U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX

JUL 18 2012

Jeffery S. Berlin
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: Norfolk Southern Railway Company/Ratledge/4-1760-10-010

Dear Mr. Berlin:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by George Ratledge (Complainant) against Norfolk Southern Railway Company (Respondent) on March 17, 2010, under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. In brief, Complainant alleged that Respondent placed him out of service on January 13, 2010 and terminated him on October 8, 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 Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is reasonable cause to believe that Respondent violated FRSA and issues the following findings:

Secretary's Findings

Respondent Norfolk Southern Railway Company is a railroad carrier within the meaning of 49 U.S.C. §20109. Respondent engaged in interstate commerce within the meaning of 49 U.S.C. §20109.

Complainant was employed by Respondent as a Carman and assigned to Respondent's facility located in Chattanooga, Tennessee. Complainant is an employee within the meaning of 49 U.S.C. §20109.

Respondent placed Complainant out of service on January 13, 2010 and subsequently terminated him on October 8, 2010. Complainant filed his initial complaint with the Secretary of Labor on March 13, 2010, alleging that Respondent retaliated against him in violation of FRSA by placing him out of service pending a formal investigation. On October 13, 2010, Complainant filed an amended complaint with the Secretary of Labor alleging that Respondent further retaliated against him by terminating his employment. As these complaints were filed within 180 days of their respective alleged adverse actions, they are timely.

Hired by Respondent in 1971 as a Carman, Complainant had been working at Respondent's Chattanooga, Tennessee facility since 1974. The Brotherhood of Maintenance of Way Employees Division, International Brotherhood of Teamsters (BMWED) represented Complainant. On January 7, 2010, Complainant was sent to inspect a load of steel piping at Respondent's customer location, Bull Moose Tube Company, in Trenton, Georgia. Complainant had previously inspected shipments at this location and would normally enter the facility via large roll-up doors designed for tractor-trailers.

When Complainant arrived on Thursday, January 7, 2010, at approximately 11:00 a.m., the large roll-up doors were closed due to snow and cold temperatures. Complainant then entered the facility through an entrance door on the right side of the building. After entering the building, he immediately turned left and took several steps before he struck his hardhat on a metal support beam. Complainant, who is approximately six feet, four inches (76 inches) tall, contends that the brace forced the hardhat down toward his shoulders. He stated that he was "rattled" by the impact for a second or two, but then proceeded to inspect the car and completed his normal work day.

Later that evening, after work, Complainant noticed that his neck was hurting. The following morning, on Friday, January 8, 2010, when he arrived for work at 7:00 a.m., he reported the injury to Senior General Foreman Terry Sayers. Complainant requested to complete the proper injury forms. Sayers told Complainant he [Sayers] would be fired if Complainant filed the injury forms and told Complainant to wait and see if he got better or worse before filling out an injury report. The condition did not improve over the weekend. On Monday, January 11, 2010, Complainant notified Sayers, once again, about his January 7, 2010 injury and that his pain had not subsided. Sayers, once again, told Complainant to *"let's wait and see if you get any worse."* (exact quote). Sayers also told Complainant that if it became necessary to seek medical attention, he should write up the injury as if it had just happened rather than use January 7, 2010, the actual injury date. Also on January 11, 2010, Complainant discussed his injury with General Foreman Robert Steed, who told Complainant that he would discuss this matter with Sayers. Complainant continued to work, with pain, that Monday and the next day, Tuesday, January 12, 2010. On the morning of Wednesday, January 13, 2010, Complainant told Sayers that he had to seek medical attention as his right arm was now numb and tingling. Sayers notified Kevin Krull, Division Manager of Mechanical Operations. Complainant completed the personal injury report and was transported to a medical facility for treatment.

