

# BEST OF THE YAEGER REPORT

Selected information from the newsletter of Yaeger, Jungbauer & Barczak, PLC

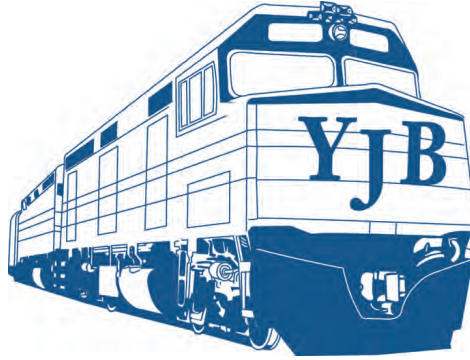


75 YEARS  
STRONG

## IN THIS ISSUE:

This special edition of The Yaeger Report is intended to answer some of the most fundamental questions about the rights railroaders have if they are injured on the job.

The answers to those questions were written by YJB attorneys, and combine well researched facts with the collective experience and knowledge the firm has gained from representing injured railroad workers for over 75 years.



If you have questions beyond what is addressed here, please contact us at any time for a free initial consultation.

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FELA Q&A

## WHAT IS THE FELA?

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 the injuries they sustained.

The FELA was the first great social legislation of the twentieth century. Before the FELA, when an injured worker attempted to recover damages for the negligence of the railroad, the law was unfairly stacked against the worker. For example, if a worker was at all contributorily negligent,



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." 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 suffered as a result of the negligence of their employer in either state or Federal court. The Act abolished defenses like The Fellow Servant Doctrine and assumption of risk and eliminated harsh contributory negligence rules by substituting a comparative fault system. Thus, if a railroad coworker 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 is 25% responsible, the recovery would be \$75,000. In cases where the railroad violated a Federal railroad safety statute such as The Federal Safety Appliance Act or Federal Boiler Inspection Act, it would become strictly liable for all injuries resulting from that violation.

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

broadening definitions of "cause" in the worker's 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 demonstrated is slight: essentially, it must be shown that the railroad failed to provide a reasonably safe place to work. When railroads act negligently, recoveries under the FELA will generally be far greater than they would be under state workers' compensation systems. Injuries resulting in permanent total disability under state workers' compensation systems will often result in a life of poverty for injured workers and their families. For example, in sixteen 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 turn, was intended to provide injured workers and their families with fair and livable compensation for injuries.

Not every case goes to trial. However, the FELA provides every railroad worker with the right to sue in state or federal court. 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. Rather, they want to abolish this law so that they can pay their injured workers less for their injuries. Railroad unions have accordingly 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.



## HOW DOES THE FELA PROTECT RAILS?

The FELA is more than just a way for injured rails to secure compensation for their injuries. By making the carriers pay for their mistakes, by holding them responsible for being unsafe, and by bringing those problems to light, it forces them to be more responsible and safer in their operations.

It is the FELA that:

- Mandates automatic couplers that must couple without the need of workers going between cars and must remain coupled unless purposely uncoupled.
- Requires grab irons and hand holds that must be safe and secure, not bent, broken, or in disrepair.
- Forces hand brakes to function properly so as to avoid injury.
- States that all appurtenances of an engine must be safe and secure so as to avoid threat to life and/or limb.
- Requires that engine seats must be fastened safely and securely.
- Insists that engine brakes and train brakes must function as designed.
- Requires that engine floors and walkways must be free of oil, grease, water, and other debris.
- Forces railroads to provide switches that do not "hang up" and other equipment that functions properly and does not malfunction upon use, and to provide walking paths that are level, clean and well maintained.
- Demands railroads provide you with a reasonable, safe place to work and, yes, it also forces you to work safely as well.
- Made carriers remove the asbestos from brake linings and pipe coverings.
- Compelled the railroads to redesign switch handles at an angle that may be easier on the back.
- Changed the location of the whistle and stop the venting of the air brakes directly into the cab, to prevent hearing loss.

## I'M NEW TO THE RAILROAD, WHAT DO I NEED TO KNOW?

If you are a new employee of a railroad, you know that you have entered a world of work that is different from most others. As a railroader, you are subject to call 24 hours a day, 365 days a year. You are a member of a union movement that led the way for modern unionism. And you work with mammoth, sometimes very dangerous, moving equipment.

Another way your life is different from that of other workers in this country is in the handling of on-the-job

injuries. Most workers are covered by State and Federal Workers' Compensation laws. Limited benefits, set by statute, are all that are generally available to people working in stores, factories, and offices.

