U.S. Department of Labor

Occupational Safety & Health Administration
230 S. Dearborn St., Room 3244
Chicago, IL 60604
(312) 353-2220

AUG 2 3 2012

Joseph P. Sirbak
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555

Re: Norfolk Southern Railroad Corp./Kawa/5-2700-10-010

Dear Mr. Sirbak:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Steven Kawa (Complainant) against Norfolk Southern Railroad Corporation (Respondent) on February 10, 2010, under the employee protection provisions of the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. Complainant, a Trackman, alleges he was terminated effective August 12, 2009, in reprisal for reporting a work injury. Respondent asserts that the Complainant was terminated for making false statements regarding the alleged incident and for grossly exaggerating the claim of severe injury to his back, neck, and head on July 6, 2009, in order to obtain paid time off to attend to personal matters. After an investigation on July 31, 2009, Respondent notified Complainant on August 14, 2009, that his employment was terminated effective August 12, 2009.

Following an investigation of this matter 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 V, finds that there is reasonable cause to believe that Respondent violated 49 U.S.C. §20109, and issues the following Findings:

Secretary's Findings

Respondent is a railroad carrier within the meaning of 49 U.S.C. §20109. Respondent offers integrated transportation services: rail, intermodal, freight forwarding, warehousing and distribution.

Respondent hired Complainant on June 27, 1978, to work as a Trackman. At all relevant times, Complainant was an employee within the meaning of 49 U.S.C. §20109.

Respondent notified Complainant on August 14, 2009, that he was discharged effective August 12, 2009. Discharge is an adverse action under FRSA. Id. at § 20109(a). Respondent's issuances of a charging letter on July 20, 2009, and the holding of an investigatory hearing on

July 31, 2009, also are adverse actions under FRSA. However, these two events fall outside the statutory 180-day filing period and therefore are not timely. On February 10, 2010, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of FRSA. As Complainant filed his complaint within 180 days of his termination, it is timely.

FRSA prohibits a railroad carrier from discharging an employee if such discharge is "due, in whole or in part, to the employee's lawful, good faith act...to notify, or attempt to notify, the railroad carrier...of a work-related personal injury or work-related illness of an employee..." Id. at § 20109(a)(4). In this case, Respondent contends that Complainant made false statements regarding the alleged incident and grossly exaggerated the claim of severe injury to his back, neck, and head on July 6, 2009, in order to obtain paid time off to attend to personal matters, and therefore, he did not engage in activity protected by FRSA.[1]

Respondent hired Complainant to work as a Trackman on June 27, 1978. He worked in and around the Melvindale Terminal of the Norfolk Southern Detroit District. Complainant was part of a four-man maintenance-of-way crew, known as the Melvindale section gang. The gang's work consisted primarily of track maintenance, including replacing and changing out rails. Complainant's employment history is free of discipline.

On July 6, 2009, Complainant and his gang crew were assigned to change-out spearing rails in Raisin Center, Michigan. This location was about 40-miles from the Melvindale Terminal, requiring the gang crew to drive a truck to the site. The gang crew decided that Complainant would be the driver because he was familiar with the area.

About 10:10 A.M. on July 6, 2009, Complainant was driving gang truck 399605. The truck had one bucket seat in the rear and two air ride seats in the front, which were installed in September 2008. The seats were equipped with restraining belts but did not have the rear tethers[2] installed. As Complainant and the gang crew (Mark Waluzak, James Barnard, and Ray Ransom) were traveling westbound on Interstate 94 in Ypsilanti, Michigan, they hit a rough patch on the surface of the Ford Lake Bridge causing the employees to bounce in their seats. Complainant hit his head on the ceiling of the truck and the gang crew members reported hearing Complainant mumble something about the bump. Complainant continued to drive approximately 20 more miles. In Britton, Michigan, Complainant pulled the gang truck off the road and asked one of the other gang crew members to drive because his neck and back were hurting. When the gang crew arrived at Raisin Center, Michigan, Complainant called Al Murlone, the Assistant Track Supervisor, reported his injury and requested to be transported to the hospital.

