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PREFACE

This pamphlet is to let you know that there is a law, an ACT of Congress called the “Federal Employers’ Liability Act,” in which you are or definitely should be interested.

The United States Supreme Court in a decision rendered on April 20, 1964 stated the following:

“Injured workers or their families often fall prey on the one hand to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other to lawyers either not competent to try these lawsuits against the able railroad counsel or too willing to settle a case for a quick dollar.”

This pamphlet is also designed to acquaint you with your rights given to you by Congress and the Supreme Court of the United States. We hope it will be of benefit to you and your family.

STRAIGHT TALK – TELLING IT LIKE IT IS

The purpose of this pamphlet is to let you know that in the event of your injury or death on the job, you or your family are covered by a Federal Law called the “Federal Employers’ Liability Act”. This Federal Law was enacted for the protection of you and your family by the U.S. Congress in 1908.

Much of what you will read in this pamphlet you will not like; however, it is based upon experiences of attorneys who are experts in F.E.L.A. law, court cases, Board awards, rules put into effect by railroads over the years over the objection of the Brotherhood Unions and documents the railroads have been forced to produce in litigation.

Part I deals with railroad company policy and attitudes when you are injured and not adequately able to support your family; or worse, when you have been killed in service. Part II in no nonsense terms tells you what you or your family can do to protect yourselves.

Since the enactment of the F.E.L.A., the nation’s railroads, through their *claim, legal and medical* departments, have continuously and systematically, by any ethical or unethical means, attempted to deny the injured or families of deceased railroad employees the “substantial” rights given to them by Congress.

PART I

YOUR INTEREST vs. THE RAILROAD'S INTEREST ONCE YOU HAVE BEEN INJURED OR KILLED ON THE JOB

This much is certain, the minute you are injured or killed on the job, you and your family's interest and the interest of the railroad become absolutely opposed to each other. Your interest as an injured or deceased employee is to protect you and your family's rights under the F.E.L.A. by collecting from the railroad every dollar that the law allows.

The interest of the railroad is to see to it that you or your family collect as little as possible. The railroad is not going to pay you or your widow and children what the law requires unless it is forced to do so. Furthermore, to protect its interest, the railroad has on its payroll *claim agents*, *lawyers* and *company doctors* throughout the system. As you can see, there is no generosity in this business.

THE ROLE OF THE CLAIM AGENT

In the event of an injury or death, the first person you or your widow will meet concerning "compensation" is the "friendly" claim agent. His or her first job is to get immediate "control" over you or your widow. The obvious reason for this is that the railroad does not want you or your widow to seek legal advice from a Brotherhood approved attorney concerning the Federal Employers' Liability Act.

In the event of your death, the claim agent will most likely show up at the funeral home, making such statements as "I knew him well" – "Everyone at the railroad thought so much of him" – "Don't worry about a thing, the railroad will take care of you and the children" – "Just trust me to take care of everything" and "By the way, you won't need a lawyer because he will charge a percentage of what the railroad will give you anyway." Obviously, these statements are made in an effort to keep your widow away from a Brotherhood attorney who will protect your rights.

In the event of injury on the job, the "control" over you is managed in various ways. Some of the approaches are as follows: (1) "You and I are both railroad workers and you won't need a lawyer because I will treat you right"; (2) "I, of course, will take care of your medical bills"; (3) "I will take care of your full pay while you are off work"; (4) "Since you are able to get around, just show up at work and sit around and you will be paid in full"; (5) "Your doctor tells me you are doing just fine and thinks you will have a full recovery"; and (6) "Jobs are sure hard to find these days."

These are just a few of the subtle ways the claim agent seeks to get you under his "wing." However, the truth of the matter is that the minute you are injured, a whole battery of highly trained men and women go to work on your case for the railroad to develop, by investigation, those facts which help the company and hurt you; to take photographs which will show a situation favorable to the railroad and unfavorable to you; to look into the law to find cases which will help the railroad

and hurt your case. Often the railroad will hold an investigation and try to blame the injured employee for the accident.

