

WHAT IS THE FELA? WHY DOES IT MATTER TO RAILROADERS?

When a railroad worker is injured on the job, the right to compensation is governed by a Federal law known as the Federal Employers' Liability Act, commonly called the FELA. The FELA became law in 1908 as a result of public anger over the devastating injuries and loss of life on the rails. The United States

Supreme Court observed "In 1888 the odds against a railroad brakeman dying a natural death were almost four to one; the

average life expectancy of a switchman in 1893 was seven years." Prior to the FELA, few of these workers or their families received any compensation for their losses.

The FELA was the first great social litigation of the twentieth century. Before the FELA, when an injured worker tried to recover

damages for on-the-job, the law was unfairly stacked against the worker. For example, if a worker was partly at fault, all recovery was denied. Even if the railroad was 99 percent at fault for the accident, and the worker only one percent contributorily negligent, there could be no recovery. Incredibly, if a



coworker caused an accident, an injured railroader could not recover from the railroad due to a defense known as "The Fellow Servant Doctrine." And even when a railroad was blatantly negligent, it was frequently able to escape liability by arguing that the injured worker "assumed the risk" of employment.

With the FELA, Congress established that injured railroad workers could sue for damages

(Continued on P. 2)

Index:

- Pg. 1: What Is the FELA?
- Pg. 3: Are You A Whistleblower?
- Pg. 4: What Do Spouses Of RR Workers Need To Know?
- Pg. 4: Accident Checklist
- Pg. 5: Do I Really Need An Attorney?
- Pg. 5: How Do I Choose An Attorney?
- Pg. 6: Why Not Just "Deal" With the Railroads Directly?
- Pg. 7: Does It Matter How I Fill Out A Personal Injury Report?
- Pg. 9: How Will Preserving Evidence Help My Claim?
- Pg. 10: What Are Statutes of Limitation and How Do They Affect My Case?
- Pg. 11: What If The RR Tried To Intimidate Me Regarding An Incident?
- Pg. 13: Surveillance: Don't Be Caught Unaware
- Pg. 14: Railroad Retirement Board: Providing Many Benefits for RR Workers
- Pg. 15: PTSD: The Silent Disability
- Pg. 16: Introducing the YJB App & Updated Website

suffered as a result of the negligence of their employer in either state or Federal court. The law abolished the Fellow Servant Doctrine and eliminated harsh contributory negligence rules by substituting a comparative fault system. Thus, if a railroad worker is partly responsible for an accident, his damages are reduced by his negligence. For example, if the worker has lost wages and pain and suffering of \$100,000 and he was 25% responsible, the recovery would be \$75,000. In cases where the railroad violated a Federal railroad safety statute such as the Safety Appliance Act or the Boiler Inspection Act, the railroad is strictly liable for all damages resulting from the violation.

In 1939, Congress improved the FELA by eliminating assumption of risk as a defense in any situation, and making it a crime for a railroad to intimidate its workers for furnishing information about an accident to an injured railroad worker or his attorney. In the 1950's, a series of U.S. Supreme Court decisions

further strengthened the FELA, broadening definitions of "cause" in the workers favor. Today, if railroad negligence played even a slight role in a worker becoming injured, the railroad will be liable.

To recover under the FELA, it is necessary to first establish some negligence on the part of the railroad. This differs from state workers' compensation laws where no such proof is needed.

However, the amount of negligence that must be proven is slight; essentially, it must be shown that the railroad failed to provide a reasonably safe place of work. When railroads act negligently, recoveries under the FELA will generally be far greater than they would be under state workers' compensation systems. Even injuries resulting in permanent and total disability under state workers' compensation systems will often result in a life of poverty for injured workers and their families. For example, in many states the maximum permanent total disability benefits that are allowed under workers'

compensation fall below the current poverty level for a family of four. Workers' compensation benefits tend to be fixed and arbitrary and grossly under-compensate workers for injuries. The FELA, in contrast, was intended to provide injured workers and their families with fair and livable compensation for injuries.

In FELA cases, the client controls the major decision-making in each case. After conferring with counsel, the injured worker can decide to accept a railroad settlement offer, make a different proposal, or go to trial.

Every year, railroads lobby Congress in an attempt to do away with the FELA. Their goal is not to help the employees they have injured. Railroad unions have been diligent in protecting the FELA against attacks by the railroad industry, and preservation of this law is of fundamental concern to rank and file railroad workers and their families.

