U.S. Department of Labor

Occupational Safety and Health Administration
The Curtis Center, Suite 740 West
170 South Independence Mall West
Philadelphia, Pennsylvania 19106-3309
(215) 861-4900
Fax: (215) 861-4904

February 25, 2013

Mr. Jeffrey S. Berlin
Sidley Austin, LLP
1501 K Street, NW
Washington, D.C. 20005

RE: Norfolk Southern Railway Company/Orr/3-6600-10-035

Dear Mr. Berlin:

This is to advise you that we have completed our investigation of the above-referenced complaint that William Orr (Complainant) filed against Norfolk Southern Railway Company (Respondent) on September 27, 2010, under the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20109. In brief, Complainant alleged that Respondent terminated him on June 25, 2010 in retaliation for reporting a workplace injury.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through her agent, the Acting Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region III, finds that there is reasonable cause to believe that Respondent violated FRSA. The Secretary of Labor, therefore, issues the following findings:

Secretary's Findings

Respondent is a freight railroad with approximately 20,000 route miles of track in 22 states and the District of Columbia. Therefore, Respondent is a railroad carrier engaged in interstate commerce within the meaning of 49 U.S.C. § 20109.

Respondent's predecessor, Erie Lackawanna Railroad, hired Complainant in 1973. Complainant continued with the company when Consolidated Rail Corporation ("Conrail") acquired it in 1976, and when Respondent acquired part of Conrail in 1999. Prior to his termination, Complainant worked in the position of thermite welder in Respondent's Pittsburgh Division. Therefore, Complainant was an employee of Respondent within the meaning of 49 U.S.C. § 20109.

Respondent terminated Complainant's employment on June 25, 2010. On September 27, 2010, Complainant filed a complaint with the Secretary of Labor, alleging that Respondent retaliated against him by terminating his employment in violation of FRSA. As the complaint was filed within 180 days of the alleged adverse action, it is timely. See 49 U.S.C. § 20109(d)(2)(A)(ii).

On May 17, 2010, shortly after 1:00 p.m., Complainant was involved in a three-vehicle accident in Sharon, Pennsylvania, while performing his work duties. Complainant was the driver of a 1996 International Navistar Truck owned by Respondent. His co-worker Donald Glista was a passenger in the vehicle. The accident occurred when a Chevrolet Silverado pick-up truck failed to stop for a red light and collided with a Ford Econovan, causing both the truck and van to strike Respondent's truck. Mr. Glista immediately called 911 for emergency services and thereafter called Mr. Eshenbaugh, his direct supervisor, to notify him of the accident.

The police arrived shortly thereafter. The driver of the Chevrolet truck was transported to the hospital via ambulance. When the police asked Complainant and Mr. Glista if they wanted to go to the hospital, they declined. Complainant and Mr. Glista told the police that they were a little injured, stiff and sore. They subsequently completed a police report. The report stated that Complainant and Mr. Glista sustained minor injuries and that "all [including the Ford Econovan operator] complained of minor pain in their shoulder areas from seat belt usage."

When Mr. Glista called Mr. Eshenbaugh, Mr. Eshenbaugh asked Mr. Glista if he and Complainant were alright. Mr. Glista said yes. Mr. Glista interpreted "alright" to mean they were not injured to the extent of needing an ambulance. Mr. Eshenbaugh was located approximately two hours from the scene of the accident, so he asked Robert Desko, an Assistant Track Supervisor, to go to the scene and get initial statements from Complainant and Mr. Glista. Mr. Eshenbaugh also called William "Craig" Webb, his immediate supervisor and Division Engineer, to inform him of the accident. Mr. Webb asked if Complainant and Mr. Glista were alright and Mr. Eshenbaugh said they were.

Mr. Desko arrived approximately 45 minutes after the accident was cleaned up. By that time, the police had left. Mr. Desko then asked Mr. Glista if he and Complainant were okay and Mr. Glista said they were. Mr. Desko also asked if they needed to go to the hospital and Mr. Glista told him no, he and Complainant were alright. Mr. Glista informed OSHA that he also told Mr. Desko that they were a little stiff and sore. Mr. Desko later stated at Respondent's investigative hearing that Mr. Glista told him that the accident "was just a bump."

