U.S. Department of Labor

Occupational Safety and Health Administration
201 Varick Street, Room 670
New York, New York 10014
Attention: John Schreck
Tel: (212) 337-2365
Fax: (212) 337-2371
E-Mail: schreck.john@dol.gov

March 26, 2012

Ms. Sofia Hubscher, Esq
Metro North Commuter Railroad Co.
347 Madison Avenue
New York, NY 10017-3739

Via United Parcel Service # 1Z X10 51V 02 9783 4976

Re: Metro-North Commuter Railroad Company / Cortese / 2-4173-09-095

Dear Ms. Hubscher:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Paul Cortese (Complainant) against Metro-North Commuter Railroad Company (Respondent) on July 10, 2009, amended on July 14, 2009 and August 10, 2009, under the Federal Railroad Safety Act (FRSA or Act), 49 U.S.C. § 20109. Complainant alleges that, in retaliation for reporting his on-the-job injury, Respondent: denied and delayed prompt medical treatment; threatened Complainant with discipline if he followed the restrictions imposed by Respondent's Occupational Health Services and his doctor; harassed and intimidated Complainant because he was following his doctor's orders; issued him a safety counseling; and did not assign any work to Complainant for approximately one week following his return to full-duty work.

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 II, finds that there is reasonable cause to believe that Respondent violated 49 U.S.C. § 20109 and issues the following findings:

Secretary's Findings

Complainant alleges that, beginning on June 6, 2009, Respondent retaliated against him for reporting his on-the-job injury. On July 10, 2009, Complainant filed a complaint with the Secretary of Labor alleging that Respondent violated FRSA. Complainant filed amendments to his complaint on July 14, 2009 and on August 10, 2009. As these complaints were filed within 180 days of the alleged adverse actions, they are timely.

Respondent is a railroad carrier within the meaning of 49 U.S.C. § 20102(3). Respondent is engaged in interstate commerce for purposes of 49 U.S.C. § 20109. Complainant is an employee who is entitled to 49 U.S.C. §20109's employee protections.

Respondent is a suburban commuter rail service that is a subsidiary of the Metropolitan Transportation Authority, a public benefit corporation. Respondent runs service to New York City's northern suburbs in New York and Connecticut, as well as to other regions, including, in conjunction with New Jersey Transit, to parts of New Jersey. Respondent operates 120 stations.

On December 4, 2000, Complainant was hired by Respondent as a machinist. He is a member of the International Association of Machinists. During the relevant period of time, Complainant was assigned to the Harmon Diesel Shop located in Croton-Harmon, NY. On Monday, July 6, 2009, Complainant sustained a cut to the third finger of his left hand while replacing a cracked bushing. It is undisputed that on July 6, 2009 Complainant reported the injury to Foreman General Neil McCorey. Complainant received first aid treatment on site by a coworker who then drove him in his own vehicle to and dropped him off at the Phelps Hospital Emergency Room where his wound was treated and sutured. The Emergency Room physician, Dr. Krumins, issued discharge orders taking Complainant out of work for the remainder of the day and the following day and instructed Complainant to follow up with his personal physician. Complainant returned to the shop as ordered after his 5:45 PM discharge from the Emergency Room, well after his shift had ended. Complainant's wife had to be called to pick him up at the emergency room because no one from Respondent remained with him at the hospital. Upon returning to the Harmon shop, Complainant received instructions to report to the shop the following morning and then go to Occupational Health Services (OHS) for an evaluation. In Complainant's absence, the work assignment was completed by his coworkers with the same tools used by Complainant.

As instructed, Complainant reported to OHS on Tuesday, July 7, 2009, and completed the Authorization For Exchange of Medical Information, Form MD-23 permitting OHS to communicate and exchange medical information with Complainant's treating doctor. Respondent contends that the Form MD-23 form is optional and that employees are neither required to complete the authorization nor will they be subject to discipline if they choose not to. Other employees who have filed FRSA complaints against Respondent have previously indicated that, contrary to Respondent's assertion, employees are not told that Form MD-23 is optional; instead, they are led to believe that their failure to complete the form will result in an adverse consequence. After receiving a call from Harmon shop management, OHS Physician's Assistant (PA) Linda Primus determined Complainant was fit for duty with restrictions. Primus completed Form MD-40 stating Complainant was fit for duty with restrictions effective this same day, Tuesday, July 7, 2009, in contravention of Dr. Krumins' discharge instructions excusing Complainant from work on July 7. Complainant was restricted by Primus from heavy lifting using the left hand and flexing of the left hand, and the third digit on the left hand needed to be covered at all times. A follow-up appointment was scheduled for July 17, 2009. Complainant returned to the shop where he was instructed to remain until the end of the shift, in contravention of Dr. Krumins' discharge orders excusing Complainant from work on July 7.

