

Before the Montana House Business and Labor Committee

March 15, 2005

Testimony of Ed Bartlett

On behalf of Union Pacific Railroad

In Opposition to

SB 375

Mr. Chair and Members of the Committee: My name is Ed Bartlett. I am an attorney representing the Union Pacific Railroad. The Union Pacific Railroad opposes Senate Bill 375 and respectfully asks that you also oppose SB 375.

The proper place of trial is already fairly and equitably set forth in the current law under Section 25-2-122 (1), (2) and (3) MCA. To target railroads as defendants in Montana courts differently than any other defendant is not necessary and is not required under the Federal Employers' Liability Act (FELA). To do so would be unfair and unjust. Further, plaintiffs who are railroad employees should not be treated differently than any other Montana plaintiffs when the Legislature grants those plaintiffs choices for the location of their trials.

The Montana Supreme Court has recently decided an important case which gives you, the Legislature, all the guidance you need to conclude that SB 375 is not needed and is not appropriate. The Montana Supreme Court ruled on January 25, 2005, in the case of Lloyd Rule vs. Burlington Northern and Santa Fe Railway Co. that the existing Montana venue law is applicable to FELA cases, concluding that Section 25-2-122 (2) MCA provides sufficient venue options for FELA plaintiffs to meet the concerns expressed in the federal venue statute and cases and in previous Montana cases. The Montana Supreme Court said that under the current statute, a FELA plaintiff has the same, or greater, venue rights as any other tort plaintiff. The Court stated that FELA plaintiffs suing railroad employers may be treated the same as any other Montana plaintiffs with tort actions against out-of-state corporate defendants.

Under Section 25-2-122(2) MCA, FELA plaintiffs and any other plaintiffs have three proper venue choices for trial: 1) the county in which the tort was committed; 2) the county in which the plaintiff resides; or 3) the county in which the corporation's resident agent is located (in other words, where the defendant corporation resides in the State). FELA plaintiffs also may elect to file their claim in Federal Court. Isn't that fair and isn't that enough? Of course it is—plaintiffs who are railroad employees should not be treated differently than any other plaintiff; nor does the law require that they be treated differently.

Governor Schweitzer in his State of the State address said that Montana is open for business. To enact SB 375 would have the likely result of increasing the costs railroads incur doing business in Montana which in turn will result in increased shipping rates to Montana customers or decreased service or both. I don't think that is what the Governor had in mind.

The Union Pacific, the other Class I railroad in Montana, operates over 33,000 route miles in 23 states. Only 125 of those route miles are in Montana, but those miles provide Montana products access to markets outside Montana; and provide products from outside Montana access to Montana customers. For example, a significant quantity of Montana grain, originating from many Montana counties, is hauled by truck to Butte and then shipped from Butte on Union Pacific Railroad, providing competition to BNSF; and General Motors cars delivered by Union Pacific to the Port of Montana in Butte are distributed for sale throughout Montana.

The State of Montana needs to protect and maintain the business and the businesses it has and needs to support expansion of that business. This cannot be done if the Legislature enacts laws like SB 375 that increase the cost and risk of doing business in Montana.

The Union Pacific Railroad respectfully requests that you oppose SB 375.

SENATE BILL NO. 375

INTRODUCED BY M. WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

- (a) the county in which the defendants or any of them reside at the commencement of the action; or
(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~Except as provided in subsection (4),~~ if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

- (a) the county in which the tort was committed;
(b) the county in which the plaintiff resides; or
(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~Except as provided in subsection (4),~~ if the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

- (a) the county in which the tort was committed; or
(b) the county in which the plaintiff resides.

(4) If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business.

*on the date of injury*

*define*

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