Complainant sat inside Mr. Desko's truck and completed Respondent's accident report form, while Mr. Glista sat inside the truck involved in the accident. Mr. Desko remained with Complainant and Mr. Glista for at least 45 minutes before Mr. Eshenbaugh arrived. When Mr. Eshenbaugh arrived, he asked Complainant and Mr. Glista if they were alright. They said they were okay. It was raining, so Complainant, Mr. Eshenbaugh and Mr. Glista got into Mr. Eshenbaugh's truck to review the Respondent accident report. While reviewing the report, Mr. Glista said that he was starting to feel sore across his chest and that he was having some pain in his ribs from the seatbelt tightening. Mr. Glista said that he wanted to get checked out. Complainant told Mr. Eshenbaugh that he felt a tweak in his shoulder blades, that he was stiffening up in his shoulder blades and that he also wanted to get checked out. Mr. Eshenbaugh told Complainant and Mr. Glista that he thought they had said they were okay. Mr. Glista again said that he wanted to get checked out, stating that if he came to work the next day and told his supervisors he was

hurting, they would ask why he had not gone to the doctor the day before. Complainant stated that he did not want to take any chances and that he wanted to "cover his ass." Mr. Desko called Mr. Webb and informed him that Complainant and Mr. Glista wanted to go to the hospital. Mr. Eshenbaugh transported Complainant and Mr. Glista to the hospital.

At the hospital, a doctor examined Complainant, administered x-rays and prescribed an anti-inflammatory. His hospital release slip indicated that he was to be off work the next two days. When Complainant exited the hospital exam room, Messrs. Eshenbaugh, Desko and Webb, along with an assistant track supervisor named Bastien, were waiting for him with paperwork. Mr. Webb asked Complainant about his injuries. Mr. Webb informed OSHA that Complainant was very vague in his response. Complainant informed OSHA that Respondent's supervisors shoved some paperwork in front of him and told him to sign it. Complainant also informed OSHA that he signed the paperwork without reading it, that he did not have on his glasses and that he did not realize that the paperwork said that he could not work the next day. Mr. Webb also asked Mr. Glista about his injuries when he exited his exam room. In response, Mr. Glista gestured as though he was fastening a seat belt and told Mr. Webb that his ribs were hurting from the truck's seat belt. Mr. Glista signed the paperwork that Respondent's supervisors presented. Mr. Webb offered to drive Complainant and Mr. Glista home, but they declined. At Mr. Webb's request, Complainant and Mr. Glista provided written statements to Mr. Eshenbaugh about the accident.

Complainant and Mr. Glista returned to work the next day, May 18, 2010. At that time, Ben Taggart and Jim Rockney, both Assistant Division Engineers, questioned Complainant and Mr. Glista about the accident. Messrs. Taggart and Rockney informed Complainant and Mr. Glista that they could not drive Respondent's truck because it was being towed. They sent Complainant home because, unbeknownst to him, the doctor's note from his visit to the hospital excused him from duty. As a result, they sent Mr. Glista to work with another crew.

On or about May 25, 2010, Complainant received a letter from Mr. Taggart notifying him that he was removed from service pending a formal investigation on June 11, 2010. The investigation's focus was whether Complainant engaged in

> conduct unbecoming an employee concerning false and conflicting statements in that . . . [he] reported to the Police that [he] experienced minor pain in the shoulder from the seat belts. However, [he] subsequently told [Respondent] supervisors that [he] did not sustain any injury from the vehicle incident, but, upon arrival of Supervisor Eshenbaugh, [he] requested medical attention and ultimately alleged to have been injured in the vehicle incident.

Mr. Glista received a similar letter. Mr. Eshenbaugh later informed OSHA that he did not know what the charges against Complainant were and that he was told to stay out of it. Mr. Webb informed OSHA he was not consulted before the charges against Complainant were filed.

Respondent held an investigative hearing concerning the charges against both Complainant and Mr. Glista on June 11, 2010. Dave Griffith, Assistant Engineer for Respondent's Dearborn Division, presided over the hearing. Complainant and Mr. Glista were represented by T.J. Nemeth, a labor union representative. The hearing included testimony from Phil Merilli, Chief Engineer for Respondent's Northern Region; Messrs. Taggart, Desko, Webb, Rockney and Eshenbaugh; and Complainant and Mr. Glista. The bulk of the testimony from Respondent's management was provided by Mr. Taggart, who issued the letters to Complainant and Mr. Glista informing them of the charges and directing them to appear at the hearing.

