

5.21 DUTY OF RAILROAD AT PUBLIC HIGHWAY GRADE CROSSING (Approved before 1983)

A. In General

Every railroad company is required to maintain at each highway crossing at grade a conspicuous sign with such inscription and of such standard and design as shall be approved by the Board of Public Utility Commissioners, so as to be easily seen by highway travelers.

NOTE TO JUDGE

N.J.S.A. 48:12-58 — This is usually a cross-buck X sign reading “Railroad Crossing.” Such sign need not be maintained in any municipality unless required by its governing body, or by the board.

The statutory duty which a railroad company owes to a highway traveler at a grade crossing is created by *N.J.S.A. 48:12-57*. That statute provides that each engine shall have a bell, weighing not less than 30 pounds, which shall be rung continuously in approaching a grade crossing of a highway, beginning at a distance of at least 300 yards from the crossing and continuing until the engine has crossed such highway or a whistle or horn operated by steam, air or electricity which shall be sounded except in cities, at least 300 yards from the crossing and continuing until the engine has crossed such highway or a whistle or horn operated by steam,

air or electricity which shall be sounded except in cities, at least 300 yards from the crossing and at intervals until the engine has crossed the highway.

Cases:

Sotak v. Pennsylvania Railroad Co., Jelinek v. Sotak, et al, 13 N.J. Super. 130 (App. Div. 1951), *rev'd*, 9 N.J. 19 (1954); N.J.S.A. 48:12-57. (Where there are no crossing bells, flasher, wig-wag signals, gates or crossing watchman, unless it is an extra-hazardous crossing, this is ordinarily the only duty owing).

See, however, Rafferty Adm'r. v. Erie R.R. Co., 66 N.J.L. 444 (Sup. Ct. 1901) and *Taylor v. Lehigh Valley R.R. Co.*, 87 N.J.L. 673 (E. & A. 1915) as to duty when engineer detects position of plaintiff in time to avoid collision.

B. At Protected Crossings

Where a railroad company has installed any automatic device designed to protect the travelling public at any crossing, the railroad company is under a duty to exercise reasonable care to keep and maintain the said automatic device in operating condition.

Where a railroad company has placed a watchman or flagman on the crossing to warn the public highway traveler of the approach of its trains, it is liable for his/her negligent acts in the performance of his/her duties.

Cases:

Passarello v. W.J. & S.R. Co., 98 N.J.L. 790 (E. & A. 1923); *Snuffin v. McAdoo*, 93 N.J.L. 231 (E. & A. 1919); *Piper v. Erie R.R. Co.*, 9 N.J. Misc. 40 (Sup. Ct. 1930).

These duties apply whether the added protection at the crossing was voluntarily provided or ordered by the Public Utility Commission. *See also* Model Civil Charge 5.10C and cases cited thereunder.

C. At Extra-Hazardous Crossings

Where a railroad crossing is so peculiarly dangerous that a reasonably prudent person could not use the highway in safety, even though the statutory signals by the engine bell or whistle are given, the railroad has the duty to employ extra means to signal the approach of its trains, beyond those required by statute. It is for you to determine here whether the railroad's warning system, taken as a whole, gave sufficient notice of danger. In passing on the sufficiency of the warning system maintained at the railroad crossing, the test which you will apply is whether the system adequately alerts reasonably prudent travelers to the hazards of the crossing. The railroad is entitled to rely on the fact that the highway traveler will be attentive to the warning system maintained at the crossing, and if you find that the safety measures in effect are sufficient to warn a reasonably prudent person, the railroad has fulfilled its duty, while if you find otherwise, it has not done so.

[Where appropriate, the following may be added by way of explanation:]

Automatic warning devices at grade crossings, unlike the standard cross-buck sign, are designed to alert the traveler to stop in a place of safety even though he/she does not or cannot see an approaching train. In effect, such devices are a substitute for an unobstructed view of the train as it nears the crossing. While the standard cross-buck sign is designed merely to inform a traveler that he/she is nearing a railroad crossing, automatic devices do much more; they warn that a train is actually approaching.

Cases:

Duffy v. Bill, 32 N.J. 278 (1960); *DiDomenico v. Pennsylvania-Reading Seashore Lines*, 36 N.J. 455 (1962); *Shutka v. P.R.R. Co.*, 74 N.J. Super. 381 (App. Div. 1962).

ADDITIONAL NOTES ON EXTRA-HAZARDOUS CROSSING

The question of whether a crossing is extra-hazardous is initially one of law for the court. If there is sufficient evidence, the issue should be submitted to the jury. *Duffy v. Bill*, 32 N.J. 278, 293 (1960).

In an action for personal injuries and property damage arising out of a railroad grade crossing collision between the plaintiff's automobile and the defendant's freight train, the Supreme Court held that where a railroad had fully complied with the statutory requirements relative to warning systems at crossings and where, although the area around the

crossing had changed since the warning system was installed, such changes did not reduce the effectiveness of the system, the railroad's failure to provide extra precautions was not negligence, and was not liable for motorist's injuries. There the railroad was single tracked and the crossing was marked by two warning sign posts with cross-buck signs inscribed with reflector letters, flashing red lights and bells, which devices operated automatically upon the approach of a train. *DiDomenico v. Pennsylvania-Reading Seashore Lines*, 36 N.J. 455 (1962).

Railroad accident cases are considered in the light of general tort law and the railroad in the absence of contributory negligence is liable to an injured person if it has not taken safety measures commensurate with the dangers involved. If the crossing is peculiarly dangerous that reasonably prudent persons could not use it in safety, then the railroad has the duty to employ extra means to signal the approach of its trains. *Id.* at p. 467.

The railroad is under a duty to appraise changing conditions and alter its warning system if necessary to safeguard reasonably prudent motorists even if the Public Utility Commission has not ordered such change. *Id.* at p. 471.