.R. Co.*, 860 N.W.2d 355, 356 (Minn. 2015). We also review de novo the interpretation of statutes and rules of procedure. *In re Welfare of Child of R.S.*, 805 N.W.2d 44, 48–49 (Minn. 2011).

We start by reviewing the competing postjudgment interest statutes. The federal postjudgment interest statute provides:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding[] the date of the judgment. . . .

28 U.S.C. § 1961(a). The parties agree that the relevant applicable rate under the federal formula is 0.58 percent per year. The federal statute further provides that it "shall not be construed to affect the interest on any judgment of any court not specified in this section." 28 U.S.C. § 1961(c)(4).

Minnesota statutes distinguish between prejudgment interest and postjudgment interest. Section 549.09, subdivision 1, sets forth the rules for the accrual of interest "until judgment is finally entered." Minn. Stat. 549.09, subd. 1(a) (2018). Subdivision 2 creates a judgment creditor remedy and provides that "[d]uring each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual rate provided in subdivision 1." *Id.*, subd. 2 (2018). Subdivision 1(c)(2) states that "[f]or a judgment or award over $50,000 . . . the interest rate shall be ten percent per year until paid." *Id.*, subd. 1(c)(2) (2018).

FELA was enacted by Congress to ensure that an injured railroad worker could recover when the railroad's negligence caused the worker's injuries. *See* 45 U.S.C. § 51; *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 561 (1987). The statute is designed to bring national uniformity to the circumstances under which railroad workers would be compensated for on-the-job injuries. *N.Y. Cent. R.R. Co. v. Winfield*, 244 U.S. 147, 150 (1917). The statute also provides for concurrent jurisdiction in state and federal courts. 45 U.S.C. § 56. Imposing concurrent jurisdiction on the states "in no sense . . . depended upon the conception that for the purposes of enforcing [FELA] right[s] the state court was to be treated as a Federal court deriving its authority not from the State creating it, but from the United States." *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 222 (1916) (holding that a state court could apply the Minnesota rule that a civil case could be decided by agreement of five of six jurors even though federal law required a unanimous verdict). Accordingly, when a FELA case is brought in state court, federal law governs the parties' substantive rights, but state court practices and procedures apply. *Boyd*

v. BNSF Ry. Co., 874 N.W.2d 234, 237 (Minn. 2016); *see Brown v. W. Ry. of Ala.*, 338 U.S. 294, 296 (1949); *Mondou v. N.Y., New Haven & Hartford R.R. Co.*, 223 U.S. 1, 56–57 (1912).

The dispute in this case is whether postjudgment interest affects substantive FELA rights (in which case the federal postjudgment interest rate applies) or is procedural (in which case the state postjudgment interest rate applies). We apply a two-part test to make that determination. First, we assess "whether the state law is substantive or procedural" in nature. *Boyd*, 874 N.W.2d at 238. If it is procedural, the state law applies. If the state law is substantive, we move to the second question and "determine whether federal law authorizes application of the state law in a FELA case." *Id.*

We turn first to the question of whether postjudgment interest is substantive or procedural in nature for FELA purposes. We begin by observing that the distinction between substantive law and procedural law is not always clear cut. In the FELA context, what are generally considered rules of procedure and practice may be deemed substantive when the procedural rule "dig[s] into 'substantive rights' " so much that those procedural rules unduly impact or interfere with the substantive rights accorded by FELA. *See, e.g.*, *Brown*, 338 U.S. at 296; *see also Cent. Vt. Ry. Co. v. White*, 238 U.S. 507, 511 (1915) (stating that "matters of substance and procedure must not be confounded because they happen to have the same name"). When that line is crossed, federal substantive law applies. Here, the proper measure of FELA damages is the only substantive right identified by BNSF that is potentially impacted by application of the state's postjudgment interest rate. Accordingly, we must address whether postjudgment interest affects the proper measure of

FELA damages so much that it unduly impacts or interferes with that substantive FELA right.

We conclude that postjudgment interest is procedural. For more than a century, the Supreme Court of the United States has recognized that a state court may apply its own postjudgment procedures in FELA cases. In *Louisville & Nashville Railroad Company v. Stewart*, the Supreme Court approved the use of Kentucky's postjudgment supersedeas procedure that required any party who sought to appeal a judgment to pay an additional 10 percent on the damages awarded at trial if the trial judgment was affirmed.[1] 241 U.S. 261, 263 (1916). The *Stewart* Court allowed the state to impose the 10-percent postjudgment penalty on FELA awards even though it meant that a railroad sued in Kentucky state court would ultimately pay 10 percent more than if sued in federal court.