On January 13, 2010, Michael Gaither, Respondent's doctor, treated Complainant at the Work Force Corporate Health Services. Dr. Gaither's assessment included: (1) degenerative disk disease in the cervical spine; (2) right shoulder pain; (3) muscle spasm; and (4) head contusion – questionable concussion. Complainant's treatment plan included prescriptions for Naprosyn, Flexeril, Lortab, and a CT scan, since Dr. Gaither was concerned that there may be a possible subdural hematoma[1]. Complainant was released to

[1] Subdural hematomas are usually the result of a serious head injury. When one occurs in this way, it is called an "acute" subdural hematoma. Acute subdural hematomas are among the deadliest of all head injuries. The bleeding fills the brain area very rapidly, compressing brain tissue. This often results in brain injury and may lead to death. Subdural hematomas can also occur after a very minor head injury, especially in the elderly. These may go unnoticed for many days to weeks, and are called "chronic" subdural hematomas. (Except from http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001732/)

return to work with restrictions. The restrictions included no pushing, no pulling, no lifting over 15 pounds with the right arm, no lifting with outstretched right arm, and limited use of the right arm.

Krull, Sayers, and Steed, Respondent's managers, began interrogating Complainant about the events that resulted in Complainant's injury of January 7, 2010, after he returned from the doctor on January 13, 2010. The interrogation lasted approximately 45 minutes. These managers then initiated an investigation to identify the cause of the injury. Even though Complainant had just returned from obtaining medical treatment, he was required to participate in the investigation. Complainant was also required to wear his full protective gear, including his hard hat. Management measured Complainant's height while he was wearing his safety boots and hard hat. Management measured him to be 79.5 inches from the floor to the top of his hard hat. Respondent stated in the subsequent investigative hearing that Complainant was measured in a "slouched" position, to mimic the position management thought he would have been in when he allegedly struck the support beam.

After the interrogation was completed and despite the doctor's order that Complainant return to work with restrictions, Krull informed Complainant Respondent would not be able to accommodate his doctor's restrictions and that *"he would be unable to return to work until Norfolk Southern's Medical Department cleared his return."* (exact quote from the investigative hearing transcript).

Later that afternoon, Krull, Sayers, and Steed went to the Bull Moose facility to conduct an on-scene investigation. They measured the distance from the floor to the bottom and top segments of the support beam. They noted that the distance from the floor to the bottom of the support beam was 71.75 inches, while the distance from the floor to the top of the support beam was 74 inches. Based on these measurements, they concluded that the support beam should have hit the Complainant at eye-level rather than on his hard hat. They also observed cob webs on the support beam but did not observe any white residue from the hard hat. As part of their investigation, they struck Krull's hard hat against a similar (but not the same) support beam, and observed white residue on the beam from Krull's hard hat. They also reviewed a Bull Moose video that showed Complainant walking into the building at 11:01 a.m., and then again walking away from the building at 11:07 a.m. Respondent noted that Complainant had the same posture and gait both going into and coming out of the building. Respondent stated that they interviewed witnesses at Bull Moose who stated that Complainant did not report the injury and did not appear impaired. Based on these findings, Krull concluded that Complainant could not have sustained an injury in the manner he reported. Complainant was then placed out of service pending a formal investigation.

On January 15, 2010, Complainant received a charge letter with two specific charges: a) failure to properly and timely report an injury in violation of General Rule N; b) falsification of an injury. When Krull discovered that Sayers and Steed prevented Complainant from filing his injury in a timely manner, the charge of late reporting was dropped. However, Krull continued to pursue the charge of injury falsification. The

investigative hearing was postponed seven (7) times due to Complainant's ongoing medical treatment. On September 9, 2010, the formal investigative hearing took place with Complainant's participation. The formal investigation found Complainant guilty of falsifying the injury and, on October 8, 2010, Complainant was terminated from employment.

On November 30, 2010, pursuant to the rules of the Controlling Agreement (effective January 1, 2003), Steven Wilhelm, Complainant's union representative, filed an appeal with Mr. D.L. Kerby, Respondent's Director for Labor Relations. Wilhelm stated that the investigative hearing was not fair and impartial and therefore violated the general requirements of Rule 29 of said Agreement[2].

