IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD ROCK, JR.,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
NATIONAL RAILROAD PASSENGER CORPORATION,	:	
	:	
Defendant.	:	**No. 04-1434**

MEMORANDUM AND ORDER

Schiller, J. **August 9, 2005**

On April 1, 2004, Edward Rock instituted this Federal Employee Liability Act ("FELA") lawsuit against the National Railroad Passenger Corporation ("Amtrak") claiming that Amtrak's negligence caused his back injury. Following a three-day trial, the jury returned a verdict in favor of Rock for $1,042,000.00. The jury also found Rock forty-five percent contributorily negligent and therefore this Court reduced the award to $573,100.00. Amtrak now moves for post-trial relief on three grounds: (1) judgment as a matter of law under Rule 50; (2) a new trial under Rule 59(a); and (3) a new trial under Rule 60 as a result of newly discovered evidence and fraud. For the reasons stated below, the Court denies Amtrak's motions.

I. STANDARD OF REVIEW

Amtrak's post-trial motions implicate three separate Federal Rules of Civil Procedure. The Court will set forth the relevant standards for each rule.

A. Rule 50

When faced with a motion for judgment as a matter of law for insufficiency of the evidence,

a district court may let the judgment stand, or direct entry of judgment as a matter of law. *See* FED. R. CIV. P. 50(b)(1). Judgment as a matter of law is appropriate only when "there is no legally sufficient evidentiary basis for a reasonable jury" to find in favor of the non-moving party. FED. R. CIV. P. 50(a) (2005); *see also Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 149-51 (2000); *Gomez v. Allegheny Health Servs. Inc.*, 71 F.3d 1079, 1083 (3d Cir. 1995). Rule 50 motions should be granted "sparingly." *Johnson v. Campbell*, 332 F.3d 199, 204 (3d Cir. 2003). If the record contains even "'the minimum quantum of evidence from which a jury might reasonably afford relief,'" the verdict must be sustained. *Parkway Garage, Inc. v. City of Phila.*, 5 F.3d 685, 691 (3d Cir. 1993) (*quoting Keith v. Truck Stops Corp.*, 909 F.2d 743, 745 (3d Cir. 1990)); *see also Gomez*, 71 F.3d at 1083.

A district court presented with a Rule 50 motion must view the record as a whole, drawing "all reasonable inferences in favor of the nonmoving party," and may not weigh the parties' evidence or the credibility of the witnesses. *Reeves*, 530 U.S. at 150; *McDaniels v. Flick*, 59 F.3d 446, 453 (3d Cir. 1995); *Keith*, 909 F.2d at 745. "[T]he court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses." *Reeves*, 530 U.S. at 151 (citation omitted).

B. Rule 59

Alternatively, Federal Rule of Civil Procedure 59 permits a court to order a new trial "for any reason for which new trials have heretofore been granted in actions at law in the courts of the United States." Fed. R. Civ. P. 59(a) (2005). As such, Rule 59(a) does not set forth specific grounds on which a court can grant a new trial, leaving the decision to the discretion of the district court. *See*

Blancha v. Raymark Indus., 972 F.2d 507, 512 (3d Cir. 1992) ("The decision to grant or deny a new trial is confided almost entirely to the discretion of the district court.") (*citing Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980)). Among other reasons, courts have granted new trials when there have been prejudicial errors of law or when the verdict is against the weight of the evidence. *See Maylie v. Nat'l R.R. Passenger Corp.*, 791 F. Supp. 477, 480 (E.D. Pa. 1992) (citations omitted).

The scope of the district court's discretion when adjudicating a Rule 59 motion depends on whether the motion is based on a prejudicial error of law or on a verdict alleged to be against the weight of the evidence. *See Klein v. Hollings*, 992 F.2d 1285, 1289-90 (3d Cir. 1993). When the basis of the motion involves a matter within the trial court's sound discretion, such as the court's evidentiary rulings or points of charge to the jury, the trial court has wide latitude in deciding the motion. *Link v. Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 921-22 (3d Cir. 1986); *see also Klein*, 992 F.2d at 1289-90. The court must determine: (1) whether an error was in fact made; and (2) whether the error was so prejudicial that a refusal to grant a new trial would be inconsistent with substantial justice. *Bhaya v. Westinghouse Elec. Corp.*, 709 F. Supp. 600, 601 (E.D. Pa. 1989).

When the verdict is alleged to be against the weight of the evidence, however, the district court's discretion to order a new trial is much narrower, *Klein*, 992 F.2d at 1290, and the "district court [is cautioned] not [to] substitute its 'judgment of the facts and the credibility of the witnesses for that of the jury.'" *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 211 (3d Cir. 1992) (*quoting Lind v. Schenley Indus., Inc.*, 278 F.2d 79, 90 (3d Cir. 1960)). Because a determination that a jury's verdict is against the weight of the evidence "effects a denigration of the jury system," a court may grant such motion "only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our

conscience." *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1352-53 (3d Cir. 1991) (*citing EEOC v. Del. Dep't Health*, 865 F.2d 1408, 1413 (3d Cir. 1988)). Moreover, the type of case at hand also factors into the scope of the court's discretion. When the subject matter of the litigation is simple and within a layman's understanding, the district court is given less freedom to scrutinize the jury's verdict than in a case that deals with complex factual determinations. *Id*. at 1352; *see also Lind*, 278 F.2d at 90-91.