This result makes sense because entry of judgment defines and settles the scope of substantive FELA liability and fixes the total and proper amount of FELA damages. Once judgment is entered, the injured employee's right of recovery under federal substantive law has been fulfilled and "[a]ll that remains is to collect the amount of the award from the losing party." *Lockley v. CSX Transp. Inc.*, 66 A.3d 322, 327 (Pa. Super. Ct. 2013).

Like the use of Kentucky's supersedeas penalty approved by the *Stewart* Court, the imposition of postjudgment interest does not affect or dig into substantive FELA rights

[1] The statute, Ky. Civ. Code of Practice § 764, provided in 1908 (when FELA was enacted) and in 1916 (when the case was decided) as follows: "Upon the affirmance of, or the dismissal of an appeal from, a judgment for the payment of money, the collection of which, in whole or in part, has been superseded . . . 10 per cent damages on the amount superseded shall be awarded against the appellant." The federal courts had no similar supersedeas provision.

because the postjudgment interest rate is not applied until a FELA judgment is entered and the scope of the FELA liability is settled and final.[2]

BNSF asserts that notwithstanding the Supreme Court's holding in *Stewart*, the Court's later decision in *Monessen v. Southwest Railway Company v. Morgan*, 486 U.S. 330 (1988), compels the conclusion that postjudgment interest is substantive. BNSF argues that an award of postjudgment interest is no different than the award of prejudgment interest that the *Monessen* Court held to have interfered too much with the substantive measure of damages available under FELA. We disagree.

In *Monessen*, the Supreme Court began with the proposition that, under FELA, the measure of actual damages is substantive. *Id.* at 335–36. It based this conclusion on several earlier decisions, in which the Supreme Court recognized that the proper measure of damages under FELA is substantive because the measure of actual damages "is inseparably connected with the right of action." *Id.* (citing *St. Louis Sw. Ry. Co. v. Dickerson*, 470 U.S. 409 (1985); *Norfolk & W. Ry. Co. v. Liepelt*, 444 U.S. 490 (1980); and *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485 (1916)).

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[2] We note that when the Supreme Court held in *Monessen Sw. Ry. Co. v. Morgan* that prejudgment interest was substantive, it found persuasive that other courts had "uniformly" reached the same conclusion. 486 U.S. 330, 336 n.3 (1988). Our conclusion here is bolstered by the fact that after *Monessen*, other courts have almost unanimously concluded that *state* law postjudgment interest statutes apply under FELA. *See, e.g.*, *Doi v. Union Pac. R.R. Co.*, No. B214287, 2010 WL 298387, at *12 (Cal. Ct. App. Jan. 27, 2010); *Cutlip v. Norfolk S. Co.*, No. L-02-1051, 2003 WL 1861015, at *12 (Ohio Ct. App. Apr. 11, 2003); *Lockley*, 66 A.3d at 326–27; *Denning v. CSX Transp. Inc.*, No. M2012-01077-COA-R3-CV, 2013 WL 5569145, at *8 (Tenn. Ct. App. Oct. 9, 2013); *but see Turner v. CSX Transp., Inc.*, 878 N.Y.S.2d 543, 544–45 (N.Y. Sup. Ct. 2009) (holding that postjudgment interest in a FELA case is substantive and federal law should apply).

The three earlier cases cited in *Monessen* did not consider prejudgment interest. They did, however, elucidate the circumstances under which a state law affects the actual measure of damages. The *Kelly* Court held that when damages are awarded under FELA for future harms (like loss to a dependent of the support of a father killed in a railroad accident), the lump-sum damages award must be reduced in accordance with federal law to the present value of those losses. 241 U.S. at 491. It noted that the measure of damages is central to an element of the FELA claim and the question of liability, *id.*, and recognized that FELA limited recovery to the amount that would compensate for loss caused by the railroad's negligence, *see id.* at 489, 491. The *Kelly* Court rejected a state court determination that the award of future damages should not be reduced to present value. *Id.* at 489–90.[3] This conclusion was reaffirmed in *Dickerson*. 470 U.S. at 411–12. And the *Liepelt* Court reaffirmed the general proposition that "questions concerning the measure of damages in an FELA action are federal in character," and held that the proper amount of recovery in a FELA wrongful death action is "after tax income" because "that provides the only realistic measure of [a person's] ability to support his family." 444 U.S. at 493. In accordance with that conclusion, the *Liepelt* Court held that the state court's jury instruction and evidence rulings that ran counter to that principle of substantive law were in error. *Id.* at 498. In sum, each of the three cases considered whether the state law at issue impacted the proper measure of damages necessary to compensate an injured

[3] Notably, the *Kelly* Court stated that the *method* of making that present value calculation should be left to "the law of the forum" like "other questions of procedure and evidence." *Id.* at 491.

employee for losses incurred due to injury. If it did, the law was considered substantive and federal law applied.