While all of this is going on, the claim agent is saying, “You don’t need a lawyer- the company will be fair with you. Why split what you’re going to get with a lawyer?” That is not an uncommon statement. Everyone who has to deal with a claim agent will hear it sooner or later. But when a claim agent asks that question, who do you suppose he is really thinking about, *you or the railroad company*? Is he really trying to save money for *you or the railroad company*? The truth of the matter is, the railroads do not want you to see a lawyer. They know that proven statistics show that you will receive from five to ten times more the amount for your claims if you retain an attorney who is an expert in F.E.L.A. cases. The railroad company will consult its own lawyers every step of the way. *The company will tell you that you don’t need a lawyer, but have you ever heard of a railroad firing all of its own lawyers?*

THE ROLE OF THE LEGAL DEPARTMENT

The legal department, under orders of the railroad management, serves essentially two functions concerning injured or deceased employees. The first is to direct, supervise and dictate policy to the Claims Department. The second is to attempt to lessen or virtually do away with your “substantial” rights given to you by the United States Congress in 1908. Since we have already discussed briefly the role of the claim agent, which is a large part of the law department’s first function, let us direct your attention to the legal department’s second function.

The law department’s second function can be divided into two sub-functions in its effort to deny you access to the courts of our great country where you can secure an adequate and reasonable settlement or verdict should your case have to be tried before a jury.

The first sub-function is court decisions and the second sub-function is proposing and lobbying for state and federal legislation, both of which can greatly affect your right as to where your case can be tried.

Initially, in 1908 when the F.E.L.A. was enacted by congress, the injured employee could only file his case where the railroad had its “home office.” Congress, realizing that this was an injustice, amended the Act (F.E.L.A.) to include a provision under which the injured employee could also file his case where the *cause of action arose* (where the accident happened or where the railroad is *doing business* (where the tracks run)). This important amendment, which gave real meaning to the intent of the F.E.L.A., provides for the protection of railroad workers and their families, and has been under constant attack by the railroads ever since.

The railroads in the past 100 years in an attempt to defeat the “substantial” right of the injured employee to choose his court or, in fact, to have access to any court at all, have employed the following methods; (1) contended these cases burden interstate commerce – the railroads lost; (2) used state court injunctions to deny you the right to the court of your choice – the railroads

lost; (3) lobbied in Congress again to limit your choice of court – the railroads lost; (4) used illegal contracts of employment to limit your choice of court – the railroads lost; (5) issued unlawful work rules to limit your choice of court – the railroads lost; (6) tried to disbar the Brotherhood approved attorneys who are experts in F.E.L.A. cases – the railroads lost; (7) tried to stop the Brotherhood Unions, who have fought this battle for their membership for over 100 years, from representing their members when they have been injured or killed in railroad service – the railroads lost.

THE ROLE OF THE MEDICAL DEPARTMENT

Like the claim and legal departments of the railroads, there is also a medical department. The medical departments are usually located at the corporate headquarters of the railroad. The head of this department is called the “Chief Surgeon” or the “Chief Medical Officer” or the “Medical Director.”

The function of the head of the medical department, insofar as on-the-job injuries are concerned, is to work hand and glove with the claim and legal departments and the management of the railroad. While the medical department can recommend that you be returned to work after an injury, if you do not avail yourself of your Union representative or a competent F.E.L.A. lawyer, or both, the final decision will rest with the supervision and management of the railroad. This certainly places the injured employee at the mercy of the railroad and, as you know, due to mergers and layoffs now and in recent years, the railroads are looking for any way possible to get rid of employees in all crafts.

In addition to the corporate medical department at the “home office,” the railroads have a network of doctors throughout the system. These doctors are normally paid on a per case basis but, nonetheless, they are paid by the railroad and their loyalties are with the railroad concerning your health and your work status. Without a doubt, they are under the “control” of the claim department and supervision.

If you are injured on the job, supervision and/or the claim department will tell you that you have to go to the company designated doctors for treatment or the railroad will not be obligated to pay the bill. This, of course, is not true. You have a right under the F.E.L.A. to see your own person doctor or any other doctor *you* choose and the railroad and/or the insurance company will, under law and/or contract, be forced to pay for the services rendered to you.

Some working agreements require that after being off work a certain number of days or months because of an on-the-job injury, the railroad can have you reexamined before returning to service. You should consult your Union representative as to the existence and terms of the agreement.

PART II

WHAT YOU OR YOUR FAMILY SHOULD KNOW AND DO TO PROTECT YOURSELF IN CASE OF YOUR INJURY OR DEATH

THE LAW

When a railroad employee is injured or killed at work, he or his survivors come under the protection of a law of the U.S. Congress known as the Federal Employers' Liability Act. Under this law, he or his survivors' claim is brought in a state court or a U.S. Federal Court, whichever suits his conveniences or purpose, and they have an absolute right to a trial by jury.