On January 28, 2011, Kerby informed Wilhelm that the appeal was denied. Kerby also stated that Wilhelm's allegation that the investigative hearing was not fair and impartial is unsubstantiated by the evidence. Wilhelm then appealed Kerby's decision to the Public Law Board. On June 21, 2011, the Public Law Board concurred with the guilty decision, but found that a permanent dismissal was unwarranted. Noting that Complainant had almost 40 years of service with a clean disciplinary record, the Board ordered reinstatement to service with seniority unimpaired but without any payment for time lost.

To date, Complainant has not been able to return to work because his medical condition has not improved and he is incapable of performing the duties of the job. He is currently on disability insurance under the Railroad Retirement Act.

Respondent denies that it retaliated against Complainant for reporting an injury. Respondent's position is that Complainant falsified his injury and this falsification is not a protected activity under FRSA. Respondent also contends that Complainant has already exercised his election of remedies by seeking relief via the Rail Labor Act (RLA) and thus he is preempted from pursuing any further relief under FRSA.

Respondent's position is not supported by the evidence.

A thorough review and analysis of the investigative hearing demonstrates that it was not conducted in an impartial and fair manner. The Hearing Officer overruled each of Wilhelm's objections. Specifically, Wilhelm objected to the photographs presented as exhibits because they were taken on another day in plain daylight, although, on January 7, 2010, when Complainant was injured, it was overcast and snowy. Wilhelm also objected to photographs presented by Krull purporting to show the "similar" support beam and the impact on Krull's hard hat while photographs of the actual support that Complainant struck were never presented as evidence in this investigation. Wilhelm was not able to present any rebuttal or objection as the Hearing Officer was overruling every single argument that he raised. This conduct demonstrates that the investigative hearing was not conducted in a fair and impartial manner. It also supports Wilhelm's position that a violation of Rule 29 of the Controlling Agreement occurred.

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[2] Rule 29, Section A – General Requirements – 1. An employee who has been in the service of the Carrier for sixty (60) working days shall not be discharged, suspended, or otherwise disciplined without a fair and impartial investigation except that an employee may waive an investigation in accordance with Section B(2) of this agreement.

Furthermore, a review of the transcript of the investigative hearing raised the following concerns, including:

- During the January 13, 2010 interrogation, Complainant was not afforded his duly authorized union representation rights.

- Krull conducted the accident investigation without following any company policy. The Hearing Officer asked Krull *"...are you aware of a, of a policy that details the, the steps that a supervisor would take in handing an injury?"* Krull replied *"No."* Krull was also asked by Wilhelm *"Mr. Krull, yes or no, are you aware of whether or not Norfolk Southern has an official policy, not a Safety or General Conduct Rule, but an official policy concerning supervisors' responsibilities for handling on-the-job injury of an employee, yes or no?"* To which Krull replied *"No."* Thus, Krull admitted that he conducted an ad-hoc investigation without following any specific company policies or procedures for handling workplace injuries and/or conducting accident investigations.

- Respondent did not comply with its own Internal Control Plan in the manner Respondent received and handled Complainant's reporting of the work injury. Respondent later dismissed Sayers and Steed for not reporting the injury as required, although they exercised their seniority rights and returned as engineers.

- Sayers admitted that he dissuaded Complainant from making an official report because he [Sayers] was afraid he would be fired. Wilhelm asked, *"So, it is an unwritten rule in Norfolk Southern, if you have injuries on your property, you're, you're, to coin a phrase, kind of marked for death?"* Sayers replied, *"Well, I don't know if it's quite that bad. But there's some instances where, you know, it, it seems that way. It appears that way, yeah."*

- Sayers also testified that it was possible that Complainant hit his head on the beam as he alleged. When questioned by Wilhelm and then again by the Hearing Officer as to why he said it was possible, Sayers replied: *"I basically said that, you know, anything could have happened. I mean, maybe he ducked underneath it and hit his head coming back up, I don't know, I wasn't there, so. Only Mr. Ratledge and God would know that."*

- Steed also testified that Complainant could have hit his hard hat on the support beam. Steed was specifically asked by the Hearing Officer, *"based on what you knew as far as what George happened – what George said happened that day, and your investigation, could those marks on the top of the hat come from hitting that Channel?"* Steed answered, *"Well, as far as possibility, I'd say, you know, it's possible. But, I mean, as far as any specific mark on his hat in this picture, you know, I don't know where these marks came from."*

- Only Krull, who was neither at the facility on January 7, 2010 nor even reports to work at this facility, testified that the injury could not have occurred as Complainant reported.

