THE FRSA's SPECIAL LEGAL STANDARDS
(January 2019)

The legal standards applicable to Federal Rail Safety Act, 49 U.S.C. 20109, whistleblower retaliation cases are distinctly different from the standards that apply to discrimination cases under Title VII.

The **basic elements** of a FRSA retaliation claim are simply stated. A railroad employee must prove by a preponderance of the evidence the following elements:

(1) he or she engaged in a protected activity under the FRSA (e.g., reported an injury or a safety hazard, or refused to violate a FRA safety regulation);

(2) the railroad subjected the employee to some form of adverse action (e.g., discipline or discriminatory treatment);

(3) the railroad supervisors or managers who instituted or imposed the adverse action had knowledge of the employee's protected activity; and

(4) the employee's protected activity was a "contributing factor" to the adverse action.

A **"contributing factor"** is a factor which, alone or in combination with any other factors, affected in any way the railroad's adverse action. A protected activity was a contributing factor if the railroad's adverse action was based "in whole or in part" on the protected activity--that is, if the protected activity affected the railroad's action to any extent.

Once an employee establishes that his or her protected activity was a contributing factor in the adverse action, a railroad can escape liability only if it proves by "**clear and convincing evidence"** it would have taken the same action in the absence of the protected activity. "Clear and convincing evidence" is a much higher standard of proof than a mere preponderance of the evidence, and requires the railroad to prove to a reasonable certainty it would have taken the exact same adverse action against the employee even if the employee had not engaged in the protected activity.

The federal case law interpreting and applying these elements is collected at the Rail Whistleblower Library. Below are summary excerpts from those decisions taken from www.trainlawblog.com posts that contain links to the full documents.

Remedial Protective Purpose

Quoting 3rd Circuit's decision in *Araujo v. New Jersey Transit Rail*:

> The purpose of the FRSA is to promote safety in every area of railroad operations.
>
> The rail industry has a long history of under reporting incidents and accidents, and railroad labor organizations have frequently complained that harassment of employees who report injuries is a common management practice.

> The intent of the FRSA is to ensure that employees can report their concerns without the fear of possible retaliation or discrimination from employer railroads" and "by amending the FRSA, Congress expressed an intent to be protective of plaintiff-employees.

https://www.trainlawblog.com/2013/02/articles/federal-rail-safety-act/frsa-alert-landmark-federal-appeals-court-decision-clarifies-legal-standards/

Quoting ARB's decision in *DeFrancesco v. Union Railroad Company:*

> An employee's right to report a workplace injury is "a core protected right" under the FRSA that benefits not only the employee but also the railroad employer and the public. If employees do not feel free to report injuries or illnesses without fear of incurring discipline, dangerous conditions will go unreported resulting in putting the employer's entire work force as well as the general public potentially at risk.
>
> Where a protected injury report becomes the basis for investigation into the worker's conduct of a type designed to lead to discipline, there is a heightened danger that the investigation will chill injury reporting by sending a message to other employees that injury reports are not welcome.

Congress responded by making it difficult for railroads to defend against their employee whistleblower retaliation claims by requiring them to prove by clear and convincing evidence it would have taken the same unfavorable personnel action in the absence of the protected activity.

https://www.trainlawblog.com/2015/10/articles/federal-rail-safety-act/more-on-the-frsas-clear-and-convincing-evidence-defense-standard/

The FRSA's Two Different Burdens of Proof

Palmer v. Canadian National Railway is an *en banc* decision in which the Administrative Review Board clarifies the burdens of proof applicable to FRSA whistleblower trials and explains how to apply that standard. Here are some of the highlights:

Proof of the Contributory Factor Element

> the first step of the AIR-21 whistleblower protection provision's burden-of-proof framework requires the complainant to prove, by a preponderance of the evidence, that protected activity was a contributing factor in the unfavorable personnel action. It further concludes that there are no limitations on the evidence the fact finder may consider in making that determination, and where the employer's theory of the case is that protected activity played no role whatsoever in the adverse action, the ALJ must consider the employer's evidence of its non-retaliatory reasons in order to determine whether protected activity was a contributing factor in the adverse action.
>
> However, the level of causation that a complainant needs to show contributing factor is extremely low: the protected activity need only be a "contributing factor" in the adverse action. Because of this low level, ALJs should not engage in any comparison of the relative importance of the protected activity and the employer's non-retaliatory reasons.

