

# Completing The Personal Injury Report -- The Right Way

Alan Fisher, Attorney Hoey & Farina 1-888-425-1212 [fisher@hoeyfarina.com](mailto:fisher@hoeyfarina.com)

The article openly addressed the issues and decisions that the injured railroader was required to make at the time of the injury. The question asked by Dillon hasn't changed, and you, the working railroader, must understand how the information that you write on that report impacts the success or failure of your claim against the railroad under the Federal Employers' Liability Act ("FELA").

Under the FELA, and unlike state Worker's Compensation laws, you are not entitled to receive compensation just because you were on railroad property, on duty and/or under pay at the time of your injury. The law requires you, the injured railroader, to prove that the railroad caused your injury. That means that you must prove that the railroad caused or contributed in some way to your injury. If you cannot establish the railroad's negligence, we, your attorneys, cannot help you meet your "burden of proof" in court.

What must you do? You must know and understand that the personal injury report is a tool designed by the railroad's legal department to diminish the railroad's liability in your personal injury claim. It is a report to establish that the injured railroader's own actions caused or contributed to the injury. In this way, it is one of the first obstacles the railroad puts before the injured railroader. Although you are in pain and may require medical attention the railroad is still going to require you to complete the personal injury report. Under these adverse conditions you still have to be able to identify the UNSAFE CONDITION OR DEFECTIVE EQUIPMENT that caused or contributed to your injury. This information MUST be listed on the personal injury report. So be prepared to do so.

Be observant when you are working on the property and know your railroad. In addition to you being alert and attentive to your duties, develop a sharp eye to identify what is wrong with the workplace conditions and equipment. When you are working on the track, in the yard or on a through train, ask yourself questions such as, "What should be done to make my workplace conditions safer?" and "Has the railroad provided me with the proper equipment to do my job?" If something does happen to you, or a fellow employee, you can then complete the personal injury report, or help one of your fellow railroaders complete the report, even under stressful conditions, by clearly stating on the document what the railroad could have done to prevent your injury. And, if no one is injured, you will be able to fill out an unsafe condition report so that the railroad can correct the conditions before someone is injured.

In all likelihood a railroad official will be looking over your shoulder or otherwise trying to influence what you write in the personal injury report. It will be intimidating. Your FELA claim, and perhaps your job, will be on the line. You have an obligation to tell the truth. However, there is no law, company rule or contract provision that requires you to admit that you are responsible for your injury. Again, you have the burden of proof under the FELA, and we, your attorneys, can help you meet that legal requirement. Do not make it more difficult for you to prove your case by failing to describe how the railroad caused or contributed to your injury. If you fail to identify the unsafe conditions or defective equipment on the personal injury report AND write anything that implicates

your own actions contributed to your injury, the railroad's attorneys at trial will enlarge the personal injury report to a 3' x 4' poster and mark it "Exhibit A".

Unfortunately, the railroad typically will create another obstacle for the injured railroader by scheduling a formal investigation soon after the injury has occurred. It has the right to do so. You **MUST** remember that the information you write on the personal injury report may become evidence for the railroad at the formal investigation and the basis to assess discipline or terminate your employment. A concise, factual statement highlighting the railroad's failure to provide safe working conditions is what you need to report. That concise, factual statement will help your representative in your discipline case and will be used to educate the arbitrator. Moreover, it will help you, and Hoey & Farina as your attorneys, in your FELA claim against the railroad.

Lastly, you need a copy of the personal injury report. You cannot rely on the railroad to give you one later. Our suggestion is that at the time you are filling out the personal injury report, completed at the same time identical copies – one for you and one copy for your supervisor. Sign both documents at the same time. In this way, you and the railroad will have a signed original.