C. Rule 60

Finally, Federal Rule of Civil Procedure 60 allows for relief based on, inter alia, "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)" or "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." FED. R. CIV. P. 60(b) (2005). The decision to grant relief under Rule 60(b) lies within the discretion of the trial court. *United States v. Enigwe*, 320 F. Supp. 2d 301, 306 (E.D. Pa. 2004), and should be granted only in the event of extraordinary circumstances. *Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991); *see also Robinson v. Red Rose Communications, Inc.*, Civ. A. No. 97-6497, 1998 WL 221028, at *3 (E.D. Pa. May 5, 1998).

II. DISCUSSION

Amtrak asserts that the evidence adduced at trial failed to support the jury's decision that Amtrak was negligent and that Amtrak's negligence caused Rock's injury. These arguments implicate Rules 50 and 59. Amtrak further asserts that this Court made legal errors that require relief under Rule 59. Finally, Amtrak raises issues of newly discovered evidence and fraud, implicating

Rules 59 and 60. This Court now turns to addressing Amtrak's assertions.

A. Insufficiency/Weight of the Evidence

1. *Negligence*

First, Amtrak asserts that the jury verdict cannot stand because Rock provided no evidence of negligence. Amtrak claims that the record lacks evidence that the conduct of any Amtrak employee deviated from the standard of care. (Amtrak's Br. in Supp. of Post-Trial Mot. at 7-9.) Amtrak also insists that there is no evidence that it failed to provide Rock with safe working conditions and appropriate equipment. (*Id*. at 11-13.)

None of Amtrak's arguments carry the day. Under the FELA, a railroad engaged in interstate commerce is liable to any employee injured in the course of his employment when "such injury . . . result[ed] in whole or in part from the [railroad's] negligence . . . or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment." *Hines v. Consol. Rail Corp.*, 926 F.2d 262, 267 (3d Cir. 1991) (*citing* 45 U.S.C. § 51 (1988)). The FELA employs a more lenient standard for determining negligence than typically applicable in tort actions. *See id*. at 267. Only in those "extremely rare instances where there is zero probability either of employer negligence or that any such negligence contributed to the injury of an employee" is it appropriate to withdraw an issue from the jury's consideration in a FELA case. *Id*. at 268 (citation omitted); *see also Walsh v. Consol. Rail Corp.*, 937 F. Supp. 380, 382 (E.D. Pa. 1996) ("Slight negligence, necessary to support a FELA action . . . is much less than the burden of proof required to sustain recovery in ordinary negligence actions.").

Given this the legal framework, there was ample evidence to support the jury's finding that Amtrak was negligent. On June 17, 2002, a northbound Amtrak train collided with a Maryland

commuter train at the Charles Interlocking in Maryland.[1] (R. at 10 (May 3, 2005 Trial Tr.).) This collision resulted in a derailment that both damaged rail cars as well as mangled tracks. (*Id*. at 10-11; *see also* Def.'s Trial Ex. 15.) Rock was assigned to the Charles Interlocking in Maryland to fix and replace track so that the track could be placed back into service. (R. at 10-11, 15, 73 (May 3, 2005).) This job at Charles Interlocking spanned more than a week and required, among other duties, installing timbers, replacing buffers, as well as knocking down and adding spikes. (*Id*. at 19, 25-26; Def.'s Trial Ex. 15.) The production logs and trial testimony tell a story of missing and broken equipment, including missing rail tongs (which are used to lift rail ties) and an improperly functioning tie handler. (R. at 26-27, 98-99 (May 3, 2005); Def.'s Trial Ex. 15.) There were also an inadequate number of workers given the amount and difficulty of the tasks to be completed.[2] (R. at 19-20, 25, 27, 35 (May 3, 2005).)

At Charles Interlocking, Rock served as the foreman of a gang of three instructed to cut and drive rails. (*Id*. at 29, 67-68.) Rock testified that when he received his assignment from his assistant supervisor, Steve Cohen, he was informed that the men would be using a backhoe to complete the task and that Mark Hoffman, the driver of the gang, would operate the backhoe. (*Id*. at 29-30.) According to Rock, Hoffman did not have sufficient experience to operate the backhoe. (*Id*. at 30-31, 36, 97.) Using a backhoe also troubled Rock; he believed that a burrow crane, which is a large

[1] An interlocking is the point where the trains move from one track to another. (*Id*. at 15.)