THE

<p>INFORMATION FOR RAILROAD EMPLOYEES</p>	<p>INFORMATION FOR HEALTH CARE PROVIDERS</p>
<ol style="list-style-type: none"> 1. If you are injured on the job, get immediate medical attention from doctors you choose. 2. Railroad officials are not permitted to discuss your case with your doctors unless you give specific permission. 3. Do not give a statement unless you have consulted with your union representative and/or the Yaeger law firm. 4. Your medical insurance will cover nearly all medical expenses for on-the-job injuries even without the railroad's cooperation. 	<ol style="list-style-type: none"> 1. Railroad employees are not covered by state workers' compensation laws but by the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51-60. 2. Railroad employees have medical insurance coverage negotiated by their unions for work-related injuries and other medical problems. 3. Railroad management does not have the right to discuss health questions with medical providers or obtain medical records unless the employee gives specific permission. 4. For additional information, contact the Yaeger law firm at 1-800-435-7888.
<p>Personal Injury Attorneys Since 1929 800-435-7888 651-288-9525 www.yjblaw.com</p>	<p>YJB YAEGER & JUNGBAUER P.A. ATTORNEYS AT LAW</p>

CONTACT OUR OFFICE OR YOUR YJB FIELD REPRESENTATIVE TO OBTAIN ONE OF THESE CARDS TO KEEP IN YOUR WALLET.

ARE YOU A WHISTLEBLOWER?

On August 3, 2007, Congress transferred authority for railroad whistleblower cases from the FRA to OSHA, and created new rights and protections to railroad workers. This is a provision of the Federal Rail Safety Act 49 USC Sec 20109.

WHO IS PROTECTED?

Any employee of a railroad carrier are protected from retaliation for reporting certain hazardous conditions, injuries, safety violations of federal safety regulations, and national security concerns.

WHAT ACTIVITIES ARE PROTECTED?

- Reporting a personal injury to the carrier or a federal agency
- Providing information about safety or security problems to the carrier, or any federal investigator or member of Congress
- Reporting a safety hazard to the carrier or a federal agency
- Refusing to work under unsafe conditions or in the face of a hazard under certain conditions

WHAT ARE YOU PROTECTED FROM?

If the Carrier takes any type of action against you, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire

- Intimidation
- Reassignment affecting promotion

As a result of your actions, you may have a claim.

WHEN MUST YOU FILE YOUR CLAIM?

Your claim MUST BE FILED WITH OSHA WITHIN 180 DAYS OF THE RAILROAD'S ADVERSE ACTION. Being pulled from service, receiving a notice of investigation, receiving discipline all may be adverse consequences. Use the earliest date to calculate the 180 day period. Failure to do so will bar you from ever pursuing that claim. Contact an attorney as soon as possible because 180 days can go by very quickly.



HOW DO YOU FILE A CLAIM?

You file a complaint with the local OSHA regional office. You may file it in writing, by mail, by hand delivery, by phone, or by email. WE URGE YOU to use certified mail for your own protection. Your claim must be a statement of what you did, what the railroad did, and why you believe the railroad is punishing you. Your complaint may be filed by a representative on your

behalf, such as a union representative or attorney.

WHAT CAN YOU RECOVER?

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA may issue an order requiring your employer to reinstate you, payback wages, restore benefits, and other possible relief to make you whole including:

- Reinstatement with the same seniority and benefits
- Payment of back pay with interest
- Removing discipline from your record
- Compensatory damages, including compensation for special damages, expert witness fees, and reasonable attorney's fees
- Punitive damages

If OSHA does not take action within 210 days of filing your complaint, you may file a lawsuit against the carrier for relief.

DOES THIS AFFECT YOUR OTHER RIGHTS?

The law does not let you make two different claims for the same act by the railroad. However, courts have consistently held that your appeal rights following a formal investigation are separate from a FRSA claim. You should consult with your union representation and a qualified attorney before taking action.

KNOW YOUR RIGHTS- CONTACT YJB FOR ADVICE AT 651-288-9500.

WHAT DO SPOUSES OF RAILROAD WORKERS NEED TO KNOW?

It is very important for both railroad workers and their spouses to be well informed about what is involved if the worker is injured on the job.

When the injury occurs on the railroad, many responsibilities may fall on the spouse. The wife or husband or the injured worker may be suddenly faced with having to take care of young children, handle family jobs, and make important decisions all by themselves. It can be a very confusing time, and through it all decisions must be made about how to seek compensation from the railroad for the injury. Sometimes these burdens can seem overwhelming.

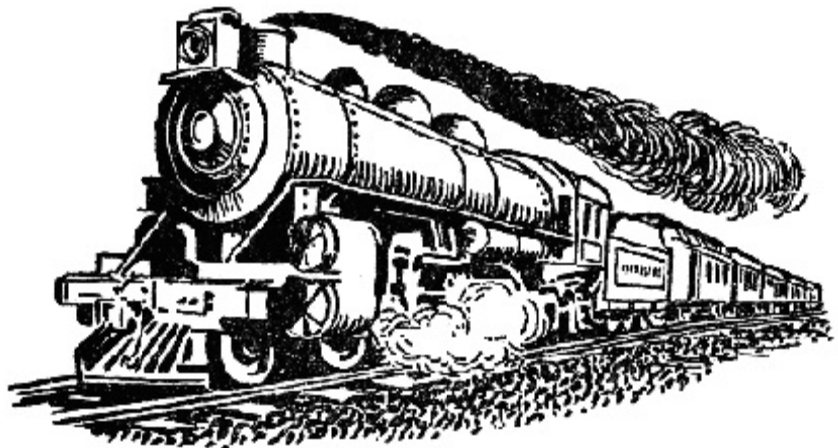
However, being armed with knowledge about the process and knowing where to look for help can help ease the weight of those burdens.