In *Monessen*, the Supreme Court held that the "question of what constitutes 'the proper measure of damages' under the FELA necessarily includes the question whether prejudgment interest may be awarded to a prevailing FELA plaintiff." 486 U.S. at 335. Accordingly, the *Monessen* Court stated, the availability of prejudgment interest is a matter of federal substantive law. *See id.* The *Monessen* Court reasoned that prejudgment interest "is normally designed to make the plaintiff whole and *is part of the actual damages sought to be recovered*." *Id.* (emphasis added).

In reaching that conclusion, the Supreme Court relied on several other earlier decisions to support its categorization of prejudgment interest as part of the "actual damages" necessary to "make the plaintiff whole." Those cases provide further insight into the Court's analysis. For instance, in *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655 (1983), the Supreme Court held that prejudgment interest was properly awarded in a patent case to ensure that the award of damages fixed in the judgment fully compensated the patent owner for his losses:

> The standard governing the award of prejudgment interest . . . should be consistent with Congress' overriding purpose of affording patent owners complete compensation. In light of that purpose, we conclude that prejudgment interest should ordinarily be awarded. In the typical case an award of prejudgment interest is necessary to ensure that the patent owner is placed in as good a position as he would have been in had the infringer entered into a reasonable royalty agreement. An award of interest from the time that the royalty payments would have been received merely serves to make the patent owner whole, since his damages consist not only of the value of the royalty payments but also of the forgone use of the money between the time of infringement and the date of the judgment.

Id. at 655–56 (footnote omitted); *see also West Virginia v. United States*, 479 U.S. 305, 310–11 & n.2 (1987); *Poleto v. Consol. Rail Corp.*, 826 F.2d 1270, 1278 (3d Cir. 1987) ("An injured worker forgoes income, yet must meet the expenses of daily life before compensation for his injury is reduced to judgment. Prejudgment interest for economic losses accounts for this period between the date of the loss and the date of its ascertainment, thereby contributing to making the plaintiff whole."). In other words, prejudgment interest is closely tied up in the question of what is adequate compensation *for the worker's injury*; a plainly substantive inquiry.[4]

In contrast, postjudgment interest does not—indeed, cannot—change the amount of damages awarded to the railroad worker to compensate him for his injury. That amount is fixed when the judgment is entered. Unlike prejudgment interest, postjudgment interest is not intended to compensate or make the plaintiff whole for his injury at the hands of the railroad. Rather, it is a judgment creditor remedy designed to compensate a wronged party for loss of use of money awarded by a final judgment. *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988); *see also Lockley*, 66 A.3d at 327 ("Post[-]judgment interest is designed

[4] In *Monessen*, the Supreme Court ultimately concluded, in the second step of the analysis, that because the common law when FELA was enacted in 1908 did not allow prejudgment interest in suits for personal injury or wrongful death and Congress never expressly acted to alter that common law, prejudgment interest is not available in FELA actions as a matter of federal substantive law. 486 U.S. at 337–39; *see Devex Corp.*, 461 U.S. at 655–56 n.10 (noting that the traditional view on prejudgment interest had changed from being a penalty to being compensation). Because we determine that postjudgment interest is procedural—that it does not unduly or impermissibly impact a federal substantive right—we need not reach the second step of the analysis and ask what federal law says about postjudgment interest.

to compensate a successful plaintiff for the time between his entitlement to damages and the actual payment of those damages by the defendant." (alteration in original) (quoting *Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, Inc.*, 848 F.2d 613, 623 (5th Cir. 1988)); Susan Margaret Payor, *Post-Judgment Interest in Federal Courts*, 37 Emory L.J. 495, 495 (1988). Accordingly, postjudgment interest does not affect the measure of actual damages nor interfere or "dig into" a substantive FELA right.[5]

We acknowledge that the *Monessen* Court bolstered its conclusion that federal substantive law governs the award of prejudgment interest by noting that "prejudgment interest may constitute a significant portion of [a] FELA plaintiff's total recovery." 486 U.S. at 335. BNSF notes that the difference between the out-of-pocket amount that the railroad must pay if the state postjudgment interest rate is used instead of the federal postjudgment interest rate is approximately $300,000. Because of this, BNSF argues that we are compelled to conclude that Minnesota courts must apply the postjudgment interest rate in FELA cases as a matter of substantive law. We do not agree.