The right of a worker to choose the place and court where he brings his claim is an important right. Generally, the law gives him the right to sue in the courts located in the larger cities where the jury awards are adequate and more reasonable than in rural communities. In addition, injured workers who are members of minority groups will receive equal treatment in the larger cities.

A railroad employee is entitled to recover damages from his company under the F.E.L.A., if the following facts exist:

1. When the railroad he works for is engaged, even in the smallest part, in interstate commerce, that is, it either runs across state lines or handles interstate freight.
2. When the injury or death to the employee is the result, in the whole or in the part – even the slightest – from the negligence (carelessness) of any officer, agent or employee of the railroad, or by any defect in the cars, engines, appliances, machinery, track, roadbed, or any other equipment of the railroad.

The railroads, under the law, have a duty to provide a safe place to work for their employees. They must also provide safe equipment, tools and proper working conditions for them. If the railroad fails to take these safety measures, or if the employee is injured or killed through the negligence of any other employee, the railroad is held responsible. This means that the railroad is liable to the work or his survivors for all injuries and damages or his death.

Even if the injured or deceased railroad employee was at fault to some extent, this does not defeat the claim entirely. He or his survivors will still win the case if the attorney can show that the railroad, or any of its employees, or its equipment, or his working conditions were, in whole or in part – even the slightest – responsible. Any negligence of the employee, where it exists, can only be used by the railroad to reduce the amount of money he or his survivors will receive. In certain types of cases (Safety Appliance Act and Boiler Inspection Act violations), the negligence of the employee is not a defense for the railroad at all and he or his survivors will collect the full amount of damages.

DAMAGES – INJURY OR DEATH

INJURY

In an injury case, the railroad employee is entitled to an award for each of the following elements of damages:

1. The nature, extent and duration of the injury.
This means that he is entitled to a money damages award for the type of injury. (for example, a loss of a limb.) The extent of the injury means whether or not the injury is permanent in nature.
2. The disability and disfigurement resulting from the injury.
This means that he is entitled to an award for the amount of disability he has and for any scarring or other type of injury which has changed the appearance of any part of his body.
3. The aggravation of any pre-existing ailment or condition.
This means that if you have a condition or ailment which predated your accident but which because of the accident, in whole or in part, has been aggravated, you would be entitled to a money award for this.
4. The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injury.
This, in itself, can be a substantial award where the injured employee has suffered a permanent disabling injury.
5. Reasonable expenses of medical care, treatment and the services received and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future.
This means that the injured employee is entitled to all medical bills in the past or any medical bills he will have as a result of his injuries for the rest of his life.
6. The value of earnings lost and the present cash value of earnings reasonably certain to be lost in the future.
This means that if the injured employee is totally disabled, he would be entitled to his wages from the time of his injury up to and including such time as he would have retired from the railroad. If he is not totally disabled, he is entitled to his wages that he lost on a partial basis and that he will earn on a partial basis lost up to and including his time and wages.

DEATH

In the unfortunate event of the death of a railroad employee, the wife and children, or in the event of a single railroad employee, his next of kin, are entitled to an award for each of the following elements of damage proved by the evidence:

1. The pain and suffering experienced prior death.
This means that if the decedent suffered conscious pain and suffering because of his injuries before death, then an award of damages must be made to include an amount that would be fair and reasonable compensation for such pain and suffering.
2. Reasonable expenses of medical care; treatment and services received.
This means that the survivors are entitled to payment for all of the medical bills prior to death.
3. The value of any money loss suffered by the survivors and any money loss reasonably certain to be suffered in the future by reason of the death of the railroad employee.
This means the money value of all benefits contributed to each survivor including money, goods and services. Consideration must be given to what he was earning and what he would have been likely to earn in the future in view of his earnings capacity, his age and life expectancy at the time of his death.
This also includes an amount to compensate for the money value of any loss of care, attention, instruction, training, advice and guidance he would have been likely to give to his minor children.
4. The money loss which he otherwise would have been entitled to after retirement from the Railroad Retirement Board had he worked out his normal life expectancy for retirement.

LENGTH OF TIME YOU HAVE TO FILE YOUR CLAIM WITH THE STATE OR FEDERAL COURT

The legal term is called the “Statute of Limitations.” In cases arising under the Federal Employers’ Liability Act, the statute of limitations is *three (3) years from the date of the accident.*

There are incidents, such as exposure to chemicals, where the employee does not know that he has been injured until years later. The statute of limitations in these incidences is three (3) years after the employee *has reason to know* that he has been injured. This is called the “Discovery Rule” and applies in most states.