The **checklist to the right** provides some basic steps for a couple to take in the event that they themselves or their spouse is injured.

WHAT SHOULD I DO IF I AM INJURED?

Accident Checklist

- Obtain the very best medical care that you can through your own doctors.
- Contact Yaeger & Jungbauer attorneys for free, confidential, and reliable advice at 651-288-9500.
- Contact your union officials, and be sure the accident has been reported to both the railroad and the union.
- Do not give a recorded or written statement to a claim agent or anyone else until you have had an opportunity to discuss the matter with an attorney or union officials.
- Write down the names, addresses and phone numbers of anyone who witnessed the accident.
- Keep records of any out-of-pocket expenses due to the accident.
- If you have a disability insurance policy, contact the insurance company to begin receiving payments.
- Apply to the Railroad Retirement Board for sickness benefits which you are entitled to.



DO I REALLY NEED AN ATTORNEY?

If you are injured it is always a good idea to consult with a lawyer.

Recovering from the railroad for your injury depends on your ability to do three things:

- 1) Prove railroad negligence
- 2) Prove this negligence caused your injury
- 3) Prove the extent of your injuries and damages

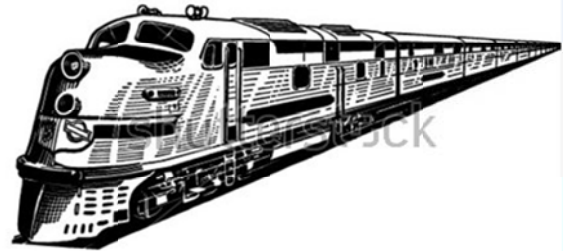
Advice from a knowledgeable attorney will greatly increase your chances of reaching a satisfactory result on your case.

A top-notch attorney can help prove railroad negligence. The moment you have an accident, the railroad begins to do all it can to minimize your claim and to prepare its case against you. You need someone working for you to investigate the case and secure information and evidence that will prove railroad negligence.

An experienced FELA attorney can help prove the extent of your injuries and link them to railroad negligence. Many times the railroad will direct

you to one of their doctors for treatment. They may minimize your medical complaints and attribute your problems to causes other than your railroad accident. We can help you locate reputable medical doctors and work with them to carefully establish the vital link between the railroad accident and your injuries.

You cannot depend on the railroad "taking care of you", particularly in cases involving career-ending injuries or injuries resulting in substantial time away from work.



HOW DO I CHOOSE AN ATTORNEY?

Choosing the right lawyer can make the difference in successful claims. It is important to choose a lawyer who knows the FELA and has the strength and resources to bring your claim to trial when necessary. Railroad claim agents and railroad attorneys know which lawyers and which law firms go to trial. They salivate to get cases against lawyers who seldom if ever try FELA cases in court. The following questions should help with your decision.

- What is the firm's experience with FELA cases?
- Does the firm have a reputation as tough advocates for their clients?
- Does the firm have people on staff that worked on the railroad and knows how to talk about it from a worker's perspective?
- How long has the law firm been helping union members in FELA cases?
- Has the firm tried cases in court to a verdict? How many?
- Has the firm won multiple million-dollar verdicts and settlements?
- Has the firm been nationally recognized for legal work on behalf of railroad workers?

WHY NOT JUST “DEAL” WITH THE RAILROADS DIRECTLY?

In an ideal world that might make some sense. In the real world, it is simply not the case. Here’s why: The moment an injury occurs, the machinery of the railroad claims and law department move quickly to establish evidence minimizing the railroad’s financial responsibility to the worker and his family. They take statements and photographs trying to blame the injured worker and make the railroad look innocent.

Railroads often act “two-faced” in injury situation. They will talk about how the railroad is one big “family” and how you need to stick with them at times of crisis. They might offer to pay medical expenses (which is something they are already obligated to do under the insurance contracts) and put the injured worker’s family up at a nice hotel and agree to take care of living expenses. While they are doing this, an army of investigators and lawyers are researching all aspects of the claim to deny compensation.

Who at this crucial time is actually looking out solely for the injured railroad worker? No one;

unless you have talked to knowledgeable FELA attorneys.

FELA lawyers work exclusively for the injured railroader, protecting and aggressively promoting the rights of the injured worker and the worker’s family against the power and might of the giant railroad corporations. A knowledgeable FELA attorney works with you and union officials to develop evidence establishing the railroad’s liability and maximizing the compensation owed by the railroad.



It must always be remembered that however nice a claim agent might be, the claim agent’s responsibility is to the corporation, not to the injured individual’s family. It is the claim department’s job to keep settlements as low as possible for the financial benefit of the corporation. They employ a wide range of tactics, but the key is to gain your trust when you are especially vulnerable.

