Schlichter Bogard & Denton

IN THIS ISSUE

Volume 1, Issue II of SB&D's Railroad Injury Newsletter

Welcome to Volume 1, Issue II of Schlichter Bogard & Denton's newsletter exclusively covering railroad-related topics.

This quarter, attorneys from our nationally recognized Railroad Injury team tackle important questions related to railroad workers' rights under the FELA and the 121-year-old railroad Safety Appliance Act ("SAA").

We hope you enjoy the second issue of the SB&D Railroad Injury Newsletter. As always, we are here to answer any questions you may have: 800-USE-LAWS | railroad@uselaws.com

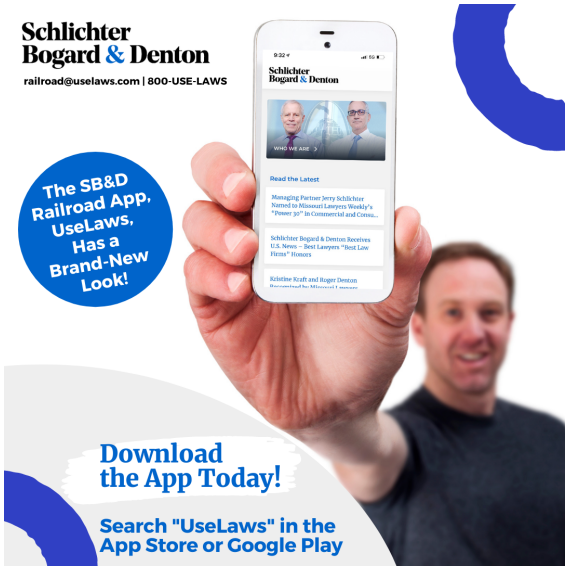
Sincerely,

Jerry Schlichter & Nelson Wolff

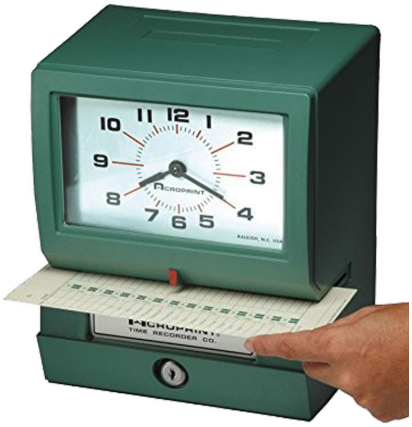
Have You Heard? The SB&D Mobile Application Has A Brand-New Look!

Our new and improved mobile application is now available on iPhone and Android mobile devices. Search 'UseLaws' in the App Store or Google Play to download the app today.

Access the latest news, sample injury report forms, and critical information about railroad workers' rights, contact our office, and more—all from the UseLaws mobile application!



Do I have to be "clocked in" for the FELA to apply?



by Jon Jones, Associate

The Federal Employers' Liability Act ("the FELA") (45 U.S.C. §§ 51-60) requires the railroad to provide employees with reasonably safe working conditions. While some may think this only applies to a worker if injured while "clocked in" at their job, the scope of the FELA in fact extends to some injuries that occur "off the clock."

Railroad workers are protected while engaged in activities incidental to their job duties, even if technically "off the clock."

Common examples of times when an employee is "off the clock" but still protected by the FELA include:

- when lodging at a company-assigned hotel during a work trip;
- when being transported by a vehicle arranged by the railroad to assigned lodging or to/from a company-assigned work site; or
- when on company property before or within a reasonable time after the work day is over, such as walking to a depot from your car that was parked in a company parking lot.

For example, a railroad can be held liable for injuries caused by unsafe conditions at a hotel where an employee is staying for work purposes, or careless driving by the driver of a company-hired transport van—even if the employee is injured when he or she is not "clocked in."

During these times, an employee is still engaged in activity necessarily incidental and sufficiently related to his or her job duties to be considered within the scope of his or her employment. For example, when employees on a work trip are using lodging provided by the railroad during a layover, it is for the purpose of preparing themselves for the next day of work, including rest and recuperation. Accordingly, they are still acting within the scope of their employment and therefore covered by the FELA.

(Cont.) Courts have distinguished between this type of covered activity and non-work activities undertaken for a private purpose, like going for a recreational jog or walking to a movie theater, which would not be covered by the FELA.

In short, you should not automatically assume you cannot be compensated for an injury just because it occurs before or after you clock out. The important issue is whether you were engaged in an activity sufficiently related to your railroad work such that it is considered to be within the scope of employment. If you are injured while doing an activity related to your work or an activity requested or controlled by the railroad, you may be entitled to compensation under the FELA.

If you are injured but unsure whether your injury is covered by the FELA, it is important that you consult with an experienced railroad attorney who can help you assess whether you have a claim.

If a contractor caused my injuries, am I protected under the FELA?

by Scott Gershenson, Associate

In our last newsletter, we discussed how the Federal Employers' Liability Act ("the FELA") protects injured railroad workers and allows them to recover money damages after experiencing an on-duty injury, so long as the railroad was at fault (negligent) in causing that injury. But what about a railroad worker's injuries are caused a railroad contractor?

Today, railroads are hiring an increasing number of contractors to undertake work that was previously performed by individuals actually employed by the railroad.