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[5] In *Boyd*, we held that Minnesota's cost-doubling rule is substantive and that it could not be applied in FELA cases brought in Minnesota state courts. 874 N.W.2d at 239-40. In so deciding, we looked to whether courts viewed cost-doubling rules as procedural or substantive under the *Erie* doctrine. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938) (holding that a federal court sitting in diversity jurisdiction must apply state substantive law to resolve claims under state law). We found it persuasive that, in the *Erie* doctrine context, federal courts also held state cost-doubling statutes to be substantive. *Boyd*, 874 N.W.2d at 240 n.6. In contrast, federal courts applying the *Erie* doctrine have generally characterized postjudgment interest as procedural. *See, e.g.*, *John Hancock Life Ins. Co. v. Abbott Labs.*, 863 F.3d 23, 49 (1st Cir. 2017); *Schipani v. McLeod*, 541 F.3d 158, 164–65 (2d Cir. 2008); *Forest Sales Corp. v. Bedingfield*, 881 F.2d 111, 112–13 (4th Cir. 1989); *Weitz Co., Inc. v. Mo-Kan Carpet, Inc.*, 723 F.2d 1382, 1385–86 (8th Cir. 1983); *see also Tobin v. Liberty Mut. Ins. Co.*, 553 F.3d 121, 146 (1st Cir. 2009).

The mere dollar impact of applying a state rule rather than a federal rule cannot be determinative of whether a rule of law is substantive or procedural. *Stewart*—the 1916 case that allowed Kentucky to impose a 10-percent supersedeas penalty, thereby increasing the out-of-pocket amount that the railroad had to pay compared to what it would have paid had the suit been brought in a federal court—disposes of that contention. The interest in uniformity of substantive FELA outcomes did not preclude the imposition of the penalty imposed after the parties' substantive FELA rights were finally determined and judgment was entered.[6] Stated another way, in *Stewart*, the railroad had to pay the injured worker more money—a combination of damages and a postjudgment penalty—than it would have in federal court and the Supreme Court approved. The Supreme Court could not have reached that decision if a mere dollar impact were decisive.

Further, in *Monessen*, the Supreme Court first decided that prejudgment interest is an integral part of the substantive measure of actual damages before reaching the question of the impact differing prejudgment interest rules had on the total amount that BNSF was required to pay Alby. That sequence is important. The dollar impact of differing prejudgment interest rates goes to the question of whether a rule typically considered to be procedural should be deemed substantive for FELA because it interferes too heavily with

[6] The Supreme Court had already recognized the importance of national substantive uniformity in FELA cases when it decided *Stewart*. *See Winfield*, 244 U.S. at 153 (holding that allowing an injured employee to recover under state strict liability workers compensation laws when the railroad was not negligent as required under FELA would disturb "the uniformity which the act is designed to secure"); *Seaboard Air Line Ry. v. Kenney*, 240 U.S. 489, 494 (1916) (holding that state laws defining "next of kin" applied in FELA cases notwithstanding uniformity concerns).

a federal substantive right. The interference question does not arise, however, until a substantive federal right (in *Monessen*, the proper measure of damages) is first identified. In other words, the interest in national uniformity is an interest in uniform substantive rights. As noted above, unlike prejudgment interest, postjudgment interest is not part of the actual damages designed to compensate the worker for his injuries. Consequently, the fact that application of the state postjudgment interest rate happens to increase the dollar amount ultimately paid to Alby is simply not, and cannot be, determinative as to whether postjudgment interest is a substantive issue. Because postjudgment interest does not interfere with a substantive FELA right—the proper measure of damages—we need not reach the question of whether application of the state law creates a lack of uniformity between federal and state courts.