Complainant was taken to Bixby Medical Center in Adrian, Michigan for treatment. He was diagnosed with a cervical sprain (whiplash), given an injection of a muscle relaxer, given a

[1] Respondent also contends that Complainant's complaint is barred by the FRSA's election of remedies provision. Since the filing of this 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., ARB Case No. 09-121, ALJ No. 2008-FRS-004 (Final Decision and Order on Interlocutory Review, Sept. 29, 2011).

[2] The purpose of the tethers is for front impacts to the vehicle to prevent the seat from overturning.

prescription for Vicodin for pain, placed in a neck collar, placed off work for seven days, and instructed to follow-up with his family physician.

Immediately following the incident, Respondent managers, R. W. Klinkbeil, M.J. Difilippantonio, and A. Murlone, conducted a preliminary investigation into Complainant's injury. Their investigation consisted of interviewing the gang crew, inspecting the seats in the gang truck, and attempting to reenact the incident.

On July 8, 2009, they released their internal investigative findings. Respondent alleges that the gang crew failed to corroborate Complainant's injury. However, Respondent's internal investigation merely provides that no other crew member "saw" Complainant hit his head. In fact, Respondent's investigation revealed that immediately after the "bump" the gang crew heard Complainant mumble something and one of the crew members, Mark Waluzak, reported that he felt his hard hat tap the roof of the vehicle. Respondent did not assert or find that the gang truck did not hit a rough spot on the road, and all crew members did corroborate that the gang truck hit a rough spot on the road. Respondent's internal investigation also stated that "the rough patch on the [road] surface caused the employees to be bounced in their seats." In addition, Respondent's internal investigation revealed that Complainant continued to drive for approximately 20 miles further, when he drove over a second smaller bump, and then asked someone to else to drive because his neck and back were hurting. The crew drove another 10 miles or so to the work site where Complainant called Assistant Track Supervisor Al Murlone, reported that he had bumped his head on the roof of the gang truck, and requested to be transported to a hospital.

Respondent's internal investigation also noted that all crew members were wearing seatbelts and that the front seats were changed out less than a year prior with no report of any problems in that time. Respondent's internal investigation notes several reenactments and claimed that no one struck their heads. The specifics of the reenactments were not provided in the internal investigation nor to OSHA during the investigation (e.g., speed of vehicle, height and weight of individuals in the vehicle, etc.). According to Respondent's internal investigation, there was adequate head clearance (2 and 7/8 inches during normal driving conditions). However, the Respondent's internal investigation did note that seat recoil over the rough spot was approximately 2.5 inches with some employees feeling their hair contact the ceiling of the cab.

Despite the above information, Respondent inexplicably concluded that one cause of the incident was an inadequate job briefing, finding that three of the four employees, including Complainant, were aware of the rough highway, and no one noted it. It seems highly questionable that even if the "rough" highway were noted in a pre-job briefing, that such would have eliminated the possibility of the incident occurring. Respondent never provided any evidence that Complainant was driving at an excessive speed, was driving erratically, or any other information from which one could reasonably conclude that the Complainant was driving unsafely.

The other conclusion reached by the Respondent as to a cause of the accident was Complainant's "very emotional state" due to his caring for his severely ill mother – according to the Respondent, the Complainant was exhausted, not sleeping, and heard to complain about the poor state of Medicare. Respondent also opined that Complainant was in a high emotional state when he was interviewed after his medical treatment. Respondent then concluded that Complainant

drove over a "known rough spot on this highway" in order to request medical attention so he would get off of work to address his personal concerns. There has been no assertion or other evidence introduced by Respondent that Complainant had a history of exaggeration of injuries, that he had a history of absenteeism, that he did not have adequate leave time, that he would have been denied leave if requested, or that he had any disciplinary action of any kind that would call into question his veracity or credibility. Rather, the only past employment history the Respondent noted in its internal investigation was that Complainant had six past injury reports (five reportable, one not reportable).

