Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 09:27 AM CST

matter of law when it determined that Shada's action against Farmers for underinsured motorist benefits accrued upon her settlement with the tort-feasor's insurer and was time barred. Therefore, we conclude that the district court erred when it granted Farmers' motion for summary judgment and dismissed the case. We reverse the judgment and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

EDDIE HECKMAN, APPELLEE, V. BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, APPELLANT.

837 N.W.2d 532

Filed August 16, 2013. No. S-12-335.

1. **Statutes: Appeal and Error.** Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.
2. **Juries: Verdicts.** A jury, by its general verdict, pronounces upon all or any of the issues either in favor of the plaintiff or the defendant.
3. **Juries: Verdicts: Presumptions.** Because a general verdict does not specify the basis for an award, Nebraska law presumes that the winning party prevailed on all issues presented to the jury.
4. **Federal Acts: Railroads: Claims: Courts.** In disposing of a claim controlled by the Federal Employers' Liability Act, a state court may use procedural rules applicable to civil actions in the state court unless otherwise directed by the act, but substantive issues concerning a claim under the act are determined by the provisions of the act and interpretative decisions of the federal courts construing the act.
5. **Federal Acts: Railroads: Pensions: Words and Phrases.** For purposes of the Railroad Retirement Act, the definition of compensation includes payments for time lost.
6. **Employer and Employee: Wages.** An employee is deemed to be paid "for time lost" the amount he is paid by an employer for an identifiable period of absence, including absence on account of personal injury.
7. **Federal Acts: Railroads: Pensions: Presumptions: Damages.** The Railroad Retirement Act presumes that payments for personal injury are compensation for time lost unless they are specifically apportioned otherwise.
8. **Federal Acts: Railroads: Pensions.** The Railroad Retirement Board treats the total Federal Employers' Liability Act award as pay for time lost if the payment for personal injury is based in part on pay for time lost.

9. **Employer and Employee: Contracts: Wages.** Employers and employees can negotiate settlement agreements and allocate portions of a settlement award to lost wages and other compensatory categories.

Appeal from the District Court for Box Butte County: TRAVIS P. O'GORMAN, Judge. Reversed and remanded with directions.

Nichole S. Bogen and Thomas C. Sattler, of Sattler & Bogen, L.L.P., for appellant.

Andrew W. Snyder and Maren L. Chaloupka, of Chaloupka, Holyoke, Snyder, Chaloupka, Longoria & Kishiyama, P.C., L.L.O., for appellee.

Kathryn Keneally, Assistant Attorney General, Deborah R. Gilg, U.S. Attorney, Robert L. Homan, Assistant U.S. Attorney, and Jonathan S. Cohen and Marion E.M. Erickson, of U.S. Department of Justice, Tax Division, Appellate Section, for amicus curiae United States of America.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

WRIGHT, J.

I. NATURE OF CASE

Pursuant to the Federal Employers' Liability Act (FELA), Eddie Heckman was awarded $145,000 in damages for on-the-job injuries sustained while working for Burlington Northern Santa Fe Railway Company (BNSF). BNSF paid the judgment, but withheld $6,202.70 as Heckman's share of Railroad Retirement Tax Act (RRTA) payroll taxes on the entire general verdict award. The district court overruled BNSF's "Motion for Satisfaction and Discharge of Judgment" and ordered BNSF to pay the $6,202.70 directly to Heckman. It also required the parties to agree in writing that no amount of the award would be considered lost wages, so as to avoid any obligations under the RRTA.

BNSF appealed, claiming that the court's order conflicted with federal tax and railroad laws. We granted BNSF's petition to bypass the Nebraska Court of Appeals. The issue is whether the general verdict award in favor of Heckman is an award of compensation from which BNSF is required to withhold

a portion of the award in order to pay RRTA payroll taxes. For the reasons set forth herein, we reverse the judgment and remand the cause with directions.

II. SCOPE OF REVIEW

[1] Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *United States Cold Storage v. City of La Vista*, 285 Neb. 579, 831 N.W.2d 23 (2013).

