United States Court of Appeals
For the Eighth Circuit

No. 25-2436

BNSF Railway Company,

Petitioner,

v.

Secretary U.S. Department of Labor,

Respondent,

Dale Gourneau,

Intervenor.

No. 25-2578

BNSF Railway Company,

Petitioner,

v.

Secretary U.S. Department of Labor,

Respondent,

Dale Gourneau,

Intervenor.

Petition for Review of an Order of the
Occupational Safety & Health Administration

Submitted: May 12, 2026
Filed: September 3, 2026

Before COLLOTON, Chief Judge, SHEPHERD and KOBES, Circuit Judges.

COLLOTON, Chief Judge.

The Department of Labor determined that BNSF Railway Company unlawfully retaliated against railway carman Dale Gourneau, and the agency awarded damages and other relief. We conclude that the agency's order based on administrative proceedings violated the company's right to a jury trial under the Seventh Amendment. We therefore vacate the Department's order and remand for proceedings consistent with this opinion.

I.

As a carman at BNSF, Gourneau inspected railroad cars for compliance with safety regulations. BNSF terminated Gourneau following a disciplinary proceeding in January 2020. Gourneau filed a whistleblower complaint with the Occupational Safety and Health Administration of the Department of Labor, alleging unlawful retaliation for reporting, in good faith, a hazardous safety condition. *See* 49 U.S.C. § 20109(b)(A). After a hearing, an Administrative Law Judge issued a decision and order in favor of Gourneau. The ALJ ordered reinstatement, backpay, damages, and attorneys' fees. The Administrative Review Board affirmed the order, and BNSF petitioned this court for review.

II.

BNSF maintains that a finding of liability and the imposition of damages and other legal remedies by an administrative agency violates the company's right to a jury trial under the Seventh Amendment. The Seventh Amendment guarantees that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. Const. amend. VII.

A.

The Department first argues that BNSF waived any constitutional challenge because it "did not raise the argument in such a way that either the ALJ or the ARB had the opportunity to rule on it." Under the governing regulations, parties who appear before the Administrative Review Board "should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived." 29 C.F.R. § 1982.110(a).

BNSF's petition for review to the Board did specifically raise an objection based on the Seventh Amendment. The petition argued that the process of trying the dispute before an Administrative Law Judge "violates the United States Constitution, including . . . the Seventh Amendment," because it "subjects a private entity to a non-jury trial on a legal or mixed legal-equitable claim by a private individual on a matter involving private rights," and "places the ALJ in the position of functioning as an Article III court." BNSF thus satisfied any exhaustion requirement, even assuming that the company was required to raise a constitutional claim before a board that likely lacked power to grant relief. *Cf. Carr v. Saul*, 593 U.S. 83, 92-94 (2021); *see* Secretary's Order 01-2020, 85 Fed. Reg. 13186, 13187 (Feb. 21, 2020) (explaining that the Board lacks "jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor").

B.

Before the adoption of the Seventh Amendment, "a jury trial was customary in suits brought in the English *law* courts. In contrast, those actions that are analogous to 18th-century cases tried in courts of equity or admiralty do not require a jury trial." *Tull v. United States*, 481 U.S. 412, 417 (1987). "To determine whether a statutory action is more analogous to cases tried in courts of law than to suits tried in courts of equity or admiralty, we examine both the nature of the statutory action and the remedy sought." *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 348 (1998). "The second stage of this analysis is more important than the first." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989).

Gourneau's claim of retaliatory discharge is analogous to a common-law wrongful discharge claim. *See Tamosaitis v. URS Inc.*, 781 F.3d 468, 486 (9th Cir. 2015). At common law, "an improper discharge would have been viewed as a breach of contract." *Lebow v. Am. Trans Air, Inc.*, 86 F.3d 661, 668 (7th Cir. 1996); *see Waldrop v. S. Co. Servs., Inc.*, 24 F.3d 152, 156 (11th Cir. 1994). A breach of contract claim raises a "legal issue" that suggests entitlement to a jury trial. *Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 570 (1990).

Gourneau's claim is traditionally legal for another reason: it "sounds basically in tort." *Curtis v. Loether*, 415 U.S. 189, 195 (1974). This court has described a violation of § 20109 under the Federal Railroad Safety Act as an "intentional tort." *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 791 (8th Cir. 2014). Like other tort claims, the action "defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Curtis*, 415 U.S. at 195.

