I'm Covered Under Workers' Comp, Right? Wrong!
The Federal Employers' Liability Act and its Protection

Most railroad workers are under the impression they are covered under workers' compensation and their wages will automatically be paid following an on-duty injury. This is wrong! The realization that the railroad is not required to pay your wages can be surprising and scary. However, railroaders will be relieved to know that the federal injury law that protects railroad workers provides more protection and more compensation than fixed and arbitrary workers' compensation systems.

The injury law that protects railroad workers is the Federal Employers' Liability Act, or FELA for short. This body of laws was enacted by Congress in 1908 and still protects railroad workers today, over 100 years later. At the time FELA was enacted and the railroads were being built across the country, Congress noticed that the country's progress in transportation was being built on the backs of these railroad workers, who were being seriously maimed and injured without complete compensation for themselves or their families.

In fact, the average life expectancy for a switchman working in 1893 was just 7 years. The odds of a railroad brakeman dying on the job in 1888 were nearly four to one. During that time, when injuries and deaths of railroad workers occurred on the job, these workers and their families were not entitled to any form of compensation.

President Benjamin Harrison addressed these dangers to railroad workers in a speech to Congress in 1889. He compared the plight of the railroad worker to those of a solider at war:

> **"It is a reproach to our civilization that any class of American workmen, should in the pursuit of a necessary and useful vocation, be subjected to a peril of life and limb as great as that of a solider in time of war."**

Congress agreed that railroading was particularly hazardous and decided that special laws were needed to protect these workers, in part because the railroads were failing to develop safety measures to protect their employees. These laws were especially needed because of the nature of the work and the fact that the work was being done in between states. Because railroad workers were in interstate

commerce between the states rather than just in one state, and the laws varied from state to state, Congress decided to pass one Act that would protect these workers to promote uniformity in railroad equipment, practices, and safety.

Essentially, the FELA provides:

> "Every common carrier by railroad while engaging in commerce…shall be liable in damage to any person suffering injury while he is employed by such carrier in such commerce, or, in case of death of such employee,…for such injury or death resulting in whole or part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiently, due to its negligence, in its cars, engines, appliances, machinery, track roadbed…or other equipment." 45 USC § 51.

Again, FELA is <u>not</u> a workers' compensation act. Congress specifically broke away from a workers' compensation scheme for railroad workers in order to afford them more protections because of the hazardous nature of their work. Under FELA, you are entitled to bring a claim if there is evidence that the injury was caused, in whole or part, by fault or negligence on the part of the railroad, including the failure of the railroad to provide a reasonably safe place to work. The FELA claimant must prove fault on the part of the employer. When railroad workers prove fault on the part of the railroad, unlike workers' compensation, the workers are entitled to damages such as past and future lost wages, pain and suffering, past and future medical expenses, past and future benefits, and loss of enjoyment of life.

The cornerstone of FELA is that railroads have a non-delegable duty to provide you a safe place to work. What that means for a railroad worker is that your railroad employer must provide you with a safe place to work. They cannot delegate that to another company. They cannot delegate and put that duty on the shoulders of the workers. They must provide <u>you</u> a safe place to work. This is a continuing duty of the railroads, to provide its employees with a reasonably safe place to work <u>at all times</u> and <u>at all places of employment</u>.

FELA allows railroad workers to bring a lawsuit against their employer where workers' compensation statutes would bar an injured employee from normally suing their employer. Also, workers' compensation provides only a fixed arbitrary amount of money for an injured employee, and often undercompensates that employee for the damages that he or she has suffered. On the other hand, part

of what Congress envisioned was that FELA would make sure the employee was taken care of if he or she was hurt or killed on the job.

However, Congress recognized that by allowing an employee to sue his/her railroad employer, it would create the dynamic of putting the employee and the employer on opposite sides of the fence, or opposite side of the tracks, so to speak. Congress, recognizing this adverse situation between employee and employer, reduced the burden on the employee under the law by only requiring that the railroad employee prove that when he suffers injuries on the job, those injuries are caused in whole or in part from the negligence of the railroad. What that means for a railroad worker is that if the railroad contributed even in the slightest to the injury that the railroad employee suffered, then the railroad can be held negligent, and the railroad employee is able to recover damages available under FELA.

As a railroad worker, you may have questions about whether you are covered under FELA and whether FELA only applies to certain railroad crafts. The short answer is that all railroaders engaged in the work of the carrier are covered under FELA. Some examples of workers that are covered include: an engineer who hits a tree on the tracks during a bad weather storm when dispatch fails to warn him; a brakeman/conductor would be covered under FELA if he's injured when working with a piece of equipment that is defective; railroaders working for short-lines or in passenger service; an on-board service dining car attendant slips and falls in ballast traversing the required "walkway" to get on the train for work. These are just a few examples of railroad workers and positions that would be covered under the FELA, but typically, all railroad workers that are engaged in the work of the carrier are covered under the FELA.

Over 100 years after it was enacted, FELA is still being utilized by our courts today to protect railroad workers. Although the railroads fight tirelessly to chip away at the rights of railroad workers, FELA continues to be protected by attorneys fighting against the railroads since 1908. It is important for railroad workers to know that FELA is the injury law that is specialized to safeguard them. The truth is that the railroads do not want their employees to know about the rights that protect them. The railroads aggressively protect their own interests. FELA, not workers' compensation, is your shield to protect you after an injury.

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