Since in most cases the employer's theory of the facts will be that the protected activity played no role in the adverse action, the ALJ must consider the employer's non-retaliatory reasons, but only to determine whether the protected activity played any role at all.

We have said it many a time before, but we cannot say it enough: A contributing factor is 'any factor, which alone or in combination with other factors, tends to affect in any way the outcome of the decision.' We want to reemphasize how low the standard is for the employee to meet, how broad and forgiving it is. Any factor really means any factor. It need not be significant, motivating, substantial or predominant, it just needs to be a factor. The protected activity need only play some role, and even an [in]significant or [in]substantial role suffices.

Importantly, if the ALJ believes that the protected activity and the employer's non-retaliatory reasons both played a role, the analysis is over and the employee prevails on the contributing-factor question. Thus, consideration of the employer's non-retaliatory reasons at step one will effectively be premised on the employer pressing the factual theory that non-retaliatory reasons were the only reasons for its adverse action. Since the employee need only show that the retaliation played some role, the employee necessarily prevails at step one if there was more than one reason and one of those reasons was the protected activity.

We cannot emphasize enough the importance of the ALJ's role here: it is to find facts. The ALJ must consider all the relevant, admissible evidence and make a factual determination, under the preponderance of the evidence standard of proof, about what happened: is it more likely than not that the employee's protected activity played a role, any role whatsoever, in the adverse personnel action? If yes, the employee prevails at step one; if no, the employer prevails at step one. If there is a factual dispute on this question, as is usually the case, the ALJ must sift through the evidence and make a factual determination. This requires the ALJ to articulate clearly what facts he or she found and the specific evidence in the record that persuaded the ALJ of those facts.

Proof of Railroad's Affirmative "Clear and Convincing Evidence" Defense

The second step involves a hypothetical question about what would have happened if the employee had not engaged in the protected activity: in the absence of the protected activity, would the employer nonetheless have taken the same adverse action anyway? On that question, the employer has the burden of proof, and the standard of proof is by clear and convincing evidence. For the ALJ to rule for the employer at step two, the ALJ must be persuaded, based on a review of all the relevant, admissible evidence, that it is highly probable that the employer would have taken the same adverse action in the absence of the protected activity. . . . It is not enough for the employer to show that it *could* have taken the same action; it must show that it *would* have.

https://www.trainlawblog.com/2016/10/articles/federal-rail-safety-act/arb-clarifies-frsa-burdens-of-proof/

Clear and Convincing Evidence Factors

How can a railroad demonstrate by clear and convincing evidence it would have taken the same adverse personnel action in the absence of the employee's protected activity? Three factors apply. The judge or jury must consider the combined effect of at least three factors applied flexibly on a case-by-case basis:

(1) how "clear" and "convincing" the independent significance is of the non-protected activity;

(2) the evidence that proves or disproves whether the employer "would have" taken the same adverse action; and

(3) the facts that would change in the "absence of" the protected activity.

If, after applying these factors, the judge or jury determines the railroad has failed to prove its affirmative defense to a reasonable certainty, then the railroad must be found liable under the FRSA.

https://www.trainlawblog.com/2015/04/articles/federal-rail-safety-act/administrative-review-board-clarifies-frsa-burdens-of-proof/

See also the 3rd Circuit decision in *Araujo v. New Jersey Transit Rail* for a discussion of the contributing factor standard: "Clear and convincing evidence" is just below "proof beyond a reasonable doubt" and way above a mere preponderance of the evidence. The Circuit Court noted that "for employers, this is a tough standard, and not by accident. . . . the standard is 'tough' because Congress intended for railroads to face a difficult time defending themselves, due to a history of harassment and retaliation in the industry." http://www.trainlawblog.com/2013/02/articles/federal-railroad-safety-act/frsa-alert-landmark-federal-appeals-court-decision-clarifies-legal-standards/

Broad Scope of Adverse Action

"Congress meant to cover broad categories of punitive employer conduct." All a rail worker need show is that the adverse action "might have dissuaded a reasonable employee from" engaging in the protected activity. And given the progressive discipline scheme used by every railroad, even a first level charge with no actual discipline imposed qualifies as adverse:

> A reasonable employee, faced with the threat of such action, may be discouraged from reporting violations of federal safety law or hazardous conditions. A reasonable employee may even feel compelled to act against his interest in bodily safety in order to avoid finding himself on the road to termination.

https://www.trainlawblog.com/2014/11/articles/federal-rail-safety-act/the-broad-scope-of-frsa-adverse-action-reaffirmed/