Immediate legal advice from trusted FELA attorneys assures

Page 6

knowledge; and “knowledge is power”. If an injury is minor, such as a sprained ankle, it might not be necessary to hire a lawyer. But it is always wise to talk to a knowledgeable attorney to know your rights because even a minor ankle sprain may lead to complexities concerning sickness benefits, health coverage, railroad investigations, pain and suffering, future problems, contract release language, etc. It is, therefore, best to contact experienced counsel for a free consultation so that you can make informed decisions.

YJB has a long history of working exclusively for injured railroad workers and their families. We have been representing railroaders hurt on the job since 1929. This long unbroken string of commitment to railroaders’ rights assures you of honest, expert, unpressured and caring advice with your best interests, and only your interests, at heart. A claim agent beholden to the corporation can never do this.



DOES IT MATTER HOW I FILL OUT A PERSONAL INJURY REPORT?

Personal injury reports may seem like routine documents but, in reality, when and how they are filled out can have a dramatic impact on the success of your injury claim and your future.

There are at least two reasons to carefully complete the report. First, company rules on virtually all railroads require an accident report be completed as soon as practicable after an incident. Failing to do so can lead to discipline ranging from a reprimand to termination. Second, the report is a key document in any personal injury claim because it is usually completed by the injured worker close to the time of the accident. Because of this, lawyers, claim agents, and ultimately judges and juries, will examine the document very closely. The more accurately the report is filled out, the greater the likelihood of having a successful claim.

Most of the report is self-explanatory: putting in your name, address, seniority date, and similar background information is quite simple. Two areas of the form are, however, not as simple but are critical. The first is the explanation of the accident. This section may be titled "Describe Fully How

Incident Occurred". Here you must explain what took place. If you slipped and fell on grease and oil on an engine step that is what you should write. If your back was wrenched on a switch that did not throw smoothly, you should write that.



The second item on the personal injury report that requires special attention is the section on "If any defects involved, identify and describe". What constitutes a "defect" has often been the source of confusion among railroaders because they have so long been provided with inadequate tools and poorly maintained equipment, facilities, and ground conditions. The word "defect" must be read as broadly as possible. It may be helpful to look at the personal injury report as an "unsafe place to work report" because that is what the railroad should be interested in identifying and is really what you need to establish when you complete the form. The key is to remember that you are not simply reporting the INJURY, but

also the UNSAFE CONDITIONS THAT CAUSED THE ACCIDENT. You should consider ANYTHING about the work environment that contributed to the accident as a defect. For example, loose ballast, bent stirrups, and trash strewn in the workplace are all defects and should be noted if they played ANY part in causing an accident. If you feel the working conditions played a role in your injury, you can state the defect as being "unsafe working conditions" and/or "unsafe equipment".

Railroads usually claim that accidents are the fault of the person injured. Experience has shown that is rarely the case. Rather, it is usually the failure of the railroads to provide adequate forces to keep work areas free of old brake shoes, tie plates, and other debris resulting in falls. Or it may be the failure of the railroad to provide adequate maintenance of switches, couplers, and hand brakes that cause back and shoulder injuries.

Unfortunately, many railroaders simply get used to working with equipment that is not kept up to proper standards and mistakenly assume that if, for example, switches throw a little hard or drawbars are difficult to align, resulting injuries are not due to defective equipment and do not report it. To protect your rights, you must be sure to report (Continued on p. 8)

absolutely ANYTHING that contributes in any way to an accident. Think carefully and if possible try to talk to your union counsel before you fill out the personal injury report.

It is also important to note on the form any part of your body that has been injured. No matter how minor it might seem, EVERY PART OF YOU THAT HURTS TO EVEN THE SLIGHTEST DEGREE SHOULD BE LISTED.

You should also be aware that if you are injured, you are only required to complete an accident report. The railroad cannot force you to give a written statement to a claim agent. As an injured employee, you should NEVER GIVE A STATEMENT UNLESS YOU FIRST TALK TO YOUR UNION REPRESENTATIVE OR AN ATTORNEY.

Finally, ALWAYS keep a photocopy of the personal injury report for your own files. Do not trust a claim agent or supervisor to give you one at a later date.

SAMPLE PERSONAL INJURY REPORT

INSTRUCTIONS: This form must be filled out and signed by each employee injured on duty, and by each employee having knowledge or information concerning such an incident.

NAME OF INJURED PERSON _____ SENIORITY DATE _____ EMPLOYEE OTHER

ADDRESS OF INJURED PERSON (STREET, CITY, ZIP CODE) _____ MARRIED SINGLE

EMPLOYEE INSURANCE COVERAGE Travelers Ins. Hospital Services Assoc. Travelers Managed Care System

LOCATION OF INCIDENT _____ DATE OF INCIDENT _____ TIME _____ DAYLIGHT DARK

DESCRIBE WEATHER CLEAR DRY RAIN SNOW FOG IF THIS REPORT IS BEING MADE BY OTHER THAN THE INJURED PERSON, DID YOU SEE THE INCIDENT? YES NO

DESCRIBE FULLY HOW INCIDENT OCCURRED:

