

Rail Safety Bulletin

Inside This Issue

The FELA: How it works..... 1

*For Information & Free
Legal Consultation..... 1*

*What to consider when
hiring a lawyer..... 2*

*Completing the accident
report 2*

For Information & A Free Legal Consultation

Martin E. Jackson
Attorney at Law
Colorado
1-866-724-5522

martyjackson@qwest.net

Leonard "Len" Baca
Senior Field
Representative

Winslow, Arizona
1-800-892-4467

lbaca40@cybertrails.com

Peter Mortaro
Chief Investigator
Alliance, NE

1-800-376-0538

railsafety@charter.net

www.railsafety.com

*For news pertaining to the
railroad industry.*

*The information contained in this
newsletter is not intended to constitute
legal advice and no attorney client
relationship is created hereby.*

THE FELA: HOW IT WORKS FOR YOU WHEN YOU ARE INJURED

THE STATUTE

Every common carrier by railroad while engaging in commerce...between any of the several States...**shall be liable in damages** to any **person suffering injury** while he is **employed by such carrier...** for such injury...resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier by reason of defect or insufficiency, **due to its negligence**, in its cars, engines, appliances, machinery, track roadbed, works, boats, wharves, or other equipment.

45 United States Code, Section 51

LIMITATIONS

Any FELA Claim Must be Filed in Court Within Three (3) Years of the Day the "Cause of Action Accrues".

INJURY

Any Injury Related to Your Job is Covered by the FELA. These include:

Traumatic Injuries—spinal injuries, broken bones, burns, torn ligaments;

Cumulative Injuries—injuries which occur over time due to repetitive motion or stress;

Occupational Diseases—injuries resulting from exposure to hazardous substances while at work such as asbestos,

welding fumes, sand, dust, chemical cleaning solvents, and lead.

DUTY

The Railroad Has a "Non-delegable" Duty to Provide You with a Safe Place to Work. The Duty Includes:

Inspecting your workplace to eliminate hazards;

Warning you of hazards which are not obvious;

Training you and other employees in safe work practices;

Complying with safety statutes, regulations, and practices, including their own safety and operating rules;

Providing you with safe and appropriate tools and equipment, including protective equipment;

Assigning you to do work within your physical capabilities and for which you and your co-workers have been properly trained.

This Duty Is the Railroad's Alone. They Cannot Escape Liability for Your Injuries Simply Because Some other Party Contributed to Your Injuries.

In the absence of notice or knowledge to the contrary, you are entitled to assume that the railroad has made your workplace safe

NEGLIGENCE AND CAUSATION

You **MUST** Prove That the Railroad was Negligent in Causing your Injuries. No Railroad Negligence Means No Monetary Recovery for You *Regardless* of the Amount of Your Losses.

However, the FELA, Unlike State Laws, Provides that You May Recover Money Damages if the Railroad's Negligence was a cause, **HOWEVER SLIGHT, IN WHOLE OR IN PART**, of Your Injuries.

COMPARATIVE NEGLIGENCE

Simply Put, if Your Actions Helped Cause Your Own Injuries, Your Money Damages are Reduced by the Percentage of Your Own Fault. This is unlike State Laws which May Eliminate All Recovery if You Contribute to Your Own Injury.

Example: You are 20% at Fault in Causing the Accident and the Railroad is 80% at fault. If a Jury Awards You \$100,000.00, You Would Receive \$80,000.00, which is the Percentage of Your Damages Caused by Railroad Negligence.

DAMAGES

To Recover Money for Your Injuries, You Must Prove that You Have Been Damaged by Railroad Negligence. The FELA Allows Money Damages for the Following Injuries:

LOST WAGES You may recover your lost wages, past and future, net of income taxes;

PAIN AND SUFFERING You may recover your physical and emotional pain and suffering in the past and into the future;

MEDICAL BILLS You may recover your past and future medical expenses — This *does not* mean that the railroad will pay your health insurance premiums into the future;

LOSS OF BENEFITS INCLUDING PENSION If you are unable to return to work because of your injuries, you may recover the present value of your lost fringe benefits and reduction of your retirement;

DISABILITY AND DISFIGUREMENT RESULTING FROM THE INJURY;

AGGRAVATION OF PRE-EXISTING CONDITIONS;

NO CLAIMS FOR YOUR SPOUSE/NO PUNITIVE DAMAGES.

WHAT TO CONSIDER WHEN CHOOSING A LAWYER

- It is your legal right and your responsibility to choose the Lawyer you think is best for you and your family.
- Consider the Lawyer's experience with FELA cases.
- Should you use a designated or independent Lawyer?
- A designation by a union is not a specialty sanctioned by the bar association which regulates Lawyer conduct.
- A designation is simply a statement that the Lawyer or law firm has been approved by the union. The union has no right to discipline a Lawyer.
- You may hire any Lawyer you choose; you are not required to hire designated counsel.
- The Lawyer owes a duty of undivided loyalty to you, his client. Make sure he has no conflicts of interest.
- Will you be represented by the Lawyer you hire or by someone else in the firm you have not met?
- How does the Lawyer charge for his services?
- What services are included in the fee he charges?
- Beware of Lawyers who tell you how much your case is worth before knowing the facts in detail.
- What is the Lawyer's track record in representing railroad workers?

COMPLETING THE ACCIDENT REPORT

- Tell the truth
- Be brief
- You have the right to put anything you wish on the report
- Include all important details, especially witnesses and unsafe tools or conditions
- Complete the report as soon as possible after the injury; read the rule on reporting injuries
- If a company official attempts to influence your reporting of the accident, note it on the accident report and identify any witnesses to the attempt; such actions are illegal
- The report will be important evidence in your personal injury case. Be careful and take your time filling out the report
- You have the right to discuss the report with a Lawyer before filling it out
- You the have the right to have union representation with you when you fill out the report
- The report will be used in the trial of your case. Don't lose your case because of a careless report
- Call our office for a consultation before filling out the report.

1-866-724-5522