Mr. Taggart testified that Complainant and Mr. Glista initially told Mr. Desko on May 17 (by phone) they were okay, told the police they had sustained minor injuries a few minutes later and later told Messrs. Desko and Eshenbaugh that they were okay until, at 3:15, they said they were sore and wanted to get checked out. Mr. Taggart and Mr. Webb stated that Complainant and Mr. Glista filled out "Form 22 Personal Injury Reports." They emphasized that neither Complainant nor Mr. Glista described any injuries. Complainant and Mr. Glista's "Form 11131 Reports of Employee Personal Injury/Illness/Incident," which Mr. Webb filled out at the hospital and about which Mr. Taggart also testified, show that, in the "Injury and Treatment" section, next to "Body Part," "left shoulder" is written for Complainant and "bruise on left side" is written for Mr. Glista.

Complainant and Mr. Glista testified that they did not recall personally reporting an on-the job injury to Respondent. Complainant testified that, to his knowledge, he did not know that he was submitting an injury report to Respondent. Mr. Glista also testified that, to his knowledge, he did not know that he was signing and submitting an injury report to Respondent.

Mr. Merilli testified regarding the results of an accident reconstruction analysis provided by Richard T. Hughes, P.E., of Hughes Engineering. The analysis concluded that, based on the weight of the vehicles involved in the accident and the likely speeds at which they were traveling at the time of the collision, the forces on Complainant and Mr. Glista did not cause them to sustain "seatbelt head/neck shoulder injuries." The analysis was based on the police report, a brief description of the incident by Mr. Merilli, Respondent's vehicle accident report, the weight of Respondent's truck, the statements of Complainant, Mr. Glista, Mark Lucy and Tom Giglio, and photos taken at the accident scene. Messrs. Lucy and Giglio were in a vehicle directly behind the truck that caused the accident. Mr. Lucy's statement indicated that the truck and van "got pushed into the Norfolk truck." Mr. Giglio's statement indicated that "both vehicles gently slid into the Norfolk Southern box truck." Neither Mr. Lucy nor Mr. Giglio, nor anyone from Hughes Engineering, testified at the investigative hearing. The remaining witnesses provided testimony of their accounts of the accident and subsequent events.

On June 25, 2010, the hearing officer, Mr. Griffith, informed Complainant in writing that he was terminated from service based on the investigation. Union representative Nemeth subsequently appealed the decision to Respondent's Director of Labor Relations, but the appeal was denied.

Prior to May 17, 2010, Complainant had never been disciplined from any of the railroads, and had never reported an accident or injury to NSR or its predecessors. During the investigative hearing, Mr. Eshenbaugh described Complainant as an honest, dependable employee.

On February 27, 2012, OSHA sent a letter to Respondent, along with the relevant evidence gathered in the investigation, and indicated that the agency's investigation to date demonstrated that there was reasonable cause to believe that Respondent violated FRSA and that reinstatement should be ordered. The letter gave Respondent ten days to provide additional evidence to support its position. OSHA then provided Respondent an extension of the time to present such evidence. On April 26, 2012, Respondent provided a statement in response to OSHA's letter but no additional evidence.

49 U.S.C. § 20109(a)(4) states that "A railroad carrier engaged in interstate or foreign commerce . . . may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done . . . to notify, or attempt to notify, the railroad carrier, or the Secretary of Transportation of a work-related personal injury or work-related illness of any employee."

Respondent contends that Complainant was not injured and did not engage in protected activity. It terminated Complainant's employment solely because Complainant made false and conflicting statements as to whether he was injured on May 17, 2010.[1] The evidence gathered thus far does not support Respondent's contentions.

Respondent asserts that Complainant was not injured as a result of the accident, based on the Hughes Engineering report. Richard Hughes's resume states that he is a professional engineer in several states and "has been retained to inspect hundreds of accident sites and develop cause and origin reports . . ." His three-page report concludes that the vehicles that ran into Respondent's truck were much smaller in weight and were not traveling any faster than 25 miles per hour. Mr. Hughes ultimately concluded that Complainant and Mr. Glista "sustained no seatbelt head/neck shoulder injuries due to this accident." Mr. Hughes, however, did not take into account any individual differences in body type, flexibility, conditioning or age among people subject to forces. Mr. Hughes also has no training or expertise in the fields of kinesiology, human biomechanics or orthopedics, or in any medical field. This calls into serious question whether he is qualified to opine on whether or not Complainant was injured as a result of the vehicle accident. Further, neither Complainant, nor his union representative at the investigative hearing, were able to cross-examine Mr. Hughes as he did not testify at the hearing.