DESCRIBE INJURIES:

IF INJURY REQUIRED SERVICES OF A PHYSICIAN, INDICATE TYPES OF SERVICE REQUIRED:
 Stitches Prescription First Aid Only Other (explain) _____

IF DOCTOR CALLED GIVE NAME: _____ ADDRESS: _____

IF INCIDENT OCCURRED WHILE WORKING WITH CARS OR ENGINES, LIST INITIALS AND NUMBERS:

DEFECTS INVOLVED: NONE MACHINERY TOOLS STRUCTURES EQUIPMENT OTHER DEFECTS

IF ANY DEFECTS INVOLVED, IDENTIFY AND DESCRIBE:

IMPORTANT: List All Persons Who Witnessed the Incident or Can Give Any Information About It:

NAME	OCCUPATION	ADDRESS (Show Street and City)

THE ABOVE IS A CORRECT STATEMENT

SIGNED _____ DATE _____ 20__ AGE _____

ADDRESS _____ PHONE _____

OCCUPATION _____ SOCIAL SECURITY No. _____ EMPLOYEE No. _____

ANSWER ALL QUESTIONS FULLY (Use Reverse Side If Necessary)

ACCIDENT CHECKLIST FOR RAILROAD SPOUSES

What should you do in the event you learn that your railroad spouse has been injured on the job?

1. Obtain the very best medical care that you can through your own doctors.
2. Contact Yaeger, Jungbauer & Barristers attorneys for free, confidential, and reliable advice.
3. Contact your union officials, and be sure the accident has been reported to both the railroad and the union.

Personal Injury Attorneys Since 1929

800-435-7888
651-288-9500
www.yjblaw.com



4. Insist that your spouse not give a recorded or written statement to a claim agent or anyone else until you have had an opportunity to discuss the matter with an attorney or union officials.
5. Write down the names, addresses and phone numbers of anyone who witnessed the accident.
6. Keep records of any out-of-pocket expenses due to the accident.
7. If your spouse has a disability insurance policy, contact the insurance company to begin receiving payments.
8. Apply to the Railroad Retirement Board for sickness benefits to which your spouse is entitled under the law.



CONTACT OUR OFFICE OR YOUR YJB FIELD REPRESENTATIVE TO OBTAIN ONE OF THESE CARDS TO KEEP IN YOUR WALLET.

HOW WILL PRESERVING EVIDENCE HELP MY CLAIM?

How can taking photographs make a million-dollar difference in a railroad claim? By capturing irrefutable proof of the conditions that lead to a serious accident. The Federal Employers' Liability Act (FELA) requires showing that the railroad was negligent and that its negligence caused or contributed to an injury. Railroads typically deny any responsibility for accidents, preferring to blame the victim. Moreover, unscrupulous claim agents have been known to destroy or alter evidence in order to defeat the just claims of injured workers. Because of this, all railroad workers need to think about preservation of evidence. The topics below outline the importance of this subject and give specific tips on how to go about preserving evidence and developing a powerful claim.

Photographs

A camera is one way to preserve evidence. Photos documenting the accident scene or conditions can be very valuable because, as the old saying goes, "a picture is worth a thousand words." A photograph of a hole or depression in the right-of-way, a picture of a bent ladder rung, or a shot of debris in the yard where

an individual has tripped will go a long way to proving how an accident occurred. In any claim, it is important to have supporting evidence backing up an injured worker's description of how the accident took place. A camera is something that every railroader should consider carrying on the job but first check with your local or general chairman to make sure carrying your camera phone does not conflict with local agreements.



The Accident Scene

Another way to preserve evidence is to simply use your five senses to conduct a close examination of the accident scene. As noted, the railroad will generally deny any liability for a claim. Therefore, scrutiny of any possible condition that the railroad could have corrected and which in some way contributed to the accident is of paramount importance. For example, many railroaders get used to working with switches that do not throw smoothly and easily and assume that it is just the normal environment. Likewise, employees may assume that having holes and ruts in a yard or on the right of way is also normal and therefore they do not think of those as defective conditions

that cause or contribute to an accident. Nevertheless, they are. If you are the victim of, or a witness to, an accident, try and take in the whole scene, consciously noting, observing, and imprinting on your mind all that you see. The railroad has a duty to provide all of its workers with a reasonably safe place to work. The railroad is required to furnish safe walkways, safe switches, and safe equipment in all regards. Anything that is not properly maintained should be considered as a possible cause of an accident.

Diagrams

Making a diagram of the area can be particularly helpful. This is especially true if there is a collision involved. Noting the exact accident location, as well as switch points and switches, co-workers, debris, etc. can be very important. Again, the idea is to preserve the scene in a reliable way so the crucial evidence is saved.

Co-Workers

Evidence can come from your fellow workers. If you are injured, be sure to tell your co-workers what happened. That way they will be able to testify



(Continued on p. 10)

and support the key elements of your claim.