[2] In fact, describing the working conditions, Rock asserted that he was "working like a Hebrew slave." (R. at 34-35 (May 3, 2005).) Although the Court is unsure of exactly how hard Hebrew slaves worked, substantial authority indicates that they toiled intensively. *See Exodus* 1:8-1:14 (King James) (stating that "Egyptians made the children of Israel to serve with rigour" and "made their lives bitter with hard bondage, in mortar, and in brick, and in all manner of service in the field.").

crane used to lift heavy objects such as rails and machinery, was a more appropriate apparatus for the job. (*Id*. at 14, 30, 97.) The operator of the burrow crane, however, was sent to work with another gang because a number of workers were absent. (*Id*. at 30.) When Rock expressed his concerns to Cohen, Cohen simply stated, "[d]o the best that you can with what you have." (*Id*. at 31.)

At the job site, Hoffman picked up the first piece of rail and laid it down without incident, but the second piece of rail proved to be too much for Hoffman, who was forced to set it down. (*Id*. at 31-32.) In the process of setting the rail down, it turned, or "flipped," over to its side. (*Id*. at 32.) Hoffman then tried, to no avail, to use the backhoe to set the rail properly. (*Id*. at 32-33.) In the process, Hoffman moved the rail onto an incline on the track bed, which was a less than optimal position for it. (*Id*. at 32.) Rock and the other crewmen therefore moved along the rail in an effort to help Hoffman flip the rail rightside up and onto flat ground. (*Id*. at 32-33, 35.) To reposition the rail, Rock placed a claw bar on its span and proceeded to pull up. (*Id*. at 34.) Rock testified that, at that moment, he felt a pain in his back. (*Id*.)

Although Rock was able to finish the assigned tasks for that shift, he reported to Cohen that he had felt a sensation in his back. (*Id*. at 36, 59-61.) Upon returning home, Rock's wife noticed that he appeared crooked and that his body positioning seemed contorted, and Rock subsequently went to the hospital where he informed doctors that he had been experiencing back pain over the course of several days. (*Id*. at 36-38.) Rock later returned to work and discussed his back troubles with Cohen, who placed him on a modified duty that did not involve any physical work. (*Id*. at 38, 62-63.) In July of 2002, Rock had an MRI on his back and soon thereafter began receiving treatment for his back from Dr. Louis Halikman, an orthopedic surgeon. (*Id*. at 39, 41.) On May 28, 2003,

Rock underwent surgery to have two disks removed and have pins inserted in his lower back. (*Id*. at 41.) To this day, Rock continues to feel constant pain and he remains restricted physically. (*Id*. at 42-43.)

If Rock's testimony is believed, Amtrak neither provided him with the appropriate tools for his job nor ensured that qualified workers were available to assist him. Rock's testimony is supported by Amtrak's Investigation Committee Report, which notes that a claw bar, which Rock used to turn the rail, was the wrong tool for this task. (Def.'s Trial Ex. 8.) Rock also testified about the difficulty of the work, especially considering that few men were available for the job. (R. at 19, 34-35, 59, 84 (May 3, 2005).) Although the dates that Rock sought hospital treatment for his back injury is a subject of a heated disagreement between the parties, to the extent there are conflicts in Rock's testimony, it is the province of the jury, not the judge, to settle any such conflicts. *See O'Neill v. Reading Co.*, 306 F.2d 204, 205 (3d Cir. 1962). Additionally, there was nothing particularly complicated about this case to warrant a closer examination of the verdict. *See Lee v. Consol. Rail Corp.*, Civ. A. No. 94-6411, 1995 U.S. Dist. LEXIS 18199, at *6-*7 (E.D. Pa. Dec. 5, 1995) (noting distinction between a judge's role in reviewing verdict of simple trials and complex trials and finding that FELA case was "relatively straightforward"). The jury was simply asked to determine if Amtrak was negligent, and if so, if Amtrak's negligence caused Rock's injury. These are typical questions that jurors are asked to answer every day.

Ever mindful that I may not substitute my judgment of the facts and determination of the credibility of the witnesses for that of the jury, I hold that sufficient evidence exists of Amtrak's negligence. *See Parkway Garage*, 5 F.3d at 691 (in deciding a motion for judgment as a matter of law, "[t]he court may not weigh evidence, determine the credibility of witnesses or substitute its

version of the facts for that of the jury."). Therefore, I will neither grant judgment as a matter of law nor order a new trial on this ground.

2. *Causation*

Amtrak also contends that there is no evidence that it caused Rock's injury. Amtrak takes issue with Rock's testimony regarding the timing and nature of his injury. (*Id*. at 10.) This timing discrepancy, as Amtrak sees it, forced Rock's counsel to alter his theory of the case midstream because it became apparent that Rock sought all his all medical treatment for his back *before* the date that he claimed he was injured at Charles Interlocking, the location where Rock claimed to have been injured. (*Id*. at 10-11.) Amtrak believes that the only evidence of causation came from Dr. Halikman, whose medical opinion was entirely based on what Amtrak contests is the now discredited testimony of Rock. (Amtrak's Br. in Supp. of Post-Trial Mot. at 14-19.) According to Amtrak, Rock's own testimony demonstrates that he did not get hurt at Charles Interlocking on the date that he originally claimed, and no medical opinion exists to support a claim that he was hurt earlier while at Charles Interlocking. (*Id*. at 17-18.)