To supplement its investigation, Respondent hired a Professional Engineer (PE) on July 9, 2009, to conduct an independent re-creation of the incident. The PE re-created the incident using a driver who was four inches shorter than Complainant and 62 pounds lighter. With the driver going 50 miles per hour over the bump, the upward movement of the chair was 3.5 inches and at 55 miles per hour, the upward movement of the chair was four inches. The PE concluded that Complainant would/should have about one inch of clearance from the top of his head to the ceiling. However, the PE used himself as the comparative driver, not the test driver. It appears this conclusion was drawn from the PE only sitting in the driver's seat, not driving over the bump at 50/55 miles per hour. The PE submitted his report to Respondent on July 13, 2009. The PE acknowledged during OSHA's investigation that he had never conducted an investigation like this in the past, and did not understand why Respondent hired him for this job.

Based on the PE's July 13, 2009 report and Respondent's assertion that there was no medical evidence to support Complainant's claim, Respondent, in a July 20, 2009 letter from Mr. Difilippntonio, notified Complainant to:

> Arrange to report to Norfolk Southern Conference Room-A, 8111 Nelson Road, Fort Wayne, Indiana on July 31, 2009 at 09:00 A.M. (Railroad Time) for a formal investigation to determine your responsibility, if any, in connection with making false statements regarding your alleged incident and claim of injury to your back, neck, and head on July 6, 2009.

On July 29, 2009, Mr. Waluzak, one of the employees riding in the gang truck at the time of the incident, e-mailed a statement to Respondent regarding the incident. He notified Respondent that he would not be able to attend the hearing as he had been called to annual training duty as part of the armed forces. In the e-mail, he stated that his hard hat hit the ceiling of the gang truck at the same time Complainant hit his head. Specifically, Mr. Waluzak wrote:

> On the day [Complainant] received his injury, I was riding behind him in the gang [truck] he was driving. I had my helmet on we were in heavy traffic, we hit a bad piece of road. I received a significant buck from my seat, hitting my head on the ceiling of the gang truck. I heard [Complainant] say something, thinking to myself that maybe he hit his head too. I do know that the air seats in the front of the truck travel much more than the seats in the rear.

An investigatory hearing was held on July 31, 2009, presided over by Assistant Division Engineer David Griffith. Complainant was questioned about the events that led to his back,

head, and neck injury. Complainant testified that he was driving a gang truck transporting three co-workers when he drove over a bump in the road and hit his head on the ceiling of the gang truck and commented "Damn, that hurt, I hit my head." In addition to Mr. Waluzuk's written statement (see reference to email above), Ray Ransom, another co-worker in the gang truck at the time of the incident, testified that Complainant stated that he was hurt right after going over the "bump." Respondent introduced its own internal report and also the PE report. The hearing officer questioned Respondent about the calculations and Respondent answered based solely on the PE report. Complainant's mental state was never raised during the hearing.

On August 12, 2009, Assistant Division Engineer Griffith informed Complainant in a one page letter that "As a result of the facts brought out in this formal investigation, you are hereby dismissed from all services with the Norfolk Southern Railroad Company." Mr. Griffith provided no explanation of which facts supported his determination, in particular, how he determined that any statements or which statements made by Complainant were false. Respondent did not introduce any evidence during the hearing that showed Complainant was in an emotional or exhaustive state the day of his injury or that he was driving recklessly or using excessive speed the day of his injury.

Complainant appealed his termination to the Public Law Board. On May 10, 2010, Public Law Board Award 185 denied Complainant's appeal of his termination. The Public Law Board determined the Division Engineer and the Assistant Division Engineer's testimony was credited over the Claimant's. "We see no reason to disturb that credibility determination. We conclude that the finding on the property that Claimant made a false statement concerning an on-duty injury is supported by substantial evidence."