On Wednesday, July 8, 2009, Complainant arrived for his regularly scheduled shift. His Foreman, Bob Mellilo, instructed Complainant to be the fire watch for an outside contractor who was hired to weld a fuel tank. Complainant informed Mellilo that he was unable to perform the work due to the restrictions on his duties by OHS. Complainant was threatened with charges of insubordination if he refused to perform the fire watch assignment and for dressing

inappropriately for work. Complainant reported the incident to Ken Korzeniowski, Captain of the fire brigade/President IBEW, and George Johnson, who at the time was the Vice President for the International Association of Machinists and Complainant's union representative. Complainant, George Johnson, Superintendent John Stagnaro and Foreman General Neil McCorey met that same day. It was confirmed that OHS had deemed Complainant fit for duty with restrictions of no heavy lifting with left hand, no flexing of left hand and keeping the left hand covered at all times. Respondent asserts that the fire watch position required Complainant to hold a radio and stand watch while an outside contractor performed a welding job. Complainant was told by Stagnaro that he was to do the job or he would be taken out of service and written up for insubordination. Complainant did not perform the fire watch duties and left work that day believing he had been taken out of service for refusing to act as fire watch.

Credible evidence suggests that the welding was to be performed on a fuel tank which required the welder and the fire watch to climb inside of a locomotive to weld the fuel tank. Specifically, union officials, Korzeniowski and Johnson, indicated that standard procedure calls for two members of the fire brigade to act as fire watch. They would have been dressed in full turnout gear and fully trained in using a fire extinguisher, which they would be carrying. All fire brigade members are New York State certified fire fighters. Complainant is not a member of the fire brigade and performing fire brigade duties would have violated his work restrictions implemented by OHS. At least climbing the ladder to enter the locomotive and carrying the fire extinguisher would have violated the restrictions on Complainant's duties, and even if he were not subject to such restrictions, he was not qualified to be a fire watch. Additionally, standard procedure requires a hot works permit to be issued prior to the start of this welding project to determine if the air is safe for welding. This procedure had not been followed. Respondent's order to Complainant demonstrated a complete disregard for the safety of the welder and Complainant.

On July 9, 2009, as required by his discharge orders from the emergency room, Complainant was seen by his treating physician, Dr. Spencer. Dr. Spencer excused Complainant from work until at least July 16, 2009, at which time it was expected Complainant's sutures would be removed. As per Dr. Spencer's treatment plan, Complainant remained out of work. This same day, July 9, 2009, Complainant was informed through his union that Respondent would not bring charges of insubordination relating to the fire watch incident if Complainant returned to work. Complainant did not return to work, and despite its threats, Respondent did not officially write him up for not performing the fire watch duties. The medical information from Dr. Spencer was forwarded to OHS, and on Monday, July 13, 2009, Complainant was ordered to OHS or face potential disciplinary action. Complainant met with PA Primus on July 14, 2009 at OHS, and she determined that Complainant's injury was clinically improved, but as per the treating physician, Dr. Spencer, Complainant was not medically qualified to work until July 17, 2009. On July 16, 2009, Dr. Spencer removed Complainant's sutures and disqualified Complainant from work through July 23, 2009. As previously scheduled, Complainant went to OHS on July 17, 2009 for his follow-up visit. PA Primus completed the MD-40 disqualifying Complainant from duty. On July 23, 2009, Complainant was cleared to return to work by his treating physician, and on July 24, 2009, PA Primus qualified Complainant for full duty. On Monday, July 27, 2009, Complainant returned to the shop to resume his full duty assignments; however, Complainant

was not given any work assignments for the remainder of the work week. Instead, he was ordered to sit in the shop and do nothing.