A worker may recover under the FELA when one can conclude that employer negligence "played any part, *even the slightest*," in injuring plaintiff. *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 506 (1957) (emphasis added); *see also Outten v. Nat'l R.R. Passenger Corp.*, 928 F.2d 74, 76 (3d Cir. 1991) (noting Supreme Court recognition that FELA is a broad remedial statute that is to be liberally construed to accomplish Congressional objectives). Furthermore, the courts are to broadly interpret causation under the FELA. *Hines*, 926 F.2d. at 268; *see also Gallick v. Balt. & Ohio R.R. Co.*, 372 U.S 108, 115-18 (1963). The judge in a FELA case is limited to examining the narrow issue of whether one could reasonably conclude that the negligence of the employer in any

way caused the plaintiff's injury. *Rogers*, 352 U.S. at 506-07. If the judge resolves this question in the affirmative, it is for the jury to decide the case even if the evidence allows a conclusion that other causes are also responsible for plaintiff's injury. *Id*. at 507.

Amtrak's causation argument fares no better than its negligence argument. Indeed, the record is not clear on whether Rock sought medical treatment after the incident at Charles Interlocking or before that time. Yet, if Rock is believed (which was a credibility issue for the jury to decide), he went to the hospital after injuring his back at Charles Interlocking. On redirect, Rock was asked whether he went to the hospital "as a result of working at Charles Interlocking and flipping that rail?" (R. at 101 (May 3, 2005).) Rock unequivocally responded, "yes," that regardless of the time line presented to him, his recollection was that he hurt his back and then sought treatment at the hospital. (*Id*. at 100-01.) He further testified that the lack of equipment and manpower were all related to the derail at Charles Interlocking. (*Id*. at 104.) Furthermore, Dr. Halikman's testimony supports Rock's claim that he suffered a herniated disc as a result of the Charles Interlocking incident. (Halikman Trial Dep. at 12, attached as Ex. A to Amtrak's Post-Trial Mot.)[3] Of course, the jury was free to disregard Dr. Halikman's opinion, just as they were free to disregard Rock's testimony about the accident. But, having chosen to believe Rock, Halikman's testimony clearly supports Rock's account that the events at Charles Interlocking were a cause of Rock's back troubles. Amtrak correctly notes that Rock had experienced back problems even before working at Charles Interlocking. (Amtrak's Br. in Supp. of Post-Trial Mot. at 18.) But Dr. Halikman stated that "[t]here may have been some preexisting degeneration and he obviously had a small scoliosis, small curvature beforehand *but the accident consisted of the disk herniation and that is what brought him*

[3] Dr. Halikman's videotaped deposition was played for the jury on May 4, 2005.

to my office and that is what necessitated treatment." (Halikman Trial Dep. at 12) (emphasis added). Furthermore, Dr. Halikman testified that Rock's disc herniation was relatively new because older disc herniations are calcified and the doctors were able to extract intradiscal material, an impossibility when faced with a chronic disc herniation. (*Id*. at 49-50.) In sum, a reasonable jury could easily have determined that Dr. Halikman's diagnosis comported with that of Rock's recollection of how he hurt himself, notwithstanding Amtrak's evidence that Rock's recollection was erroneous.

But, perhaps most importantly, Dr. Halikman testified that his expert medical opinion would not change depending on the exact date of Rock's injury. (*Id*. at 52.) This testimony highlights an important point: the date on which Rock might have sought treatment at a hospital, so vital to Amtrak's post-trial motions, is a red herring. In fact, Rock could still recover had he never visited a hospital. Nothing in the FELA requires a plaintiff to seek medical treatment before he may recover for an injury caused by his employer's negligence. *Cf*. 45 U.S.C. § 51 (2005). The date on which Rock first felt pain is equally immaterial. *See Hines*, 926 F.2d at 268 (injury need not be an immediate result of accident to meet FELA's causation standard). Even if the jury believed that Rock went to the hospital before the events at Charles Interlocking, they could have found in Rock's favor based on his testimony regarding the long hours he worked without proper equipment and manpower. (*See*, *e.g.*, R. at 34-35 (May 3, 2005).)

Applying the relevant legal precepts, there was more than ample evidence to support the jury's finding that Amtrak's negligence was a cause of Rock's injuries. Furthermore, the record before me neither shocks the conscience nor cries out to be overturned. *See Williamson*, 926 F.2d at 1353. Accordingly, Amtrak is entitled to neither a judgment notwithstanding the verdict nor a new

trial based on the weight of the evidence.