- Krull provided the four pictures of the Bull Moose facility. The pictures were taken on different days and under different weather conditions. The day of the injury the weather was overcast with snow and the large doors were closed. Complainant contends the area was dimly lit. Respondent contends the area was well lit. Respondent acknowledged the difference between the two days but submitted the photos as evidence anyway. Moreover, the Hearing Officer did not question Respondent about why the photos were taken in different lighting scenes and simply accepted the photos as exhibits of the investigation.

- Complainant's attorney and Dr. Tyler A. Kress, Ph.D., CIE, CXLT, a Board Certified Industrial Ergonomist, Certified XL Tribometrist, and Safety Engineer on Biomechanics hired by Complainant to evaluate the root cause of his injury, attempted to gain, but were denied, access to the Bull Moose facility to take measurements, examine the scene, and conduct their own investigation. They had to rely on Respondent's measurements of the height of the support beam.

- Although the Hearing Officer allowed the Dr. Kress' affidavit to be admitted as an exhibit of the investigation, he discounted its significance since Dr. Kress had neither visited the accident scene nor testified at the hearing. Dr. Kress' calculations were based on Respondent's own measurements of the support beam. Based on his reconstruction efforts, Dr. Kress concluded that Complainant's description of the incident is absolutely plausible and that low overhead clearances in walking paths are a known and foreseeable hazard that should be eliminated or addressed reasonably by the employer.

- Respondent submitted the Work Force Corporate Health Return to Work Status Sheet regarding Complaint's treatment. Respondent highlighted the fact that the return to work sheet indicates Complainant's medical problems as degenerative disk disease. However, Respondent did not submit the rest of the medical records from Dr. Michael Gaither, one of which stated, *"We will obtain non-contrast head CT over at Erlanger Medical Center as patient did sustain a pretty hard hit and questionable loss of consciousness, I am concerned that there may be a possible subdural, even though I understand the risk is probably pretty low."*

Respondent also contends that Complainant's C4-5 disc bulge, which is the injury at issue in this complaint, was part of an ongoing degenerative disorder, a progressive consequence of his C6-7 disc bulge and degenerative disc disease he had years earlier, and not related to the alleged injury on January 7, 2010. However, Respondent failed to consider that Complainant's treating physician, Dr. Scott Hodges, reported that after Complainant underwent an anterior cervical discectomy fusion C6-7, a surgical procedure that took place in 1998, he enjoyed a full recovery and had already returned to normal activities. Dr. Hodges further stated that *"based on evidence presented and with the history given that the patient's C4-5 problems are related to his work related injury which occurred as recorded in the chart."*

Furthermore, Complainant filed a complaint with the U.S. Department of Transportation, Federal Railroad Administration (FRA). On November 29, 2010, that agency informed

Complainant that Respondent had violated 49 CFR Part 225.33(1) when Complainant was "harassed and intimated by Norfolk Southern from January 7, 2010 through January 13, 2010." It further states that "Norfolk Southern violated Title 49 CFR Part 225.33 (1) when they did not allow you to report your initial injury when it occurred on January 7, 2010.". The FRA also found that Respondent violated 49 CFR 225.11 when it failed to document the on-the-job injury on its FRA-required monthly report of all reportable accidents/incidents that occurred for the previous month.