But as a railroad employee, you have a much stronger law in your favor - the Federal Employers' Liability Act. Because the FELA is so dramatically different in many respects, there are several things you should be aware of if you do get hurt on the job:

1. Report the accident to your supervisor immediately and fill out a Personal Injury Report. Because the FELA requires a finding of fault on the part of the railroad, it is especially important to list anything that contributed in any way to the accident such as unsafe working conditions or unsafe cars and equipment. Remember, what you fill out may very well be used in court in connection with your claim.
2. 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 experienced FELA counsel or union officials.
3. Write down names, addresses and phone numbers of anyone who witnessed the accident or knows about the work conditions.
4. Do not sign a medical release of information to the railroad without first getting legal advice.
5. Be sure to tell your co-workers that you have been hurt and how the incident occurred.
6. As soon as you can, see your own doctor, do not rely solely on the company physician. Be sure to let the doctor know of every injury and symptom you have, no matter how minor it might seem. Tell your doctor if you have recovered from any prior injuries, especially those that affect the same part of your body as the current problem.
7. Apply to the Railroad Retirement Board for sickness benefits.
8. If you have a disability insurance policy, contact the insurance company to begin receiving payments.
9. Keep track of any lost wages and out of pocket expenses due to your injury. It is a good idea to keep copies of all documents, including the Personal Injury Report and medical records, together in a file folder or large envelope.
10. As soon as you can, contact your local union representative and a knowledgeable FELA attorney for additional advice. By contacting us at Yaeger, Jungbauer & Barczak, you not only get skilled FELA advice, but we will provide initial free legal advice on how to handle your claim.

## IS THE FELA BETTER THAN WORKERS' COMP?

The FELA provides a much broader array of remedies than the traditional workers' compensation system. For the most part, workers' compensation benefits tend to be fixed and arbitrary, and to grossly under-compensate injured workers. For example, under workers' compensation, an injured employee receives only partial wage reimbursement benefits and nothing for pain and suffering. Under the FELA, however, an injured railroad worker can recover all of the damages traditionally associated with a law suit, including all of his or her lost wages and benefits (past and future), medical expenses (past and future), pain and suffering, and loss of enjoyment of life.



### FELA

1. No limit to compensation
2. No money until claim is settled
3. Applies equally regardless of location
4. Compensation can include
  - a. lost wages and benefits
  - b. medical expenses
  - c. pain and suffering
  - d. loss of enjoyment of life
5. Regulated by Federal Government
6. Covers most types of job related injuries
7. Medical expenses covered by railroad
8. Requires proof of employer negligence
9. Doctor/Patient confidentiality
10. Provides an incentive for carriers to improve safety

### WORKERS' COMP

1. Fixed monetary awards
2. Compensation is immediate
3. Compensation is 2/3 of normal salary (See 8b)
4. Benefits are awarded without fault
5. Limits liability of employer
6. Covers medical expenses
7. May require job retraining
8. Individual states regulate
  - a. Type of injuries covered
  - b. Level of benefit available
  - c. Waiting Periods
  - d. Filing procedures
9. Employers are involved in medical treatment.

## WHAT IF I AM PARTIALLY AT FAULT FOR MY INJURY?

To recover under the FELA, the injured worker must establish some negligence on the part of the railroad. This differs from workers' compensation laws which do not require the employee to prove negligence. Essentially, the worker needs to establish that the railroad failed to provide him or her with a reasonably safe place to work.

The FELA has a provision called "contributory negligence" which means that the railroad is liable even if they are only 1% responsible for the injury. According to the "contributory negligence" provision of the FELA, if a railroad worker is found to be partly responsible for an accident, any damage award will be reduced by the percentage that the worker contributed to the accident. If the case goes to a trial, a jury decides the percentage of liability for the employee and the railroad. The claim is paid out according to that percentage. If a jury awards \$100,000 and they determine that you are 20% responsible for your own injury, then \$20,000 will be deducted from your damages. However, in cases where the railroad is found to have violated federal safety statutes, all liability is automatically assigned to the railroad. ( See page 16 for more information on safety statutes.)

## WHAT SHOULD I DO IF I AM INJURED?

The steps you take after an injury are vital to how effective your claim will be and the type of damages you are entitled to. It is very important that you be knowledgeable about your legal rights and the laws protecting you, in order to receive the compensation you are entitled to. The accident checklist below provides some basic steps.

### ACCIDENT CHECKLIST:

- Obtain the very best medical care that you can through your own doctors.
- Contact an attorney and union officials for additional information and free, confidential, reliable advice.
- Be sure the accident was reported to the railroad and to the union.
- Do not give a written or recorded statement to a claim agent or anyone else until you have the opportunity to discuss the matter with your lawyer or union officials.
- Write down, remember, and if possible photograph details of the accident and your injury.
- Write down the names, addresses and phone numbers of anyone who witnessed the accident.
- Apply to the Railroad Retirement Board for sickness benefits to which you are entitled under the law.

## HOW WILL PRESERVING EVIDENCE HELP MY CLAIM?

How can a \$10 disposable camera 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 a 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

The disposable 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 disposable 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 one does not conflict with local agreements.