B. Legal Errors

Next, Amtrak argues that the Court made legal errors which warrant a new trial. Specifically, Amtrak contends that it was legal error to permit Rock's counsel to switch course midstream and argue that Rock was injured not because of one specific incident at Charles Interlocking, but rather because of heavy lifting and working long hours over a course of time. (Amtrak's Br. in Supp. of Post-Trial Mot. at 20-21.) Amtrak further asserts that it was legal error to forbid its lawyers from questioning Rock about requests for admissions that framed his case as relying only on events at Charles Interlocking. (*Id*. at 24-25.) Amtrak also argues that it was legal error for this Court not to give a jury instruction that would limit Rock's counsel to the subject matter of the Complaint. (*Id*. at 21.)

1. *Altering Rock's Theory of the Case*

Amtrak puts forth the rather amorphous claim that the Court erred by allowing Rock to raise a new theory during the course of trial as to the cause of his injuries. As Amtrak would have it, Rock should have been limited to discussing and presenting evidence related solely to June 25-26, 2005, when Rock allegedly felt the sensation in his back. Amtrak states that it was therefore error to allow Rock's counsel to mention other items and events that occurred from June 17, 2002, the date of the train collision and derailment, items that "certainly created a picture of haphazard working conditions." (Amtrak's Br. in Supp. of Post-Trial Mot. at 20.) The Court, according to Amtrak, also allowed Rock's counsel too much latitude in questioning Rock regarding the events leading up to June 25-26, in effect permitting Rock to amend his complaint (*Id*. at 22-24.)

This Court will not overturn a jury verdict based on what Amtrak argues is Rock's counsel's

theory of the case. The Federal Rules require only that a defendant be provided enough information to properly defend against a plaintiff's allegations. FED. R. CIV. P. 8(a); *see also Conley v. Gibson*, 355 U.S. 41, 47 (1957) (Federal Rules require nothing more than "short and plain statement of the claim" that provides defendant fair notice of the claim and its basis). Rock's complaint stated that his injuries resulted from "among other reasons, [Amtrak's failure] to provide sufficient resources." (Compl. ¶ 9.) There is simply no basis for limiting Rock's testimony to the events of two days and not permitting the jury to hear and understand the larger context of Rock's job and the conditions under which he worked, especially when the FELA mandates that Amtrak maintain reasonably safe working conditions. *See Pehowic v. Erie Lackawanna R.R. Co.*, 430 F.2d 697, 699 (3d Cir. 1970) (under FELA, railroad has non-delegable duty to provide employees with reasonably safe place to work); *see also Lauria v. Nat'l R.R. Passenger Corp.*, Civ. A. No. 95-1561, 1997 U.S. Dist. LEXIS 1810, at *4 (E.D. Pa. Feb. 20, 1997) (same). As the Court has already made clear, the FELA merely required Rock to prove that Amtrak's negligence was a cause, no matter how slight, of Rock's injuries. *See Rogers*, 352 U.S. at 506; *Gallick*, 372 U.S. at 116; *Pehowic*, 430 F.2d at 699. The exact date on which he sought medical treatment is irrelevant to that inquiry. Additionally, to the extent Amtrak is concerned about Rock's counsel's questions and statements made during summation, this Court instructed the jury on what could properly be considered evidence and what could not be considered as evidence:

> The evidence from which you'll find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits and any facts the lawyers may agree or stipulate to or that I might instruct you to find. Testimony of witnesses may be presented by deposition or by videotape.
> *Now, certain things are not evidence and must not be considered by you and I'm going to list them for you: statements, arguments and questions by lawyers are not evidence. Objections to questions are not evidence.*

(R. at 5 (May 3, 2005) (emphasis added).) It is presumed that the jury will follow the Court's instructions. *See Opper v. United States*, 348 U.S. 84, 95 (1954) ("Our theory of trial relies upon the ability of a jury to follow instructions."); *United States v. Zauber*, 857 F.2d 137, 154 (3d Cir. 1988) ("We must assume that the jury followed the court's instructions and arrived at a verdict based on those instructions."). Accordingly, the Court rejects Amtrak's arguments that Rock's counsel switched course midstream and that Amtrak was therefore prejudiced.

2. *Requests for Admission*

Amtrak also contends that the Court erred in refusing to allow counsel to question Rock about requests for admissions, which Amtrak argues demonstrates how Rock framed his case during pretrial discovery. (Amtrak's Br. in Supp. of Post-Trial Mot. at 24-25.) This argument has no merit. The Federal Rules provide that "[n]o error in either the admission or the exclusion of evidence and no error or defect in any ruling . . . by the court . . . is ground for granting a new trial . . . unless refusal to take such action appears to the court inconsistent with substantial justice." FED. R. CIV. P. 61.