This conclusion is supported by the cases cited in *Monessen* for the proposition that rules that impact "too substantial a part of the rights accorded by the Act" are subject to federal law. 486 U.S. at 336 (internal quotation marks omitted). In *Dice v. Akron, Canton & Youngstown Railroad Company*, the Supreme Court reviewed a decision of the Ohio Supreme Court holding that a release signed by an injured worker barred his suit against the railroad. 342 U.S. 359, 361 (1952). The Ohio court applied state law providing that judges, rather than juries, should decide factual issues as to whether a person was induced by fraud to sign a release. *Id.* The *Dice* Court reversed because "[r]eleases and other devices designed to liquidate or defeat injured employees' claims play an important part in the *federal* Act's administration. Their validity is but one of the many interrelated questions that must constantly be determined in these cases according to a uniform federal

law." *Id.* at 361–62 (emphasis added) (citation omitted). The *Dice* Court concluded that a release defense was an issue of substantive law. It held that the Ohio "local rule of procedure" that took determination of that substantive right out of the hands of the jury imposed too heavily on the federal right. *Id.* at 363 (internal quotation marks omitted).

In *Brown*, the United States Supreme Court employed a similar analysis. The Court concluded that an injured worker filed a complaint that alleged all the elements necessary to make out a substantive claim under FELA. 338 U.S. at 297–98. The Georgia state court dismissed the complaint under its rule of practice that required construing allegations in a pleading "most strongly against the pleader." *Id*. at 295 (internal quotation marks omitted). The *Brown* Court declined to allow the Georgia pleading rule to defeat what was otherwise a legitimate substantive claim under FELA.[7] As in *Dice* and later *Monessen*, the Georgia procedural rule dug too deeply into and interfered too much with an otherwise substantive federal right. And in *Dice* and *Brown*, the procedural rule interfered with a substantive legal right, in part, by preventing a claim from moving forward before it could reach the jury for decision. Postjudgment interest does not affect preverdict decisions in such a way.

[7] The Supreme Court's decision in *Central Vermont Railway Company v. White* is to the same effect. In *White*, the Vermont Supreme Court did not apply the state rule of procedure requiring the injured worker to bear the burden of proving that he was not guilty of contributory negligence. 238 U.S. 507, 510–11 (1915). It ruled that FELA "supersede[d]" the state procedural rule. *Id.* at 510. The United States Supreme Court affirmed, holding that the federal rule—which placed the burden of proving contributory negligence on the defendant railroad—applied. *Id.* at 512. To rule otherwise would "destroy[] the liability" established in FELA. *Id.* at 511. Once again, what was typically viewed as a rule of procedure—the burden of proof—was deemed substantive because it interfered too heavily with identified substantive rights established in FELA.

Our prior decisions in *Kinworthy* and *Boyd* do not change this result. In *Kinworthy*, we were tasked with deciding whether state or federal law applied regarding post-verdict, prejudgment interest. 860 N.W.2d at 356. Because of the Supreme Court's broad holding in *Monessen* that prejudgment interest was substantive, we were bound to that conclusion as well. *Id.* at 359 ("The basic definition of 'prejudgment interest' in the [*Monessen*] opinion clearly means any and all interest that accrues before the entry of the judgment in the case."). *Monessen* does not similarly bind us here.

In *Boyd*, we held that Minnesota's cost-doubling rule, Minn. R. Civ. P. 68.03(b)(2), is substantive.[8] 874 N.W.2d at 240. The cost-doubling rule creates a significant preverdict, prejudgment decision for a defendant. Under the rule, the defendant railroad must either (1) agree to the injured worker's settlement terms and give up its substantive FELA right to present a defense and take its case to trial, *or* (2) proceed to trial and run the risk that it will face an even greater dollar payout if the jury returns a verdict in excess of the amount the injured worker offered in settlement. Because the federal rules do not authorize cost-doubling against defendants, the railroad would not have faced such a decision—before liability is determined—if the case had been brought in federal court. *See id.* at 239. Accordingly, we concluded that applying the Minnesota cost-doubling rule created an unacceptable disparity in substantive FELA rights based solely on whether the plaintiff's

[8] Rule 68.03(b) provides that when the relief awarded to a plaintiff who makes an offer is less favorable to the defendant than the offer, "the defendant-offeree must pay, in addition to the costs and disbursements to which the plaintiff-offeror is entitled under Rule 54.04, an amount equal to the plaintiff-offeror's costs and disbursements incurred after service of the offer."

claim is brought in federal or state court. *Id*. at 240. In contrast, the imposition of the judgment creditor remedy of postjudgment interest does not impact any decision affecting substantive FELA rights before liability is determined.

Awards of postjudgment interest are procedural in nature. Accordingly, postjudgment interest in an action brought under FELA in Minnesota courts should be calculated in accordance with Minn. Stat. § 549.09, subd. 1(c).