> Congress re-emphasized the broad reach of FRSA when it expressly added "threatening discipline" as prohibited discrimination in subsection 20109(c) of the FRSA whistleblower statute. . . . Where termination, discipline, and/or threatened discipline are involved, there is no need to consider the alternative question whether the employment action will dissuade other employees.

https://www.trainlawblog.com/2012/12/articles/federal-rail-safety-act/arb-rules-the-mere-filing-of-a-charging-letter-constitutes-frsa-adverse-action/

> Under the FRSA, any other unfavorable employment action that is more than trivial, either as a single event or in combination with other deliberate employer actions, qualifies as an adverse action.

https://www.trainlawblog.com/2015/12/articles/federal-rail-safety-act/expansive-scope-of-frsa-adverse-action/

Types of Evidence Proving Contributing Factor Element

The types of evidence an employee can use to prove a FRSA complaint include:

> **Direct or "smoking gun" evidence** that "conclusively links the protected activity and the adverse action and does not rely on inference"
>
> **Circumstantial evidence** showing that the railroad's "proffered reason was not the true reason, but instead a pretext"; such circumstantial evidence may include:
>
> 1) close proximity in time between the protected activity and the unfavorable personnel action
> 2) disparate treatment of the whistleblower employee
> 3) deviation from routing procedures
> 4) attitude of supervisors towards the whistleblower or the protected activity in general
> 5) the employee's work performance rating before and after engaging in the protected activity

And under the FRSA, an employee can prevail even without showing the railroad's reason was a pretext: that is, an employee "can alternatively prevail by showing that the railroad's reason, while true, is only one of the reasons for its conduct and that another reason was the employee's protected activity."

https://www.trainlawblog.com/2013/02/articles/federal-rail-safety-act/how-to-analyze-false-and-misleading-injury-report-retaliation/

In *DeFrancesco v. Union R.R. Co*., 2012 WL 694502 (ARB Feb 29, 2012), the ARB highlighted the various types of circumstantial evidence that can satisfy the contributing factor element in retaliation cases:

> Circumstantial evidence that protected activity was a contributing factor in an adverse employment decision may include evidence of: temporal proximity, indications of pretext, inconsistent application of an employer's policies, an employer's shifting explanations for its actions, antagonism or hostility toward a complainant's protected activity, the falsity of an employer's explanation for the adverse action taken, and a change in the employer's attitude toward the complainant after he or she engages in protected activity.

DeFrancesco, supra, at *3. The presence of any of this conduct, either alone or in combination, is sufficient to carry the employee's burden of proving the contributing factor element.

When Violation of Work Place Rules Is Not a Valid Defense

Here are the questions that must be answered when determining if an employee's violation of a workplace safety rule is being used as a pretext for retaliation against an injured employee:

- Does the railroad routinely monitor for compliance with the work rule in the absence of an injury?
- Does the railroad consistently impose the same discipline on employees who violate the work rule but do not report an injury?
- Is the rule so vague or subjective it can be easily used as a pretext for discrimination?
- Was the investigation designed more to unearth a plausible basis for punishing the injured employee than to reveal the root cause of the injury?
- Were all the supervisors whose actions or inaction contributed to the root cause of the injury also disciplined, or was only the injured employee disciplined?

It is not enough for the railroad to show the employee was disciplined for violating a safety rule. It is not enough for the railroad to show it disciplines employees who do not report an injury. A railroad's defense will fail if it cannot prove to a reasonable certainty that it routinely monitors for compliance with the work rule in the absence of an injury, and that it consistently imposes the same discipline on employees who violate the work rule but do not report an injury.

https://www.trainlawblog.com/2015/10/articles/federal-rail-safety-act/more-on-the-frsas-clear-and-convincing-evidence-defense-standard/

The contributing factor standard is notably lenient. In the words of the ARB:

> The "contributing factor" standard was employed to remove any requirement on a whistleblower to prove that protected activity was a '"significant', 'motivating', 'substantial', or 'predominant' factor in a personnel action in order to overturn that action." Consequently, "[a] complainant need not show that protected activity was the only or most significant reason for the unfavorable personnel action, but rather may prevail by showing that the respondent's reason, while true, is only one of the reasons for its conduct, and another [contributing] factor is the complainant's protected' activity."

