



# UNION PACIFIC GENERAL COMMITTEE OF ADJUSTMENT CENTRAL REGION



William Jungbauer,  
BLET Designated Legal Counsel

Yaeger, Jungbauer & Barczak, PLC

St. Louis

Minneapolis



# Introductions

- Dick Scott
- Denny McGinley
- Cleatus Roy
- Bob Wendt
- WGJ
  - Yaeger, Jungbauer & Barczak: Over 75 years in business;
    - Best Lawyers in America
    - National reputation; BLET DLC
    - Set up Congressional Hearings on Harassment

The logo for Yaeger, Jungbauer & Barczak (YJB) is a black square with the letters 'YJB' in white, serif font. The square is flanked by two vertical white lines on each side.

# Overview

1. How to fight carrier harassment under new Federal Law.
2. Historic Congressional Hearings on RR Harassment of injured employees
3. UP Cumulative Trauma Update

The logo consists of the letters 'YJB' in a white, serif font, centered within a black square. The square is flanked by two vertical black bars on either side.

# NEW ANTI-HARASSMENT LAW

- Railroad can not
  - Discharge
  - Demote
  - Suspend
  - Reprimand
  - Any way discriminate against an employee
- For employee filing or providing information regarding injury or violation of Federal safety law, rule, or regulation.
  - Nearly two pages on specific prohibited conduct.

The logo consists of the letters 'YJB' in a white, serif font, centered within a black square. The square is flanked by two vertical white lines on each side, creating a framed effect.

# DAMAGES

- Reinstatement of job and/or seniority
- Back pay with interest
- Compensatory damages
- Attorneys fees, expert fees, litigation costs
- **PUNITIVE DAMAGES**
  - Up to \$250,000

# EMPLOYEE REQUIREMENTS FOR FILING AND PROVING CLAIM

- Strict Time Limits
  - File complaint with Secretary of Labor within **180 days of harassment.**
- Employee must prove that the act or behavior for which he was disciplined was “in whole or in part a contributing factor” in unfavorable personnel action.
- Numerous other technical deadlines as short as 30 days that follow.

# CARRIER DEFENSES AND STANDARDS

- Railroad must prove with “clear and convincing evidence” that railroad would have taken same unfavorable personnel action in absence of the behavior alleged in Complaint.
- Secretary of Labor must decide initially whether or not Complaint meets criteria for claim, if not, claim is dismissed.
- DOL investigation of complaint based on reasonable cause.

The logo consists of the letters 'YJB' in a white, serif font, centered within a black square. This square is flanked by two vertical black bars on either side, creating a stylized frame.

# PROCESS

- Secretary of labor issues preliminary order.
  - Either party can submit objections to findings of fact and/or final order within 30 days.
- If no objection preliminary order becomes Final Order.
- If objections within 30 days a hearing on the record is conducted.
- If no decision within 210 days after filing of Complaint employee can sue in Federal Court and request a jury.

The logo consists of the letters 'YJB' in a white, serif font, centered within a dark square. The square is flanked by two vertical white lines on either side.



# APPEALS

- Two Types of Appeals
  - Appeal from Order of Secretary of Labor
    - Petition of Review filed within 60 days after the date of the issuance of the final order or denial of claim
    - Appeal is in United States Court of Appeals
  - Appeal from District Court Decision
    - Deadlines governed by Federal Rules of Appellate Procedure

# ISSUES

- \$1,000 fine for frivolous complaint
- Secretary of Labor determines
  - Whether claim has merit
  - Amount of damages
  - Whether to assess damages against individual railroad official.
- Statute of Limitations
  - Earliest possible statute of limitations is **January 26<sup>th</sup> 2008** (180 days from August 3<sup>rd</sup>)

The logo consists of the letters 'YJB' in a white, serif font, centered within a dark blue square. The square is flanked by two vertical white lines on either side.

