United States Court of Appeals
For the Eighth Circuit

No. 25-3379

Stephen Parr

Plaintiff - Appellant

v.

Union Pacific Railroad Company

Defendant - Appellee

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: September 24, 2026
Filed: October 30, 2026

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

BENTON, Circuit Judge.

Stephen P. Parr sued Union Pacific Railroad Company, alleging retaliation for protected activity under the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109.

The jury found no retaliation. Parr appeals, challenging the district court's[1] jury instructions. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

Union Pacific hired Parr in 2015. It trained him to report workplace safety issues to the "Safety Line" and violations of laws, regulations, and company policy to the "Values Line." From 2018 to 2022, Parr made over 160 Safety-Line complaints and over 100 more complaints directly to his local managers.

In 2022, Parr began making complaints by text and email to employees who were not his direct supervisors, including Carrie Stevens. Uncomfortable with his communications, Stevens reported her experience to General Manager Coleman Bell. Bell met with Parr in December 2022, giving him a "letter of counsel" prohibiting him from communicating safety concerns by text, email, or social media. He directed Parr to use the Safety and Values Lines.

After this meeting, Parr submitted Values-Line complaints of retaliation and ethics violations. The Values-Line complaints continued through February 2023. Union Pacific then informed Parr by letter that he was under investigation for misusing the Values Line and failing to follow management's instructions. After a disciplinary hearing, he was terminated for being quarrelsome, discourteous, and insubordinate. He appealed the decision to the Public Law Board. It reinstated him without backpay.

Parr sued Union Pacific, alleging retaliation in violation of the FRSA. The jury returned a verdict for Union Pacific, finding Parr did not prove his prima facie case. The district court denied the motion for a new trial. He appeals, asserting three jury instruction errors.

[1]The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri.

II.

Parr contends three jury instruction errors require reversal. This court "review[s] a district court's jury instructions for an abuse of discretion." ***Blackorby v. BNSF Ry. Co.***, 936 F.3d 733, 735 (8th Cir. 2019) (*Blackorby II*). The "jury instructions, taken as a whole, must fairly and adequately represent the evidence and applicable law in light of the issues presented to the jury in a particular case." ***Id.***

A.

Parr asserts Instruction 12 incorrectly required "intentional retaliation" to prove his FRSA claim—contrary to the Supreme Court's ruling in *Murray v. UBS Securities, LLC*, 601 U.S. 23 (2024). Instruction 12 states Parr must prove "Union Pacific intentionally retaliated against plaintiff by firing plaintiff, due, in whole or in part, to plaintiff Stephen Parr having reported a hazardous safety condition to defendant Union Pacific."

Under the FRSA, "[a] railroad carrier . . . shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for[] reporting, in good faith, a hazardous safety or security condition." **49 U.S.C. § 20109(b)(1)(A)**. A plaintiff must show "(i) he engaged in a protected activity; (ii) [the railroad] knew or suspected, actually or constructively, that he engaged in the protected activity; (iii) he suffered an adverse action; and (iv) the circumstances raise an inference that the protected activity was a contributing factor in the adverse action." ***Kuduk v. BNSF Ry. Co.***, 768 F.3d 786, 789 (8th Cir. 2014). The challenged portion of Instruction 12 addresses the contributing-factor element.

"[T]he contributing factor that an employee must prove is intentional retaliation prompted by the employee engaging in protected activity." ***Id.*** at 791. This court clarified that the "essence" of FRSA retaliation is "discriminatory animus." ***Id.*** Failing to instruct on "intentional retaliation" is reversible error. *See* ***Blackorby v. BNSF Ry. Co.***, 849 F.3d 716, 722 (8th Cir. 2017) (*Blackorby I*)

(reversing district court because "it instructed the jury that Blackorby need not establish intentional retaliation"). The district court's instruction follows this court's precedent and mirrors the Eighth Circuit Model Jury Instructions. *See* **Eighth Circuit Model Jury Instructions (Civil)** § 18.40 (2025), https://juryinstructions.ca8.uscourts.gov/; ***Bailey v. Department of Elem. & Secondary Educ.***, 451 F.3d 514, 519 (8th Cir. 2006) ("The district court was well within its discretion to submit its own instructions, which relied on the evidence submitted at trial and followed the recommendations of the Eighth Circuit Model Jury Instructions."). Instruction 12 fairly and accurately represents the contributing-factor element, which requires showing intentional retaliation was partly due to protected activity.

