



# **How to protect your rights when injured on the job**

**What every rail worker should know**

[www.smart-union.org](http://www.smart-union.org)

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## Why this pamphlet?

Experience indicates that not all injured rail members receive just compensation. Railroads retain skilled claim agents and attorneys. As soon as a rail worker is injured, the railroad and its agents get to work to protect the railroad's interests. Statements of witnesses are taken, photographs of the scene and equipment are produced and measurements are made.

The railroad's lawyers begin to put their legal knowledge to work. The railroad's claim agents and attorneys work for the railroad, not you. It is difficult for an investigation to be made for you after a long delay, when the trail has become cold.

This pamphlet is intended to make you aware of your rights and obligations when injured.

# To all rail members

**T**his pamphlet is not legal advice. That can come only from a lawyer. What is written here cannot tell you what the law is as applied to the facts of a particular case. However, this pamphlet can alert you to how you can learn about, and enforce, your personal legal rights for the benefit of both you and your family.

This union and its predecessors fought for and obtained federal laws making railroad work safer, but railroading is still a hazardous occupation. Every year, thousands of railroad workers are injured or killed on the job. Some rail workers and their families may not receive fair compensation. The best laws are no good unless they are known.

In a decision dated April 20, 1964, the United States Supreme Court ruled that a railroad union has a constitutional right to recommend to its members that when injured they consult union-designated attorneys, and said:

“It soon became apparent to the railroad workers, however, that simply having these Federal statutes on the books was not enough to assure that the workers would receive the full benefit of the compensatory damages Congress intended they should have. Injured workers or their families often fell prey on the one hand to persuasive claim adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other hand, to lawyers either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar.”

In 1971, SMART Transportation Division predecessor union UTU again obtained an opinion by the U.S. Supreme Court which confirmed and further explained these constitutional rights. This pamphlet is a message from SMART TD to its rail members, and their families, on how they can learn about and enforce their personal legal rights. SMART TD stands ready to help you.

# The law says ...

## *Negligence*

Cases of injuries to railroad workers are governed by a law passed by Congress called the Federal Employers' Liability Act (FELA). Under this law, you are not entitled to be paid by the railroad for your injury merely because you were injured on the job. In order to collect a claim, there must be evidence that the injury was caused, in whole or in part, by fault or negligence on the part of the railroad, or through negligence in failing to furnish a reasonably safe place or equipment for work.

Under the Federal Safety Appliance Act, railroads are responsible, without proof of negligence, for injuries caused by their failure to furnish automatic couplers, secure grab irons, ladders and steps, and efficient hand brakes and air brakes.

Under the Federal Boiler Inspection Act, railroads are responsible, without proof of negligence, for injuries caused by their failure to provide locomotives which are in proper condition and safe to operate.

## *How much?*

Under FELA, rail workers are entitled, if they choose, to go to court and have a jury decide whether they are entitled to compensation and, if so, how much. In case of injury caused in whole or in part by railroad fault or negligence, workers are entitled to compensation for past and future wage losses, pain and suffering and medical expense.

In case of death caused in whole or in part by the railroad's fault or negligence, the worker's family members may be entitled



to compensation for their financial losses, loss of services of the deceased, and for any conscious pain and suffering of the deceased.

Fault or negligence on the part of the worker does not entirely defeat the claim, but under FELA, damages are reduced in the proportion that the fault of the worker bears to the total fault of the railroad and worker combined. In cases of injuries caused by a railroad's violation of the Safety Appliance Act or Boiler Inspection Act, fault or negligence on the part of the worker does not reduce the amount of compensation.



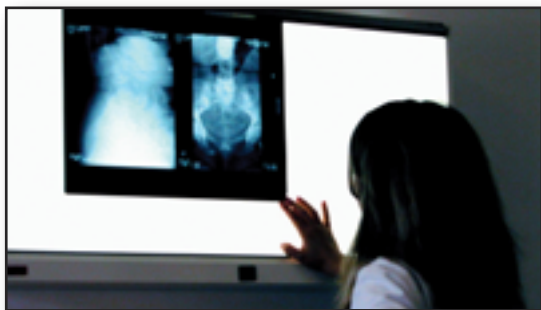
Workers usually have the choice of the court and the place to sue. The statute of limitations requires that you settle your claim or file suit against the railroad within three years from the date of your accident. If you fail to do so, your claim may be barred forever. Time limits barring suits against other possible defendants may be much shorter.