This means a railroad can have a legitimate reason for taking the adverse action and still violate the FRSA if the employee's protected activity also was a contributing factor. And in situations where the railroad's basis for the adverse action is intertwined with the employee's protected act (e.g., an injury report is deemed "false" or "dishonest"), the ARB confirmed it is the railroad who "bears the risk" the protected act and the reason for the adverse action "cannot be separated."

https://www.trainlawblog.com/2015/04/articles/federal-rail-safety-act/administrative-review-board-clarifies-frsa-burdens-of-proof/

An Example of Disparate Disciplinary Treatment

Even if an injured employee violates a Rule by following a common practice, the railroad nevertheless violates the FRSA if it disciplines that injured employee after ignoring other employees who followed the same practice.

For example, in the case of *Araujo v. New Jersey Transit Rail*, the Court noted "it was common practice for conductor-flagmen not to talk to the electrical linemen, and thus be unaware of the extent of the catenary power outages" but that "no other conductor-flagmen were disciplined for violating any rules" due to following that practice.

"While the facts in the record may show that Araujo was technically in violation of written rules, they do not shed any light on whether the Railroad's decision to file disciplinary charge was retaliatory." Why? Because the key is whether the Railroad treated Araujo disparately.

As the Circuit Court stressed, the fact Araujo was the only flagman involved in a fatal incident does not matter: "while Araujo may have been the only conductor-flagman to have been on duty during a fatal accident, it is not appropriate to put him in a class by himself, and not compare him to other conductor-flagmen who did not know about catenary outages but were not on duty during fatal accidents."

http://www.trainlawblog.com/2013/02/articles/federal-railroad-safety-act/frsa-alert-landmark-federal-appeals-court-decision-clarifies-legal-standards/

When the Protected Activity and Discipline Are Inextricably Intertwined

> When the protected activity itself triggers the adverse action or investigation that leads to it, the protected activity is inextricably intertwined with the adverse action. The ARB has repeatedly found that protected activity and employment actions are inextricably intertwined where the employment action cannot be explained without discussing the protected activity.

https://www.trainlawblog.com/2019/01/articles/federal-rail-safety-act/when-failing-to-comply-with-a-direct-order-is-ok/

In a case involving discipline for the allegedly “late filing” of an injury report, the ARB held:

> Because it is impossible to separate the cause of Riley’s discipline—for filing his injury report late—from his protected activity of filing the injury report, the two are inextricably intertwined and causation is presumptively established as a matter of law. . . . a case is established here because the basis for Riley’s suspension cannot be discussed without reference to the protected activity. Simply put, Rilery’s reporting of his injury set in motion the chain of events eventually resulting in the investigation and is inextricably intertwined with the eventual adverse employment action.

https://www.gowhistleblower.com/ARB-Decision-Riley-v-Dakota-Minnesota-Eastern-Railroad.pdf

Intervening Events Do Not Necessarily Break FRSA Causal Connection

The ARB confirms that:

> an "intervening event" does not necessarily break a causal connection between protected activity and adverse action simply because the intervening event occurred after the protected activity. The employee's burden of proving contributory causation will be met even if the railroad also had a legitimate reason for the unfavorable employment action against the employee. Again, proof of causation for "contributing factor" is not a demanding standard. The employee need not prove that his or her protected activity was the only or the most significant reason for the unfavorable personnel action. It is enough that an employee establish that the protected activity in combination with other factors affected in any way the adverse action at issue.

Thus, the only way an intervening event can help a railroad is if the railroad proves by clear and convincing evidence that, due to the intervening events, it would have taken the same adverse action even if the employee had not engaged in the protected activity.

http://www.trainlawblog.com/2013/04/articles/federal-railroad-safety-act/more-frsa-railroad-defenses-shot-down/

No Need to Prove Retaliatory Motive or Retaliatory Intent

From the 3rd Circuit's decision in *Araujo v. New Jersey Transit Rail*:

> A railroad employee need not demonstrate the existence of a retaliatory motive on the part of the supervisory employee taking the alleged prohibited personnel action in order to establish that his disclosure was a contributing factor to the adverse personnel action.
>
> We note the fact an employee need not ascribe a motive to the supervisor or manager greatly reduces the employee's burden in making a prima facie case. However, we believe this reduced burden is appropriate in FRSA cases. We note that the legislative history shows that Congress was concerned that some railroad supervisors intimidated employees from reporting injuries to the FRA.

http://www.trainlawblog.com/2013/02/articles/federal-railroad-safety-act/frsa-alert-landmark-federal-appeals-court-decision-clarifies-legal-standards/

Why the 8th Circuit's Reference to "Intentional Retaliation" in Kuduk is Erroneous

In *Kuduk v. BNSF Ry. Co*., 768 F.3d 786, 791 (8th Cir 2014), the 8th Circuit noted:

> the FRSA knowledge requirement may be satisfied by circumstantial evidence the employer had actual or constructive knowledge of protected activity. . . . We agree . . . that, under the [FRSA] statute's "contributing factor" causation standard, "[a] prima facie case does not require that the employee conclusively demonstrate the employer's retaliatory motive." . . . But the contributing factor that an employee must prove is intentional retaliation prompted by the employee engaging in protected activity.