# MORE ISSUES

- Who can represent Union Member?
  - Union Official?
  - Lawyer
- Obligation of Union Officers to notify members of possible claim?
- No case law interpreting new law or types of claims allowed.
  - Bad facts will make bad law.
  - **Screw up ANY of the DEADLINES and case is LOST**

# CONGRESSIONAL HEARINGS ON RAILROAD HARRASSMENT



YJB

# Chairman James Oberstar, D-MN Transportation & Infrastructure

- Chairman Oberstar stated:
  - First full committee hearing on railroad issues in almost 100 years.
- Understands harassment of employees by big corporations is a serious problem
- It must not and can not continue to happen.
- Comes from a Union family



YJB

# FRA Chief - Boardman

- FRA Claims
  - Carrier Harassment is under control
  - No problem of under reporting
  - FRA is limited in its ability to investigate harassment claims
    - Can only investigate interference with or denial of medical benefits



YJB

# Union Side Sworn In



YJB

# THE GOOD



YJB



# These RR Officials Sitting Behind Me Are the Guilty Ones



YJB

# RR's Sued to Stop MN & IL Criminal Laws Stopping Harassment

- In testimony, Jungbauer tells Congress that the same RR's that say there is no problem with harassment sued to stop MN & IL laws:
  - UP
  - BNSF
  - CP
  - NS
  - CSX
  - Amtrak

# FRA Not Doing Job To Stop Harassment

- Dirty little secret: FRA RR fines negotiated to pennies on the dollar
- “Billion dollar railroads don’t worry about \$1,000 fines that get reduced to \$100 fines.”
- FRA stats showing decrease in injuries due to non reporting or under reporting of injuries due to RR harassment of injured employees

The logo consists of the letters 'YJB' in a white, serif font, centered within a black square. This square is flanked by two vertical white lines on each side, creating a rectangular frame around the central square.