Claims based on hearing loss, or occupational disease, or injuries due to substances, such as asbestos, may present complex questions because you cannot identify the exact date of injury or the date from which to compute the statute of limitations. In reference to occupational diseases such as hearing loss, etc., three years runs from the date you know, or should have known in the exercise of ordinary care, that you have an impairment and the probable cause of that impairment. However, you should not let the three-year limitation get close before seeking advice from designated legal counsel.

When workers are represented by competent counsel, and their cases are thoroughly prepared for trial, the vast majority of cases are settled fairly before going to trial.

# See your union and insurance association

**R**eport your injury immediately to your local union officers. If applicable, they will direct you to the Railroad Retirement Board (RRB) to collect sickness benefits and the disability annuity for which you qualify, based on your length of service and disability.



Your local union officers will direct spouses to the RRB for benefits for which they may qualify. Your field supervisor of the UTU Insurance Association (UTUIA) or your local union officers can help spouses file for any death benefits that may be payable from insurance.

Your local union officers will help you obtain a leave of absence as permissible under applicable agreements and practices, if necessary, and will help you protect your seniority and job security while off the job because of injury under existing agreements and practices. They will also represent you at railroad investigations.

Your local union officers, upon request by you or your family, will assist you in making an appointment to see one of the SMART TD Designated Legal Counsel for advice and help.

Consult your field supervisor of the UTUIA or your local insurance representative for help in collecting benefits under any policy you may have with the UTUIA.

You owe it to yourself and your family to obtain in advance from your UTUIA field supervisor the protection of disability insurance covering on-the-job injuries.



# See your own doctor

**A**lthough you may be required to be examined by a doctor selected by the railroad, you cannot be required to accept treatment from a company-selected doctor. You have a right to treatment by a doctor of your own choice.

If employees on your railroad are covered by the union-negotiated policy, you have a right to select your own doctor and hospital and the insurer will pay to the extent provided for in the policy. If you are a member of a hospital association, you will ordinarily be treated by physicians on the staff of the association. If they fail to give you satisfactory treatment, you should report it to your local union officers. This information should be given to labor representatives who are members of the boards of directors of hospital associations.

Injured rail workers may need a doctor who is a specialist in the particular field of their injury, that is, bones, eyes, nerves, etc. If you need help in finding a qualified specialist who is an independent doctor, and not a company-selected doctor, you may contact designated legal counsel for assistance. They are familiar with medical specialists in all fields and will help you.

## Injury, accident reports

**U**nder the working rules or agreements on many railroads, employees are required to make reports of injuries on prescribed company accident report forms, but are not required to give question-and-answer statements to a railroad claim agent. You should contact your local union officers to learn the rules and requirements on your railroad concerning accident reports.

In the event the carrier attempts to take your statement through its claims agent, before giving the statement you should give consideration to discussing the matter with your union representative or designated legal counsel.



# See Designated Legal Counsel

**S**MART TD has chosen experienced and successful trial lawyers as its designated legal counsel, and recommends these lawyers to its members and their families.

These lawyers are specialists in handling FELA claims, and are fully experienced in dealing with the trained railroad claim agents and railroad lawyers. They are also familiar with the railroad industry.

Most of these lawyers are SMART TD members and SMART TD PAC Platinum Club members who support all of the union's endeavors on legislative matters affecting SMART TD and its members. You should seek their counsel and advice at the earliest opportunity when you have a potential FELA case against a railroad.

You are not required to delay doing this because a claim agent or railroad official asks you to delay, or until a doctor releases you from treatment. You have a right to protect yourself and your family by making an appointment yourself or through your local union officers to see one of the designated legal counsel as soon as possible after your injury. The longer you delay, the greater advantage you may give to the railroad. The choice is yours.