Parr argues that *Murray* overrules *Kuduk* and *Blackorby I*. The Supreme Court there held that the whistleblower provision of the Sarbanes-Oxley Act does not require "retaliatory intent" or "animus" for the contributing-factor element. ***Murray***, 601 U.S. at 32–33. The Second Circuit had reversed because the jury instructions did not require proving the employer "took the adverse employment action against the whistleblower-employee with retaliatory intent." ***Id.*** at 31. The Supreme Court reversed, holding the Sarbanes-Oxley Act's contributing-factor element did not require "some separate, heavier burden on the plaintiff to show 'retaliatory intent,'" like animus. ***Id.*** at 37, 39. Concurring, Justice Alito clarified that "intent" is still required and "the plaintiff must show that a reason for the adverse decision was the employee's protected conduct." ***Id.*** at 40 (Alito, J., concurring).

Based on *Murray*, the Second Circuit overturned a prior panel decision requiring retaliatory intent or animus in the FRSA context. ***Ziparo v. CSX Transp., Inc.***, 160 F.4th 314, 334–35 (2d Cir. 2025). That court stated, "*Murray* clearly held that retaliatory intent is no longer a relevant consideration for a SOX claim subject to AIR-21." ***Id.*** at 335. Thus, "because both the FRSA and SOX incorporate the same burden-shifting framework and contributing factor causation standard (the 'AIR 21' burden-shifting framework), *Murray*'s reasoning binds us here with equal force." ***Id.*** at 323.

Parr urges this court to follow the Second Circuit's lead and overturn *Kuduk* based on the Supreme Court's decision in *Murray*. "It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel." ***Mader v. United States***, 654 F.3d 794, 800 (8th Cir. 2011) (en banc). True, this court may "revisit an opinion of a prior panel if an intervening Supreme Court decision is inconsistent with the prior opinion." ***McCullough v. AEGON USA, Inc.***, 585 F.3d 1082, 1085 (8th Cir. 2009). But, *Murray* and *Kuduk* are reconcilable. *Murray* involved the Sarbanes-Oxley Act; the Supreme Court did not indicate any intent to extend its decision to other statutes applying the AIR-21 framework. Here, Instruction 12 requires only that Union Pacific "intentionally retaliated" against Parr, calling into question whether *Murray*—which prohibited requiring *animus*—would control even if it applied to the FRSA.

The district court did not abuse its discretion by instructing the jury that Parr must prove Union Pacific "intentionally retaliated" against him "due, in whole or in part" to protected activity.

B.

Challenging Instruction 13, Parr argues it was improper because the FRSA provides no basis for a business judgment instruction and Instruction 13 bars the jury from considering pretext. Instruction 13 states: "In deciding plaintiff Stephen Parr's claim, you should not concern yourself with whether defendant Union Pacific's actions were wise, reasonable, or fair."

