

# Protect Yourself – Protect Your Family



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## *The Personal Injury Report: One of the Most Important Documents in Your FELA Case*

### INTRODUCTION

Working on the railroad has always been a dangerous occupation. So dangerous that nearly one hundred years ago Congress enacted the Federal Employers' Liability Act (FELA) 45 U.S.C. §51 et seq. Under the FELA, Congress guaranteed rights and remedies for injured railroad workers. However, due to the desire of the railroads to limit payments to injured workers, securing your rights under the FELA is not a simple matter.

Under the FELA, railroad workers who suffer on-the-job injuries must prove that the railroad's negligence caused or contributed to their injuries. A railroader does not have to prove that the accident was totally the fault of the railroad to be eligible for a recovery, but if there is no fault on the part of the railroad in the accident, an injured employee is not entitled to receive damages.

One of the most important liability documents in an FELA case is the Accident Report that the railroad requires every injured worker to fill out upon accident and/or personal injury. Accident reports are generally considered to be accurate by juries and other non-railroaders, mostly because the injured worker is reporting the facts himself or herself, and the reporting is done close in time to the accident when the details of the incident are most fresh in the railroader's mind.

The FELA requires that the railroad provide workers with a reasonably safe place to work. The information that the injured railroader records on the personal injury report will play a substantial role in determining whether the railroad provided this safe place to work and will also have a direct impact on damages the railroader receives for the injuries sustained in the course and scope of his or her railroad employment. BRS members are an honest group and want to fill out the accident reports in an honest manner. However, due to the way the forms are set up, unless you understand the report, you may make a mistake, which can be very harmful to your claim or lawsuit.

**The information you put down on the initial injury report will greatly affect the recovery received by you and your family for your injury!**

### EIGHT CARDINAL RULES TO FOLLOW WHEN FILLING OUT THE ACCIDENT REPORT

#### *1) Do not let the railroad pressure you into reporting facts that are not 100% accurate or true*

To be most accurate in any potential claim or lawsuit against the railroad, the report should not be tainted by threats, intimidation, and/or inaccuracies that are brought on by pressure from railroad officials. If it is, it is not an honest report of what happened. It is often reported that railroad management receives incentives to keep reporting of injuries to a minimum. This motivation can lead to a potential conflict between management and the injured employee.

Typically you are filling out the report directly after being injured, when you are nervous, tired, and experiencing pain. The railroad knows that you are at your most vulnerable point during this process and may try to take advantage of this by pressuring you into recording information that places blame on you, rather than where it belongs.

No supervisor has the right to pressure and/or intimidate you into signing an inaccurate and/or false report. Do not sign a report that you do not feel accurately reflects what occurred before, during, or after the accident. If you are unable to accurately fill out the report due to pain from the injury or the medication you are taking, ask to wait until you are clearheaded. If your supervisor will not allow you to wait, do not refuse their orders, but note on the report that you are under the influence of pain or medication.

#### *2) Do not blame yourself where you are not to blame*

In FELA cases, the accident report is one of the primary documents that the railroad uses to place blame on an employee for his or her accident. The worker's fault, or comparative negligence as it is known in the courtroom, will be considered in assigning blame for the accident. That is, what did you, the signalman, do to cause or contribute to your accident? The more comparative negligence the railroad is able to place on you regarding the accident, the less you recover in damages

once the claim or suit is resolved. It is critical that the accident report is not filled out in such a way that places blame on the employee when the negligence of the railroad caused or contributed to the accident.

### ***3) Be As Specific As Possible In Identifying the Unsafe Condition(s) that Caused the Accident***

This is an area on the report where you need to be as detailed as possible. If you know the Mile Post number or any other identifying marker that clearly identifies the location where your accident occurred, make sure to identify that in the report. Also, the more certain you are about the equipment involved in the accident the more credible your report will be. Other factors may be causes as well. For example, if you were injured due to inadequate training received by you or by a co-worker, include that on the report.

### ***4) Name Witnesses Where Possible***

Immediately tell a co-worker or supervisor when you get hurt. The best case is to have an eyewitness. However, if an eyewitness was not present, tell the nearest co-worker. You will be a more credible witness for yourself if you can call witnesses whom you immediately told after your accident happened, particularly if you are specific about your injuries. For example, "Joe, I think I hurt my back." List the witnesses that you are aware of on your report.

### ***5) List All Affected Body Parts***

One of the most common questions by the railroad in an FELA case is why the injured party did not list each and every affected body part on the personal injury report. For example, you may primarily have neck pain from the accident and some pain in your back, although it is not severe immediately after the accident. Railroaders often only list the spot with the greatest amount of pain. However, even if you feel tingling in your back, note that in the report. For example, if your back injury gets worse and you did not note it on the report the railroad may accuse you of falsifying the injury report.

### ***6) Accurately Describe How the Accident Occurred***

For example, if you were repairing a grade crossing signal and you slipped due to an unseen tool that had been left in the ballast by a track crew, say something like, "Obstruction and debris in the ballast caused me to trip and fall." Or if the cause was uneven ballast, say something like, "Poor condition of ballast caused me to slip and fall, injuring my knee." If you receive an electric shock, describe what you were doing when you were shocked.

### ***7) Less is More***

Although it is important to be honest and thorough in completing the report, do not ramble on about information that does not add to the credibility and accuracy of the report. Over-explaining where it is not necessary to describe the accident just allows the railroad to question you later about issues that are not relevant or helpful to the case.

### ***8) Beware: Some Questions are Trick Questions***

The railroad's accident reports are often set up in a way that make it difficult and intimidating for the injured railroader to accurately fill out the report. There are two obvious examples of trick questions. The first is that most accident forms include confusing boxes to check. Look at the boxes carefully; they are worded in a way that the railroad lawyers believe will help the railroad prove that the accident was your fault. For example, a question with "yes" and "no" boxes might say, "Could You, By More Care On Your Part, Have Prevented Your Injury?" The railroad wants you to check "Yes." But, by doing this you are saying that the accident was partially your fault! The carrier fully hopes you will blame yourself. A second example is that the railroad is aware that you are reluctant to blame your friends and/or coworkers. Therefore, the railroads have structured questions to make your only choice to be about either naming and blaming your coworkers or blaming yourself. Don't fall into their trap!

## **CONCLUSION**

The Accident Report is often the single most important document in an FELA case. How you fill out the report in the minutes and hours after you have been injured often determines the extent of the recovery you will receive for your injuries. Fill it out honestly and accurately, and use your own words, not those of your supervisor.

One way to avoid making a mistake in filling out the report is to get a copy of a blank injury form and review it in the same way that you review your rulebooks. That way, if you are injured, you will be familiar with the questions. If you have questions, upon reviewing it, contact your local chairman or BRS Designated Counsel for guidance.

Know your rights under the FELA and demand the proper time and circumstances to fill out the report. If you have been injured and feel you are in a situation where you are being harassed and intimidated by railroad officials, or if you simply do not understand how to fill out the report, immediately contact your local chairman or BRS Designated Counsel.

Properly filling out your personal injury report at the time of injury will help protect you and your family later. ■