These lawyers will talk with you and advise you of your rights without any charge whatsoever. In the event that you do retain them to handle your case for you, then you will enter into an agreement with them to be charged a reasonable contingency fee based upon the amount recovered for you.

SMART TD feels that injured railroad workers who are represented by designated legal counsel stand a much better chance of receiving more money for themselves and their families than those workers not represented by them.

Remember, a non-designated lawyer does not have any obligation to your union and is not answerable to the union. Great care should be exercised in the selection of your attorney.

Always remember that the railroad claim agent is just that – an agent for the railroad. Any designated legal counsel you select is YOUR agent, and their job is to represent you. They are on your side.

## *A word to spouses of rail workers*

All too frequently a railroad worker's spouse receives a telephone call that informs them that there has been an accident, and that their rail worker spouse is either gravely injured or dead. This sort of tragedy does more than break up a home and family. It causes financial and other hardships, and imposes the burden of being both mother and father and manager of the family finances.

In this regard, SMART TD is concerned that spouses who find themselves in this unfortunate position should be advised of what to do to safeguard their positions and to receive the service and assistance to which their spouse's membership in the union entitles them.

When railroad workers lose their lives on the job, railroad claim agents and officials may come to see the surviving spouse before or soon after the funeral. Remember that they are trained specialists working for the railroad. They have the benefit of railroad-hired attorneys. They sometimes ask the surviving spouse not to get legal advice which would place the railroader's family at the mercy of the railroad without competent legal help.

Spouses have a right to follow the suggestions set out at the beginning and end of this pamphlet to protect themselves and their children. Contact the local union officers immediately. They will help you collect any death benefits that may be due from insurance. They will help put you in contact with personnel at the RRB to obtain benefits. The local union officers, upon request, can help you make an appointment immediately with one of the designated legal counsel for advice and help.

You are not automatically entitled to any payment from the railroad on account of your spouse's death. You must make a claim and have evidence that the death was caused in whole or in part by negligence or fault on the railroad's part.

Proper evaluation of your claim requires a complete investigation under the direction of an experienced lawyer with knowledge of railroad operations and railroad law.

# Protect your job security

**U**nder SMART TD contracts with the railroad, you can only be disciplined or discharged for cause after a fair investigation at which you have the right to be represented by the union.

The railroad cannot discipline or discharge you for making a personal injury claim through a lawyer or suing in court on a personal injury claim.

The Federal Employers' Liability Act states in the United States Code Annotated (45 U.S.C.A. Section 60), as follows:

“Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than \$1,000 or imprisoned for not more than one year, or by both such fine and imprisonment for each offense: Provided, that nothing herein contained shall be construed to void any contract, rule, or regulation, with respect to any information contained in the files of the carrier, or other privileged or confidential reports.”

“Persons in interest” in the law includes the injured worker’s lawyer.

As an American citizen, you have a right to the protection of the laws which are written for your benefit.

SMART TD is ready to help you.

# How to protect your rights

**R**ailroad workers should follow these suggestions to protect their rights when injured on the job:

- 1. See your union.** Report the injury immediately to your local union officers and get their help. Collect all benefits under union agreements and federal laws.
- 2. See a doctor of your choice.**
- 3. See your own lawyer.** SMART TD designated legal counsel are available for advice and help. Protect your-self and your family. A complete list of designated legal counsel is available by clicking on the Designated Legal Counsel tile at [www.smart-union.org/td/](http://www.smart-union.org/td/)
- 4. Give no statement to a railroad claim agent unless required** by your book of rules or union contract. See your local union officers about any such requirements.
- 5. Protect your job security** through your local union officers.
- 6. Do not participate in a railroad investigation without union representation.**
- 7. Learn your rights.** Do not accept the railroad's advice or decision as to how much money you are entitled to receive without the advice of designated legal counsel.
- 8. Keep this pamphlet where it can be found** by your family in the event you cannot assist them.



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