III. FACTS

Heckman was injured in the course and scope of his employment with BNSF. Because he was a railroad employee, he filed a claim for personal injury damages pursuant to FELA, 45 U.S.C. § 51 et seq. (2006). Heckman's pleadings included claims for lost earnings and benefits. He testified at trial regarding his lost wages and argued lost wages as part of his request for damages. The court instructed the jury to consider awarding Heckman damages to compensate for his injury, including lost wages, if it returned a verdict in his favor. Neither party requested a special verdict instruction. The court instructed the jury as follows:

> I am about to give you a list of the things you may consider in making this decision. From this list, you must only consider those things you decide were in whole or in part caused by [BNSF's] negligence:
>
> 1. The nature and extent of the injury, including whether the injury is temporary or permanent and whether any resulting disability is partial or total;
>
> 2. The reasonable value of the medical, hospital, nursing, and similar care and supplies reasonably certain to be needed and provided in the future;
>
> 3. The physical pain and mental suffering [Heckman] has experienced and is reasonably certain to experience in the future;
>
> 4. The wages [Heckman] has lost because of his inability or diminished ability to work.

The jury returned a general verdict in favor of Heckman and awarded him $290,000 less 50 percent for his contributory negligence. The jury did not specify how it attributed damages.

The district court approved the verdict and entered judgment in favor of Heckman for $145,000.

On October 19, 2011, BNSF deposited $127,256.70 with the clerk of the district court for Box Butte County, Nebraska, and filed its motion for satisfaction and discharge of judgment. The amount deposited consisted of the judgment amount of $145,000 plus 45 days of accrued postjudgment interest and $1,974.24 in costs. Withheld from that amount was $20,089.53, which was calculated as follows:

> (1) $7,868.53 to satisfy the Railroad Retirement Board's lien for [Heckman's] short-term sickness and unemployment benefits that he received;
>
> (2) $6,018.83 to satisfy a lien . . . for short-term disability benefits that [Heckman] received; and
>
> (3) $6,202.70 to satisfy [BNSF's] purported obligation to withhold and pay the Internal Revenue Service for [Heckman's] share of [RRTA] payroll taxes on his general verdict award.

Heckman does not contest the offsets for the liens.

At the hearing on the motion for satisfaction and discharge of judgment, BNSF offered evidence to show how it determined the amount of taxes due on Heckman's general verdict award. Relying upon U.S. Railroad Retirement Board (RRB) program letter No. 2011-01 and Internal Revenue Service (IRS) 2010 instructions for IRS Form CT-1, the rate of taxes for compensation paid to Heckman in 2011 were determined as follows:

> Tier 1: Employee pays 4.2% of the first $106,800 of compensation. Railroad pays 6.2% of the first $106,800 of compensation.
>
> Tier 1 Medicare: Employee and railroad each pay 1.45% of compensation.
>
> Tier 2: Employee pays 3.9% of the first $79,200 of compensation. Railroad pays 12.1% of the first $79,200 of compensation[.]

At the time of the judgment, Heckman's year-to-date income was $42,891.32. This amount was deducted from the capped amount of earnings for calculating withholding amounts. BNSF calculated the withholding by using the entire amount

of the judgment, $145,000, as lost wages. Based on this amount and using the withholding chart, it calculated the taxes as follows:

Tier 1	**$2,684.16** ($106,800 less earnings through October 11, 2011, $42,891.32, equals $63,908.68 multiplied by 4.2%)
Tier 2	**$1,416.04** ($79,200 less earnings through October 11, 2011, $42,891.32, equals $36,308.68 multiplied by 3.9%)
Medicare	**$2,102.50** ($145,000 multiplied by 1.45%)
Total:	***$6,20[2].70*** [($2,684.16 + $1,416.04 + $2,102.50)]

The total, $6,202.70, is the amount BNSF claims it is required to withhold and pay to the IRS. Heckman does not dispute the accuracy of the computations but claims the law does not require BNSF to withhold the $6,202.70.

The district court overruled BNSF's motion for satisfaction and discharge of judgment and ordered that "no portion of the general verdict shall be attributable to [Heckman's] wage loss claim." The court concluded that because a general verdict was rendered, it had no way of knowing what portion, if any, of the verdict the jury apportioned for wage loss and that the issue could not be relitigated. It directed BNSF to pay $6,202.70 to the clerk of the district court for Box Butte County for distribution to Heckman.