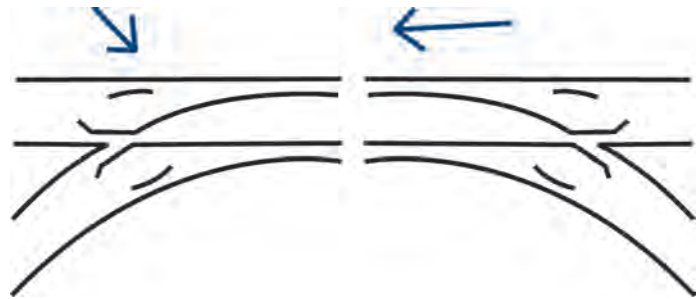
### THE ACCIDENT SCENE

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 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" causing or contributing 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.

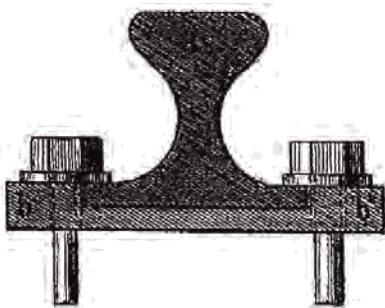
## DIAGRAMS

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 that 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 and support the key elements of your claim.



## PERSONAL INJURY REPORT

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. See the following page for further information.

## 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 1-800-435-7888 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.

## 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

*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.*

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. On the sample personal injury report this section is 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 sample personal injury report that requires special attention is entitled, "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 causes 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 so do not report it. To protect your rights, you must be sure to report absolutely ANYTHING that contributes in any way to an accident. Think carefully and if possible try to talk to your union representative or legal 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 or tape recorded statement to a claim agent. As an injured employee, you should NEVER GIVE A STATEMENT UNLESS YOU FIRST TALK TO YOUR UNION REPRESENTATIVE OR 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	<input type="checkbox"/> EMPLOYEE	<input type="checkbox"/> OTHER
ADDRESS OF INJURED PERSON (STREET, CITY, ZIP CODE)			<input type="checkbox"/> MARRIED	<input type="checkbox"/> SINGLE
EMPLOYEE INSURANCE COVERAGE <input type="checkbox"/> Travelers Ins. <input type="checkbox"/> Hospital Services Assoc. <input type="checkbox"/> Travelers Managed Care System				
LOCATION OF INCIDENT		DATE OF INCIDENT	TIME	<input type="checkbox"/> DAYLIGHT <input type="checkbox"/> DARK
DESCRIBE WEATHER <input type="checkbox"/> CLEAR <input type="checkbox"/> DRY <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> FOG			IF THIS REPORT IS BEING MADE BY OTHER THAN THE INJURED PERSON, DID YOU SEE THE INCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
DESCRIBE FULLY HOW INCIDENT OCCURRED: <hr/> <hr/> <hr/> <hr/>				
DESCRIBE INJURIES: <hr/>				
IF INJURY REQUIRED SERVICES OF A PHYSICIAN, INDICATE TYPES OF SERVICE REQUIRED: <input type="checkbox"/> Stitches <input type="checkbox"/> Prescription <input type="checkbox"/> First Aid Only <input type="checkbox"/> Other (explain)				
IF DOCTOR CALLED GIVE NAME:		ADDRESS:		
IF INCIDENT OCCURRED WHILE WORKING WITH CARS OR ENGINES, LIST INITIALS AND NUMBERS: <hr/>				
DEFECTS INVOLVED: <input type="checkbox"/> NONE <input type="checkbox"/> MACHINERY <input type="checkbox"/> TOOLS <input type="checkbox"/> STRUCTURES <input type="checkbox"/> EQUIPMENT <input type="checkbox"/> OTHER DEFECTS				
IF ANY DEFECTS INVOLVED, IDENTIFY AND DESCRIBE: <hr/>				
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)

## WHAT TYPES OF DAMAGES AM I ENTITLED TO UNDER THE FELA?

Damages are the losses suffered by an employee as a result of an on-the-job injury. Under the FELA, an injured railroad employee may recover money from the railroad as compensation for these losses. Unlike state workers' compensation laws which provide only a small portion of a worker's wages as compensation, the FELA provides for recovery of the injured railroad worker's entire range of losses.

There are two categories of damages:

1. **Economic damages** are those more easily measured in dollars. The biggest component usually is lost wages. It also includes lost benefits and cost of replacement services. (Medical bills can be such a loss, but are usually fully covered by insurance for job-related injuries.)

In addition to past and future wage losses, economic losses include loss of benefits such as health and dental insurance. At \$500.00 or more per month for a family of four, these benefits can add up to a very substantial sum of money over the course of just a few years. It is important to factor these into any claim. Another type of economic loss is replacement services. A severely injured worker may not be able to do normal home maintenance such as painting or lawn mowing and these must be taken care of by hired help. Future medical expenses must also be explored as economic losses.

2. **Non-economic damages** include pain and suffering, and the loss of enjoyment of life.

