

Accidents and Injuries: What Every New Railroad Employee Should Know

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Thirty years ago, the "old heads" on the railroad would pass down their rail knowledge to the new kids being hired. Over the past several years, the railroads have been hiring. However, with a change to crew consists, the new hires are going right from the classrooms to the field, alone. The new hires don't have the "old heads" available to mentor them in the ways of railroading, and specifically, the adversarial roles that arise between management and labor with regard to injuries. New hires are vulnerable.

I have noted some important information every new hire needs to know if injured:

THE RAILROAD'S VIEW OF AN INJURY

It appears to me that the railroads have always viewed employee injuries with suspicion and distrust. However, in recent years, the carriers often show outright hostility toward the injured employee. And although disciplinary investigations following an injury were never uncommon, they are now almost mandated by company policy.

The railroad takes the approach that the best defense to a Federal Employers' Liability Act ("FELA") claim is to manipulate the evidence to demonstrate that the employee himself is the sole cause of his injury. Moreover, the employee should be punished for affecting the railroad's safety record with the Federal Railroad Administration, the Harriman Award Committee, or the officials' bonus program.

Because of this, the disciplinary process, from the investigation through an appeal, is an integral part of everything that happens after an injury occurs. This is why you need to know what to do before you're in that situation.

AN INJURED EMPLOYEE'S STATEMENT

The carrier starts with an attempt to get the employee himself to admit that he screwed up and because he did, was injured. The carrier often surrounds the injured employee with multiple supervisors and claims personnel who then cross-examine the injured employee hoping to get him to say something self-incriminating or inconsistent with what he told someone else (See Hoey & Farina's DVD – "Don't Get Railroaded".) The carrier officials know that you are in pain and concerned about your medical care. You are thinking about your future on the railroad and most certainly your concentration is diminished or non-existent. In other words, you are vulnerable and the railroad is positioned to take full advantage. Later, when we, your attorneys, become involved and start to negotiate with the claim or law department, your statement to the claim agent and testimony at the formal investigation are used to show that you admitted responsibility according to the railroad. Your claim's value can be greatly reduced or eliminated altogether.

BE ACTIVE IN YOUR UNION

Numerous times I have talked with an injured railroader who said he didn't know which local he belonged to. He never asked anyone in his union for help and he spent the past year trying to work in good faith with the railroad's claim department. However, in doing so, he had no one to advise him of his rights and had handled so many things wrong that he would likely never get his job back and never recover financially from his injuries.

Do you know what local, lodge or division you belong to? Do you know who your union officers are? Get involved in your union, get to know your officers and keep yourself informed.

While the railroad has the right to find out what caused your injury, you have to be able to convey to the railroad what happened - briefly and effectively. Although the law does not give you the right to have your union officer present at this preliminary interview, before the railroad sends you its charge letter and sets a date for your investigation, your union can be protecting your job.

As soon as you are hurt, we will contact your union officer if you want us to do so. He can start getting involved by notifying your family if you haven't been able to, helping you fill out the injury report, meeting your family at the hospital if your injuries are serious or life threatening and keeping carrier officers from disturbing you. Your union officer has certain degrees of protection from carrier interference when in the performance of the duties of his elected office. One of the most important of these is the right to recommend counsel like Hoey & Farina, experienced in FELA litigation and who can provide valuable information and skilled representation to injured union members.

Your union officer will represent you with regards to any investigation concerning the on-duty injury. Your union officer may even be able to postpone the investigation to give you time to heal. Don't sign a waiver of investigation without talking to your union officer or our office! These waivers usually contain language that constitutes an admission that you violated a rule or that your conduct caused your own injury. Leniency reinstatements also may contain this language. If you sign a discipline waiver, you may be signing away everything – your chance at getting your job back and your chance at recovering financially in a claim or lawsuit. Everything!

Hoey & Farina is always available to assist your union officer in analyzing the effect a waiver could have on your job and your FELA claim. We are available to advise and counsel your union officer at no cost or obligation to you or your union officer in the procedures of an investigation conducted under the Railway Labor Act. And, although we cannot actually participate in the investigation, we can make suggestions to your union officer as to how to create an effective record for appeal.

Being a part of a union is being a part of a brotherhood – a brotherhood where fellow members, including your union officers, are watching out for you. Even if carrier availability policies and work requirements prevent you from attending your union meetings, your union officers can forward information on to you or direct you to good information – like that found in these Straight Track articles. Information and knowledge is a powerful tool in protecting the rights of injured railroaders.

If you have any questions relating to an injury, yours or one of your members, please contact us at (888) 425-1212 or info@hoeyfarina.com.