BNSF moved for rehearing. The district court revised its order and directed the parties to agree in writing that no portion of the award would be considered lost wages, "so as not to place BNSF at odds with the statutory requirement to pay the [RRTA] Taxes to the IRS as permitted by the rules."

BNSF appealed, and we granted the petition to bypass.

IV. ASSIGNMENTS OF ERROR

BNSF claims, summarized and restated, that the district court erred in not entering a satisfaction and discharge of the judgment against BNSF and ordering the parties to agree in writing that no portion of the verdict was for lost wages.

V. ANALYSIS

Heckman claims that BNSF has not presented evidence it paid the $6,202.70 to anyone and that, therefore, the district

court did not err in refusing to enter a satisfaction of the judgment. In the interest of judicial economy, we proceed to examine BNSF's assignments of error.

The first question is whether in Nebraska a general jury verdict is presumed to rule in favor of the successful party on all issues presented to the jury. The second question is whether any portion of the general verdict can be considered to be lost wages and therefore be treated as compensation under the RRTA. The final question is, If part of the verdict is compensation, does the court, after a general verdict has been entered, have authority to order the parties to agree in writing that no portion of the verdict will be considered lost wages?

1. General Jury Verdict in Nebraska

[2,3] The jury returned a general verdict in favor of Heckman and against BNSF. A jury, by its general verdict, pronounces upon all or any of the issues either in favor of the plaintiff or the defendant. *Wulf v. Kunnath*, 285 Neb. 472, 827 N.W.2d 248 (2013). Because a general verdict does not specify the basis for an award, Nebraska law presumes that the winning party prevailed on all issues presented to the jury. See *id*. In a FELA suit against BNSF, we held that the trial court's failure to give a requested apportionment instruction was not reversible error because the jury, through its general verdict, presumptively held in favor of the plaintiff on all causes of action. See *Gustafson v. Burlington Northern RR. Co.*, 252 Neb. 226, 561 N.W.2d 212 (1997).

[4] In disposing of a claim controlled by FELA, a state court may use procedural rules applicable to civil actions in the state court unless otherwise directed by the act, but substantive issues concerning a claim under the act are determined by the provisions of the act and interpretative decisions of the federal courts construing the act. *Ballard v. Union Pacific RR. Co.*, 279 Neb. 638, 781 N.W.2d 47 (2010). In Nebraska, general verdicts are controlled by statute as part of our procedural rules. See Neb. Rev. Stat. § 25-1122 (Reissue 2008).

BNSF argues that because the general verdict was based in part on lost wages, federal law requires that the entire award

be treated as compensation and subject to withholding under the RRTA. Heckman argues that the verdict does not set forth how damages were allocated, so no amount of the award can be considered lost wages.

The district court determined that because a general verdict was rendered, the court had no way of knowing what portion of the verdict the jury apportioned to lost wages. The court concluded that because it could not determine what portion of the award was allocated to lost wages, no portion of the award would be considered lost wages.

The district court misinterpreted Nebraska precedent regarding general verdicts. A correct reading of our precedent establishes a presumption that when the jury returns a general verdict in favor of one party, we presume that the jury found in favor of the successful party on all issues raised by that party and presented to the jury. See *Wulf, supra*.

Heckman has referred us to *Mickey v. BNSF R. Co.*, No. ED 98647, 2013 WL 2489832 (Mo. App. June 11, 2013), a recent unpublished decision from the Court of Appeals for the eastern district of Missouri. In *Mickey*, the appellate court concluded that the trial court did not have power to modify the judgment once it became final. Following judgment, the trial court's authority was limited to issuing orders necessary to execute the judgment.

In *Mickey*, the court stated that pursuant to its interpretation of Missouri law, a general verdict could not be interpreted as a finding by the jury for lost wages. The plaintiff sought to enforce his judgment against BNSF and Safeco Insurance Company of America (Safeco) as BNSF's surety on a supersedeas bond for the amount which BNSF claimed was required to be withheld under federal law. The trial court found that BNSF failed to satisfy the judgment and entered judgment on the supersedeas bond in the amount of $12,820.80 plus interest.

