

UNITED STATES DISTRICT COURT

DISTRICT OF _____

_____X

[PLAINTIFF NAME],

CIVIL ACTION

Plaintiff

NO.

VS.

[RAILROAD NAME]

Defendant

____, 2010

_____X

COMPLAINT

NATURE OF ACTION

1. The plaintiff _____ brings this action against the defendant for violations of the Federal Rail Safety Act, 49 U.S.C. Section 20109.

JURISDICTION

2. This Court has subject matter jurisdiction in this case pursuant to the Federal Railroad Safety Act, 49 U.S.C. Section 20109(d)(3) (FRSA).

PARTIES

3. The plaintiff is of _____, _____.

4. The defendant _____ is a railroad carrier providing railroad transportation, with a usual place of business in _____, _____.

FACTS

5. During all times herein mentioned, the defendant Railroad carrier engaged in interstate commerce by providing railroad transportation between the states of _____ and _____.

6. At the time of the defendant's FRSA violations, the plaintiff was employed by the defendant Railroad as a _____, and qualified as an employee within the meaning of 49 U.S.C. Section 20109.

7. On _____, the plaintiff was working as a _____ [describe pertinent facts]

__. As a result of [defendant Railroad's] conduct, the plaintiff suffered various economic harms as well as emotional distress and mental anguish.

FRSA CAUSE OF ACTION

__. The plaintiff adopts by reference and realleges each and every allegation set forth in paragraphs 1 through __ of this Complaint with the same force and effect as if set forth under this cause of action.

__. The plaintiff engaged in protected activity under the FRSA when he [list specific activities protected under the FRSA]

__. The defendant Railroad had knowledge of all the protected activities referenced above.

__. The defendant Railroad took adverse or unfavorable actions against the plaintiff in whole or in part due to his protected activities when it [list adverse or unfavorable actions taken by Railroad] In so doing, the defendant Railroad acted with

reckless disregard for the law and with complete indifference to the plaintiff's rights under the FRSA.

___ On _____, the plaintiff filed a FRSA Complaint with the Secretary of Labor's Region ___ OSHA Whistleblower Office. Exhibit 1. That was within 180 days from the date the plaintiff became aware of the defendant Railroad's intent to take adverse or unfavorable personnel action against him.

___ The Region ___ OSHA Whistleblower Office commenced its investigation, and the plaintiff fully cooperated with OSHA's investigation. However, OSHA did not issue a final decision within 210 days after the filing of the FRSA Complaint. The delay was not due to any bad faith on the part of the plaintiff.

___ On _____, OSHA's Whistleblower Office issued a Merit Findings and Order. Exhibit 2. However, that decision did not become final because on _____ the defendant Railroad filed objections to the Order and requested a hearing before an Administrative Law Judge. Exhibit 3. Accordingly, the fact the Secretary of Labor's Merit Findings and Order did not become a final decision was not due to any bad faith on the part of the plaintiff.

___ Pursuant to Section (d)(3) of the FRSA, the plaintiff has a statutory right to bring an original action in a United States district court for a jury trial regarding the Railroad's violations of the FRSA. 49 U.S.C. Section 20109(d)(3). On _____, the plaintiff filed with the Administrative Law Judge a Notice of Intent to File Original Action. Exhibit 4.

___ Pursuant to FRSA 49 U.S.C. 20109(d)(3), the plaintiff now is bringing this original action at law and equity for de novo review by the United States District Court of

the District of _____, which Court has jurisdiction over this FRSA action without regard to the amount in controversy.

WHEREFORE, in order to encourage employees to freely report all injuries without fear of any retaliation, thereby ensuring the Federal Rail Administration has the necessary information to develop and administer an effective rail safety regulatory program that promotes safety in every area of our nation's railroad operations, the plaintiff demands a Judgment under the FRSA for all relief necessary to make him whole, including but not limited to:

[list all appropriate remedies, for example]

- expungement of all references to disciplinary action related to _____;
- lost benefits with interest;
- lost wages with interest;
- compensatory damages for medical expenses incurred due to defendant's conduct;
- compensatory damages for economic losses due to defendant's conduct;
- compensatory damages for mental anguish and emotional distress due to defendant's conduct;
- the statutory maximum of punitive damages; and
- special damages for all litigation costs including expert witness fees and attorney fees.

PLAINTIFF DEMANDS TRIAL BY JURY.

By his attorneys,

By _____