The use of the phrase "intentional retaliation" is simply a maladroit way of saying the managers who took the adverse action must have had some knowledge of the employee's protected activity. Which has always been the case. Knowledge of the protected activity = intentional retaliation. The more accurate phrasing actually is: "intentional retaliation prompted by some knowledge of the employee's protected activity." If the supervisors taking the adverse action had no knowledge of the employee's protected activity, then the contributing factor element is not satisfied. But that is nothing new or different. The 8th Circuit's "intentional retaliation" comment is a distinction without a difference.

https://www.trainlawblog.com/2017/04/articles/federal-rail-safety-act/recent-frsa-circuit-court-decisions/

The Administrative Review Board provides further proof of the erroneous use of the phrase "intentional retaliation" in the 8th Circuit's *Kuduk* decision. In *Riley v. Dakota, Minnesota & Eastern Railroad*, the ARB spells out why "intentional retaliation" simply does not apply to the FRSA's contributing factor standard:

> *Kuduk* and its progeny hold that "the contributory factor that an employee must prove is intentional retaliation prompted by the employee engaging in protected activity." But this pronouncement is both conclusory and contrary to the weight of precedent interpreting the "contributing factor" element of the statutory protections of most whistleblower laws.

In footnote 13, the ARB cites decisions from the 3rd, 5th, 7th, and Federal Circuit Courts contradicting *Kuduk*, and then explains how *Kuduk* erroneously substitutes Title VII's "motivating factor" standard for the FRSA's "contributing factor" standard. *Kuduk* does so

> without properly accounting for the differences between the "motivating factor" causation standard under Title VII and the "contributing factor" standard under FRSA. We have long held that "retaliatory motive" is not required to show causation under the whistleblower statutes, like FRSA, containing the "contributing factor" standard. . . [The FRSA] is designed to address (and remedy) the effect of retaliation against whistleblowers, not the motivation of the employer. Proof of "retaliatory motive" is not necessary to a determination of causation. Although *Kuduk* acknowledged that the "contributing factor" under FRSA does not require an employee to "demonstrate the employer's retaliatory motive," the court failed to explain why, instead, "intentional retaliation" was required or how "intentional retaliation" differs from "retaliatory motive."

Because the 8th Circuit itself admits the FRSA does not require the employee to "demonstrate the employer's retaliatory motive," the phrase "intentional retaliation" simply refers to the fact that one or more of the managers involved in the adverse action must have had some knowledge of the employee's protected activity. If in fact none of the managers in the disciplinary chain had any actual or constructive notice of the protected activity, then their adverse action cannot be connected in any way to the protected activity. But this has always been the case: the contributing factor standard does require proof that one or more of the adverse acting managers were aware of the protected activity.

But proving mere awareness of the protected activity is far different from proving a person's internal motive or intent. Under the FRSA, the employee does not have to prove a manager's internal motive or intent, only that the manager had some actual or constructive notice of the protected activity before initiating the adverse action. **https://www.trainlawblog.com/2019/01/articles/federal-rail-safety-act/further-correcting-kuduks-mischief/**

An Ultimate Decision Maker's Lack of Knowledge of FRSA Protected Activity Is No Defense

Railroad's often try to argue that because the high level manager who made the ultimate decision to discipline was not aware of the employee's FRSA protected activity, there can be no violation of the FRSA. The ARB rejects such a defense:

> to focus on the knowledge possessed by the final responsible decision-maker constitutes error as a matter of law. Proof that an employee's protected activity contributed to the adverse action does not necessarily rest on the decision-maker's knowledge alone. It may be established through a wide range of circumstantial evidence, including the acts or knowledge of a combination of individuals involved in the decision-making process. Proof of a contributing factor may be established by evidence demonstrating "that at least one individual among multiple decision-makers influenced the final decision and acted at least partly because of the employee's protected activity."

http://www.trainlawblog.com/2013/04/articles/federal-railroad-safety-act/more-frsa-railroad-defenses-shot-down/