On appeal, BNSF and Safeco argued that BNSF satisfied the judgment by fulfilling its obligation under federal law to withhold the plaintiff's portion of railroad employment taxes. The appellate court disagreed and cited Missouri's procedural rules, which stated that "'[t]he verdict of a jury is either general or

special.'" *Id.* at *4. It concluded that because the general verdict did not specify individual items such as lost wages, the amount of lost wages as compensation was "'a matter forever relegated to the bosom of the jury.'" *Id.*

The court in *Mickey* concluded that after a verdict has been rendered and the jury discharged, the "'trial court has no authority to correct or amend [the judgment] in matters of substance, only in mere matters of form.'" *Id.* at *5 (quoting *Kansas City Power & Light v. Bibb & Assoc.*, 197 S.W.3d 147 (Mo. App. 2006)). BNSF had not requested any changes when the trial court entered its judgment, and on direct appeal, did not challenge the form of the judgment. Because the judgment did not allocate any specific amount of damages to lost wages, the court was unable to conclude that 45 U.S.C. § 231(h)(2) (2006) applied. The court saw no basis in Missouri law to withhold taxes on a judgment based on time lost.

The *Mickey* court distinguished two unpublished trial court orders in FELA cases which BNSF relied upon for its argument that it properly withheld railroad employment taxes because the judgment was held to be pay for "time lost." The court in *Mickey* stated that in "*Nielsen v. BNSF Railway Company*[, No. 0807-10580 (Multnomah County, Or. Mar. 5, 2012),] the jury specifically awarded the plaintiff damages for lost wages." 2013 WL 2489832 at *6. Further, "[i]n *Phillips v. Chicago, Central & Pacific Railroad Company*, [No. 04781 LACV 098439 (Pottawattamie County, Iowa Apr. 12, 2013),] the trial court appeared to apportion damages to a specific category, ('time lost') after the judgment was final." 2013 WL 2489832 at *6.

We agree that the two trial court orders relied upon in *Mickey, supra*, are distinguishable. But we also distinguish *Mickey*, because with a general verdict, we presume that the jury found in favor of Heckman on all issues, including lost wages. See, § 25-1122; *Wulf v. Kunnath*, 285 Neb. 472, 827 N.W.2d 248 (2013). Our focus is whether any of the verdict was based on lost wages. To determine if Heckman's award was based on lost wages, we look to the pleadings, evidence presented at trial, and the instructions given to the jury. See RRB Legal Opinion L-92-18 (Feb. 25, 1992).

Examining all three of these elements, we conclude that the jury verdict was based in part on Heckman's lost wages. Heckman alleged in his complaint that his damages included lost wages. He presented evidence at trial about his lost wages, and the jury was instructed it could take into account his lost wages if it returned a verdict in Heckman's favor. It would be error to conclude that because the jury returned a general verdict, no portion of the verdict could be considered lost wages. To do so would require the district court to conclude that the jury did not base any damages on Heckman's lost wages. This is contrary to the presumption that with a general verdict, the jury is presumed to have found in favor of the successful party on all issues raised by that party. See *Wulf, supra*. Part of Heckman's claim was for lost wages. Therefore, the district court erred in concluding that no portion of the general jury verdict could be considered lost wages.

2. Compensation

(a) Background

Because we conclude that under Nebraska's procedural rules, Heckman's verdict was based in part on lost wages, we turn to federal substantive law to determine if his lost wages verdict is considered compensation.

Railroad employees do not receive Social Security benefits. See *Hance v. Norfolk Southern Ry. Co.*, 571 F.3d 511 (6th Cir. 2009). Instead, they receive retirement benefits under the Railroad Retirement Act of 1974 (RRA). See, 45 U.S.C. § 231b(a)(1) (calculating annuity amount) (2006); 45 U.S.C. § 231t (2006). The RRA applies to railroad companies and their employees. See 45 U.S.C. § 231(a) and (b). The RRA is administered by the RRB. See 45 U.S.C. § 231f (2006 & Supp. V 2011). RRA benefits are funded through payroll taxes assessed against both the employee and the employer under the RRTA. See I.R.C. § 3201 et seq. (2006 & Supp. V 2011).

RRTA taxes are divided into tax tiers 1 and 2. See I.R.C. § 3201(a) and (b). Tier 1 RRTA taxes are similar to taxes imposed on nonrailroad workers by the Federal Insurance Contributions Act (FICA), I.R.C. § 3101 et seq. (2006 & Supp. V 2011), and RRTA taxes are paid in lieu of FICA taxes.