As part of its investigation, OSHA compared the Krull accident investigation and the assessments and conclusions of Dr. Kress. The determining factor in this matter is Complainant's "effective height" as compared to the 71.75" – 74" support beam's heights (bottom and top of bar, respectively). Respondent contends that the support beam should have struck Complainant directly in the face rather than on the hard hat. Dr. Kress, however, states that Complainant's height automatically decreases 3" while walking during regular stride. Dr. Kress notes that anthropometric measurements and subsequent trigonometric and geometric analyses confirmed his experimental assessment and indicated that Complainant's "effective height" is decreased by 3" too. This brings the "effective height" of the lower part of the hard hat to 71", which is the same height noted by the Respondent's measurement from the floor to the bottom side of the support beam. Dr. Kress further stated that since it is common knowledge that people may slump and/or tilt downward, the "effective height" of the lower part of the hard hat could even be less than 71", during normal ambulation. Dr. Kress concluded that even if the lower rim of the hard hat was 71" from the ground, Complainant would hit the bar with his hard hat, using Respondent's previously summarized numbers indicating that the height of the subject bar is 71.75" (bottom of bar) to 74" (top of bar).

Dr. Kress' affidavit also concluded that, contrary to Respondent's position regarding the lack of white residue from Complainant's hard hat on the support beam, *"Hard direct impacts onto metal by hard hats rarely leave discernible visual or "naked-eye" evidence."* Dr. Kress further states that *"most hard hats are made of thermoplastics (such as polyethylene) and have been for decades"* and that *"they are manufactured via an injection molding process with polyethylene pellets of which a small percentage are colorant pellets."* According to Dr. Kress, *"Implying that the hard hat did not hit the subject metal bar as Mr. Ratledge walked into it because there was "no hard hat residue found" is definitely not appropriate."* Respondent discounted Dr. Kress' affidavit as "hearsay."

What is particularly troubling about Respondent's position with regards to Dr. Kress' affidavit is that Respondent's Labor Relations Director D.L. Kerby, after reviewing Wilhelm's appeal request, described Dr. Kress' affidavit as hearsay. In his January 28, 2011 appeal denial, Kerby stated *"As for hearsay evidence, the most direct example of hearsay evidence allowed into the transcript was the document allegedly prepared by Dr. Tyler Kress that was submitted by the Organization [union] on the Claimant's [Complainant's] behalf."* It is clear that Respondent, through its various avenues of investigative hearings and subsequent appeal reviews, disregarded the measurements, calculations and assessment of a qualified and certified expert while placing greater value on the measurements and conclusions of a supervisor [Krull] who has no expertise in the area of biomechanics and did not hire an independent expert to assist with the investigation.

On April 10, 2012, OSHA contacted Bull Moose's attorney Angie Smith, to find out why Dr. Kress and Complainant's attorney were not allowed to enter the facility to conduct their independent investigation. Smith informed OSHA that Bull Moose did not know that Complainant was actually injured until Complainant's attorney filed a civil suit. Smith also stated that Complainant never asked to inspect the facility. Complainant's attorney stated that he requested to examine the facility with Dr. Kress, but was informed by Respondent's District Claim Agent Linda Kurzenberger, that Bull Moose would not allow the visit. Smith then informed OSHA that Respondent sent Bull Moose a letter thanking them for allowing its employees entrance into the facility and informing Bull Moose that *"Mr. Ratledge has retained an attorney to represent him on the above alleged injury, and may I suggest you report this to your insurance company."* Moreover, witnesses[3] interviewed at Bull Moose stated that Respondent informed Bull Moose *"let's pony up, we are in this together."* At Respondent's request, Bull Moose painted the support beam safety-yellow.

Respondent also argued that Complainant elected a remedy when he appealed the termination through the collective bargaining process. However, current case law refutes Respondent's position. *See Mercier v. Union Pacific Railroad, ARB 09-121*; and *Koger v. Norfolk Southern Railway Company, ARB 09-101 (Sept. 29, 2011).*

Based on the above, Respondent's investigation and hearing process appear to have been intentionally orchestrated to support the decision it had already made: to terminate Complainant's employment.

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."

All the elements of a prima facie case are present in this case. The evidence shows that Complainant engaged in protected activity when, on January 8, 2010, he reported a work-related injury he suffered on January 7, 2010.