OSHA may defer to an arbitrator's decision if the proceeding ensures all relevant issues were addressed and the outcome was not repugnant to the purpose and policy of FRSA. In this case, the ruling was on the credibility of managers' testimony and did not consider testimony or credibility of Complainant's co-workers who were riding in the vehicle at the time of the injury. In addition, the issue of retaliation for reporting a workplace injury was not addressed. Therefore, OSHA is not deferring to the decision issued by Public Law Board Award 185.

In sum, the evidence obtained during the investigation in this matter reveals that Complainant was a 31-year employee with a positive disciplinary record. Complainant suffered an on-duty injury to his back, neck, and head and reported the injury to the assistant track supervisor. Respondent transported Complainant to a local hospital where he was given pain medication and diagnosed with a "cervical sprain." Complainant completed a personal injury report the same day he was injured.

About two weeks after reporting his injury, Respondent charged Complainant with making false statements regarding his injury. After an investigatory hearing, there was no evidence that Complainant made any statements or submitted any documents related to his injury that could be construed as falsification or misleading. Respondent relied only on managers' testimony who were not present when the injury occurred and did not consider testimony from Complainant's co-workers who were present at the time of the injury. Moreover, Complainant's work injury has caused severe medical problems to his back, neck, and shoulders. He is unable to sit for

more than 60 minutes, stand and walk for more than 15 minutes, drive for more 45 minutes, and is restricted from operating machinery with moving parts. Respondent presented no evidence to contradict or call into question the extent of his injuries. Finally, the Complainant has been receiving Railroad Disability Benefits since January 1, 2010. Prior to that, he received sick benefits.

OSHA issued Respondent a due process letter on August 16, 2011, which included a copy of the case file. The letter allowed Respondent to submit additional evidence or to request a meeting with OSHA officials. Respondent did not submit any additional evidence for OSHA to consider nor additional witnesses to interview.

This situation has been difficult and stressful on Complainant. Complainant has suffered from depression, sleeplessness, and pain. Financially, the loss of employment benefits requires Complainant to pay about $1200 per month for health insurance and prescriptions, and all dental bills.

Respondent's disregard for Complainant's rights warrant punitive damages. The evidence shows that Respondent intentionally presented an extraordinary and fraudulent theory that it was not physically possible for Complainant to have sustained an injury in the manner he described. Respondent theorized that he may have made it up so he could get more time off to care for his seriously ill mother. Further, Respondent terminated Complainant's employment – the most severe form of punishment, even though Complainant has a 31-year work history with Respondent that is free of discipline. On several previous occasions, OSHA has found that Respondent violated the whistleblower protection provisions of FRSA when it brought disciplinary charges against employees who reported workplace injuries, charged those employees with falsifying or making misleading or conflicting statements about their injuries, and terminated their employment.[3]

Based on all the forgoing, OSHA finds that there is reasonable cause to believe that Respondent has violated 49 U.S.C. § 20109(a). According, OSHA issues the following:

Order

1. Complainant's work injury has caused severe medical problems to his back, neck, and shoulders. He is unable to sit for more than 60 minutes, stand and walk for more than 15 minutes, drive for more 45 minutes, and is restricted from operating machinery with moving parts. Therefore, Respondent shall, upon receipt of formal notice that Complainant is medically released to return to work, schedule a neutral Functional Capacity Evaluation to determine if Complainant is capable of performing the essential functions of his former position, "Trackman, Maintenance-of-way crew member." If the neutral Functional Capacity Evaluation determines that Complainant is able to perform the essential functions of his former position, Respondent shall immediately reinstate

[3] 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.

Complainant to his former position, with full seniority and benefits he otherwise would have been entitled to had Respondent not terminated his employment.