The Court's decision regarding Rock's requests for admissions falls far short of meeting the "substantial justice" standard. First, the Court correctly forbade this line of questioning. These requests were no doubt written by Rock's counsel and, as such, it would have been inappropriate to question Rock about his counsel's mind-set in writing them. Questions about the strategy involved in framing these requests would have to be directed to Rock's counsel and would be fraught with obvious evidentiary difficulties that need not be addressed here. Moreover, these requests are nothing more than questions and not evidence of anything. As noted earlier, questions by lawyers are not evidence. While Amtrak's counsel might have concluded that these requests framed Rock's

theory of the case, they were merely one piece of the discovery process. To jump to the conclusion that Rock's entire case was based on those requests is a leap this Court is unwilling to take. Second, as Amtrak itself observes, the requests for admissions were admitted into evidence. (Amtrak's Br. in Supp. of Post-Trial Mot. at 24.) Thus, even assuming it was legal error to forbid questions about the requests, any such error was harmless. *See Allstate Ins. Co. v. Am. Rehab & Physical Therapy, Inc.*, 330 F. Supp. 2d 506, 508 (E.D. Pa. 2004) ("Thus, absent a showing of substantial injustice or prejudicial error, a new trial is not warranted and it is the court's duty to respect a plausible jury verdict.") (citations omitted); *see also Constant v. New York Cas. Ins. Co.*, Civ. A. No. 88-6058, 1990 U.S. Dist. LEXIS 3679, at *6 (E.D. Pa. Apr. 3, 1990) (requiring reasonably clear demonstration that prejudicial error made or substantial justice not done before district court will disregard jury verdict). Finally, the Court finds it odd that Amtrak alleges Court error in this area since Amtrak denied the relevant requests for admissions and stated that it had no information "concerning the voracity [*sic*] of the plaintiff's claim that he was injured on the date stated." (Amtrak's Ans. to Pl.'s Request for Admissions, attached as Ex. 2 to Amtrak's Post-Trial Mot.)

The Court concludes that Amtrak cannot be granted a new trial on this basis.

3. *Jury Instructions*

Additionally, Amtrak contends that the Court erred in failing to instruct the jury "that plaintiff is bound by the information contained in his Complaint." (Amtrak's Br. in Supp. of Post-Trial Mot. at 21.) This argument fails. A trial court is awarded broad discretion in the wording of jury instructions. *See Fritz v. Consol. Rail Corp.*, Civ. A. No. 90-7530, 1992 WL 96285, at *4 (E.D. Pa. Apr. 23, 1992). When a party claims that a new trial is warranted based on erroneous jury instructions, the court, in its discretion, reviews the charge to determine whether the instructions

"taken as a whole, properly apprises the jury of the issues and the applicable law." *Montgomery County v. Microvote Corp.*, 320 F.3d 440, 445 (3d Cir. 2003) (*citing Smith v. Borough of Wilkinsburg*, 147 F.3d 272, 275 (3d Cir. 1998)); *see also Dressler v. Busch Entm't Corp.*,143 F.3d 778, 780 (3d Cir. 1998) (holding that jury instructions should be reviewed by "totality of the charge given to the jury, not merely a particular paragraph or sentence").

Amtrak's attempt to chain Rock to the four corners of his Complaint would subvert the concept of broad discovery contemplated by the Federal Rules. The Court will not so bind Rock. Amtrak sought the following jury instruction:

> 29. Ladies and Gentlemen, Plaintiff Edward Rock filed a lawsuit alleging that he sustained an injury to his low back after reporting to work at 9pm on June 25, 2002. Plaintiff alleges that the injury occurred while he was in the process [of] turning a rail with three other men at the Charles Interlocking. In order for the plaintiff to recover from the railroad, he must prove by a preponderance of the evidence that while working at the Charles Interlocking, Amtrak was negligent and that its negligence caused plaintiff's injury.

(Amtrak's Requested Jury Instruction, attached as Ex. E to Amtrak's Post-Trial Mot.)

The Court rejected Amtrak's request and instead gave the following instruction:

> Now, when a plaintiff files a complaint in Federal Court he is not required to go into detail with respect to the factual allegations that he makes, but he must provide enough information for the defendant to be aware of what it is being accused.

(R. at 48 (May 6, 2005).)

Viewing this paragraph in light of the instructions as a whole, there are no grounds upon which to grant Amtrak's motion. The instructions make clear that for Rock to recover, he was required to prove by a preponderance of the evidence that Amtrak was negligent and that Amtrak's negligence was the cause of his injuries. (*Id*. at 44, 49-53.) The exact date of the injury is of no moment, provided there is evidence that the injury was caused, at least in part, by Amtrak's

negligence. Rather than using Amtrak's extremely narrow and self-serving charge, the Court properly instructed the jury that a plaintiff who files a complaint in federal court is not required to go into the factual details of his allegations, but is merely required to place the defendant on notice of why he is being sued. The Court further instructed the jury that the burden was on Rock to prove both that Amtrak was negligent and that Amtrak's negligence was responsible, at least in part, for his injuries. Nothing in the FELA demanded that this Court restrict the jury's consideration of the evidence solely to a brief window of time. Therefore, Amtrak was not entitled to an instruction which would so limit Rock, and Amtrak is not entitled to a new trial based on the Court's charge.