# Problem: UP Upgrade Program, Bonuses For Officials Tied to Stats

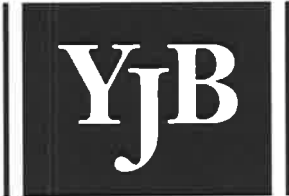


YJB

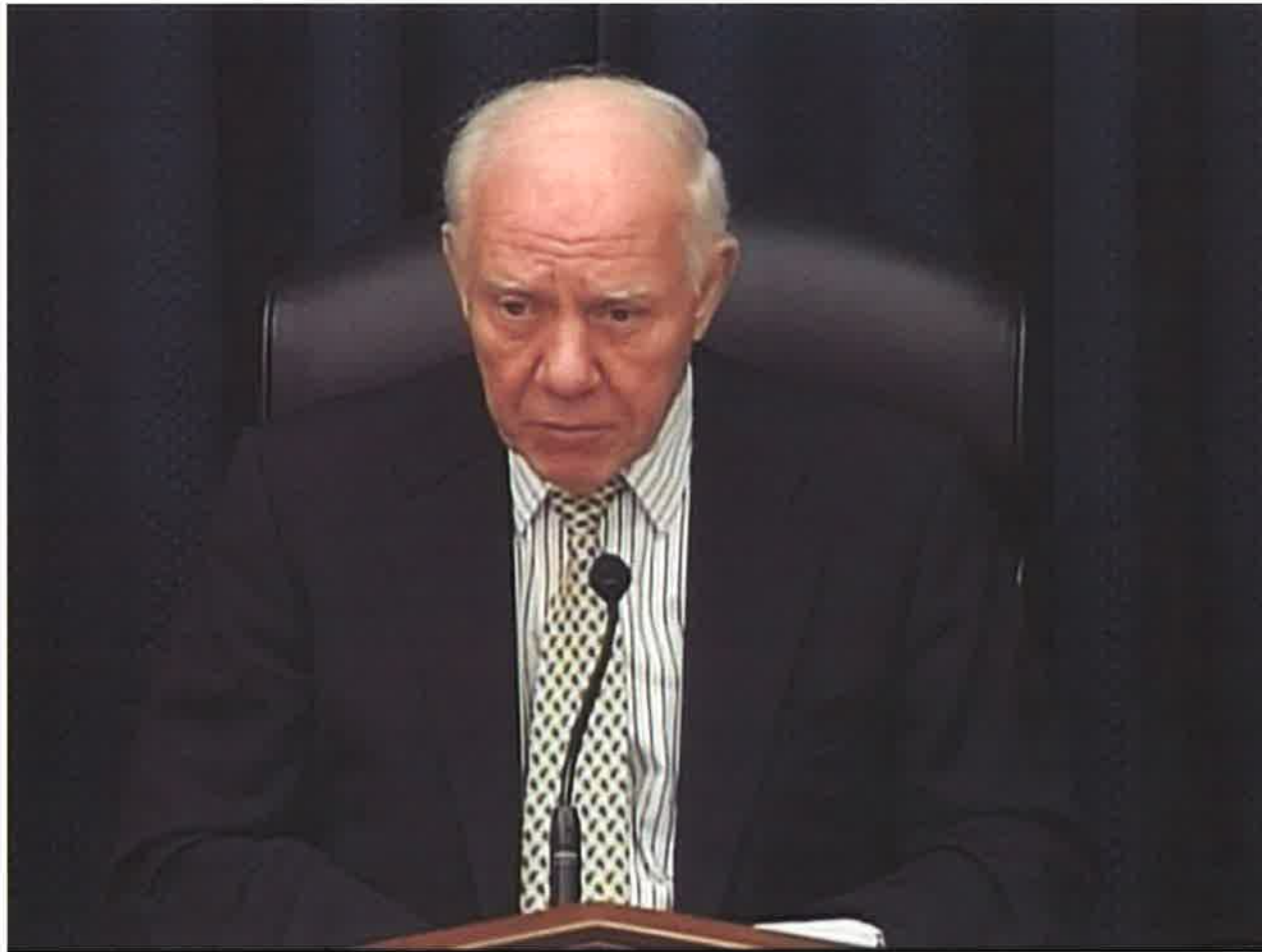
# UP Upgrade Program

**POLICY AND PROCEDURES FOR ENSURING RULES COMPLIANCE** Rev. 11/01/06

<b>Discipline Assessment Table</b>		
<b>Violation of these rules*</b>	<b>Results in.....</b>	
	<b>Level ^</b>	<b>Discipline</b>
<p><b>General Code of Operating Rules</b></p> <ul style="list-style-type: none"> <li>- Rule 1.5 Drugs and Alcohol (Rule "G")</li> <li>- Rule 1.12 Weapons</li> <li>- Rule 1.6 Conduct. Employees must not be:               <ol style="list-style-type: none"> <li>1. Careless of Safety</li> <li>2. Negligent</li> <li>3. Insubordinate</li> <li>4. Dishonest</li> <li>5. Immoral</li> <li>6. Quarrelsome (excludes 1.6.1)</li> </ol> </li> <li>- Rule 1.7 Altercation</li> <li>- Felony Conviction; Fraud; or Theft</li> <li>- EEO Policy Infractions***</li> <li>- Overstaying Leave of Absence Without Authority</li> <li>- Workplace Violence Policy Infractions^^</li> </ul>	5	<b>Permanent dismissal</b>



# Chm. Oberstar Concerned With Evidence of Harassment



YJB

# The Bad



# UP's V.P. Grimaila

- UP states:
  - “Union Pacific will not tolerate harassment or intimidation of any person who seeks proper medical treatment or reports an accident, incident, injury, or illness.
  - No point system for discipline at UP





# The Ugly

- AAR states:
  - Harassment, if it exists, is due to adversary nature of the FELA. FELA should be eliminated and replaced with workers comp. system.
  - Claims of harassment of rr employees are false.



# Sherman Joyce – Tort Reform Advocate

- Tort Reform states:
  - Wants to replace FELA with workers comp. system.
  - Wants to limit recovery of non-economic damages ,such as pain and suffering, by injured employees.



YJB

# The Problem: RR Greed, not FELA



YJB

# Proposed New Law

- Section 606
  - Protects against interference with medical treatment of injured employee
    - Delaying treatment
    - Interfering with medical treatment

# Proposed Section 301

- Harassment prohibited
- Lawsuit without Dept. of Labor intervention
- No \$1,000 frivolous lawsuit counterclaim
- Direct lawsuit in federal court allowed

# UP Cumulative Trauma Cases

- Motherlode of UP documents showing UP KNEW of CT, established a program to help employees and UP law department killed the program
- YJB St. Louis Office, Bob Wendt

The logo consists of the letters 'YJB' in a white, serif font, centered within a black square. The square is framed by two vertical white lines on each side.

# THANK YOU



William Jungbauer,  
BLET Designated Legal Counsel

Yaeger, Jungbauer & Barczak, PLC

St. Louis

Minneapolis

1-800-435-7888

