

PREPARING FOR A FORMAL INVESTIGATION
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I. INVESTIGATE ISSUES AND DEVELOP THEORY OF CASE

A. Identify Issues for Formal Investigation

- 1. Review "charge letter"**
- 2. Review collective bargaining agreement**
- 3. Review work rules and bulletins**
- 4. Identify provisions under contract that claimant complied with on date of incident**

B. Develop Theory of Claimant's Position

- 1. What happened through claimant's eyes**
- 2. Evidence/Arguments must be Credible**
 - Avoid inconsistencies**
 - Front the harmful information**

C. Develop Theory of Railroad's Position

II. DEVELOP FACTS AND EVIDENCE OF CLAIM

A. Review Work Standards/Practices at Location

- Show Historical Development of Practice**

B. Witnesses

- 1. Interview & Prepare Claimant/Witness**
- 2. Expert Witness**
 - Union officer with extensive experience**
 - Establish his qualifications**
 - "Offer" Expert and his Conclusions**

3. **Interview Carrier's Witnesses**
 - **Did Hearing Officer participate in meeting?**
 - **Did Hearing Officer discuss matter with Carrier officials prior to investigation?**

C. Documents and Records

1. **Personnel Records**
2. **Carrier's Documents**
3. **Medical Records**
4. **Safety Reports**
5. **Photographs and Video Tapes**

D. Prepared Statements and Affidavits

1. **Introduce at Investigation**
 - **Have short and positive statements in affidavit**
 - **Notarized to help credibility**

E. Written Requests to Railroad

1. **Make requests to railroad in advance of investigation**
2. **Detailed request set forth in letter**

III. GAME PLAN FOR FORMAL INVESTIGATION

A. Organize Check List

1. **Seating location**
2. **Documents to present at hearing**
3. **Arguments to be made**

B. Opening Statement

1. **Statement of Facts/A Picture of what Occurred**
2. **A Compelling Story - Chronological Order**
3. **Made before or after Carrier's statement**

C. Exhibits and Evidence To Be Introduced

1. **Numbered Exhibits**
2. **Offer of Proof for Record**
3. **Offer your Expert Witness**

D. Objections

- 1. Check list of objections**
- 2. Make the objection before claimant answers**
 - “Objection – Hearsay.”
 - “Objection – Speculation. No foundation in Record.”
- 3. Use objections to break the flow of inquiry**

E. Preparation for Cross Examination

- 1. Conduct by Topic of Inquiry That You Want**
 - Provide information to the Arbitrator
- 2. Take Witness to Topic You Want to Challenge**
 - “Now, I would like to talk to you about the working conditions in the yard.”
- 3. All Questions lead to Closing Argument**
- 4. Motive or Bias Against Claimant/Union**
 - Why is witness lying?
 - “Thank you for your answer Mr. MTO/MSO, but my question is: Why did you.....”

F. Closing Argument / Basis of Appellate Record

ASK FOR SHORT RECESS SO YOU CAN PREPARE

- 1. Introduction**
- 2. Parties/Scene/Weather/Equipment**
- 3. Practice and Procedures**
- 4. Date and Time**
- 5. Circumstances – What Happened**
- 6. Circumstances – Rules Compliance**
- 7. Corroboration by Witness**
- 8. Impeachment of Carrier’s Position**
- 9. Refute Carrier’s Position**
 - Highlight Carrier’s Violation of Rules/Regulations
- 10. Damages – For the Arbitrator to Make Whole**

**G. Federal Rail Safety Act (49 United States Code, Section
20109)**

**“The Implementing Recommendations of the 9/11 Commission
Act of 2007”**

- <http://www.osha.gov/dep/oia/whistleblower/acts/frsa.html>

**QUESTIONS TO BE ASKED AT FORMAL INVESTIGATION
CONCERNING HARASSEMENT AND INTIMIDATION AND
FELA CLAIM FOR PERSONAL INJURY**

What written plans, policies, or strategies have been implemented by (RAILROAD'S) management to reduce FRA reportable injuries?

What written plans, policies or strategies have been discussed by (RAILROAD) management to reduce FRA reportable injuries?

Have you participated in these discussions?

If so, when did this meeting take place?

Where did this meeting take place?

Who was present?

What was said?

Are you aware that Mr. CEO's annual compensation/bonus plan include an amount based upon the reduction in reportable personal injuries and lost work time on the system as measured by FRA standards?

In addition to Mr. CEO receiving a bonus for the reduction in reportable personal injuries and lost work time in the system, is there any similar compensation/bonus plan for line officers like yourself?

What are the provisions of the bonus plan?

What benefits do you receive under the plan?

Which line officers at this location participate in this plan?

Does the (RAILROAD) have a policy to initiate a disciplinary investigation for every reportable injury?

Under what circumstances does the (RAILROAD) initiate a disciplinary investigation when injury has been reported?

To the best of your knowledge, have you ever heard any railroad supervisor stating to an injured employee that if an injury is reported a disciplinary investigation may be held?

Are you aware of any railroad supervisor stating to a union representative that if an injury is reported a disciplinary investigation may be held regarding a rule violation?

Isn't it fair to say that union employees on the RAILROAD who are injured while on duty believe they will be charged with a rule violation, such as filing a late accident report or being "unsafe" in causing their accident?

Isn't it true that the perception among union employees on the (RAILROAD) is that they will be investigated and likely disciplined if they are involved in an accident/injury?

Have you ever discussed the issue of harassment and intimidation as it relates to the reporting of on-duty injuries with other line supervisors?

If so, when did this meeting take place?

Where did this meeting take place?

Who was present?

What was said?

At any time have you discussed the reporting of on-duty injuries with employees under your supervision?

If so, when did this meeting take place?

Where did this meeting take place?

Who was present?

What was said?

Are you aware of 45 USC Section 60 of the Federal Employers' Liability Act (F.E.L.A.) concerning penalty for intimidation?

Have you ever discussed the issue of incidents of FELA claims/lawsuits with other line supervisors?

If so, when did this meeting take place?

Where did this meeting take place?

Who was present?

What was said?

Have you ever discussed or raised any issue relating to FELA claims/lawsuits filed by employees as a result of on-duty injuries, directly or indirectly by reference, with members of the (union) under your supervision?

If so, when did this meeting take place?

Where did this meeting take place?

Who was present?

What was said?

Does any (RAILROAD) policy provide for the upgrade in discipline if there is a reportable injury? If so, why?

Isn't it fair to say that employees have been counseled by railroad management not to file on-duty injury reports?

Under what circumstances does the (RAILROAD) initiate a disciplinary investigation after an employee reports an on-duty injury?

CHECKLIST OF OBJECTIONS

A general list of some of the most common objections to be made at this formal investigation. Make objection as follows: “I object as to the form of the question.”

- Form of the question.
- Ambiguous question.
- The hearing officer has asked a leading question.
- Question assumes facts not in evidence.
- Compound question which calls for two answers from the witness.
- Lack of foundation in the record for the question asked by the hearing officer.
- The question calls for a hearsay answer from the railroad’s witness.
- The question has been asked and answered by the claimant.
- The answer was not responsive to the question.
- The question is irrelevant – beyond the scope of allowable discovery.
- The question calls for a narrative answer from the railroad’s witness.
- The question calls for prejudicial information from the claimant.
- The question is argumentative.
- The document speaks for itself. (The document is the best evidence.)
- The question calls for [the railroad’s witness] to testify as to a legal conclusion, which he is not qualified to do.
- The question mischaracterizes the testimony of the witness/claimant.