Tier 1 taxes fund retirement and disability payments. Railroad employees covered by the RRA and subject to the RRTA also pay an additional tier 2 RRTA tax, which funds a separate annuity that is equivalent to a private benefit. FICA taxes do not have an equivalent tier 2 component.

Both tier 1 and tier 2 RRTA taxes are imposed on all compensation earned by a railroad employee. See I.R.C. § 3201(a) and (b). The RRA defines compensation as "any form of money remuneration paid to an individual for services rendered as an employee . . . including remuneration paid for time lost as an employee." 45 U.S.C. § 231(h)(1). See, also, I.R.C. § 3231(e)(1) ("'compensation' means any form of money remuneration paid to an individual for services rendered as an employee").

(b) Resolution

Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *United States Cold Storage v. City of La Vista*, 285 Neb. 579, 831 N.W.2d 23 (2013). Since we have concluded that part of the general verdict was an award for time lost, we apply federal law to determine if the time lost was compensation subject to withholding under the RRTA. And if part of the award is compensation, what amount of the award is compensation subject to withholding?

[5-7] For purposes of the RRA, the definition of compensation includes payments for time lost. See 45 U.S.C. § 231(h)(2). An employee is deemed to be paid "for time lost" the amount he is paid by an employer for an identifiable period of absence, including absence on account of personal injury. See *id*. The statute provides guidance for allocating pay for time lost:

> If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the *total payment shall be deemed to be paid for time lost* unless, at the time of payment, a part of such payment is *specifically apportioned* to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

Id. (emphasis supplied). See, also, 20 C.F.R. § 211.2(b)(2) (2013) (compensation includes pay for time lost as employee); 20 C.F.R. § 211.3(a)(1) (2013) (pay for time lost as employee includes pay received for certain period of time due to personal injury). The RRA presumes that payments for personal injury are compensation for time lost unless they are specifically apportioned otherwise. See 45 U.S.C. § 231(h)(2).

The IRS considers FELA judgments for "time lost" to be compensation, unless specifically excepted. See, I.R.C. § 3121(a); *Cheetham v. CSX Transp*., No. 3:06-CV-704-J-PAM-TEM, 2012 WL 1424168 (M.D. Fla. Feb. 13, 2012). Treasury regulation § 31.3231(e)-1(a)(3) (2003) provides that "compensation is not confined to amounts paid for active service, but includes amounts paid for an identifiable period during which the employee is absent from the active service of the employer." Compensation under the treasury regulations also includes "pay for time lost." Treas. Reg. § 31.3231(e)-1(a)(4).

Whether compensation is paid for work performed or for time lost, the RRTA requires employers to collect all RRTA taxes imposed under I.R.C. § 3201 "by deducting the amount of the taxes from the compensation of the employee as and when paid." I.R.C. § 3202(a). Every employer is required to deduct RRTA taxes from employees' compensation. Employers are liable for the payment of such tax and "shall not be liable to any person for the amount of any such payment." I.R.C. § 3202(b). Treasury regulations also provide that an employer "is not liable to any person for the amount of the employee [RRTA] tax deducted by him" and paid to the IRS. Treas. Reg. § 31.3202-1(e) (1994).

As stated in I.R.C. § 3202(b), a railroad employer is liable to the IRS for the employee's portion of RRTA taxes and the employer is not liable to any other person for the amounts deducted. Thus, under I.R.C. § 3202(b), a railroad employer must withhold RRTA taxes from compensation paid to employees and must remit the taxes to the IRS. If the employer fails to remit the employee portion of the tax, both the employer and the employee remain liable for the unremitted amount. Treas. Reg. § 31.3202-1(e). Based on the definition of compensation

as stated in the RRA and RRTA and the agencies' interpretations found in federal regulations, we conclude that time lost is compensation that is subject to taxation. Time lost is equated with lost wages.

Having determined that time lost is compensation and that the verdict in favor of Heckman was based in part on time lost, we must now determine what part of the general verdict is subject to taxation under the RRTA. The RRB, the federal agency charged with administering the RRA and funded by the RRTA, has issued legal opinions that provide guidance in answering this question.