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[1] Respondent also contends that Complainant's complaint is barred by the FRSA's election of remedies provision. Since the filing of the complaint, the Administrative Review Board has ruled that an employee is not precluded from pursuing his whistleblower rights under the FRSA because he filed a grievance and pursued arbitration under a collective bargaining agreement. See Mercier v. Union Pacific Railroad Co., Koger v. Norfolk Southern Railway Co., ARB Case Nos. 09-121, 09-101, ALJ Case Nos. 2008-FRS-004, 2008-FRS-001 (Final Decision and Order on Interlocutory Review, Sept. 29, 2011).

The evidence shows that Complainant was experiencing pain on May 17, 2010. Immediately after the accident, Complainant informed the police that he was a little stiff and sore. He told Respondent a few hours later that he felt a tweak in his shoulder blades, that he was stiffening up in his shoulder blades and that he wanted to get checked out. A physician subsequently prescribed pain medication for Complainant. Mr. Griffith, the investigative hearing officer, was unsuccessful in his efforts to get Complainant or Mr. Glista to admit that they were not feeling any pain that day. Therefore, a preponderance of the evidence demonstrates that Complainant suffered a work-related injury.

Respondent further asserts that Complainant did not engage in protected activity because he did not report a work-related injury or do anything that caused Respondent to perceive that he was reporting or attempting to report a work-related injury. Respondent points out that Complainant and Mr. Glista testified in the investigative hearing that, to their knowledge, they did not personally report an injury to Respondent, and that they did not understand the submission of their Form 22 forms to constitute the making of an injury report. Complainant did, however, verbally inform Respondent that he felt a tweak, was stiffening up in his shoulder blades and requested to go to the hospital to get checked out. In his letter to OSHA of April 26, 2012, Respondent's counsel acknowledges that Mr. Webb, Respondent's own Division Engineer, testified in the investigative hearing that by asking to go to the hospital, Complainant and Mr. Orr were reporting injuries. Therefore, Respondent has not shown that Complainant did not do anything to cause Respondent to believe that he was notifying, or attempting to notify, Respondent of a work-related injury.

Respondent further points out that Complainant did not describe any injuries on the NSR Form 22 Injury Report that he signed at the hospital, and Respondent and Complainant disagree on who actually filled out the form. The form, however, does not specifically request that the employee describe his or her injuries; it only asks the employee to "[d]escribe what happened – give specific, detailed information." If Complainant did fill out the form, as Respondent asserts, it was not unreasonable for Complainant to describe the vehicle accident in response to this question, which is what he did, without describing his injuries. Complainant also checked the box indicating he desired medical attention at that time. If Complainant did not fill out the form, and signed it without reading it, then Respondent cannot rely on the form itself to assert that Complainant did not describe any injuries to Respondent. Respondent, therefore, cannot rely on the information provided or not provided in this form to support its position Complainant did not report a work-related injury.

Respondent also argues that Complainant's statement that he wanted to go to the hospital to "cover his ass" further demonstrates that Complainant did not attempt to report a work-related injury. In his letter to OSHA of April 26, 2012, Respondent's counsel cites Complainant's testimony in the investigative hearing: "I never told anybody that I was hurt, I just wanted to go to the hospital to play it safe and get checked out." In his December 3, 2010 letter to OSHA, Respondent's counsel also cites Mr. Webb's investigative hearing testimony that Complainant told him that "they needed to protect their ass, that, you know, even though – that even though they were fine, if they were sore the next day, they would need to, you know, have protected their ass." Respondent

states that Complainant and Mr. Glista's concern that they might be disciplined if they reported any injuries the next day indicates that they were not attempting to report a work-related injury on the day of the accident.[2] However, Complainant's request to go to the hospital was in addition to his verbal notification to Respondent that he was experiencing pain. The evidence shows that Complainant and Mr. Glista's desire to get checked out, which stemmed from their concern that their pain might worsen the next day, confirms what they reported to Respondent on May 17, 2010 – that they were experiencing pain as a result of the accident. Moreover, the evidence shows that by "cover his ass" or "protect his ass," Complainant meant that, although he felt some pain on the day of the accident, he likely would not have sought medical attention that day, except for his belief that Respondent would accuse him of making false statements about his injury if he waited until the next day to see a doctor. Complainant's belief proved to be justified because Respondent found him guilty of making false and conflicting statements and subsequently terminated his employment.