Personal Injury Reports

For the injured person a crucial document is the personal injury report. It is important to fill out one as promptly as possible noting any problems that caused or contributed to the injury. It is important to keep a copy of that personal injury report. Do not let the railroad have the only copy.

Union Officials

It is particularly important to advise your union officials of an accident. Because a formal investigation could result from any accident, you want to be sure that your local chairman and other union officials are up to speed on all aspects of the matter so that you can be properly defended in an investigation.

FELA Attorneys

Finally, it is also imperative to contact experienced FELA attorneys as soon as possible after an accident, even a seemingly minor one. You can call YJB at 651-288-9500 for a free confidential consultation about any accident. We can go through the details with you while everything is fresh. We will give you specific advice focused on your exact situation-not just general information like this article. Remember, there is no

obligation for such a phone call and no charge. We will discuss the matter with you and analyze the facts and give you guidance. Early involvement of union officials and expert FELA attorneys can help you to preserve the evidence that is so important to your claim and help ensure that you receive proper compensation. Call us, we are here to help.



WHAT ARE STATUTES OF LIMITATIONS AND HOW DO THEY AFFECT MY CASE?

It seems so simple: a statute of limitations sets a time limit for the filing of a lawsuit concerning a given type of claim. If you do not file a lawsuit or settle the particular claim in the prescribed time period, your rights are extinguished and you lose any opportunity to pursue the matter in court.

The statute of limitations under the FELA is three years. It is fairly easy to determine when the statute of limitation expires in the

case of a single traumatic incident, say a back injury resulting from a poorly maintained switch. If the injury occurs on December 15, 2018 then a lawsuit must be filed, or the claim must be settled, no later than December 15, 2021. When a lawsuit is filed, the statute of limitation is stopped and the case continues until it is resolved through trial or settlement.

But what happens if the switch involved is on industry property? In that instance, another statute of limitations may also be involved, one covering the industry under state law. An injured individual would then have two claims, one governed by the FELA and one covered by state law. In Illinois, for example, there is a two-year statute of limitations in such claims. Accordingly, a suit against the industry must be started within that two year period. In California, the statute of limitations is only one year. A year can go by very quickly when someone has been injured and it is important to be mindful of these different periods.

Not all injuries are the result of a single incident like a switch case. A railroad worker could contract an industrial disease such as asbestosis or develop carpal tunnel syndrome from repetitive work. These problems occur not from one event but over a period of weeks, months, (Continued on p. 11)

or years, and may not manifest themselves for a long time. In these cases, the statute of limitations standard is that a suit must be filed or the claim be settled within three years from the date the employee knew or in the exercise of reasonable care should have known that the problem was related to railroad work. Determining the statute of limitations in such cases can be much more complicated than in a simple, straightforward switch case. A careful review of medical records may be needed to make the calculation.

There are many other claims that are important to railroaders that have varying statute of limitations. For example, a claim for racial or sexual discrimination under federal law requires that a complaint be filed with the Equal Employment Opportunity Commission within 300 days of the discrimination. Failure to do so

extinguishes such a claim. Some railroad employees feel that it is okay to wait nearly the full three years under the FELA before talking settlement about their claim. Not only that, but



claim agents often encourage this. Why? Because the claim agents know that delay helps the railroads and hurts the claimants. As time passes, memories fade, critical evidence may be lost or destroyed, and important witnesses may move away and not be readily accessible.

In addition, claim agents know that the closer the statute of

limitations, the more pressure is placed on the railroad worker. As the statute of limitations looms, the claimant's judgement may be impaired and the claim may be settled for far less than what it is worth. In addition, if an attorney is needed, waiting until the statute of limitations makes it more difficult to find a lawyer who would be able to get the case properly investigated and filed in time.

What can we learn from all of these issues regarding the statutes of limitations? The key thing is that if you have an injury, contact us at YJB as soon as possible for a free consultation about your claim, including an analysis of the applicable statutes of limitations. We can help you determine the statutory period and give you guidance as to whether an attorney is needed to handle the claim or not.

WHAT IF THE RAILROAD TRIED TO INTIMIDATE ME REGARDING AN INCIDENT?

In recent years, there has been a surge of intimidation and harassment by railroads against their injured employees. Sometimes the tactics are direct and obvious: a supervisor threatens a worker with a formal investigation if the employee wants to turn in a personal injury report, or the company, in an effort to embarrass people, posts the names of anyone who has been injured. Other times, the intimidation is less direct but still effective; the company holds an "informal" inquiry to "help" the employee understand why he or she has an injury.

Sometimes when a person is about to fill out a personal injury report, a supervisor threatens to look back over the employee's years of service to suggest that the worker is "accident prone" and further threatens an injury review which could result in probation or other discipline. (Continued on p. 12)

These efforts lead to fear and hesitation to fill out personal injury reports. Railroads claim they are simply trying to improve safety and avoid injuries. The real purpose of these efforts is to lower claim payments to deserving workers and cut the number of injuries reportable to the Federal Railroad Administration. Railroads also try to keep employees from reporting injuries so they can go to Congress and boast that injuries are now declining. They do this to try to show that they have provided a safer place to work, when in reality the personal injuries are running at a higher rate than indicated because the workers are afraid to report them.