C. Newly Discovered Evidence/Fraud

Finally, Amtrak has also requested a new trial, or at a minimum, a hearing based on what it asserts is newly discovered evidence of fraud. Amtrak's request for a new trial appears to based on both Rules 59 and 60. (*See* Amtrak's Br. in Supp. of Post-Trial Mot. at 6.) At trial, Rock testified that he has been participating in the "Right Care Day One" program, which allows injured railroad employees to perform lighter duty work for charitable and community based organizations. (R. at 40, 50 (May 3, 2005).) Amtrak states that it has paid Rock's salary for this work from the time of his injury until an unspecified date close to trial. (Amtrak's Resp. to Rock's reply to Amtrak's Supplemental Mot. for New Trial at 1.) Amtrak avers, however, that it has just discovered that Rock has not actually been working at the Salvation Army. (Amtrak's Supplemental Mot. for New Trial ¶¶ 4-5 & Ex. C (Burton Aff.)); Amtrak's Br. in Supp. of Post-Trial Mot. at 4-6; Amtrak's Resp. to Pl.'s Reply to Amtrak's Supplemental Mot. for New Trial at 2 & Ex. D (work verification pay forms).) To bolster this claim, Amtrak has submitted affidavits from Jerry Prusak, Director of Human Resources at the Salvation Army, and Loretta Burton, Amtrak's Manager for the Alternative

Work Program. Prusak asserts that he has never signed a work verification form for Rock and is unaware of any involvement Rock has had with the Salvation Army. (Prusak Aff. ¶¶ 6-7.) He further asserts that he has been advised that Rock's work verification forms were signed by an individual named Gregory Brown, whose employment with the Salvation Army ended in February of 2005. (*Id*. ¶¶ 9-10.) Amtrak has also submitted Verification Pay Forms, one of which appears to indicate that Rock was working at the Salvation Army at the exact time he was before this Court for his trial. (Amtrak's Resp. to Pl.'s Reply to Amtrak's Supplemental Mot. for New Trial Ex. D.)

Amtrak has hired a private investigator in an effort to uncover Rock's alleged scheme to have Amtrak pay his salary for work he was not really performing. (*See* Amtrak's Supp. Mot. for New Trial ¶ 8 & Lott Aff.) Amtrak argues that this "newly discovered" evidence, if true, would shatter the image of Rock as a decent, honest, hard-working man, an image that Amtrak claims helped Rock emerge victorious from the trial. (Amtrak's Supp. Mot. for New Trial ¶¶ 2, 9.) Amtrak reasons that because "[i]t is clear that the verdict of the jury was based on sympathy for the plaintiff who was repeatedly referred to by his counsel as a hardworking, honest man," this scheme to defraud Amtrak of money would have painted an entirely different picture of Rock. (*Id*. ¶ 2.)

Rock counters Amtrak's accusations with affidavits submitted on his behalf. Dolores Doughty, a Salvation Army store manager from February 2005 through May 2005, claims that Rock was "consistently in my employment on a part-time weekly basis." (Doughty Aff. ¶¶ 1-4.) LaFaun Davis, a Salvation Army store manager from May 2005 through the present, asserts that Rock "has been consistently in my employment on a part-time weekly basis."[4] (Davis Aff. ¶ 1-4.)

[4] Amtrak points out that while Rock's affidavits indicate that he was a part-time employee, his work verification pay forms indicate that he worked forty hours a week. (Amtrak's Resp. to Pl.'s Reply to Amtrak's Supp. Mot. for New Trial at 2 & Ex. D.) Rock has

These allegations are very troubling and I suspect Rock will have to further explain his actions to Amtrak. The Court, however, will not award Amtrak a new trial based on these submissions. As an initial matter, to the extent that Amtrak's motion is based on Rule 59, the Court notes that Amtrak's delay in raising this issue warrants a denial of the motion. Rule 59(b) commands that "[a]ny motion for a new trial shall be filed no later than 10 days after entry of the judgment." FED. R. CIV. P. 59(b). Amtrak filed a timely post-trial motion that made no reference to these allegations. The Court allowed the parties additional time to supplement their briefs, so as to allow them to add appropriate cites to the record. (Order of June 15, 2005; *see also* Amtrak's Mem. of Law in Supp. of Post-Trial Mot. at 2.) It was only in Amtrak's supplemental submission however, filed on June 30, 2005, well after the ten-day time limit, that Amtrak brought these allegations were brought to light. This Court may not grant a new trial for reasons articulated subsequent to Rule 59's 10-day time limit. *Lee*, 1995 U.S. Dist. LEXIS 18199, at *8-*9 (*citing Arkwright Mutual Ins. Co. v. Phila. Elec. Co.*, 427 F.2d 1273 (3d Cir. 1970)); *see also Larsen v. IBM*, 87 F.R.D. 602, 606 n.2 (E.D. Pa. 1980) (party may not advance additional arguments requesting a new trial subsequent to the time limit set forth in Rule 59); *Maylie*, 791 F. Supp. at 480 n.3 (denying leave to amend post-trial motion to add newly discovered evidence argument).