In other words, the "cat's paw" principle applies, so even if just one of the supervisors or managers involved in the disciplinary chain was aware of the protected activity, that knowledge is sufficient to establish FRSA liability.

https://www.trainlawblog.com/2014/09/articles/federal-rail-safety-act/two-more-federal-court-frsa-decisions/

Emotional Distress

In FRSA cases, "no medical or psychological treatment" is necessary to support an award for emotional distress, and an employee's "credible testimony alone is sufficient to establish emotional distress." Examples of evidence establishing emotional distress include testimony confirming "sleeplessness, anxiety, extreme stress, depression, marital strain, loss of self-esteem, excessive fatigue, or a nervous breakdown." Also testimony noting the physical manifestations of severe emotional harm is sufficient, such as "ulcers, gastrointestinal disorders, headaches, or panic attacks."

https://www.trainlawblog.com/2013/02/articles/federal-rail-safety-act/how-to-analyze-false-and-misleading-injury-report-retaliation/

Also, an award for emotional distress under the FRSA can include "damages for emotional pain, loss of reputation, and personal humiliation."

https://www.trainlawblog.com/2018/11/articles/federal-rail-safety-act/frsa-remedies-and-attorney-fees/
See also *Simon v. Sancken Trucking Co*., ARB No. 06-039, ALJ No. 2005-STA-040 (ARB Nov. 30, 2007), citing *Hobby v. Ga. Power Co.*, ARB Nos. 98-166, -169, ALJ No. 1990-ERA-030, at 33 (ARB Feb. 9, 2001). *See also Hobson v. Combined Transport, Inc*., ARB Nos. 06-016, 06-053, ALJ No. 2005-STA-35 (ARB Jan. 31, 2008).

Punitive Damages

When Punitive Damages Are Warranted

The ARB follows the United States Supreme Court's standard for when an employer's conduct justifies a punitive damages award, namely

> where there has been reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law. The inquiry into whether punitive damages are warranted focuses on the employer's state of mind, and thus does not require that the employer's misconduct be egregious or outrageous.

The "requisite state of mind" is confirmed when a railroad consciously disregards an employee's FRSA protected rights or intentionally interferes with the exercise of those rights. And although egregious or outrageous conduct by a railroad is not necessary to establish the requisite state of mind, its presence certainly supports an inference of the requisite state of mind.

https://www.trainlawblog.com/2016/10/articles/federal-rail-safety-act/arb-clarifies-frsa-punitive-damages-standard/

One Circuit Court noted FRSA "punitive damages are warranted if a railroad acted:

- with malice or ill will, or
- with knowledge that its actions violated federal law, or
- with reckless disregard or callous indifference to the risk that its actions violated federal law

https://www.trainlawblog.com/2017/05/articles/federal-rail-safety-act/two-recent-frsa-punitive-damages-decisions/

The Amount of Punitive Damages

The ARB notes the purpose of punitive damages is to punish employer conduct that "calls for deterrence and punishment." The amount to accomplish that purpose is up to the Judge's discretion:

> Punitive damages are not awarded as of right upon a finding of the requisite state of mind; rather, the question of whether to award punitive damages is in the ALJ's discretion. . . . An ALJ's task after determining that an award of punitive damages would be appropriate is to determine the amount necessary for punishment and deterrence, which is "a discretionary moral judgment."

Finally, the ARB stresses that the FRSA's $250,000 "statutory limit on punitive damage awards" eases "any reluctance to award punitive damages where minimal or no compensatory damages have been awarded."

https://www.trainlawblog.com/2016/10/articles/federal-rail-safety-act/arb-clarifies-frsa-punitive-damages-standard/

Historically, juries that find a railroad whistleblower's rights have been violated have not hesitated to award the $250,000 maximum in punitive damages. This is true even in cases involving little or no economic damages or relatively minor discipline where the employee has not been fired. *See, e.g., Raye v. Pan Am Ry.*, 855 F.3d 25 (1st Cir. 2017), *BNSF Ry Co. v. U.S. DO*L, 816 F.3d 628 (10th Cir. 2016), and *Worcester v. Springfield Terminal Ry. Co*., 827 F.3d 179 (1st Cir. 2016).

For more detailed information and resources regarding the Federal Rail Safety Act whistleblower law, go to the Rail Whistleblower Library page at http://www.gowhistleblower.com

For blog updates on the latest developments in the FRSA, go to www.trainlawblog.com and enter your email address in the Stay Connected box on the left hand side of the page.

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