Even if an award of postjudgment interest were substantive, we would reach the same result. Under our precedent, if the state law affects substantive FELA rights, we must then "determine whether the federal law authorizes application of the state law in a FELA case." *Boyd*, 874 N.W.2d at 238. To answer that question, we turn to the federal postjudgment interest statute.[9]

The federal postjudgment statute provides that "[i]nterest shall be allowed on any money judgment in a civil case *recovered in a district court*." 28 U.S.C. § 1961(a) (emphasis added). Subdivision (c) of section 1961 specifies that the federal postjudgment interest rate provisions also apply in certain courts that are not federal district courts.

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[9] Regarding this second step in the analysis—whether federal law authorizes application of the state law in a FELA case—we observe that this case is different from *Monessen* and *Boyd*. In those cases, federal law did not authorize prejudgment interest and cost-doubling, respectively. *Monessen*, 486 U.S. at 336; *Boyd*, 874 N.W.2d at 241. Here, federal law expressly authorized postjudgment interest on damages judgments entered in federal courts in 1908 when FELA was enacted and continues to do so today. *See* 28 U.S.C. § 1961; *see also* 5 Stat. 518, § 8 (1842 adoption of federal postjudgment interest statute that is currently found at 28 U.S.C. §1961); U.S. Rev. Stat. ch. 18, § 966 (1873) (federal postjudgment interest statute in effect when FELA was enacted in 1908); *see also Pierce v. United States*, 255 U.S. 398, 406 (1921) (discussing section 966). Accordingly, our second-step inquiry in this case is limited to determining *which* rate (state or federal) applies.

Specifically, they apply to final judgments against the United States rendered in the United States Court of Appeals for the Federal Circuit and judgments entered in the United States Court of Claims. 28 U.S.C. § 1961(c)(2)–(3). Subdivision (c) further clarifies that section 1961 interest rates do not apply in IRS cases. *Id.* § 1961(c)(1). Finally, and critically, 28 U.S.C. § 1961(c)(4) provides that the federal interest rate provisions "shall not be construed to affect the interest on any judgment of any court not specified in this section." Because Minnesota state courts are not specified in section 1961, the federal interest rate does not apply. *See Denning*, 2013 WL 5569145, at *9; *Doi*, 2010 WL 298387, at *12. Applying the plain language of the federal postjudgment interest statute, when a FELA case is brought in a Minnesota state court, the Minnesota postjudgment interest rates must apply.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court to apply the 10-percent postjudgment interest rate set forth in Minn. Stat. § 549.09, subd. 1 (c)(2).

Reversed and remanded.

D I S S E N T

ANDERSON, Justice (dissenting).

We are required to determine here whether the state or federal postjudgment interest rate applies to a Federal Employer's Liability Act (FELA) case brought in Minnesota state court. Under the test laid out by our court in *Boyd v. BNSF Railway Company*, we must first determine "whether the state law is substantive or procedural in nature." 874 N.W.2d 234, 238 (Minn. 2016). If the law is substantive in nature, we must then "determine whether federal law authorizes application of the state law in a FELA case." *Id.*

The court ultimately concludes that the state interest rate applies. Because of the effect postjudgment interest has on the liability of the parties and one of the underlying purposes of FELA—uniformity between state and federal courts—I disagree with the court's conclusion. Instead, I would conclude that postjudgment interest is substantive in nature and that the federal interest rate applies.

I.

The court concludes that postjudgment interest is procedural in nature because it is a "judgment creditor remedy" rather than a component of damages, determined by a jury, intended to compensate a plaintiff for his injury. The court also rejects the idea that postjudgment interest is substantive simply because it constitutes a significant portion of an injured employee's recovery. I disagree and conclude that postjudgment interest is substantive in nature.

Minnesota is granted concurrent jurisdiction over FELA claims under 45 U.S.C. § 56 (2012). The Supreme Court of the United States has held that "[p]ermitting state courts to entertain federal causes of action facilitates the enforcement of federal rights" and is premised on "the relation between the States and the National Government within our federal system." *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 & n.4 (1981) (citing The Federalist No. 82 (Alexander Hamilton)). When exercising concurrent jurisdiction, the state must "recognize federal law as paramount." *Id.* at 478.

