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**“Will The Railroad Bad Order Me“**

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One of the issues that often concerns a railroad worker is whether a medical condition or a physical restriction will enable the railroad to “bad order” him/her and prevent further employment. In years past, this was a constant fear for engineers who developed high blood pressure or developed diabetes. When this happened the railroad would restrict the engineer to the yard or in some cases, completely bad order the engineer. A trainman who had a knee or hip replacement was often prohibited from returning to work because of the artificial joint.

However, these practices changed with the passage of the American’s with Disability Act, over twenty years ago. In 1990 a Federal Law was passed that made it unlawful for an employer to discriminate against an employee because of a disability, so long as the person can perform the “essential functions” of the job. Thus, under the ADA if an engineer has high blood pressure, but the condition is controlled with medication, it is unlawful for the railroad to bad order the engineer. If a trainman has a knee replacement and is returned to work with a 50 pound lifting restriction, it would be unlawful for the railroad to bad order the person, as lifting 50 pounds or more is a job requirement, but not an “essential function.”

Examples of the essential functions of a trainman include walking on ballast, climbing on cars and lining switches. However, repetitive heavy lifting is not an essential function of the job. Examples of the essential job functions of an engineer include the ability to distinguish the primary colors (red, yellow, green) and to have 20-40 vision, with or without corrective lens. Coupling hoses between engines is not an essential function of the job and thus a 50-pound lifting restriction would not prohibit an engineer from returning to his/her job.

The ability to return to work comes up a lot when an injury occurs. For example, if a trainman is hurt at work and has to undergo back surgery, there is usually a fear that the railroad will not allow the person to return to work.

But, under the ADA if the treating physician releases the person to return to work with no restrictions or with restrictions that do not prevent the person from performing the essential function of the job, the railroad will almost always allow that person to come back to work.

In fact, since the law was passed, I cannot remember a single employee that the railroad bad ordered after an injury, where the treating doctor gave a release to return to work. This is a great law for the worker. It has virtually eliminated those old fears that existed twenty years ago! Today, railroad employees are not indiscriminately disqualified from working just because they have a physical impairment.

In those rare cases where the railroad does try to bad order an employee, he/she has the right to sue to get their job back under the ADA. If you have a problem with disability discrimination, let us know. We can certainly help get you on the right track.



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