

PROTECT YOUR RIGHTS WHEN INJURY STRIKES

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INTRODUCTION

This booklet is designed to give the railroad working man and woman a general outline of the law governing their rights to recover damages for injuries sustained at work as well as instructions for the protection of those rights. These rights include protection under the Federal Rail Safety Act. It is not designed as a substitute for legal advice since each case must be interpreted on its individual facts; and the law applicable will vary from the general rules expressed in this booklet. As designated union counsel, it is our hope that with knowledge of the rights available under the Federal Employers' Liability Act, union members and their families will be better able to protect themselves when injury strikes.

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THE FELA GUARDIAN OF YOUR RIGHTS

The United States Congress in 1908, and again in 1939, passed legislation known as the Federal Employers' Liability Act. For the first time in the history of railroading, the American worker was armed with the tools to obtain just compensation for injuries sustained at work. As United States Supreme Court Justice Douglas later stated: "The FELA was designed to put on the railroad industry some of the costs for legs, eyes, arms and lives which it consumed in its operations". *Wilkerson v. McCarthy*, 336 U.S. 53, 69 S. Ct. 413, 420, 93 L. Ed. 497.

This legislation, both a milestone to the union movement and a model for the rights of working people, was like all legislation, complicated in its application and subject to interpretation by the courts. There have been thousands of reported decisions by various State and Federal Courts, and approximately 800 decisions by the United States Supreme Court, in which the FELA has been discussed, analyzed or interpreted. Like most important areas of legislation, an immense body of law

has developed, and with that has come the necessary specialization of designated legal counsel to advise and represent the injured railroad employee.

BE AWARE—THE CARRIER PROTECTS ITS OWN INTERESTS

The railroads, in an effort to maintain control over the effects of the FELA, have hired and trained a group of highly skilled claim agents. These individuals represent railroad management. Their job is to fully investigate the facts surrounding the railroad worker's injuries, and to prepare a factual and legal defense to the employee's claim. This includes taking statements and photographs, and collecting physical and demonstrative evidence. Make no mistake about their duties. Their primary responsibility is to the carrier, and the carrier's interest is keeping the cost of compensating injured railroad workers to a minimum. Railroad claim agents are determined to persuade the injured person to accept inadequate compensation *before* the sound advice of a legal representative is available, and in some cases, in spite of it. In addition, railroad management maintains a large staff of attorneys who advise and direct the investigation and processing of injury claims. These individuals spend their time exclusively protecting the financial interest of the railroad. They are skilled in handling injury cases in such a way as to try to reduce

the amount of liability on the part of the railroad and they attempt to shift the burden of blame for the accident to the injured person.

YOUR RIGHT TO A LAWYER IS GUARANTEED

Experience has shown that the average working man and woman is ill-equipped to deal with this formidable armada of talented adversaries. Direct dealing by employees oftentimes results in manifest injustice to injured railroad workers and their families. Railroad unions have recognized the need for trained and experienced legal counsel to assist in the handling of railroad injury claims; and have in fact recommended specific lawyers to injured railroad workers. The right of individual workers personally, or through their union, to advise injured workers concerning their need for legal assistance, and most importantly, what lawyer a member can confidently rely upon, is guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Despite the benefits provided under the law, many employees or their families are reluctant to bring suit against the railroad because of fear of intimidation. The FELA addresses the bringing of lawsuits by employees against their railroad employers. The law protects employees against any threats or retaliation.

This is not something that Congress has taken lightly. It recognized that enforcement of the provisions of the FELA would come from individual lawsuits by injured railroad workers. To insure compliance with the Act, criminal penalties were provided as follows:

“Whoever, by threat, intimidation, order, rule, control, regulation or device whatsoever, shall attempt to prevent any person from furnishing . . . such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing such information to a person in interest shall, upon conviction thereof be punished by a fine of not more than \$1,000.00 or imprisonment for each offense.” 45 U.S.C. § 60.

While the FELA provides a means to obtain fair compensation for the injured employee, it does not guarantee payment. The FELA is not an insurance policy against injuries. The railroad is not required to pay damages merely because an employee is injured. The Act provides for liability based upon negligence. Stated another way, the railroad must be shown to be at fault for the employee’s injuries. The mere happening of an accident is not sufficient to warrant a recovery.

The employee, in order to recover damages for his or her injuries, must prove some wrongdoing on the part of the employer. This can be the maintenance of an unsafe place to work. The unsafe condition of a car, locomotive, tools, equipment, track, roadbed or premises may give rise to liability so long as the unsafe condition contributed to the employee's injuries. Facts and circumstances can vary widely so that it is impossible to prescribe rules as to what conduct constitutes negligence; and the ultimate determination of negligence lies in the hands of a jury.

If fault or negligence has been established on the part of the carrier, and that negligence contributed to the employee's injuries, the employee is entitled to a full and fair recovery unless the railroad proves that the employee caused or contributed to the occurrence of the accident.