As we have already discussed in this pamphlet, the railroad, the minute you are hurt, has begun to investigate your case on its behalf. Thus, it seems reasonable that the only way you can protect yourself is to at least consult with an approved Brotherhood attorney as soon as possible.

PRACTICAL “POINTERS” ABOUT YOUR RIGHTS UNDER THE F.E.L.A.: NO STATEMENT – WRITTEN OR ORAL

Right after an accident, many railroads try to get the injured employee to sign a statement or give a recorded statement. Experience shows that the employees frequently sign a statement or give an oral recorded statement either without reading it or without understanding the “trick wording” with which such “statements” are loaded. Such “statements” often include weasel-words to prove that the accident was not the fault of the railroad or any of its employees, but rather was the fault of the injured man. Such “statements” often also include hidden phrases which describe the railroad worker’s injuries as not serious.

Do not make any statements either orally or in writing, as to how the accident occurred or concerning the nature of the injuries until such time as you have been fully advised by your attorney.

Most union agreements with the railroads specifically provide that an employee is required to fill out a so-called “accident report.” This “accident report” is to be filled out by the injured employee and not by his foreman, claim agent or other officer of the railroad. If you have any difficulty in filling out this form, you should at once contact your union representative who will either aid you in filling out such form or provide you with other assistance in getting it filled out properly. Many claims have been defeated or sharply reduced in the amount paid because injured railroaders have given written or oral statements or filled out accident reports which they have not read nor have properly understood.

DO NOT ALLOW THE RAILROAD TO PREVENT YOU FROM CONSULTING A BROTHERHOOD APPROVED LAWYER – IT IS AGAINST THE LAW

Some railroad men hesitate to consult a lawyer about their claim. They have been led to believe the company can put them out of service or discriminate against them in other ways because they have exercised their right to consult and engage a lawyer to press their claims. This is false and a federal criminal offense.

The fact is that the U.S. Federal Employers’ Liability Act forbids the carriers to engage in such practices. The Act is very clear and strong on this point. The Act spells out the legal right of the injured railroad workers to get the advice of a lawyer.

The Act provides specifically that:

“Whoever, by threat, intimidation, order, rule, contract, regulation or device whatsoever, shall attempt to prevent any person from furnishing... such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing such information to a person in interest, shall, upon conviction thereof, be punished, by a fine of not more than \$1,000 or imprisonment, for not more than one year, or both such fine and imprisonment for each offense.” (Person in interest in the law above quoted refers to your lawyer.)

Advice and counsel of a lawyer are the railroad worker’s best guarantee that his claim will be properly evaluated, handled and presented. As a result, the largest payment or settlement will be obtained. A consultation with a Brotherhood approved lawyer is always free.

**CONSULT A SPECIALIST IN THE FIELD IF YOU OR YOUR FAMILY IS IN
NEED OF AN F.E.L.A. ATTORNEY**

All the railroad employees are covered by the Federal Employers’ Liability Act and belong to one of the unions. All of the unions, of course, have Local or District Chairmen or General Chairmen. It is one of the functions of these officers to see to it that an injured employee or the family of a deceased employee are properly advised of their rights concerning the Federal Employers’ Liability Act.

The Grand Lodge of most of the unions has appointed law firms throughout the United States which specialize in Federal Employers’ Liability Act cases. These law firms are either referred to as “regional counsel” or “approved attorneys” and the Supreme Court of the United States has approved this system, the purpose of which is to see to it that the employees and their families are properly advised of their rights.

If you are injured or your family is in need of assistance because of your death; contact, or have your family contact your Local Chairman or General Chairman and he will advise you on how to proceed concerning the Federal Employers’ Liability Act.

WHEN YOU ARE INJURED

Railroaders should keep in mind the following rules:

1. Get the names and addresses of all persons who saw the accident and the names and addresses of all your crew or the gang in which you work.
2. Report the accident and injury immediately to your Local Chairman or your General Chairman
3. Do not give any statements, whether written or oral, to the railroad.
4. If your agreement requires you fill out an accident form, be properly advised concerning this form as stated to you earlier in this booklet.
5. Know your rights. Do not accept the railroad's advice or decision as to how much money you are entitled to receive.
6. Consult a *Union Approved Attorney* for advice about your rights. Call the toll-free number of the Pratt & Tobin, P.C. law office for free consultation.

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