The effect of the railroad's intimidation efforts is not safer workplaces, but unjustified firings, uncompensated injuries, and misleading accident statistics. These efforts by the railroad industry strike at the very heart of worker protection under the FELA. They also very likely violate Section 55 of the FELA which provides, in part, "Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void..." Moreover, these management actions may also violate Section 60 of the FELA, which prohibits efforts to restrict access to information about accidents.

It is very important to be aware of these tactics and know how to combat them should the situation arise. The list below provides some steps to help protect you.

What can you do to halt these attacks?

- 1) Work closely with your local union representatives and participate in union meetings. There is strength in numbers.
- 2) If you are injured, follow your railroad's rules and report every on the job accident, carefully noting any and all actions the railroad could have taken to prevent it from occurring. This will help show what is really happening.
- 3) If the accident was unwitnessed, immediately tell your coworkers what happened
- 4) Contact YJB for free advice on how to further protect your rights.



SURVEILLANCE: DON'T BE CAUGHT UNAWARE

Surveillance is a method railroads and insurance companies use to try to discredit injured workers' claims. They have a long history of hiring private detectives to photograph and video injured workers. Whether or not you have hired an attorney, you should be aware that surveillance may be performed to "catch" you doing something inconsistent with the physical restrictions set by your doctor.

There are many situations where surveillance may be ordered. As an injured worker, your chances of being spied upon are greater if you do work on the side such as farming or landscaping, or if doctors have a difficult time finding objective evidence of injury but you remain off work due to pain. Also, there are few secrets on the railroad – if, for example, you are a golfer or bowler, the railroad knows and will be watching.

How can you deal with the prospect of being put under surveillance? Most importantly, never exceed your doctors'

restrictions. If your doctor gives you a 25-pound lifting restriction, do not lift a 40-pound bag of water softener salt. However, doctors often will not give specific restrictions but will tell you to do what you can. In an attempt to continue to lead as normal a life as before the accident, you may try physical activities around the yard or recreational activities. Perhaps you continue to mow the lawn or go fishing. Of course, these



activities may be acceptable in light of what the doctor has said, but when captured on video may look unusual given the nature of your injury. Remember, video does not show how that night's sleep was difficult because of pain from the activity. If you tried something but it caused problems, make sure you tell that to your doctor.

Always be aware of your surroundings. You may notice an unusual van in your neighborhood. It could have cameras photographing you. With new technology, a surveillance team can be a

great distance from you. Simply because your house may be a long distance from a main road does not mean that your activities cannot be caught on video. Also do not believe that because you will be out of state on a trip that you are safe from the spying eyes of the railroad.

Over the years we have seen various tricks used by surveillance firms. For example, they may follow you to a movie theatre and puncture one of your tires while you are inside. You may feel you have to change the tire even with a bad back. Unfortunately, it is all recorded for the jury to view. If possible, you should call a service station and have a tow truck operator change the tire for you.

The best way to deal with surveillance is to follow the advice of your doctors. You should always be aware of the vehicles around your home or following you. Be sure to call Yaeger & Jungbauer Barristers, at 1-800-435-7888 for free initial advice.



RAILROAD RETIREMENT BOARD: PROVIDING MANY BENEFITS FOR RAILROAD WORKERS

The Railroad Retirement Act is a unique Federal law that applies only to railroad workers. It is administered by the Railroad Retirement Board (RRB), with three members appointed by the President of the United States: one labor, one management, and one neutral. The RRB administers programs that provide sickness benefits, retirement annuities, Medicare, unemployment, and disability benefits. This article will highlight a few key points about the Railroad Retirement Act.

Creditable Months: Critical to receiving benefits administered by the RRB is the number of months in which a railroader has received pay for wages or vacation. Each railroad reports this information annually to the RRB which in turn sends employees a document called a BA-6 card. This card reports the creditable months earned. It is wise to keep track of the creditable months to be sure they are

accurately reporting on your behalf.

Sickness Benefits: An employee off work due to illness or injury can collect sickness benefits. The length of time for which these benefits may be paid depends on the number of creditable months earned. Generally, the longer an employee works for a railroad, the longer sickness benefits will be available. In the event of a personal injury settlement, any sickness benefits are repayable to the board.



Disability Annuity: If an employee is injured and unable to return to work, he or she may be eligible for a disability annuity. Employees must have at least 120 but less than 240 creditable months to be eligible for total disability. Totally disabled workers are physically unable to perform any gainful employment. The Board makes decisions on this based on medical reports from an employee's own doctors and may send the individual to

a doctor designated by the Board. If an employee has 240 or more creditable months, the employee is eligible to apply for an occupational disability. It requires only that the individual be unable to return to his/her regular job on the railroad.

Regular Retirement: The Board also administers "age and service annuities" for employees with at least ten years of creditable service. Generally, these start at age 60 or 62 and the retirement age will gradually increase over the coming years. The amount of the annuity depends on the years of service an employee has.