[8] The RRB's opinions indicate that absent specific allocations to other components, the RRB treats the total FELA award as pay for time lost if the payment for personal injury is based in part on pay for time lost. See, RRB Legal Opinions L-87-91 (July 1, 1987) and L-92-18. When a jury returns a general verdict in a lump sum, the RRB has interpreted 45 U.S.C. § 231(h) to require payment of RRTA taxes on the entire judgment amount. RRB Legal Opinion L-87-91. It concluded when "no part of the verdict was allocated to factors other than pay for time lost, [then] the whole verdict may be considered pay for time lost." *Id*. The RRB has stated:

> If one of the claims for damages is lost wages and the jury was instructed that it could include lost wages in determining damages, then it can be concluded that the judgment is, at least in part, based on pay for time lost. If this is so, under [45 U.S.C. § 231](h)(2) . . . the entire amount is pay for time lost.

RRB Legal Opinion L-92-18.

For guidance, the RRB suggested that the types of damages included in the jury verdict could be inferred by examining a copy of the complaint filed by the injured party and the instructions submitted to the jury. *Id*. In the case at bar, we have concluded that part of Heckman's damages included lost wages. Therefore, Heckman's general verdict, based in part on lost wages, would be deemed paid entirely for lost wages and therefore subject to RRTA taxes on the entire verdict.

The federal circuits have also determined that under the RRTA, general awards based at least in part on lost wages

are taxed on their entire amount. The Sixth Circuit has held that payments for personal injury are considered compensation for time lost. In *Hance v. Norfolk Southern Ry. Co.*, 571 F.3d 511 (6th Cir. 2009), the plaintiff brought a claim against his employer for a violation of the Uniformed Services Employment and Reemployment Rights Act of 1994. Part of his complaint alleged damages for backpay and lost benefits. The Sixth Circuit concluded that the backpay award was compensation for time lost and that the employer had to pay tiers 1 and 2 taxes on the backpay award.

In the case at bar, the district court relied on *Jacques v. United States R.R. Retirement Bd.*, 736 F.2d 34 (2d Cir. 1984). In *Jacques*, the defendant was injured while working for his railroad employer. He sued under FELA, and the case was settled. The settlement did not indicate how the money was to be allocated among the different categories of damages alleged in the complaint, including 5 months of time lost for personal injury. When the defendant filed for a disability annuity under the RRA, his claim was denied because he had not met the minimum months of service to be eligible for disability. The defendant was 4 months short of the minimum 234 months to be eligible for a disability annuity. The RRB refused to take into account the months the defendant was absent from work due to his disability, for which he was compensated in his FELA settlement.

The Second Circuit concluded that because the settlement was not broken down by categories of damages, the entire award had to be treated as compensation for each of the damages alleged in the complaint, including time lost. It held: "Under the provisions of section 231(h)(2), the whole payment is therefore deemed to have been for time lost . . . ." *Jacques*, 736 F.2d at 39. The court concluded its analysis of compensation paid for time lost by stating:

> Finally, we note that, in the absence of specific substantial evidence to the contrary, any reasonable mind would decide that compensation paid (1) by an employer, (2) to an employee, (3) for an accident that took place while the employee was performing his regular duties, and (4) that caused the employee to be out of work for six

> months is compensation paid—at least in part—for lost time. To suggest otherwise is to strain logic well beyond its breaking point.

Id. at 41-42.

Citing *Jacques*, the district court concluded that BNSF "should not be able to unilaterally decide to apportion the entirety of a general verdict to wage loss when it finds it beneficial or no portions [sic] in situations when it attempts to deny retirement benefits." The district court reasoned that the outcome affected only Heckman, because either he received his money immediately and had to forgo retirement credit or he could receive retirement credit and not receive the money immediately. Either way, BNSF had to pay the money to someone.

But the district court misinterpreted *Jacques*. Under federal law, time lost for personal injury is deemed to be compensation. When a jury returns a general verdict based in part on time lost, the entire award is considered compensation and is subject to taxation.