Non-economic losses are sometimes referred to simply as "pain and suffering". These damages are more difficult to put a value on than those discussed above. Our courts recognize that jurors can take into account their own common sense and experiences in evaluating what pain and suffering might be worth for a back surgery or the loss of a leg, for example. In addition to the physical pain and suffering, injured workers suffer a psychological loss sometimes referred to as the loss of enjoyment of life. A serious injury may prevent a railroad worker from being able to play with and fully nurture his or her children. It may end the ability to enjoy recreation such as waterskiing or hunting and fishing. All of these losses are significant and are

compensable under the FELA.

At YJB, we work closely with our clients to help identify and prove both economic and non-economic damages. We meet with doctors to learn the nature and extent of injury, calculate all out-of-pocket losses like wage loss and medical expenses, and assess the injured party's changed lifestyle both vocationally and recreationally. We know these losses are significant and unique to each individual and each family.

In event of a death, the spouse and family members are entitled to award for the pecuniary losses that they have suffered as well as for any pain and suffering the individual faced up until the time of death. Pecuniary is a legal term referring to measurable dollar losses. These include the amount of money that the deceased worker would have contributed to the family through the course of life had it continued. It also includes the value of aid, comfort and counseling to minor children. These are very special damages and often require significant expertise to ensure the family is fairly provided for.

Because the death of a loved one through a work-related railroad accident is so devastating, it is especially important for the surviving spouse to seek immediate guidance from a FELA attorney. Railroads can and will take every advantage possible even at such times.

In all FELA cases, it is very important to get high quality legal advice early on to be sure that all appropriate damages are fully calculated.

### DOES THE FELA COVER OCCUPATIONAL ILLNESS, CUMULATIVE TRAUMA, OR REPETITIVE STRESS INJURIES?

Yes, however with these types of injuries it is very important to have a knowledge and understanding of the statutes of limitations. In short, the three-year statute of limitations begins when the employee knew or reasonably should have known that they suffered a cumulative trauma disorder related to their work. It is important to contact an attorney as early as possible to make sure your claim remains valid.

## WHAT ARE STATUTES OF LIMITATION 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, 2004, then a lawsuit must be filed, or the claim must be settled, no later than December 15, 2007. 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, 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 a long way away and not be readily accessible. In addition, claim agents know that the closer to the expiration of the statute of limitations, the more pressure is placed on the railroad worker. As the statute of limitations looms, the claimant's judgment may be impaired and the claim may be settled for far less than what 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 statute 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.

## WILL THE RAILROAD INTERFERE WITH MY MEDICAL TREATMENT?

*It happened to a conductor. A switch hung up, causing severe back pain. He knew immediately that he would need a doctor. How did the railroad respond? The supervisor first tried to discourage him from reporting the injury and told him to rest and he would be fine. The pain was so bad; the conductor insisted that he needed treatment. Reluctantly, the supervisor agreed, but only if he could go along too.*

Once at the hospital, the supervisor cornered the emergency room doctor and said that this was an on-the-job injury and therefore the individual should not receive any prescription medication because it would interfere with work. The doctor switched from the prescribed drug to over-the-counter pills.

The supervisor was doing this for no other reason than to avoid making the accident an FRA reportable event. Once there is lost time or prescription medication involved, an injury must be reported to the FRA. By bullying or flimflaming the doctor into giving over-the-counter drugs, the supervisor avoided having a mark on his safety record that could affect his bonus. In the meantime, however, the conductor was denied the medication that his doctor initially prescribed.

This scenario has been repeated countless times over the last several years as railroads deceive Congress and the FRA by providing accident information that does not reflect what is going on on the property. There are other ways the railroad accomplishes this. Most

commonly, it is the use of medical department personnel, some times called "medical managers." They contact doctors and hospitals directly and talk about employee medical care and treatment without medical authorizations. The railroads may also force the worker to see a "railroad doctor", or accompany the worker to doctor visits so they will have access to records and possibly influence the treatment. This can compromise the treatment process and may have potentially devastating consequences for any injury claim the employee might have.

The railroads have been able to get

*Railroad interference can compromise the treatment process and may have potentially devastating consequences for any injury claim the employee might have.*

away with this tactic because most doctors and other healthcare providers in the United States have no idea what the Federal Employers' Liability Act (FELA) is or what rights it gives railroad employees, nor do they know of the vast differences between the FELA and state workers' compensation laws. Most workers' compensation laws give an active role to the employer concerning medical treatment following an on-the-job injury. The FELA gives no



such rights to railroads.

Some people see no problem with letting medical managers, claim agents, and others talk to their doctors because they "have nothing to hide." However, the issue is not about hiding anything, but rather about the railroad manipulating the situation and focusing attention on matters other than the actual injury. For example, the railroad may suggest that an individual's problems predate his railroad injury and ask the doctor to emphasize that. The facts, however, may be that the prior problem may have been a long time past or a healed injury that had not caused any problems until this accident. Nevertheless, a doctor relying on a claim agent's information may make medical entries focusing on this prior problem that can seriously compromise a claim for an injury.

