



# **BLET Auxiliary News**

*Working to bring about safer working conditions for Locomotive Engineers & Trainmen, educate spouses, and enhance the lifestyles of railroad employees and their families.*

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## FELA vs. STATE WORKERS' COMPENSATION

[and company ordained doctors] — by Ben Saunders, Designated Legal Counsel

Over 100 years ago, the United States Congress enacted the Federal Employers Liability Act. It was specifically designed to give a federal compensation remedy to railroad workers injured on the job working in interstate commerce. It is essential to understand that under the provisions of this federal law, there was not then, and is not now, a provision for a railroad worker to receive any form of state workers' compensation.

Decades later, around the time of the Great Depression, Workers' Compensation Statutes came into vogue. These statutes were passed in every state to cover workers hurt on the job in that state. No state's compensation statute covers railroad workers because it was recognized that railroad workers had a Federal remedy that preempted state workers' compensation laws.

Nevertheless, many a man who was hurt working on the railroad, believing Workers' Compensation was his only remedy, settled his railroad injury claim for only lost wages, believing that was all he was entitled to receive. If the injured railroader later discovered he could not physically do his job, then he would simply walk away and go to the house! The reason for this travesty of justice was that these working men cooperated with their employing railroad without realizing they had given up their federal rights under FELA for a minimal sum by signing a release of all claims with a highly trained railroad claim agent.

In this century, education is the key. It is absolutely essential to understand that under the Federal Employers Liability Act, when a railroader is injured, or worse yet, loses his life, the worker and/or his family have the right to recover all damages sustained from the harm caused by the railroad. There is no cap, no ceiling, and no legislated pay scale applicable in FELA. Payment is due for all losses including both past and future loss of income, as well as compensation for past pain and suffering, future pain and suffering, and in some instances hedonic damages.

Regarding medical treatment, the rail labor unions representing the various crafts have done a wonderful job negotiating, as part of the Collective Bargaining Agreement, medical coverage for men hurt on the job where the carriers are responsible for medical bills through an insurance company like United Healthcare or Aetna. This means that an injured man does not have to be treated for his injury by a company doctor to get his bills paid for an on-the-job injury.

Further, under the provisions of the Collective Bargaining Agreements, and the medical coverage policies that were written pursuant to those negotiations, that are managed by the healthcare providers, an injured worker has a choice to treat with a doctor of his choosing to make sure he gets treatment from a patient-oriented physician who cares about making a correct diagnosis and prognosis, or he can go to a company ordained doctor recommended by a claim agent!

The reason it is important to get treatment for an on-the-job injury by a doctor personally chosen by the injured employee is that, in today's world, many railroads have adopted workers' compensation physicians, approved by workers' compensation insurers, to do railroad medical examinations. These designated physicians often minimize the injury and give the call to the railroad, allowing the injured employee to go back to work, usually sooner rather than later, claiming any pain is age related and not due to a railroad injury. For example, arthritis is an age-related disease in some instances; however, it can also come from a traumatic injury that is correctly diagnosed as traumatic arthritis. If trauma causes the pain, the railroad must pay for the pain caused by the injury that made the arthritis become active.

Also, when dealing with medical treatment following an on-the-job injury at the railroad, an injured railroader must always remember the axiom that the legal follows the medical. I have preached this concept for over a decade and a half at BLET meetings throughout the United



States. I am still not certain everyone fully understands that if an injured employee prematurely settles his case prior to the time that the doctor is able to give a time-tested prognosis, and he goes back to work and experiences such pain that he cannot perform the duties of his job, the case is over and he has no right to proceed further as he signed a settlement and release document with the railroad.

A great example of what is referred to above is the case where a railroader ruptures a disc in his spine moving a jammed drawhead. Let us say he was 50+ years old, and had asymptomatic pre-existing degenerative disc disease. The cause in fact of the rupture, the diagnosis, and the inability to work is the diagnosed frankly herniated disc from the drawhead accident and not the fact that he may have had some age-appropriate arthritis in his spine. The man has a viable FELA case. FELA law always recognizes you take your victim like you find him!

Remember, from a legal standpoint, there is no rush to get back to work under FELA before your own patient-oriented physician certifies that you are able to do so. FELA allows three years to bring a lawsuit. To the contrary, in my state of Louisiana, there is only one year to bring a state tort negligence case, so plaintiffs often rush into filing lawsuits that they would not ordinarily file fearing they will lose all rights after a year from the accident if no suit is filed.

Finally, it should be remembered that if negotiations fail, FELA Designated Legal Counsel are known for being litigators who

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are not afraid to try cases before juries in both State and Federal courts when the railroad will not pay what is reasonable and just compensation to the employee it injured on the job. In this field of practice, many a railroader has obtained a million or multi-million dollar verdict from a jury for damages resulting from an on-the-job injury.

Should anyone have any questions about this article or the FELA, please do not hesitate to call me or any other Designated Legal Counsel for advice as we have agreed pursuant to the DLC Rules of Conduct to answer questions to guide an employee in the right direction after he is injured.

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