Respondent argues that Complainant made false and conflicting statements in that he repeatedly told Respondent that he was not injured, yet told the police and medical staff that he was. In his letter of April 26, 2012, Respondent's counsel states that Complainant and Mr. Glista's statements to the police that they were in "minor pain in their shoulder areas" was in sharp contrast to what they told respondent, which was that they "were not injured." Respondent's counsel, however overlooks that Complainant reported an injury when he told Mr. Eshenbaugh that he felt a tweak and was stiffening up in his shoulder blades. The evidence, therefore, does not support a conclusion that Complainant made either false or conflicting statements.

Respondent claims that Complainant's initial statements to Messrs. Desko and Eshenbaugh that he was "okay" conflict with his statements to the police and medical staff. However, Complainant informed OSHA that, by "okay," he meant that he did not need to be transported to the hospital via ambulance like the other driver involved in the accident. Mr. Glista also informed OSHA that he meant the same thing by "okay." Mr. Glista also testified at the investigative hearing that he was not hurt "to the extent where, you know, I needed the ambulances that showed up." Further, Respondent's supervisors who were most closely involved in the incident all acknowledged that Complainant could have become stiff and sore between the time of the accident and the time that Complainant requested medical attention. Mr. Eshenbaugh stated that it was possible that

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[2] Respondent also argues that Complainant and Mr. Glista's desire to "cover their ass" was undercut by the BMWED's July 9, 2010 letter of discipline appeal, wherein their representative stated that Complainant and Mr. Glista "did not go to the hospital to get check[ed] out so they could turn in an injury against the Carrier," but "to file a law suit against the person that caused this accident." Respondent mischaracterizes these statements by taking them out of their full context:

> Mr. Glista and Mr. Orr did not fail to tell the truth throughout this so-called investigation. They were concerned about having internal injuries that may have been caused by this accident, that is why they went to the hospital. They did not go to the hospital to get check[ed] out so they could turn in an injury against the Carrier. If in fact they were injured which would have resulted in a loss of time working, it was their intention to file a law suit against the person that caused the accident.

Complainant could have started to feel stiff. Mr. Desko stated that it was not unusual for Complainant to request medical attention and even described his own experience of increasing pain over time from a sore back. Mr. Webb said that it was not unusual that Complainant requested to go to the hospital. Curiously, neither Mr. Eshenbaugh nor Mr. Webb were consulted before the charges against Complainant were filed, and Mr. Eshenbaugh was initially told to stay out of the matter.

All the elements of a *prima facie* case are present in this case. A preponderance of the evidence shows that Complainant was a 37-year employee of Respondent with a spotless record. He was involved in an on-duty vehicular accident on May 17, 2010. He engaged in protected activity when he notified Respondent that he was experiencing pain and subsequently requested medical attention as a result of the accident. Respondent knew of Complainant's injury when Complainant notified Respondent of his pain and accompanied Complainant to the hospital. Complainant suffered an adverse action when Respondent terminated his employment.

As a result of his termination and the uncertainty of future employment, complainant suffered extreme stress. He described the period following his termination as the most stressful time of his life. He felt isolated, avoided talking with other people, and lost sleep. He suffered from the fact that he could no longer support his family. He was prescribed anti-anxiety medication. In April 2011, complainant experienced a heart-related event that required him to have a pacemaker.

Respondent's actions in terminating Complainant reflect a reckless disregard for FRSA and Complainant's rights thereunder. Respondent is well aware of these rights, as it has litigated numerous cases under FRSA before the Department of Labor's Administrative Law Judges and the Administrative Review Board. Further, this is not the first case where OSHA has found reasonable cause to believe that Respondent retaliated against an employee in violation of the FRSA by instituting disciplinary proceedings and terminating him for reporting a workplace injury.[3] Respondent's disregard for Complainant's rights under the FRSA warrants punitive damages. In making this determination, OSHA notes that Respondent offered Complainant reinstatement to his former position with unimpaired seniority on May 17, 2012. OSHA has considered Respondent's offer of reinstatement as a mitigating factor in determining the punitive damages to be awarded in this case.