Why do railroads do this? The simple reason is that they want to limit their claim payout and the best way to do this is to minimize any and all injuries. They will do this through manipulation of the

medical treatment or through direct intimidation of the injured worker. Whatever the technique, it is a violation of both medical ethics and the FRA's anti-harassment and intimidation regulations. These regulations provide that railroads are not to interfere in any way with the reporting of a personal injury or with the medical treatment of an injured worker.

While it is true that the railroad may be entitled to medical records at an appropriate time, many of the medical releases that the railroad has people sign contain language allowing them to discuss the case with the doctors. This should not be permitted. Let your doctors know that you are not covered by worker's compensation and therefore absent your written permission, you want the doctor/patient relationship respected and that means no doctor/railroad contact.

What can you do to protect yourself when the railroad resorts to these tactics?

1. Stand up for your rights. If a supervisor wants to accompany you into the treatment room, politely but firmly decline (however, do not be insubordinate) - call your union representative for help.
2. Be knowledgeable about the difference between the FELA and state workers' compensation laws. Know that the railroad has no right to interfere in your medical treatment, or even to talk to your doctors without your consent.
3. Tell your doctors that you are not covered under workers' compensation and therefore, absent your permission, you would like the doctor to respect the doctor/patient privilege. Below is a sample letter to your medical provider that explains these issues. A printable version of this letter is also available on our website.



*RAILROAD WORKERS' INJURIES AND THE  
FEDERAL EMPLOYERS' LIABILITY ACT*

*Dear Medical Provider:*

*I was injured while working for a railroad. My profession is one of a very few that are not covered by any state workers' compensation laws. Railroaders work under a federal law called the Federal Employers' Liability Act (FELA). This law differs significantly from state workers' compensation laws. Because of these differences, the railroad has no right to talk to my treating physician, have access to my medical records, or to be in the examining room while I am being treated. My medical bills will be paid by my group health insurance policy. The railroad might process these bills for convenience, however without express written approval from me, this does not, under the FELA, waive the doctor/patient privilege which I specifically ask you to respect and enforce.*

*If you have any questions please feel free to call the law offices of Yaeger, Jungbauer & Barczak at 612-333-6371, or 800-435-7888. Simply ask for one of the attorneys who will explain the FELA to you.*

*Thank you for your attention to this matter.*

## WHAT IF THE RAILROAD TRIES 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 on a bulletin board or in a newsletter 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.

*The effect of the railroad's intimidation efforts is not safer workplaces, but unjustified firings, uncompensated injuries, and misleading accident statistics.*

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. 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 Federal Employers' Liability Act (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 box below provides some preventative steps to help protect you and your fellow rails.

### What can you do to halt these attacks on railroaders?

- 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 own 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 the country what is really happening.
- 3) If your own accident is unwitnessed, immediately tell your coworkers what happened.
- 4) Contact Yaeger, Jungbauer & Barczak for free advice on how to further protect your rights.

## AFTER FILING A CLAIM, WILL THE RAILROAD PUT ME UNDER SURVEILLANCE?

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 videotape injured workers. Whether or not you have hired legal counsel, 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 the person remains off work due to pain. Also, there are few secrets on the railroad -- if 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 doctor's restrictions. If your doctor gives you a 25-pound lifting restriction, you must 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. For example, you may continue to mow the lawn or to fish. Of course this is perfectly acceptable in light of what the doctor has ordered, but when captured on videotape it 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 mention it 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 videotape. Also do not believe that because you will be out of state on a trip, for example, 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 theater 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.

## MOST INJURED RAILROADERS HAVE YEARS OF EXPERIENCE ON THEIR JOB, SO WHY DO YOU HIRE OUTSIDE EXPERTS?

Expert witnesses have special training and skills which allow them not only to examine the problem at hand, but also to explain it clearly and concisely to a jury. This can be especially critical in a case with complicated liability.

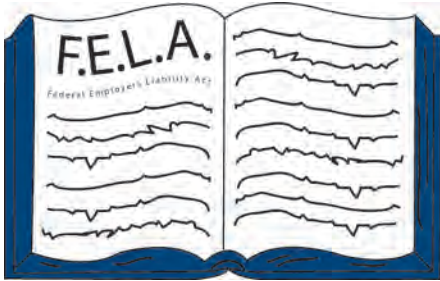
Under federal and state law, persons with special training, knowledge or experience are allowed to testify and express opinions concerning specific subjects. A good expert will examine a particular problem, such as faulty equipment, and use photos, videotapes, drawings, and charts to explain to a jury exactly why the equipment failed and how that failure could have been prevented.