The evidence also shows that Respondent was aware of Complainant's injury as Respondent admitted attempting to dissuade Complainant from making such injury report. The evidence also shows that Complainant suffered adverse action when, on January 13, 2010, he was suspended pending a formal investigation and again when, on October 8, 2010, he was terminated from employment.

The evidence further establishes a direct nexus between Complainant's protected activity and the adverse employment action. Respondent showed animus towards Complainant for reporting an injury, which directly affects Respondent's injury and illness rates. This

[3] The witnesses requested confidentiality. OSHA cannot release additional information without disclosing their identities.

was demonstrated by Sayers' instruction to Complainant not to report the injury for fear Sayers would also be fired.

The preponderance of the evidence indicates that Complainant, who had almost 40 years of service with no prior disciplinary action, was subjected to severe emotional anguish and distress during the suspension period and after dismissal. Complainant was subjected to an investigative hearing that was neither fair nor impartial. Moreover, Complainant was subjected to an accident investigation immediately after returning from the hospital. Respondent directly targeted Complainant because of his injury report and humiliated him for doing so. Respondent wanted to make Complainant an example of what would happen if an employee reports an injury, causing mental anguish. Although the Public Law Board, after two appeals, ordered Complainant to be reinstated, Complainant's personnel records still reflect the suspension. Therefore full restitution was not attained. Complainant record remains tarnished, which will undoubtedly hinder any opportunities for employment with other companies, if he is able and so chooses to.

Complainant's current physical conditions prevent him from ever returning to the position he held. Therefore, the Department is not ordering reinstatement or back pay given the fact that Complainant is medically unable to return to work at full capacity.

Respondent's immediate retaliation against Complainant for reporting the January 7, 2010 injury exhibited reckless disregard for the law and total indifference to Complainant's statutorily-protected rights. Respondent's retaliatory conduct towards employees that report injuries and/or illnesses has created a chilling effect in the workplace. On several previous occasions, OSHA has cited Respondent for violating the whistleblower protection provisions of FRSA[4]. Respondent's continued callous disregard for Complainant's and other employees' protected rights under FRSA warrants significant punitive damages.

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 on-the-job 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:

Order

1. Respondent shall pay Complainant compensatory damages of $75,000 for mental anguish and pain and suffering.

2. Respondent shall pay Complainant punitive damages in the amount of $200,000.00 for reckless disregard for the law and indifference to Complainant's rights under FRSA.

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[4] 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.

3. Respondent shall pay Complainant reasonable attorney fees in the amount of $25,123.40.

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

5. 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.

6. 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.

7. Respondent shall post immediately the attached "Notice to Employees" and "Fact Sheet" in a conspicuous place in or about Respondent's 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.

8. Respondent shall train its managers and employees assigned to the Chattanooga, Tennessee facility about employee's rights to file injury reports without fear of retaliation. Respondent shall complete the training within 60 days and will provide proof of such training to OSHA by mailing it to Cindy A. Coe, Regional Administrator, U.S. Department of Labor – OSHA, 61 Forsyth Street, S.W., RM 6T50, Atlanta, GA 30303.

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, D.C. 20001-8002
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

William C. Tucker, Jr., Esq.
Petway, Tucker & Barganier, LLC
510 Park Place Tower
2001 Park Place North
Birmingham, Al 35203

Cindy A. Coe, Regional Administrator
U.S. Department of Labor, OSHA
61 Forsyth Street, SW, RM 6T50
Atlanta, GA 30303

U.S. Department of Labor
Office of the Regional Solicitor
61 Forsyth Street, SW, Suite 7T10
Atlanta, GA 30303

U.S. Department of Labor Associate Solicitor
Division of Fair Labor Standards
200 Constitution Avenue, NW, N2716
Washington, D.C. 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 form 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,

CINDY A. COE
Regional Administrator

cc: William C. Tucker, Jr., Esq., Attorney for Complainant
Chief Administrative Law Judge, USDOL
Federal Railroad Administration, USDOT
Office of the Solicitor, Fair Labor Standards Division, USDOL