Contributory negligence is a defense to a claim brought under the FELA, and the railroad carriers concentrate their investigative efforts on establishing contributory negligence on the part of the injured employee. Contributory negligence diminishes the size of the employee's recovery by the percentage of the

contributory negligence established. In other words, if there is a finding that the employee was 50 percent at fault, then the amount of damages would be cut in half.

The Act specifically provides: "the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee . . .". 45 U.S.C. § 53.

THE SAFETY APPLIANCE ACTS

Although liability under the FELA is predicated upon the concept of negligence, certain specific requirements for the safety of the railroad have been established by Congress. The Safety Appliance Acts require trains to be equipped with certain safety devices, and a violation of any of these requirements imposes absolute liability. Contributory negligence is no defense if a violation of the Safety Appliance Acts causes injury. For example, if an employee's injuries are caused, in whole or in part, by the failure of automatic couplers, brakes or insecure grab irons and the equipment is in use on the lines of the carrier, then the carrier is responsible for damages without regard to any contributory negligence on the part of the employee. Furthermore, the employee would be relieved of the burden of proving negligence since establishment of a violation of the Safety Appliance Acts establishes liability without regard to negligence.

The Locomotive Inspection Act deals primarily with the locomotive. Like the other Safety Appliance Acts, absolute liability is imposed without regard to negligence, and contributory negligence is no defense.

Again, the equipment must be in use on the line of the carrier and the injury must have been caused in whole or in part by a violation of the Act. For example, if the employee is injured, in whole or in part, by the failure of air compressors, bearings, boilers, injectors, sanders, stay bolts or throttles, liability is established. The Act requires the carrier to provide equipment which is safe and will not subject the employee to unnecessary danger of personal injury.

THE FEDERAL RAIL SAFETY ACT

The Federal Rail Safety Act, 49 U.S.C. Section 20109, is a powerful new law that protects railroad workers who engage in certain “protected activity.” FRSA prohibits railroads from firing, laying off, demoting, disciplining, reprimanding, intimidating, denying promotion or benefits, or in any other way retaliating or discriminating against any employee who engages in certain “protected activity.” “Protected activities” include reporting an accident, reporting an unsafe condition, refusing to engage in unsafe practices, requesting medical care and following your doctors’ instructions. Severe penalties can be imposed on a railroad that retaliates against an employee. A complaint must be filed with OSHA within 180 days of the discipline or retaliation. Therefore, it is essential that you contact Coffey Kaye Myers & Olley as soon as you believe you have been punished for exercising one of your protected rights.

WHAT TO DO WHEN INJURED

Report All Injuries

Report all injuries no matter how small or trivial they may first appear. All too often what seems like a simple twist of the back and neck may result in a serious spinal injury. Even a simple sprain or pulled muscle may prove to be painstakingly slow in healing; and may in fact result in a degree of disability not contemplated at the time of injury.

Obtain Copies of Accident Reports

The railroad completes one or more forms concerning every reported accident. Make certain that you obtain a copy of all accident reports and other forms relating to your accident. There is a great deal of information contained on these forms which can affect the outcome of your case.

Get Proper Medical Care

The first concern for the injured railroad worker is to obtain necessary and qualified medical specialists to attend to his or her injury. It is of utmost importance to restore the worker to good physical health so that he or she can return to work without further damage to health

and well-being. Second, the evaluation of the extent of the employee's injury and its full significance from a disability standpoint must be carefully and accurately assessed by qualified doctors in order to determine what compensation he or she may be entitled to under the FELA. The railroad will of course offer medical assistance and will attempt to control the medical evidence. While the practice of medicine may be a science, conflicts in medical diagnosis and treatment are quite common. Injured employees are sometimes persuaded to return to work before their physical condition warrants a safe return to work. It is absolutely essential that a doctor or team of medical specialists examine and treat the injured worker. It is necessary that a definite diagnosis and prognosis for the future be made which is critical and often the decisive evidence in injury claim cases.

If a claim of future or permanent disability is made, it may be necessary to obtain vocational consultation and rehabilitation by experts of the employee's choosing. The railroad, in an effort to minimize their financial exposure, will offer their own medical and vocational assistance programs. They may attempt to have a nurse

“coordinate” your medical treatment to make certain your treatment is consistent with the railroad’s objectives. These programs should be viewed cautiously because they are usually intended to protect the railroad rather than the employee. Your attorney can help you find medical and vocational assistance.

Call the Firm of Coffey Kaye Myers & Olley

Seek the advice of our designated and qualified law firm with the specialized knowledge and investigative staff that is thoroughly familiar with the railroad and its operations, and capable of marshaling the evidence to properly prepare your claim. Our firm of trial lawyers prepares every case so as to obtain the maximum recovery. While a number of cases can be resolved favorably before trial, many cases ultimately do go to trial. Our firm of trial lawyers has consistently won some of the largest verdicts on behalf of our clients.