Under a FELA claim in state court, "federal law governs all substantive matters, but procedural matters are subject to state procedural rules." *Kinworthy v. Soo Line R.R. Co.*, 860 N.W.2d 355, 357 (Minn. 2015). The Supreme Court has acknowledged that in FELA cases "what extent rules of practice and procedure may themselves dig into 'substantive rights' is a troublesome question at best." *Brown v. W. Ry. of Ala.*, 338 U.S. 294, 296 (1949). There is no "precise rule" to distinguish between a substantive law and a procedural law in the FELA context. *Boyd*, 874 N.W.2d at 239 (quoting *St. Louis Sw. Ry. Co. v. Dickerson*, 470 U.S. 409, 411 (1985)). But we must start our analysis with the fact "that the definition of 'substantive' in FELA cases is expansive, encompassing state laws that by ordinary nomenclature would be regarded as 'procedural.' " *Id.* (holding that the cost-doubling statute was substantive); *see also Kinworthy*, 860 N.W.2d at 357. The Supreme Court has "recognized generally that the FELA is a broad remedial statute," and has "adopted a 'standard of liberal construction *in order to accomplish [Congress'] objects*.' " *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 562 (1987) (emphasis added) (quoting *Urie v. Thompson*, 337 U.S. 163, 180 (1949)).

It has long been settled that " 'the proper measure of damages [under the FELA] is inseparably connected with the right of action.' " *Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 335 (1988) (quoting *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485, 491 (1916)). The issue of substance " 'must be settled according to general principles of law as administered in the Federal courts.' " *Id.* In other words, "questions concerning the measure of damages in an FELA action are federal in character . . . even if the action is brought in state court." *Norfolk & W. Ry. Co. v. Liepelt*, 444 U.S. 490, 493 (1980).

I conclude that *Monessen* cannot be distinguished in the manner suggested by the court, and because distinguishing *Monessen* is not possible, I reach the inevitable result that postjudgment interest is substantive rather than procedural.

As discussed by the court, the *Monessen* Court had to decide whether a Pennsylvania Rule of Civil Procedure, which requires state courts to add a 10-percent prejudgment interest, should be applied to a FELA judgment obtained in a Pennsylvania state court. 486 U.S. at 333–34. The *Monessen* Court determined that because the interest constituted a substantial part of a defendant's liability under FELA, the additional statutory interest could not be characterized as procedural. *Id.* at 336.

The court argues that the interest added to the judgment here is properly classified as procedural because the court, rather than a jury, determined the amount of interest and included the interest in the judgment to be paid by the railroad. But there are numerous cases in which state practices, unrelated to any jury determination, are deemed substantive in the context of FELA even though those practices are procedural for non-FELA purposes. *See id.* at 330 (prejudgment interest); *Brown*, 338 U.S. at 296 (pleading standards); *Cent.*

Vt. Ry. Co. v. White, 238 U.S. 507, 511–12 (1915) (burden of proof standards); *Boyd*, 874 N.W.2d at 236 (double-cost recovery).

Our decision in *Boyd* also leads to a conclusion that postjudgment interest is substantive in nature. When determining whether Minnesota's cost-doubling statute was substantive or procedural, we looked at whether the result of applying the state law would increase the railroad's liability beyond the plaintiff's actual costs. *Boyd*, 874 N.W.2d at 240. Relying on the *Monessen* Court's analysis, we considered the congressional intent of maintaining uniformity between federal and state court FELA cases. *Id.* Among other reasons for concluding the cost-doubling statute was substantive, we also noted that the statute would have increased the railroad's liability by $60,000, and therefore would have created a disparity between state and federal FELA cases, and, as a result, held the statute to be substantive in character. *Id.*

Here, the difference between applying the state interest rate and the federal interest rate is approximately $320,000—constituting almost an additional 20 percent of the damages awarded to Alby by the jury. This significant difference in total liability should be considered, as it was in *Boyd* and *Monessen*. A conclusion that postjudgment interest is procedural, therefore leading to application of the state interest rate, creates drastic disparities between state and federal courts, undermines the goal of uniformity, and fails to accomplish the objective of Congress. This raises serious policy concerns of forum shopping that cannot be ignored in the court's analysis. "The judiciary has never favored this sort of shopping for a forum" where a plaintiff "may go shopping for a [court] believed to be more favorable." *Miles v. Ill. Cent. R.R. Co.*, 315 U.S. 698, 706 (1942) (Jackson, J.,

concurring). Further, we have held that "Minnesota does not have an interest in encouraging forum shopping." *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 471 (Minn. 1994). The court concludes here that "the mere dollar impact" cannot be the determinative test for whether state law or federal law applies. But even if we grant the argument that, in an individual case, the "mere dollar impact" is not the only factor of concern, here, the general disparity between the flat 10-percent state rate and the floating federal rate creates a consistent and significant disparity in *all* cases involving significant damages and the application of postjudgment interest. Moreover, the issue is not so much the extent of the disparity but rather the potential for significant disparities that lead to bad public policy—i.e., forum shopping.