Experts provide a valuable service before trial as well. When confronted with a powerful report from an expert witness, a railroad often is more willing to talk seriously about settlement.

Virtually any aspect of a case can be right for expert testimony. Among these experts most commonly used in court are medical experts, who testify about permanent disability, future surgery and related issues; economists, who explain past and future wage and fringe benefit losses; vocational rehabilitation specialists, who talk about an injured worker's retraining possibilities and future job prospects; and liability experts, who testify about the causes of a particular injury.

At YJB, we have developed a network of the very best expert talent available and have used them time and again to dramatically augment our case and win justice and a full measure of compensation for our clients.

## WHAT IS THE IMPORTANCE OF SAFETY STATUTES?



In 1907, the average life expectancy of a switchman was seven years, and a brakeman's chance of dying a natural death was less than one in five. Recognizing the dangers faced by railroaders, Congress enacted the Federal Employers' Liability Act (FELA) to shift part of the "human overhead" of doing business from employees onto their railroad employers. As the United States Supreme Court has explained, the FELA "was designed to put on the railroad industry some of the cost for the legs, eyes, arms and lives which it consumed in its operations." The first version of the FELA was passed in 1896, but was found unconstitutional and the law was reenacted in 1908.

Around the same time, beginning in 1893 and continuing through 1911, Congress also enacted a number of other statutes that have come to be known as the Federal Safety Appliance Act (FSAA) and the Federal Locomotive Inspection Act (formerly called the Boiler Inspection Act) (LIA).

The FSAA pertains to railroad "vehicles" and requires that the railroad use only cars that are equipped with properly functioning "safety appliances." Examples of such "safety appliances" include, but are not

limited to, couplers, sill steps, hand brakes, ladders, running boards, handholds and grab irons. In turn, the LIA governs locomotives and requires that the railroads use only locomotives all parts and appurtenances of which are in proper condition and safe to operate without unnecessary danger of personal injury. While technically distinct from the FELA, the FSAA and LIA were also enacted for the safety of railroad workers and they supplement the broader protections of the FELA by imposing an absolute and continuing duty on the railroad to

*When the railroad's violation of a safety statute has caused or contributed to the injury, the employee does not have to prove that the railroad was negligent.*

provide certain specific safe equipment. In this regard, the Supreme Court has explained that the FSAA and LIA "are substantively if not in form amendments to the Federal Employers' Liability Act," and are "supplemental to it, having the purpose and effect of facilitating employee recovery, not of restricting such recovery or making it impossible."

A railroad's violation of the FSAA or LIA in a FELA case is significant for a number of reasons. Generally speaking, when a railroad employee is injured on the job and brings a FELA claim, he is required to prove that the railroad was negligent in some way. However, when the railroad's

violation of the FSAA or LIA has caused or contributed to the injury, the employee does not have to prove that the railroad was negligent. In this regard, the United States Supreme Court has explained that the railroads' liability under the FSAA and LIA "is not based upon the carrier's negligence," but rather, "the duty imposed is an absolute one and the carrier is not excused by any showing of care, however assiduous."

Additionally, in the typical FELA negligence case, the railroad can argue that the employee's own negligence caused the accident and injury. If the jury finds that to be the case, the employee's recovery will be reduced in proportion to his own percentage of fault. However, in cases where the railroad's violation of the FSAA or LIA has caused or contributed to the injury, contributory negligence is eliminated as an available defense. In other words, the railroad will be precluded from arguing that the injured employee's own negligence caused the accident, and the employee's recovery will not be reduced by reason of any such alleged negligence.

Obviously, a comprehensive explanation of the FSAA and LIA is well beyond the scope of this limited article, but it is important for all railroaders to be aware that they exist to protect them while working on and around locomotives and rail cars.



## HOW IMPORTANT IS CAR INSURANCE FOR RAILROADERS INJURED ON THE JOB?

Railroad employees are often transported by vans or taxicabs hired by the railroad, or asked to drive their personal vehicles for railroad business. In both circumstances, you as a railroad worker may unknowingly be putting yourself at great risk of being left without compensation for personal injuries in the event of an accident.

Most people are unaware of the automobile insurance coverages necessary to properly protect themselves and their families. Attorneys often hear after an accident that an injured person had "full" coverage and thought that he or she was fully protected but was not.

There are four main types of coverage every driver should be aware of:

- 1) **No-Fault (only in certain states):** If you live in a "no-fault" state, you should consider obtaining the highest no-fault coverages available, and "stacking" where available. No-fault pays medical bills and wage loss (within certain limits), without regard to who caused the accident. Stacking means you can add the coverages on any other vehicles you may insure.
- 2) **Liability Insurance:** This coverage is not paid to you if you are injured, but instead, is paid to someone else whom your negligent driving injures. You buy this coverage to protect your personal assets from a claim against you.
- 3) **Uninsured Coverage (UM):** This is part of your own policy, but acts as liability coverage for another driver who: (1) injures you by their negligent driving, and (2) has no insurance. You buy uninsured coverage to compensate yourself if you are injured by the negligent driving of an uninsured driver. Consequently, you should consider the highest limits available.
- 4) **Underinsured Coverage (UIM):** This is similar to uninsured coverage, is purchased by you and is part of your policy. The difference from uninsured coverage is that underinsured coverage protects you when the other driver has some insurance, but not enough to compensate you for your injuries. You should consider purchasing the highest limits available.

