

**ADMINISTRATIVE REVIEW BOARD
U. S. DEPARTMENT OF LABOR**

CHRISTOPHER BALA	:	ARB Case No. 12-048
Complainant	:	
	:	
v.	:	
	:	
PORT AUTHORITY	:	
TRANS-HUDSON CORPORATION	:	
Respondent	:	DECEMBER 9, 2013

ATTORNEY FEE AFFIDAVIT OF CHARLES C. GOETSCH

I, Charles C. Goetsch, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. I am an attorney duly admitted to the practice of law before the United States Supreme Court and the U.S. Court of Appeals for the District of Columbia Circuit, Second Circuit, and Third Circuit, as well as numerous federal district courts.

2. I represent the Complainant Christopher Bala.

3. In 1973 I received an A.B. degree *magna cum laude* and Phi Beta Kappa from Brown University in Providence, Rhode Island. In 1976 I received a J.D. from the University of Connecticut School of Law, and in 1977 I received an LL.M. from the Harvard Law School. In 1978-1979 I was a Visiting Scholar and American Bar Foundation Fellow at the Yale Law School. I served as a law clerk to U.S. District Judge Ellen Bree Burns in the District of Connecticut from 1978-1979, and as a law clerk to U.S. Circuit Court Judge Leonard P. Moore at the United States Court of

Appeals for the Second Circuit from 1979-1980.

4. For over 33 years I have practiced in the federal courts enforcing the federal statutory rights of railroad workers. I have personally tried over 55 federal cases before juries and courts, and have briefed and argued 13 appeals before United States Court of Appeals. In 1997 I briefed and argued a railroad law case before the United States Supreme Court. I have lectured at several seminars on federal rules and practice, and have authored articles and books on legal subjects. I am an American Bar Association Fellow, and a long-time member of the Academy of Rail Labor Attorneys as well as other bar groups and associations. I have been selected as a "Super Lawyer" in the fields of Transportation and Plaintiff Employment Litigation.

5. The operations of our nation's railroads affects the safety of employees, passengers, contractors, drivers at railroad crossings, and the schools, homes, and work places in countless communities through which freight trains haul toxic chemicals capable of killing or poisoning thousands. In response, Congress enacted the Federal Rail Safety Act, the purpose of which is to "promote safety in every area of railroad operations," 49 USC 20101. The Federal Rail Administration is charged with regulating railroad safety, and Congress found that unless rail workers are protected from retaliation when they report safety hazards or injurious conditions, the FRA's ability to promote rail safety will be handicapped. Congress responded by enacting Section 20109, which for the first time in history gives railroad workers whistleblower protection when they report safety hazards or injuries. The prosecution of FRSA whistleblower cases serves an important public benefit function by clarifying for managers and workers the boundaries of acceptable conduct on our nation's railroads and by applying the penalties applicable to any violations of that standard of conduct.

6. The FRSA is a relatively new statute, and thus presents significant challenges regarding how to approach and resolve critical issues. I have taken a lead in the prosecution of FRSA cases, and have handled numerous FRSA matters throughout the United States. I created and maintain the "Rail Whistleblower Library" located at

<http://www.gowhistleblower.com/Practice-Areas/Rail-Whistleblower-Library.shtml> an online resource center for all aspects of FRSA matters that is relied on by OSHA Whistleblower investigators and attorneys representing railroads and employees. I gave the first CLE lectures on the FRSA at the 2011 and 2012 Annual Convention of the Academy of Rail Labor Attorneys, and the first FRSA seminar at the American Association of Justice's Annual Meeting in July 2013. I maintain a blog at <http://www.trainlawblog.com/> with over 500 subscribers where I post updates on developments in the FRSA.

7. OSHA has awarded numerous Merit Findings on behalf of my clients, and I tried three of the first Administrative Law Judge FRSA bench trials. I briefed three of the first FRSA appeals to the Administrative Review Board (*Santiago v. Metro North Railroad*, ARB Case No. 10-147, *Vernace v. PATH*, ARB Case No. 12-003, and *Bala v. PATH*, ARB Case No.12-048). I filed the first FRSA cases in United States District Court and tried the first federal jury FRSA trial in the nation in March 2012 in the U.S. District Court for the District of Connecticut (*Barati v. Metro North Railroad*, 3:10-cv-01756-JBA), resulting in a historic jury verdict awarding \$1 million in punitive damages. *Barati v. Metro North Railroad*, 939 F.Supp.2d 143 (D.Conn. March 22, 2013). On December 17, 2012, I successfully argued the first FRSA case to come before a U.S. Circuit Court of Appeals, *Araujo v. New Jersey Transit Rail*, and on February 19, 2013, the Third Circuit issued a landmark Decision confirming and clarifying the correct legal standards federal courts must apply when deciding FRSA cases. *Araujo v. New Jersey Transit Rail*, 708 F.3d 152 (3rd Cir. Feb. 19, 2013). On March 27, 2013, United States District Judge Janet Bond Arterton issued a Decision noting: "Attorney Goetsch is undeniably a leading specialist in the law governing railroad employees' rights, and his longstanding and highly developed practice makes him more efficient, creative, and effective for his railroad employee clients than an attorney of similar trial experience in federal litigation but without the benefits of his specialization." *Barati v. Metro North Railroad Co.*, 939 F.Supp.2d 153, 156 (D. Conn. 2013). I am not aware of any other attorney in the nation with my level of experience and expertise in handling FRSA cases.

8. This is one of the first cases brought for violations of the FRSA, and was vigorously defended by the defendant Railroad. Pressing this case serves an important public benefit function of clarifying both for management and workers the boundaries of acceptable conduct on our nation's railroads and the legal standards that apply to any violations of that standard of conduct. As such, its importance transcends the amount of any economic damages involved.

10. In March of 2012 I successfully tried the nation's first FRSA federal district court jury trial before U.S. District Judge Janet Bond Arterton. On March 27, 2013, Judge Arterton issued a Decision applying the law and factors governing the award of attorney fees to determine my reasonable hourly fee rate:

As described in the Affidavit of Attorney Richard Renner, Attorney Goetsch is undeniably a leading specialist in the law governing railroad employees' rights, and his longstanding and highly developed practice makes him more efficient, creative, and effective for his railroad employee clients than an attorney of similar trial experience in federal litigation but without the benefits of his specialization. Based on Attorney Goetsch's experience, his success in this unique case, and the case law since *Serricchio* evidencing a rise in the prevailing market rate, the Court finds that an hourly rate of \$525 for his work on this case is reasonable and fulfills the purpose of federal fee shifting statutes to incentivize capable attorneys to take on meritorious cases under the FRSA.

Barati v. Metro North Railroad Co., 939 F.Supp.2d 153, 156 (D. Conn. 2013). I respectfully request that the Court take judicial notice of Judge Arterton's findings, which are here incorporated by reference. Exhibit 2. Similarly, the Administrative Review Board found that \$525 per hour is a reasonable rate for my services in a FRSA, and that decision is attached as Exhibit 3.

11. The detailed list of time and labor spent on the prosecution of this case before this appellate tribunal is attached. The number of hours expended is 49.75, and multiplying that number by \$525 equals \$26,118.75. Thus the total amount of attorney fees requested is \$26,118.75.

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STATE OF CONNECTICUT)
) ss: New Haven
COUNTY OF NEW HAVEN)

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

Subscribed and sworn to before me this 9th day of December, 2013.

Notary Public