I am not persuaded by the court's reliance on *Louisville & Nashville R.R. Co. v. Stewart*, 241 U.S. 261 (1916), as support for the conclusion that postjudgment interest is procedural. The *Stewart* Court upheld the use of Kentucky's supersedeas procedures on appeal from FELA verdicts that required any party who sought to appeal a judgment to pay an additional 10 percent on the damages awarded at trial if the trial judgment was affirmed. *Id.* at 263. The Kentucky provision in *Stewart* was tied to the right of appeal. Here, the injured employee's right to receive additional funds was not tied to any procedural rights, but rather the amount paid to the employee increased, and increased substantially, simply because a judgment, following the verdict, was entered. The court concludes that *Stewart* supports the general conclusion that a rule that does not apply until after judgment has been entered on the FELA claim must be procedural. This cannot be true, as we held the cost-doubling statute, another posttrial remedy, to be substantive in *Boyd*. 874 N.W.2d at

240. More significantly, the *Stewart* Court makes no mention of a procedural or substantive distinction in the single paragraph analysis of the supersedeas rule and provides no guidance to our analysis here.

II.

Because I conclude that postjudgment interest is substantive in nature, I must next determine whether the federal law authorizes application of our state postjudgment interest rate. *Id.* at 238. When looking at whether to apply federal or state interest law, our court must "act[] consistently with federal law." *Monessen*, 486 U.S. at 339.

In both of the binding FELA decisions relevant here, *Monessen* (prejudgment interest) and *Boyd* (cost-doubling), federal law was silent. Because of the congressional "silence," those cases required consideration of the common law to determine legislative intent. *Monessen*, 486 U.S. at 337; *Boyd*, 874 N.W.2d at 240. In contrast, here, Congress was not silent on the matter of postjudgment interest. The general federal interest statute, 28 U.S.C. § 1961 (2012), grants postjudgment interest for "any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a). Subsection (c)(4) indicates that state tribunals are not required to use the federal rate. 28 U.S.C. § 1961(c)(4) ("This section shall not be construed to affect the interest on any judgment of any court not specified in this section."). But I conclude that the federal interest rate, rather than the state interest rate, necessarily applies in FELA proceedings. While state courts are granted concurrent jurisdiction over FELA claims under 45 U.S.C. § 56, the federal government occupies the field for a railway worker's personal injury claims, and provides the sole remedy at law. *Mondou v. N.Y., New Haven, & Hartford R.R. Co.*, 223 U.S. 1, 56–57 (1912). As a

convenient forum for the plaintiff, state tribunals in FELA cases must not frustrate the purpose of uniformity that Congress intends.

Application of the federal interest rate is required because "only if federal law controls can [FELA] be given that uniform application throughout the country essential to effectuate its purposes." *Dice v. Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359, 361 (1952). In line with this broader goal of consistency, Congress passed the Federal Courts Improvement Act of 1982, Pub. L. No. 97–164, 96 Stat. 25, section 302 of which amended 28 U.S.C. § 1961. This Act set a single, consistent, postjudgment interest rate for all federal cases, and moved away from the earlier practice of setting the postjudgment interest rate based on the rate allowed by state law. *Compare* Act of June 25, 1948, ch. 646, § 1961, 62 Stat. 869, 957–58, *with* 28 U.S.C. § 1961(a). Allowing a state court to apply its own postjudgment interest rate frustrates the uniform recovery purpose of both FELA and 28 U.S.C. § 1961.

Application of the federal interest rate also effectuates the proper measure of damages required by FELA. Section 1961 calculates interest from the date of judgment at a rate equal to the weekly average 1-year constant maturity Treasury yield as published by the Federal Reserve System. 28 U.S.C. § 1961(a). The interest statute effectuates the purpose of FELA because "damages awards in suits governed by federal law should be based on present value." *Dickerson*, 470 U.S. at 412. Thus, I conclude that the federal postjudgment interest rate is applicable.

Because of the disparate effect that would be caused by applying the state postjudgment interest rate and the underlying policy goals of FELA, I conclude that the

award of postjudgment interest is substantive in nature. Consistent with federal law, the federal interest rate applies. Accordingly, I would affirm the court of appeals.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice Anderson.