The Act also provides for money damages, the "prototypical common law remedy." *SEC v. Jarkesy*, 603 U.S. 109, 123 (2024). Monetary relief is a legal remedy where "designed to punish or deter the wrongdoer," and an equitable remedy where it "restore[s] the status quo." *Id.* (internal quotation omitted). The Act provides for "all relief necessary to make the employee whole," including reinstatement, backpay, compensatory damages, and punitive damages in an amount not to exceed $250,000. 49 U.S.C. § 20109(e)(1)-(3). Backpay, compensatory damages, and punitive damages are legal in nature, because the relief "seeks to impose personal liability on the defendant, is measured by the plaintiff['s] loss, and does not involve traceable funds that belong to the plaintiff and are being unlawfully held by the defendant." *Calhoon v. Trans World Airlines, Inc.*, 400 F.3d 593, 598 (8th Cir. 2005); *see also Terry*, 494 U.S. at 570 (determining backpay in a breach of fair representation action is a legal remedy). The provision of punitive damages confirms that the Act, in addition to offering an equitable remedy of reinstatement, is designed to punish or deter. *See Jarkesy*, 603 U.S. at 123; *Tull*, 481 U.S. at 422 n.7. Gourneau's action is thus "legal in nature." *Jarkesy*, 603 U.S. at 124.

C.

Although Gourneau's claim implicates the Seventh Amendment, the Department and Gourneau argue that a jury trial is not required because the "public rights" exception applies. "[W]hen Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment.'" *Id.* (quoting *Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm'n*, 430 U.S. 442, 455 (1977)).

Relying on *Atlas Roofing*, a decision that represented "a departure from our legal traditions," *id*. at 138 n.4, the Department contends that the Act's statutory and regulatory regime was unknown to the common law and more closely resembles "a detailed building code" than anything at common law. *See Jarkesy*, 603 U.S. at 137. *Atlas Roofing* concerned an agency's imposition of civil penalties for violations of safety provisions promulgated by the Secretary of Labor. 430 U.S. at 445-46. "The purpose of this regime was not to enable the Federal Government to bring or adjudicate claims that traced their ancestry to the common law." *Jarkesy*, 603 U.S. at 137.

Gourneau does not allege that BNSF failed to comply with a regulatory scheme unknown to the common law. Rather, he asserts that BNSF, a private party, allegedly breached its duty to Gourneau, another private party, by unlawfully retaliating against him and terminating his employment. Where, as here, "the statutory claim is in the nature of a common law suit," *Atlas Roofing* does not control. *Id.* at 138 (internal quotation omitted).

The public rights exception also applies where Congress creates a "seemingly private right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution." *Granfinanciera*, 492 U.S. at 54 (internal quotation omitted). A regulatory program, for example, may incidentally require adjudication of a statutory right. *See Katchen v. Landy*, 382 U.S. 323, 330 (1966) (bankruptcy claim "can neither be allowed nor disallowed until the preference matter is adjudicated"); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 856 (the "purposes of the reparations procedure would have been confounded" without agency authority to adjudicate counterclaims). Gourneau's claim, however, does not impact a broader regulatory scheme: it is a "standalone" suit and is "neither prioritized nor subordinated to related claims." *Jarkesy*, 603 U.S. at 134. We respectfully disagree with the contrary conclusion of *Yellow Freight System, Inc. v. Martin*, 983 F.2d 1195, 1201 (2d Cir. 1993), which reflected a different approach some thirty years ago.

The Act's overall regime is also not "incompatible" with a jury trial. *See Granfinanciera*, 492 U.S. at 61-62. The statute specifically provides that an employee may bring an original action in federal court if the Secretary of Labor has not issued a final decision within 210 days of the employee filing a complaint. 49 U.S.C. § 20109(d)(3). Once the action is in federal court, either party may request a jury trial. *Id.*

> [W]hen Congress provides for enforcement of statutory rights in an ordinary civil action in the district courts, where there is obviously no functional justification for denying the jury trial right, a jury trial must be available if the action involves rights and remedies of the sort typically enforced in an action at law.

Curtis, 415 U.S. at 195. Given that Congress specifically allowed in the statutory scheme for trial by jury on this very type of dispute in certain circumstances, we see no functional justification for conditioning the employer's right to a jury trial on the timing of the Secretary's decision and the choice of an employee to file an action in federal court.

The Supreme Court has left open the possibility that agencies may make "specialized, narrowly confined factual determinations regarding a particularized area of law." *Stern v. Marshall*, 564 U.S. 462, 489 n.6 (2011). But the Federal Railroad Safety Act does not establish the Department of Labor as an "adjunct" to the district court on a claim where the Department's expertise is important. Gourneau does not allege that BNSF violated a specialized regulation promulgated under the Act. He must show only that BNSF retaliated against him because he "report[ed], in good faith, a hazardous safety or security condition." 49 U.S.C. § 20109(b)(1)(A). Article III courts are the "'experts' in the federal system" at resolving such claims. *Stern*, 564 U.S. at 494.

As Gourneau's claim does not fall within the public rights exception, "Congress may not avoid a jury trial by preventing the case from being heard before an Article III tribunal." *Jarkesy*, 603 U.S. at 127. We conclude that the Seventh Amendment entitles BNSF to a jury trial on Gourneau's claims for liability, backpay, compensatory damages, and punitive damages before any equitable claim to reinstatement is adjudicated. *See Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 479 (1962); *Lebow*, 86 F.3d at 672-73.

The petition for review is granted, the Board's order of May 21, 2025, is vacated, and the case is remanded to the Board for further proceedings.