2. Complainant has been unable to work since his injury on July 6, 2009. Complainant collected sick benefits until January 1, 2010, when he started collecting Railroad Disability benefits. Therefore, back pay is not ordered.

3. Respondent shall pay medical and dental expenses in the amount of $17,818.60. These are expenses that would have otherwise been paid by his employee insurance.

4. Respondent shall pay Complainant compensatory damages of $150,000 for mental pain and emotional distress due to the humiliation and the loss of income from the wrongful termination.

5. Respondent shall pay Complainant $150,000 in punitive damages for its reckless disregard for the law and complete indifference to Complainant's rights under 49 USC §20109.

6. Respondent shall pay Complainant's attorney fees in the amount $32,813.75 (69.25 hours @ $300.00 per hour, plus other fees of $12,038.75).

7. Respondent shall expunge Complainant's personnel records and any other related Respondent records of any adverse references relating to Complainant's discharge or the exercise of his rights under 49 USC §20109 and shall ensure that the facts and circumstances related to this complaint are not used against Complainant in any future promotional opportunities with the Respondent and that no negative references relating to the facts and circumstances related to this complaint are provided to any prospective future employment references.

8. Respondent shall provide to all employees at the Melvindale Terminal a copy of the FRSA Fact Sheet included with this order.

9. Respondent shall post for 60 consecutive days the Notice to Employees included with this Order in all areas where employee notices are customarily posted at the Melvindale Terminal.

10. Respondent shall remove from Complainant's employment records any reference to the exercise of his rights under FRSA.

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
U.S. Department of Labor
Suite 400N, Techworld Building
800 K Street, NW
Washington D.C. 20001-8002
(202)693-7542, Facsimile (202) 693-7365

with copies to:

Charles A. Collins P.A.
Attorney at Law
411 Main Street, Suite 410
St. Paul, MN 55102

Nick A. Walters
Regional Administrator
Occupational Safety and Health Administration
230 South Dearborn Street, Room 3244
Chicago, IL 60604

Mary Ann Howe, CFE
Assistant Regional Administrator
Region V Whistleblower Protection Program
U.S. Department of Labor, OSHA
365 Smoke Tree Plaza
North Aurora, IL 60542

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 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.

The rules and procedures for the handling of FRSA cases can be found in Title 29, code of Federal Regulations Part 1982, and may be obtained at www.osha.gov.

Sincerely,

Nancy Hauter

for Nick A. Walters
Regional Administrator

Enclosures: Notice to Employees
FRSA Fact Sheet

cc: Chief Administrative Law Judge
Complainant's Attorney
Federal Railroad Administration

OSHA® FactSheet

Whistleblower Protection for Railroad Workers

Individuals working for railroad carriers are protected from retaliation for reporting potential safety or security violations to their employers or to the government.

On August 3, 2007, the *Federal Railroad Safety Act* (FRSA), 49 U.S.C. §20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to transfer authority for railroad carrier worker whistleblower protections to OSHA and to include new rights, remedies and procedures. On October 16, 2008, the *Rail Safety Improvement Act* (Public Law 110-432) again amended FRSA, to specifically prohibit discipline of employees for requesting medical treatment or for following medical treatment orders.

Covered Employees

Under FRSA, an employee of a railroad carrier or a contractor or subcontractor is protected from retaliation for reporting certain safety and security violations.

Protected Activity

If your employer is covered under FRSA, it may not discharge you or in any other manner retaliate against you because you provided information to, caused information to be provided to, or assisted in an investigation by a federal regulatory or law enforcement agency, a member or committee of Congress, or your company about an alleged violation of federal laws and regulations related to railroad safety and security, or about gross fraud, waste or abuse of funds intended for railroad safety or security. Your employer may not discharge or in any other manner retaliate against you because you filed, caused to be filed, participated in, or assisted in a proceeding under one of these laws or regulations. In addition, you are protected from retaliation for reporting hazardous safety or security conditions, reporting a work-related injury or illness, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures. You may also be covered if you were perceived as having engaged in the activities described above.