The particular danger to railroad employees injured while



being transported or driving their own vehicles is that the railroad will not be responsible for their injuries, and also that the injured employees may not have enough insurance coverage to compensate them for their injuries. Under the Federal Employers' Liability Act (FELA), a railroad is only responsible when its negligence causes an employee's injury. A van or taxicab hired by the railroad is usually the railroad's "agent," and consequently the employee has a claim against the railroad only when that driver's negligence causes an accident.

However, if that van or taxi driver is not at fault (if, for example, the vehicle is rear-ended by a drunk driver), the injured employee probably would not have a FELA claim against the railroad, and would be forced to look to the insurance coverage of the other driver. If that driver had no insurance, or limited coverage, the employee must then look to his or her own uninsured or underinsured coverage (and no-fault coverage, if available). If those limits are low (and many people have as little as \$15,000 or \$25,000 of coverage), the employee may have serious disabling injuries but be left with no source of recovery. By purchasing the highest limits available, railroad employees can protect themselves in circumstances where the railroad may not be at fault.

These concerns are even greater when employees are asked to drive their own vehicles. Employees injured in car accidents may have no basis to bring a FELA claim against the railroad, since they were the ones driving. An employee's claim is more likely to be limited to the available insurance coverages from the other driver, or

*(continued on page 18)*

## CAR INSURANCE

*(continued from page 17)*

their own uninsured and underinsured coverages. Also, employees transporting other railroad workers may become a defendant in claims made by these other injured employees. Because automobile insurance policies may make a distinction between "personal" and "commercial" use, the insurance company may deny coverage for this accident because a "personal" vehicle was used for "commercial" purposes.

Finally, it is important to remember that automobile insurance laws are different in every state, and, unfortunately, are much more complicated than most people think. [Note: Many railroad workers are eligible for benefits under the "Off Track Vehicles Agreement." However, these benefits are limited and generally do not provide full compensation. You should check with your union or your attorney about coverage.] It is important that you sit down with your insurance agent and explain your employment circumstances, particularly the fact that the FELA rather than Workers' Compensation laws cover you. It is important that your agent understand the great financial risks to you if you are injured in an accident and do not have sufficient insurance coverage.

## WHY NOT JUST "DEAL" WITH THE RAILROADS DIRECTLY?

*Workers and spouses occasionally ask why they should talk to or hire an attorney. They say, "Why not let the company take care of things and find out what they might offer before talking to a lawyer?"*



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 departments moves 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 situations. 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 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.

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## 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 lawyer 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 direct you to reputable medical doctors and work with them to carefully establish the vital link between the railroad accident and your injuries.

You can't 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 claims agents and railroad attorneys know which lawyers and which law firms go to trial. They salivate to get cases from lawyers who have seldom or never tried FELA cases in Court. The following questions should help you choose.*

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 know 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 12 or more cases in court to a verdict?

Has the firm won multiple million-dollar verdicts and settlements?

Has the firm ever done nationally recognized legal work for railroad workers?

Have the firm's attorneys been Board Certified as Civil Trial Specialists?

## 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.

### Below are 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 reported 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. 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 special doctor designated by the Board.

**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.

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## RRB QUESTIONS AND ANSWERS

This answers some basic questions about Railroad Retirement. However, it is always a good idea to contact YJB for help in these matters. We are always available to consult with railroaders about retirement, disability and other issues.

### Q: Where can I go to look at the actual law?

A: The Railroad Retirement Act of 1974 is codified at 45 U.S.C., § 231-331 (b) and the Railroad Unemployment Insurance Act is codified at 45 U.S.C. §351-367. These provisions have been amended from time to time, and can be found through the RRB website.

### Q: What are the minimum eligibility requirements?

A: Minimum service requirement for employees under the Railroad Retirement Act is 60 months of service (5 years) but only if all the service is after 1995. Otherwise the minimum is 120 months. This is the minimum vesting time period required to qualify for total occupational disability benefits if one becomes totally disabled on the railroad. Full age and service related retirement benefits are available after 30 years of service at age 60. Typically, occupational disability pensions are available after 20 years of service (240 months of service).

**Q: Who is eligible to receive certain annuity benefits given proper qualifications?**

**A:** Annuities are payable to spouses and divorced spouses of retired railroad workers, widows and widowers, surviving divorced spouses, remarried widows and widowers, children, and parents of deceased railroad workers under certain conditions.