For example, railroads now commonly hire transport van/taxi companies to shuttle railroad employees to and from work from railroad terminals or company-arranged lodging, which is another contractor. These transporters and hotels are considered contractors of the railroad. Many workers incorrectly think the railroad is not responsible for injuries that happen at these hotels or during van transport. Fortunately, this is not the case. The protection afforded by the FELA does indeed cover such injuries because the contractors are considered "agents" of the railroad. If the contractor fails to provide a safe environment, both the contractor and the railroad can be held responsible.

For instance, if a railroad employee is being transported by a cab company that the railroad hired, and the cab driver goes through a red light and causes a collision and injuries to the railroad employee passengers, then they have a claim against the railroad under the FELA and a claim against the cab company for negligence.

Even though the cab driver was the primary cause of the injury, the railroad has a responsibility to provide a safe workplace to its employees, and that extends to cab rides performed by contractors.

(Cont.) Not only can the railroad be held responsible for failing to provide a safe workplace, it can also be liable for failing to hire a safe driver. Railroads typically hire low cost contractors who sometimes fail to invest in safety. As a result, many transport companies hire drivers that are not appropriately trained and lack professional driving experience.

It is worth noting that railroads typically have an agreement with contractors (called an indemnification agreement) that requires the contractor to carry liability insurance and to reimburse the railroad for any liability costs.

It should also be noted that the railroad will not be responsible simply because you were injured while riding as a passenger in a transport vehicle, IF the incident was caused by another motorist, such as someone who drives drunk and crashes into the transport van. And, like injuries sustained while working on railroad property, you must still prove that your damages were caused by the unsafe conditions. Those damages can include wage loss, medical bills, disability and disfigurement.

Claims involving railroad contractors can be difficult to navigate alone. These companies have a team of claim agents and lawyers who are contacted immediately after a reported injury incident and will have a head start investigating your case and protecting their assets. The law firm of Schlichter Bogard & Denton has successfully tried and also settled out of court many cases involving injuries caused a contractor's negligence. If you have any questions, contact one of our team members, and we will be happy to speak with you.

This 121-year-old act is keeping railroad workers safe. Do you know the eight safety features that all cars and locomotives must include under the Railroad Safety Appliance Act?

by Nelson Wolff, Senior Partner

In 1893, Congress enacted the railroad Safety Appliance Act ("SAA") to provide a set of federal safety standards for trains used on railroad lines across the United States. At the time, railroad workers had one of the most dangerous jobs in the nation, and the SAA was designed to decrease rising workplace injuries and deaths on American railroads by requiring that each locomotive and/or railcar be equipped with certain basic safety features, including automatic couplers and air brakes.

The SAA took effect in 1900 and has been credited with a sharp drop in injuries in the early 20th century. According to the article, "Lives and Limbs Saved by Automatic Couplers," published in 1910, the *Railway Age Gazette* found that between 1893 and 1908, deaths decreased by about one-third even as the number of trainmen increased significantly during that same time.

Railroad Deaths and Injuries 1882 - 1892*

YEAR	KILLED	INJURED	KILLED PER MILLION TRAIN MILES
1892	627	2,407	.98
1891	790	2,685	.95
1890	806	2,812	1.015
1889	492	1,772	.681
1888	667	2,204	.968
1887	656	1,946	1.018
1886	416	1,419	.73
1885	307	1,530	.548
1884	389	1,760	.718
1883	473	1,910	.879
TOTAL	5,623	20,445	.8424

*Source: *Railroad Gazette*; 8 Feb. 1883.

(Cont.) The SAA's original safety requirements remain in effect today with some modification over the years. The current version requires the following **eight safety features** for all cars and locomotives placed in service on railroad lines:

1. automatic train couplers that can be coupled by impact and uncoupled without a worker stepping in between the ends of cars;
2. secure sill steps;
3. efficient hand brakes;
4. ladders and running boards must be secure and handholds or grab irons must be available on the roof at the top of each ladder;
5. except as otherwise provided, secure handholds and grab irons at the ends and sides of cars;
6. drawbars that meet height requirements as prescribed by the Secretary of Transportation;
7. enough power brakes or train brakes for the engineer to control the train's speed without using common hand brakes for that purpose; and
8. at least 50 percent of all vehicles (cars and locomotives) in a train must be equipped with power brakes.

Although these safety laws have successfully reduced injury events, they still happen when a railroad fails to provide adequate train equipment. For example, if a pin lifter does not work properly and a trainman needs to go between two railcars to open a knuckle, the condition of the railcar violates the SAA. If a handhold breaks while climbing on or around a railcar or locomotive, the SAA is violated. Such a violation of an absolute duty and creates strict liability negligence on the part of the railroad. In such cases, the railroad's reasonable care to prevent the failure is not a defense. Importantly, the railroad's liability can not be reduced even if the worker was contributorily negligent if the injury happened while the equipment was being used. That liability does not apply if the equipment is being inspected or repair at a maintenance shop.

If you are injured after using defective equipment, it is critical to contact an experienced railroad attorney who can help evaluate whether you have a compensation claim under the SAA or one of the other railroad safety laws designed to protect railroad employees from dangerous conditions.