In addition, you are also protected from retaliation (including being brought up on charges in a disciplinary proceeding) or threatened retaliation for requesting medical or first-aid treatment, or for following orders or a treatment plan of a treating physician.

Adverse Actions

Your employer may be found to have violated FRSA if your protected activity was a contributing factor in its decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Disciplining an employee for requesting medical or first-aid treatment
- Disciplining an employee for following orders or a treatment plan of a treating physician
- Forcing an employee to work against medical advice

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged adverse action occurred.

How to File a Complaint

A worker, or his or her representative, who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the worker lives or was employed, but may be filed with any OSHA officer or employee. For more information, call your nearest OSHA Regional Office:

- *Boston* *(617) 565-9860*
- *New York* *(212) 337-2378*
- *Philadelphia* *(215) 861-4900*
- *Atlanta* *(404) 562-2300*
- *Chicago* *(312) 353-2220*
- *Dallas* *(972) 850-4145*
- *Kansas City* *(816) 283-8745*
- *Denver* *(720) 264-6550*
- *San Francisco* *(415) 625-2547*
- *Seattle* *(206) 553-5930*

Addresses, fax numbers and other contact information for these offices can be found on the Whistleblower Protection Program's website, www.whistleblowers.gov, and in local directories. Complaints may be filed orally or in writing, by mail (we recommend certified mail), e-mail, fax, or hand-delivery during business hours. The date of postmark, delivery to a third party carrier, fax, e-mail, phone call, or hand-delivery is considered the date filed. If the worker or his or her representative is unable to file the complaint in English, OSHA will accept the complaint in any language.

Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue a preliminary order requiring the appropriate relief to make you whole. Ordered relief may include:

- Reinstatement with the same seniority and benefits.
- Payment of backpay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees and reasonable attorney's fees.
- Punitive damages of up to $250,000.

OSHA's findings and preliminary order become a final order of the Secretary of Labor, unless a party objects within 30 days.

Hearings and Review

After OSHA issues its findings and preliminary order, either party may request a hearing before an administrative law judge of the U.S. Department of Labor. A party may seek review of the administrative law judge's decision and order before the Department's Administrative Review Board. Under FRSA, if there is no final order issued by the Secretary of Labor within 210 days after the filing of the complaint, then you may be able to file a civil action in the appropriate U.S. district court.

To Get Further Information

For a copy of the statutes, the regulations and other whistleblower information, go to www.whistleblowers.gov. For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:

OSHA® Occupational Safety and Health Administration

U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

DEP 8/2010

NOTICE TO EMPLOYEES

THE EMPLOYER AGREES:

THE EMPLOYER AGREES THAT IT WILL NOT INTERFERE WITH, RESTRAIN, COERCE, DISCHARGE, OR IN ANY MANNER DISCRIMINATE AGAINST ANY EMPLOYEE BECAUSE SUCH EMPLOYEE HAS FILED ANY COMPLAINT UNDER OR RELATED TO THE FEDERAL RAILROAD SAFETY ACT (FRSA) 49 U.S.C. § 20109.

THE EMPLOYER AGREES TO ENSURE THAT ALL PERSONNEL IN ITS EMPLOY WILL IN NO WAY DISCRIMINATE AGAINST ANY EMPLOYEE BECAUSE THEY QUESTIONED VIOLATIONS OF FEDERAL LAWS AND REGULATIONS RELATED TO RAILROAD SAFETY AND SECURITY, OR ABOUT GROSS FRAUD, WASTE OR ABUSE OF FUNDS INTENDED FOR RAILROAD SAFETY OR SECURITY.

_____ _____

FOR THE EMPLOYER Date

Regional Administrator
U.S. Department of Labor, OSHA
230 S. Dearborn, RM 3244
Chicago, IL 60604
312 353-2220