**Q: What are the definitions of “totally disabled” and “occupationally disabled” under the RRB system?**

**A:** An employee is totally disabled if medical evidence shows a permanent physical or mental impairment preventing the performance of any regular and gainful work. Occupationally disabled means the physical or mental impairment prevents the employee from performing the duties of his or her regular railroad occupation, even though the employee may be able to perform other kinds of work.



**Q: What are “sickness benefits?”**

**A:** These are benefits payable to an eligible employee who is injured and unable to perform his or her occupation. There is a limit to these benefits. An individual must apply for these benefits within a certain timeframe, typically within seven days from the illness or injury for which benefits are claimed. There is a grace period that might apply beyond that up to thirty days. It is important to file promptly for both sickness benefits and unemployment benefits.

**Q: Where do I get forms for the various RRB benefits?**

**A:** Application forms should be available from any local RRB office, which can be found through the RRB website at [www.rrb.gov](http://www.rrb.gov). Applications for certain benefits can also be submitted at the website.

**Q: What if I am short of credited RRB months of service for either the five-year total disability pension or the 20-year occupational disability pension?**

**A:** It is possible to negotiate settlements for “buying up” a series of months, allowing an individual to qualify for benefits. When this happens, the pension cannot be applied for until after the buy-up period is complete and the requisite months have been achieved. It is very important to get the proper allocation of months of service in order for this option to be effective. This is another reason to check with the RRB prior to formalizing any settlement with the “buy up” provision.

**Q: Is the RRB pro-railroad or pro-union?**

**A:** The RRB is a neutral party designed to assist you in obtaining information and benefits to which you are entitled. Most RRB offices that we have contacted on behalf of clients have been very helpful in answering questions and providing assistance.

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](http://www.rrb.gov) or writing to the Board at U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**PLEASE NOTE...**

We realize that there are many more questions and concerns than can be addressed in our newsletter. The Yaeger 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 free initial advice.

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**WHAT DO THE 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 an injury occurs on the railroad, many responsibilities may fall on the spouse. The wife or husband of 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 a decision 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.

This edition of The Yaeger Report provides a good foundation for that knowledge and should be shared between spouses. The checklist below provides some basic steps for a husband or wife to take in the event their spouse is injured.

The attorneys and staff at the Yaeger Firm are always available to answer any additional question you might have.

**ACCIDENT CHECKLIST FOR 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 legal counsel and union officials for additional information and free, confidential, reliable advice.
3. Be sure the accident has been reported to the railroad and to the union.
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 counsel 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.

## THE YAEGER FIRM: 75 YEARS STRONG

The attorneys and staff of The Yaeger Firm have seen many changes in our proud 75-year history. We began serving the needs of injured railroaders in 1929 when Carl Yaeger Sr. was named partner in the firm of Davis, Michel, and Yaeger. In 1930, Carl Yaeger Sr. became designated counsel for the Brotherhood of Railroad Trainmen, beginning three quarters of a century of Union designation that continues through today. By 1961, when our firm name changed to Yaeger & Yaeger, the country had witnessed incredible events; weathered a depression, a world war, and the advent of television. In 1978 Bill Jungbauer joined the firm and in 1980 Ron Barczak came on board. In 1991 at the dawn of the information age the firm changed its name to Yaeger, Yaeger, Jungbauer & Barczak. Today our firm's name is Yaeger, Jungbauer & Barczak, with talented, young, aggressive lawyers waiting in the wings.

For 75-years the people of The Yaeger Firm have stood side by side with the working men and women of our nation's railroads. While other firms have come and gone, we have been steadfast in our advocacy, dedicated to a mission of fighting for the rights of workers, performing excellent legal work, and maintaining a personal commitment to our clients.

Our mission began in 1929 and it remains unchanged. It continues to guide our attorneys today, because it is the right thing to do, and because we get results for our clients.

We are proud of our traditions, and we are dedicated to fighting for our clients today and into the future. For as long as there are injured railroaders we will stand by them with strength, courage, and compassion.

## THE YAEGER REPORT

For over fifteen years, the Yaeger Firm has published The Yaeger Report. This free newsletter contains news and information for railroaders and their families, including any changes to FELA and related laws, significant cases and news about our firm. The newsletter is mailed nationwide several times a year and is free to all railroaders, clients, and friends of the firm.

The Yaeger Report is a great way to stay informed about your rights under the FELA.

If you are interested in receiving The Yaeger Report, please call 1-800-435-7888 or e-mail your name and address to [yrsb@yjblaw.com](mailto:yrsb@yjblaw.com)

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## BEST OF THE YAEGER REPORT

We encourage you to read the material in this “Best of The Yaeger Report,” and keep it as a reference for any questions you or your family may have regarding the Federal Employers’ Liability Act.

Knowledge is power when it comes to pursuing legal matters and this guide will provide a good foundation for that knowledge.

# 75 Years

