

FELA Reform: Is It Really Over?

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On August 15, 1996, the United States General Accounting Office (GAO), responding to a previous request from Chairwoman, Susan Molinari, Sub-committee on Railroads, rendered its long awaited report on whether the system for compensating railroad workers for work related injuries (FELA) should be changed.

The GAO report focused on the prospects of eliminating FELA totally and replacing it with a so-called no fault system or, alternatively, modifying the FELA Statute to cap non-economic damages and legal fees.

When the long awaited report finally came out, it failed to recommend the repeal, replacement or modification of the FELA Statute, paralleling previous studies undertaken during the Bush Administration!

Although the railroads, including both the major freight carriers and the short-lines, had joined hands in this most recent effort to scrap FELA, the effort failed not because of the strength of the Railroad Trial Bar or of Rail Labor Unions, but because of the integrity, honesty, and openness of the GAO in objectively analyzing the functioning of the 88 year old FELA statute by 1996 criteria.

In the end, simple logic and standards of fair play written into this turn of the century statute obviously became apparent to GAO investigators as they studied not only the empirical data, but also considered the viewpoints of the opponents of the statute, consisting of the major freight railroads, short-line carriers, AAR, and NARTC (defense railroad bar), as well as the proponents of FELA, i.e. Rail Labor, Rail Unions, and Railroad Trial Attorneys.

At the conclusion of this very fair process, the GAO did not recommend changing FELA.

The GAO is to be commended for remaining nonpartisan and objectively pointing out both the strengths and weaknesses of FELA. It correctly recognized that a system which has served to compensate those legitimately injured on the job for almost all of this century should not be declared broken, only to be fixed by an even more controversial, untested "No Fault System" that could potentially cost the railroads more than FELA if "2/3 or more of these workers were permanently and totally disabled and unable to return to any work".

As all railroad practitioners readily know, injuries at the railroad are usually of such a grievous nature that careers are lost and re-entry into the work force, as "damaged goods," is usually a medical impossibility despite the passage of the ADA.

If one were to read the full GAO Report, it would be impossible not to recognize that what the carriers and insurance industry really wanted from Congress was repeal of FELA, under the guise or misnomer of "reform," without a good substitute or proper analysis as to the long term effect on the industry or the people who serve it.

Certainly, by repealing FELA the railroad industry would strike a blow against railroad workers and their unions, but in the end would it really cost less or would the carriers simply be seeking "reform" for the sake of "reform" without a long range prognosis?

Fortunately, the GAO did the carrier's job for them by pointing out what the railroads should have known, which is that the changes sought in the end may not at all be what the railroad industry was looking for in the first place.

Sometimes reform just for the sake of reform is not the answer. At the railroad, there has long been an expression amongst the employees: "If it ain't broke don't fix it." Apparently the railroad industry neglected to fully calculate and assimilate for itself the facts and information sifted out by the GAO in its excellent report.

Does this mean attempts at FELA reform are really over?

Although the elections are concluded, and the political parties are purportedly gyrating to the middle ground to gain favor with the electorate, the position of the railroads will remain the same. Nobody wants to be told they are wrong.

In addition the railroads' appetite to dismantle or totally eradicate employee rights can never be quelled. Suffice it to say that this sleeping giant is merely hibernating until this spring to "spring!"

If history is any teacher, and the last 2½ decades are any gauge, we have been taught one underlying lesson about individual rights versus those of big business. The human desire for power coupled with the lure of vast sums of money and bottom line profits in the Railroad Boardrooms of this country will never be satisfied because these gods control every waking moment of the Captains of the Railroad Industry.

So the prediction is that this spring, despite the GAO Report, the railroads will forge ahead and try to repeal FELA again. Almost ninety years of experience with a compensation plan based on accountability between railroads and railroaders, operating without bureaucracy, for those legitimately injured on the job, will continue to be attacked.

Logic escapes the attack. Wasn't the FELA Statute ahead of its time by requiring individual accountability without the right to claim punitive damages from the employing railroad? Is this not the very subject of the discussions in State Houses across the country when they talk about tort reform? Why try to change a statute that was ahead of its time, which is operating practically, and which is compatible with much of the thinking of many of the tort reformers in this country?

Hopefully Representative Molinari will read this article and use her valuable time for more human goals rather than limiting the rights of those injured in the service of an industry they love, but which often hurts them.

All believers in FELA hope even more that our President will assure the dedicated railroad workers of this country that he will stand by them and be counted with them so they will not be cast aside by a proposed No Fault Statute which, in the end, will cost the carrier more and give the claimant less.

Railroaders seek the Presidential veto of any legislation aimed at eliminating or limiting FELA, but as long as our Congress continues to exercise its collective common sense, sound judgment and the basic fairness the public embraced when pulling the levers on voting machines nationwide to elect its members, such drastic measures by our President will, fortunately, be unnecessary.