

HILDEBRAND MCLEOD & NELSON LLP

REPRESENTING INJURED RAILROAD WORKERS SINCE 1926

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FELA PROTECTED STATEMENTS

IT IS A CRIME FOR THE RAILROAD TO TAKE ACTION AGAINST YOU FOR GIVING A STATEMENT:

- The Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51, et seq., was passed by Congress 100 years ago to provide a remedy to railroad workers injured in the course and scope of their employment.
- In 1939, Congress amended the FELA by adding 45 U.S.C. § 60 ("Section 60"), **making it a crime** for the railroad to take action against a railroad worker who provides a statement to an FELA attorney:

"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..."

CONGRESS EXPRESSLY INTENDED TO PROTECT RAILROAD WITNESSES FROM RETALIATION:

- "When an employee is injured, the claim agent promptly endeavors to procure statements from all witnesses to the infliction of the injury, takes photographs, measurements, and obtains all available information considered necessary to protect the railroad company against a possible suit for damages. On the other hand, the claimant may be seriously handicapped in his attempt to procure the information necessary to the determination of the question of liability. For example, a substantial number of railroads subject to the Employers' Liability Act have promulgated rules which prohibit employees from giving information concerning an accident to anyone excepting certain specified company officials and claim agents. The purpose of the amendment under consideration is to prohibit the enforcement of such rules and permit those who have information concerning the facts and circumstances of a personal injury to give statements to the injured employee or his dependents, or to someone authorized to represent him or them." S.Rep. No. 661, 76th Cong., 1st Sess. 5 (1939).

COURTS HAVE HELD THAT YOU MAY NOT BE DISCIPLINED FOR GIVING A STATEMENT:

"Section 60 prohibits a railroad from disciplining or attempting to discipline an employee for furnishing information to an FELA plaintiff. Thus, any disciplinary investigation held solely for the purpose of punishing an employee for such conduct is violative of this statute...the disciplinary procedure not only violates the mandate that an employer refrain from disciplining an employee for furnishing information, it also becomes a device the "effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest." *Hendley v. Central of Georgia Railroad*, 609 F.2d 1146.

UNDERSTANDING YOUR RIGHTS UNDER FELA IS THE FIRST STEP IN PROTECTING YOUR RIGHTS.

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