Report All Unsafe Conditions

It has been repeatedly stated by many frustrated union men and women, “Why complain? The unsafe conditions are not repaired when reported.” Unfortunately, railroad management sometimes operates under marginal safety

conditions, and frequently people are required to work in dangerously unsafe areas despite the clear pronouncement by Congress and the Courts that the railroad has a non-delegable duty to provide a reasonably safe place to work. While your individual complaints may not result in the correction of unsafe working conditions, they do go a long way in building a record of a continuous and deliberate course of unsafe conduct by railroad management. These complaints about unsafe conditions can be a decisive factor in establishing fault on the part of the railroad when a fellow worker is injured. Make your complaints orally and in writing, and advise your local chairman of all unsafe conditions.

Be Cautious When Giving Oral and Written Statements

Almost all railroads require an injured employee to report all injuries, and most railroads have designated forms for that purpose. If your injury requires immediate medical attention, ask to be transported to the nearest emergency medical treatment facility. Do not permit the railroad to force you into signing statements when you are in pain. There is sufficient time within the next twenty-four (24) hours to complete the required

forms after consultation with your union representative and your attorney. You should also be acutely aware that any statement, including an oral comment, by the injured party can be used against that party in a later legal proceeding. It is for this reason that the railroad will order various company supervisory personnel to verbally question and interrogate the injured person immediately following the accident. Try to keep your oral conversations limited to your medical condition and refrain from discussing the facts of your accident.

Under no circumstances should you sign any statement as to how the accident happened; nor should you give a recorded statement to a company claim agent, unless this has been approved by the lawyer you select and/or your union representative who has first inquired of the lawyer handling the case as to whether to give such information. The so-called "routine statement" taken by a company claim agent can and will be used against you to diminish or defeat your claim. Innocent sounding phrases are often hidden traps designed to diminish the railroad's responsibility or shift the responsibility of the accident to the injured employee. Most union contracts provide for representatives at company

investigations. You are required to attend these investigations; but under no circumstances should you attend these hearings without your union representative.

Do Not Volunteer Information

Do not discuss the facts surrounding the accident or the nature and extent of your injuries and medical treatment with anyone other than your lawyer. There is nothing to be gained by discussing your case with anyone and frequently discussing your case may result in information taken out of context, which could be used to defeat or diminish your claim.

Be Cautious of Monetary Assistance Programs

Some railroad claim agents offer clients weekly or monthly checks while their cases are pending. Some railroads offer wage continuation programs. They may take the form of actual wage rates for a normal work week or fixed monetary payments on a weekly or monthly basis. These programs impact upon the settlement of your case in several ways. Under a wage continuation program, taxes are deducted. The railroad, under the law, is entitled to a deduction for these payments from your final settlement. They will, in

effect, place a lien for the total dollars paid which includes the taxes withheld. However, when you process your claim, only net lost wages are recoverable. Thus the railroad, through their lien, can reduce your recovery by the gross amount of wages paid during the wage continuation period, not the net amount. Put another way, your recovery can be reduced by twenty-five percent (25%) or more, which is the common percentage of taxes paid by railroad workers.

Beware of Claim Agents Promising Future Payments or Structured Settlements

The railroad's claim agents have been instructed by top management to make promises of future payments in settlement of injury claims. These settlements may take the form of monthly payments or lump sum future payments over a period of years. Remember, they are offering only a promise. When you settle, the railroad will insulate itself from all liability. You will have no control over the funds to be paid. The railroad will buy an annuity policy from some third party, and you, the injured person, will not own the annuity policy. Under no circumstances should you consider this form of settlement until you have been fully advised of your

rights by a lawyer familiar with railroad law and annuity settlements who can then advise you of the costs of this type of settlement.

Instruct Your Loved Ones What to Do When You Are Injured

Unfortunately when injury strikes, the person is often incapacitated and unable to communicate his or her wishes. Protection of the person's rights at this time is crucial. Make sure to instruct your loved ones! Let them read this booklet so that they will be in a position to make decisions if you are unable to communicate.

NON-RAILROAD INJURIES

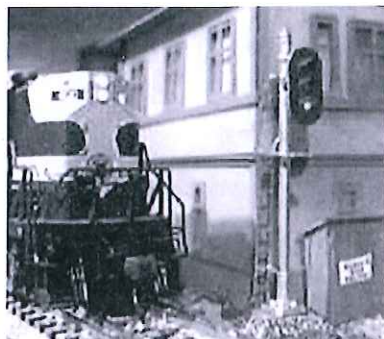
Our law firm is dedicated to representing injured men, women and children throughout the United States. If a friend, neighbor or loved one has been injured in an automobile collision, by a defective product, by a professional act of malpractice, due to a fall-down on property, in a construction site accident, or because of some other act of negligence, have them call us on our toll-free number. There is no charge for our initial consultation. In fact, there is no charge unless we prevail on anyone's behalf. Our fees are based on a contingent fee agreement, which means that there is no fee unless we are successful in obtaining a recovery.



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