The Railroad Retirement Act contains many complex provisions and it is a good idea to call a local RRB office before making decisions concerning any of the programs. Valuable publications are also available. The RRB has a free 24 hour Help Line: 1-800-808-0772. You can locate the Board's nearest regional office and get other information by calling that number, reviewing the Board's website: www.rrb.gov or writing to the Board at U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

PTSD: THE SILENT DISABILITY

When RR workers are involved in a severe accident where they experience extreme fear for their own lives they can develop Post Traumatic Stress Syndrome, (PTSD) a disabling condition over which they have no control. In some cases PTSD can be so severe and debilitating as to prevent a worker from ever returning to work. This photo is of an AMTRAK train that caught fire after a collision at a grade crossing in Mississippi. Two of the workers sustained severe PTSD and were disabled from returning to their jobs. YJB settled their cases.



The "hallmark" of PTSD is avoidance. Patients with PTSD through no fault of their own cannot force themselves free from the mental terror or to be around certain things (stimuli) that cause them to remember or relive the horrors of the accident. PTSD can cause severe nightmares, intrusive thoughts that interfere with thinking or concentration and much, much more. Imagine a

locomotive engineer or conductor with PTSD from a severe incident trying to operate past the scene of the accident while following all of the RR rules and procedures if their thinking and concentration is destroyed!

With PTSD the fear disables or interferes with basic motor skills so that they cannot complete basic tasks. In a similar way, PTSD interferes with basic concentration and functions. Some people just cannot get back on an engine or return to work since it reminds them of the accident and aren't able to do their job safely if they have PTSD.

YJB has successfully represented numerous conductors and engineers from a number of states around the country who have been involved in serious accidents and developed severe PTSD such that they were permanently disabled from ever doing their RR job or even working for the railroad in any capacity again in the future.

Shortly after a serious accident the railroad will do everything to convince the injured worker and his family that the railroad is their "friend". At the same time, the Railroad is working to prove that the accident or injuries were not the fault of the railroad -- but were caused by worker error,



Act of God, third party negligence, etc. Railroads often claim the injured worker had psychological problems before the accident ("Blame the Victim") by looking into their personal or family lives for distressing (divorce, death of a pet, bad childhood) experiences even though the worker had no problem doing his or her job until the severe accident.

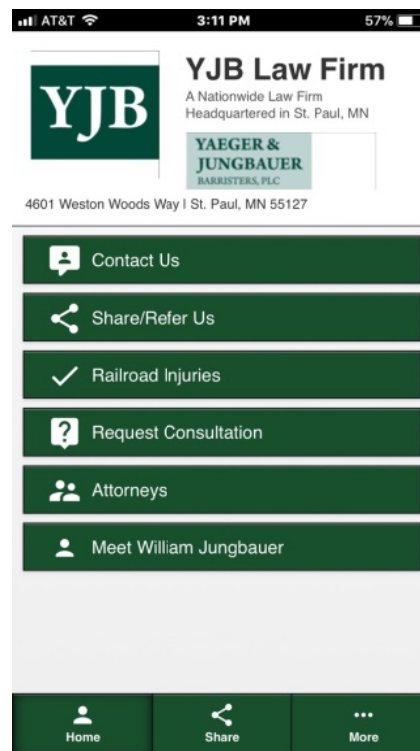
Railroads sometimes DELAY helping injured workers find good, INDEPENDENT medical, psychological, or psychiatric treatment. Many railroads CONTROL medical treatment by having railroad nurses secretly talk to medical personnel outside the presence of the injured worker and his or her family. They are paid to get the injured worker back to work as soon as possible to save the railroad money. For these reasons it is vitally important to have the injured worker seen by competent doctors, psychiatrists and/or psychologists who are NOT under the control of the railroad as soon as possible after a serious accident.

INTRODUCING THE YJB APP & UPDATED WEBSITE

The Yaeger & Jungbauer Barristers, PLC website is a great source for further information about the FELA and the work our firm does. It includes current updates on FELA news, past issues of the Yaeger Report, complete biographical information about each of our attorneys, the history of our firm and what we do, and links to multiple helpful resources. Visit www.yjblaw.com.

The YJB mobile app acts as a mobile business card providing easy access to the firm and our website. It is a resource that allows you to: have our contact information handy, request a consultation, know who our attorneys are, and gives you the option to share this app with others.

You will not be able to download this directly from the App Store or Google Play. Contact our office or a field representative near you, and we can share this app with you. After you request for this app, you will receive a text message and you can click on the link and download it within minutes.



Please note...

We realize that there are many more questions and concerns that can be addressed in our newsletter. The YJB Report is intended to be used as a general information source only and does not constitute legal advice under any circumstances. Consult an attorney before taking any action. Our attorneys are available to answer questions and give advice.

A Newsletter for friends and clients of Yaeger & Jungbauer Barristers PLC

4601 Weston Woods Way

St. Paul, MN 55127

P: 651-288-9500 or 800-435-7888

www.yjblaw.com

