



## **PREPARING FOR A FORMAL INVESTIGATION**

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### **I. INVESTIGATE ISSUES AND DEVELOP THEORY OF CASE**

#### **A. Review Issues for Formal Investigation**

- 1. Charge Letter**
- 2. Collective Bargaining Agreement**
- 3. Operating 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. FACTS AND EVIDENCE FOR FORMAL HEARING**

#### **A. Review Work Standards/Practices at Location**

- Show Historical Development of Practice**

#### **B. Witnesses**

- 1. Interview & Prepare Claimant/Witnesses**
- 2. Expert Witness**
  - Union officer with extensive experience**
  - Establish his qualifications**
  - Offer of Proof**

**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 support credibility**

**E. Written Requests to Railroad**

- 1. Detailed written request to Railroad**
- 2. Requests to railroad in advance of investigation**

**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. Number Exhibits**
- 2. Offer of Proof for Record**
- 3. Offer 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 U.S.C. Section 20109**

**H. Rail Safety Improvement Act of 2008 49 U.S.C.**

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

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

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