Because the jury returned a general verdict that was based in part on Heckman's lost wages, we presume that he prevailed on all issues presented to the jury and that Heckman was awarded lost wages. The district court failed to recognize that absent specific allocations to other components, the award is deemed compensation for lost wages. See, 45 U.S.C. § 231(h)(2); RRB Legal Opinions L-87-91 and L-92-18. Classification of the award as compensation affects both Heckman and BNSF because it triggers obligations and benefits of both parties under the RRA. BNSF is required to pay tiers 1 and 2 taxes, and Heckman receives retirement benefits for the amount of time he was absent due to his personal injury.

3. Order Directing Parties to Agree No Portion of Award Considered Lost Wages

The district court concluded, and Heckman agrees, that the parties could negotiate to allocate portions of the jury verdict. The court ordered the parties to agree in writing that no portion

of the verdict would be considered lost wages "so as not to place BNSF at odds with the statutory requirement to pay the [RRTA] Taxes to the IRS as permitted by the rules."

Heckman argues that because neither party asked for a special verdict and the jury returned a general verdict, the district court could not construe what portion of that award, if any, is attributable to lost wages. We have resolved this issue against Heckman.

BNSF argues that although an employer and employee can negotiate and allocate what portion of a settlement agreement should be deemed lost wages, the jury decided the appropriate compensation for Heckman's injuries. Therefore, it is too late for the parties to agree to allocation and BNSF is obligated to pay taxes on the entire verdict. BNSF contends that paying the RRTA taxes on the entire verdict places Heckman in the same position he would have been in had he not been injured, because BNSF would have paid RRTA taxes on his compensation while he was working in return for credit to Heckman's retirement account.

[9] Employers and employees can negotiate settlement agreements and allocate portions of a settlement award to lost wages and other compensatory categories. See 45 U.S.C. § 231(h). During settlement, parties may agree that no portion of the award is attributable to lost wages. That decision rests largely with the employer on how it wishes to allocate the settlement. See 20 C.F.R. § 211.3(a)(2). Heckman and BNSF could have entered into settlement negotiations and determined what portion, if any, of a settlement award would be allocated to time lost. See, 45 U.S.C. § 231(h); 20 C.F.R. § 211.3. But they were not able to do so.

Instead, this matter was ultimately decided by a jury. When the jury returned a general verdict based in part on Heckman's claim of lost wages, substantive federal law controlled the allocation of the award to lost wages. See 45 U.S.C. § 231(h)(2). The court could not force the parties to agree to change the basis of the verdict. We find no authority that would permit the court to order BNSF to agree to an allocation of the settlement after the verdict was entered. See 20 C.F.R. § 211.3(a)(2). Because the verdict was based in part

on lost wages and no damages were specifically apportioned, the entire verdict is deemed compensation for lost wages. See 45 U.S.C. § 231(h)(2). Therefore, the entire award became subject to RRTA taxes. See I.R.C. § 3121(a). Under the RRA, the entire award is compensation subject to RRTA taxes that must be paid by the employer.

The district court erred when it required that the parties agree in writing that no portion of the general verdict could be considered lost wages to avoid BNSF's obligation to pay RRTA taxes on Heckman's entire award.

VI. CONCLUSION

We conclude that Heckman's entire award was compensation subject to RRTA taxation. The district court erred in denying BNSF's motion for satisfaction and discharge of judgment and ordering that the parties agree in writing that no portion of the general verdict was based on lost wages. Therefore, we reverse the judgment and remand the cause with directions that the district court enter a satisfaction and discharge of the judgment upon proof of payment of $6,202.70 by BNSF to the IRS on account of the lost wages paid to Heckman.

REVERSED AND REMANDED WITH DIRECTIONS.

SHERMAN T., INDIVIDUALLY AND AS NEXT FRIEND OF BRAYDEN N., APPELLANT, V. KARYN N., APPELLEE.

837 N.W.2d 746

Filed August 16, 2013. No. S-12-515.

1. **Trial: Courts.** A court cannot err with respect to a matter not submitted to it for disposition.
2. **Appeal and Error.** An issue not presented to or passed on by the trial court is not appropriate for consideration on appeal.
3. **Standing: Claims: Parties.** To have standing, a litigant must assert the litigant's own rights and interests.
4. **Motions to Dismiss: Rules of the Supreme Court: Jurisdiction: Pleadings: Service of Process.** When a motion to dismiss raises both Neb. Ct. R. Pldg. § 6-1112(b)(1) and § 6-1112(b)(6), the court should consider dismissal under