To the extent that Amtrak is relying upon Rule 60, its argument is unavailing both on the newly discovered evidence and fraud provisions of Rule 60. The Court, however, will address these contentions together. The Federal Rules provide that a court may relieve a party from a final judgment in the case of newly discovered evidence "which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." FED. R. CIV. P. 60(b)(2). Additionally,

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not responded to these claims.

a court may grant relief from judgment for "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Fed R. Civ. P. 60(b)(3). Newly discovered evidence is that which was in existence at the time of trial *and of which the moving party was excusably unaware*. *Beloff*, 950 F.2d at 930 (emphasis added). To be entitled to a new trial based on newly discovered evidence, the movant must demonstrate: (1) that the evidence is material and not merely cumulative; (2) that the evidence could not have been discovered prior to trial through the exercise of due diligence; and (3) that the evidence would probably have changed the outcome of the trial. *Id*. (citations omitted). A movant under Rule 60(b) faces a heavy burden, which requires "more than a showing of the potential significance of the new evidence." *Beloff*, 950 F.2d at 930 (*quoting Plisco v. Union R.R. Co.*, 379 F.2d 15, 16 (3d Cir. 1967). To prevail under a Rule 60 motion on the basis of fraud, Amtrak must establish not only fraud on the part of Rock, but that Rock's fraud prevented Amtrak from fully and fairly presenting its case. *Stridiron v. Stridiron*, 698 F.2d 204, 207 (3d Cir. 1983). "In order to sustain the burden of proving fraud and misrepresentation under Rule 60(b)(3), the evidence must be clear and convincing." *Brown v. Pa. R.R. Co.*, 282 F.2d 522, 527 (3d Cir. 1960) (citations omitted).

For several reasons, Amtrak is not entitled to a new trial based on this evidence. First, this evidence is not newly discovered. Amtrak has failed to offer a reason why it could not have uncovered this possible fraud much earlier. As Amtrak was responsible for paying Rock's salary while he worked at the Salvation Army, Amtrak needed to exert only a modicum of effort to determine whether Rock was actually working there. Second, at this juncture, Amtrak has not shown that this evidence is either material or would have changed the outcome of the trial. Amtrak has provided nothing but allegations of fraud, allegations that Rock has countered. Amtrak remains free

to continue its investigation and pursue Rock both criminally and civilly, if it so desires. This Court, however, is not the appropriate forum for Amtrak's contested charges. Furthermore, these allegations are immaterial because they have absolutely nothing to do with Rock's FELA claim. Instead, Amtrak argues that with this evidence, it could have painted Rock as a liar at trial. But the important interest in the finality of litigation cannot be set aside each time a party uncovers a fertile ground for impeachment. *See Harris v. Martin*, 834 F.2d 361, 364 (3d Cir. 1987) ("[R]elief under Rule 60(b) is available only under such circumstances that the overriding interest in the finality and repose of judgments may properly be overcome."). Amtrak had ample time to dig into Rock's background and uncover seeds of doubt that could be planted in juror's minds. That time has passed. Finally, while counsel certainly attempted to portray his client as a hardworking and honest man, it is nothing more than conjecture for Amtrak to state that the jury verdict was based solely on sympathy for Rock. As Amtrak has offered this Court nothing but allegations and conjecture – and candidly admits that its investigation is continuing – this Court deems it inappropriate to overturn the jury's verdict based on this "newly-discovered" evidence of fraud. Amtrak has failed to meet the high threshold set for granting relief from judgment based on newly discovered evidence and fraud. Therefore, the Court will not grant relief under Rule 60.

III. CONCLUSION

For the reasons set forth above, all of Amtrak's requests for post-trial relief are denied. An appropriate Order follows.

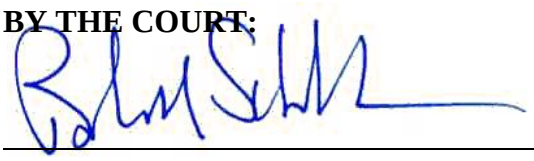
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD ROCK, JR.,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
NATIONAL RAILROAD PASSENGER CORPORATION,	:	
	:	
Defendant.	:	**No. 04-1434**

ORDER

AND NOW, this **9th** day of **August, 2005**, upon consideration of Defendant's Motion for New Trial (Document No. 29), Plaintiff's response thereto (Document No. 30), Plaintiff's supplemental response (Document No. 35), Defendant's Supplemental Motion for New Trial (Document No. 37), Plaintiff's reply thereon (Document No. 38), Defendant's surreply (Document No. 39), and for the reasons stated herein, it is hereby **ORDERED** that Defendant's Motions are **DENIED** and the jury's verdict shall stand.

BY THE COURT:



Berle M. Schiller, J.