This court has approved a business judgment instruction in FRSA cases. *See* ***Blackorby II***, 936 F.3d at 737. In *Blackorby II*, the plaintiff challenged an instruction that began: "In deciding Plaintiff's claim, you should not concern yourself with whether Defendant BNSF Railway's actions were wise, reasonable, or fair." ***Id.*** at 736 n.4. This court ruled that "the first sentence is an unobjectionable statement of the business judgment rule, presented generically and without reference to any party's burden of proof." ***Id.*** at 737. This court concluded, "To the extent

Blackorby directs his challenge at this articulation of the business judgment rule, we reject his argument." ***Id.***

Parr's challenge to a substantively similar jury instruction fails. He argues the ruling in *Blackorby II* was dicta because the case was reversed based on an incorrect statement of law in the second sentence of the instruction. ***Id.*** However, this court considered whether the instruction, "taken as a whole . . . fairly and adequately represent[ed] the evidence and applicable law." ***Id.*** at 735. As part of its holding, this court considered the business judgment sentence.

Parr also argues the business judgment instruction bars the jury from considering pretext. Juries hear business judgment instructions in other employment-discrimination contexts where pretext is at issue. *See, e.g.*, ***Stemmons v. Missouri Dep't of Corr.***, 82 F.3d 817, 819–20 (8th Cir. 1996) (holding district courts "must offer" a business judgment instruction in a Title VII case "whenever it is proffered by the defendant," despite plaintiff having the burden "to demonstrate that the department's explanation was pretextual"). The business judgment instruction here is compatible with Parr's FRSA claim.

Parr's reliance on Equal Pay Act cases—rejecting a business judgment instruction—is misplaced because the EPA is a strict liability statute not requiring discriminatory intent. *See* ***Bauer v. Curators of the Univ. of Mo.***, 680 F.3d 1043, 1045 (8th Cir. 2012) ("The EPA, a strict liability statute, does not require plaintiffs to prove that an employer acted with discriminatory intent . . . .").

The district court did not abuse its discretion by giving a business judgment instruction.

C.

Parr challenges the time period in Instruction 12, which required the jury to find that "plaintiff Stephen Parr reported a hazardous safety condition to defendant Union Pacific in good faith in December of 2022 through February of 2023."

The complaint pleads that Parr had a disciplinary hearing in April 2023 for "allegedly misus[ing] the Union Pacific Values Line and allegedly fail[ing] to follow instructions from [his] management team." At the hearing, Union Pacific "introduced evidence that Parr reported safety concerns to its Values Line between December 20, 2022, and February 11, 2023." Parr pled Union Pacific "used these reports of safety concerns as evidence to support its decision to fire" him and that Union Pacific "fired him because he made safety reports too frequently." The rest of the complaint is ambiguous about the protected activity that caused the retaliation.

Parr's trial testimony supports the time period in Instruction 12. While evidence shows Parr made over 160 Safety-Line complaints from 2018 to 2022, he agreed that he was not fired, demoted, or disciplined "the paper way" for any safety reports he filed from 2018 to December 2022. In other words, Parr said he was not subject to retaliation based on safety reports made before December 2022. The time-period instruction is supported by the evidence. *See* ***Safety Nat'l Cas. Corp. v. Austin Resols., Inc.***, 639 F.3d 498, 501 (8th Cir. 2011) ("A party is entitled to a jury instruction . . . if the instruction is both legally accurate and supported by the evidence."). Parr's testimony establishes that reports from December 2022 through February 2023 are the relevant protected activity. The district court's instruction properly reflects this limit.

Parr counters that his theory—that the retaliation was partly due to safety reports made before December 2022—was tried by consent and he could amend the complaint to conform. *See* **Fed. R. Civ. P. 15(b)(2)** ("When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after

judgment—to amend the pleadings to conform them to the evidence . . . ."). Parr never moved to amend the complaint, and the record does not show the issue was tried by consent. Union Pacific requested the instruction with the time period. Though Parr objected, the court agreed with Union Pacific to keep the time period. *See* ***United States v. $84,615 in U.S. Currency***, 379 F.3d 496, 500 (8th Cir. 2004) ("[I]ssues actually tried *without objection* are effectively incorporated into the pleadings." (emphasis added)).

The district court did not abuse its discretion by limiting the period of relevant protected activity to December 2022 through February 2023.

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The judgment is affirmed.