In the absence of clear and convincing evidence indicating that Respondent would have taken the same adverse action, even if Complainant had not engaged in protected activity (reporting his injury), OSHA finds reasonable cause to believe that Respondent violated 49 U.S.C. § 20109 and, therefore, issues the following order to remedy the violation:

[3] Norfolk Southern Railway Corp, Complaint # 4-3750-10-028 on 6/12/12; Norfolk Southern Railway Corp., Complaint # 4-1221-10-007 on 6/12/12; Norfolk Southern Railway Corp., Complaint # 3-3500-11-001 on 6/14/12; Norfolk Southern Railway Corp., Complaint # 4-3750-10-006 on 8/8/11; and Norfolk Southern Railway Corp., Complaint # 4-0520-08-008 on 4/4/11. .

Order

1. Respondent shall pay Complainant compensatory damages for lost wages, benefits and increases in costs, penaltieis, and special damages incurred as a result of the adverse employment action totaling $72,985.00, plus interest compounded at the daily IRS rate for underpayment of taxes. This amount includes:

   a. Lost wages of $62,157 (June 2010-April 2011);
   b. Health insurance premiums ($1,666) and lost insurance opt-out incentive ($2,200) of $3,866 (June 2010-April 2011);
   c. Out-of-pocket medical costs of $6,784;
   d. Interest on home equity withdrawals made for necessary expenses (June 2010-April 2011) of$158.

2. Respondent will file with the Railroad Retirement Board all forms necessary to ensure that the Complainant is properly credited for the months of service that the employee would have earned absent Respondent's adverse action. Respondent's report will allocate the backpay award to the appropriate calendar month in which Complainant would have earned the compensation.

3. Respondent shall pay Complainant compensatory damages for pain and suffering totaling $75,000.

4. Respondent shall pay Complainant punitive damages in the amount of $150,000 for reckless disregard for the law and indifference to Complainant's rights under FRSA.

5. Respondent shall pay Complainant reasonable attorney fees.

6. Respondent shall expunge from Complainant's personnel records any adverse references relating to the discharge or the facts at issue in this case.

7. Respondent, as well as any of Respondent's agents, representatives, employees or any person in active concert with them, shall not provide any adverse information in response to any requests for information about Complainant, including (but not limited to) any requests for employment references.

8. Respondent, as well as any of Respondent's agents, representatives, employees or any person in active concert with them, shall not direct future retaliation or discrimination against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to the referenced Act.

9. Respondent shall post immediately the attached "Notice to Employees" and "Fact Sheet" in a conspicuous place in or about Respondent's Pittsburgh, Pennsylvania facility, including all places where notices for employees are customarily posted, including on a Website for employees, if there is one, and maintain for a period of at least 60 consecutive days from the date of posting, said Notice to Employees to be signed by a responsible official of the Respondent and the date of actual posting to be shown thereon.

10. Respondent shall train its managers and employees assigned to its Pittsburgh, Pennsylvania facility about employees' rights to file injury reports without fear of retaliation. Respondent shall complete the training within 60 days and provide proof of such training to OSHA by mailing it to: MaryAnn Garrahan, Regional Administrator, U.S. Department of Labor, OSHA, The Curtis Center-Suite 740 West, 170 S. Independence Mall West, Philadelphia, PA 19106-3309.

11. Respondent shall make Complainant whole for any benefits not identified above that may have been lost for the period of time he was out of work, such as retirement contributions and vacation days that would have accrued.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U. S. Department of Labor
800 K Street NW, Suite 400 North
Washington, DC 20001-8002
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

Charles A. Collins, P.A. (Attorney for Complainant)
Labor and Professional Centre
411 Main Street, Suite 410
Saint Paul, MN 55102

MaryAnn Garrahan, Regional Administrator
U. S. Department of Labor, OSHA
The Curtis Center, Suite 740 West
170 S. Independence Mall West
Philadelphia, PA 19106-3309

U.S. Department of Labor
Office of the Regional Solicitor
The Curtis Center, Suite 740 West
170 S. Independence Mall West
Philadelphia, PA 19106-3309

U.S. Department of Labor Associate Solicitor
Division of Fair Labor Standards
200 Constitution Avenue, NW, N2716
Washington, DC 20210

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under FRSA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint.

Sincerely,

MaryAnn Garrahan
Regional Administrator

cc: Charles A. Collins, P.A. (Attorney for Complainant)
Chief Administrative Law Judge, USDOL
Federal Railroad Administration, USDOT
Office of the Solicitor, USDOL