On August 4, 2009, Superintendent John Stagnaro conducted a safety counseling session with Complainant. Respondent asserts the counseling session is corrective and instructive, not disciplinary. However, the counseling session is noted in Complainant's employment history and reflects that Complainant used the improper tool thereby causing his injury. A Job Safety Analysis (JSA) was reviewed with Complainant during his counseling session although it was not approved until August 10, 2009. Complainant alleges that he requested a copy of the JSA from Matt Dalbo, Foreman General, the following day and that Dalbo refused stating that Complainant's lawyer can get it for him. Complainant further alleges that Dalbo told Complainant if his injury had happened at any other work place he would have been ordered to put a glove on his hand and get back to work. Complainant considered the comments to be further harassment stemming from the reporting of his injury on July 6, 2009. Dalbo disputes having made the comments and asserts that he did not have a copy of the JSA and he was uncertain of its approval status.

Complainant engaged in protected activity when he reported his July 6, 2009 injury to his managers. Respondent does not dispute that it was aware of this protected activity.

Complainant alleges that Respondent took five adverse actions against him in violation of 49 U.S.C. §§ 20109(a) and (c). First, Complainant alleges that he suffered an adverse action when PA Linda Primus, of OHS, cleared him to return to work with restrictions the day after he was treated at the Emergency Room, in contravention of the Emergency Room's discharge instructions that ordered the Complainant to remain out of work that day.

Complainant alleges Respondent took a second adverse action against him on July 8, when Complainant was ordered to perform the duties of the fire watch and threatened with discipline if he did not perform those duties even though the required duties would have been in contravention of his work restriction and he could not safely perform those duties.

A third alleged adverse action occurred when Respondent ordered Complainant to make an unnecessary visit to OHS on July 14, even though OHS did not request the visit and he had an OHS appointment scheduled for July 17.

Fourth, Complainant alleges that he suffered an adverse action when he was made to attend a safety counseling session, which resulted in a written note of reprimand finding that he caused his injury by using the wrong tool.

Last, Complainant alleges he suffered an adverse action when, upon his return to work at full duty status, Complainant was not given any work assignments for approximately one week even though Complainant had been cleared for full duty by his physician and by OHS.

Following its investigation, OSHA finds that there is reasonable cause to believe that Respondent violated 49 U.S.C. § 20109(a)(4).[1] In each instance listed above, Respondent took actions against Complainant that could dissuade a reasonable employee from reporting his injury and thus satisfy the standard for adverse action under 49 U.S.C. § 20109(a)(4). In each instance, Complainant's July 6, 2009 injury report was a contributing factor to the action taken against him, and Respondent has not shown by clear and convincing evidence that it would have taken the same action in the absence of the injury report.

49 U.S.C. § 20109(a)(4) provides that a railroad carrier "may not discharge, demote, suspend, reprimand, or in any other way discriminate" against an employee for any lawful, good faith act by the employee to report a work-related injury to either the railroad or the Federal Railroad Administration (FRA). The types of retaliatory actions prohibited by (a)(4) include not only the specific acts identified (discharge, demotion, suspension, and reprimand), but also "any other" discrimination against an employee for notifying his/her railroad carrier of a work-related personal injury. Prohibited retaliatory actions can thus include actions not directly related to employment and harm caused outside the workplace. A retaliatory action by a railroad carrier that may dissuade a reasonable employee from reporting his or her injury is prohibited by (a)(4).[2]

Complainant suffered an adverse action when OHS cleared Complainant to return to work with restrictions on July 7, 2009 despite the fact that the Emergency Room's discharge instructions had ordered Complainant to remain out of work that day. The orders were specific that the two days encompassed the date of treatment, July 6, 2009, and the following day, July 7, 2009. Complainant was seen by PA Primus at OHS on July 7, 2009. The discharge orders to remain out of work were still in effect. Despite the orders, Primus cleared Complainant for duty with restrictions that very day. Respondent contends this was an error in judgment by Primus. Regardless, Complainant had to report to work in a diesel shop where Respondent's actions could have caused Complainant additional harm. OSHA finds ordering a worker back to work in an environment that might harm the worker's recovery against the orders of his treating physician would likely dissuade a reasonable employee from reporting future injuries. OSHA notes that Respondent had a motive to coerce Complainant to return to work as Respondent could avoid reporting lost work days to the FRA if Complainant returned to work.

---

[1] OSHA does not find reasonable cause to believe that Respondent's actions violated 49 U.S.C. § 20109(c)(2), which prohibits a railroad carrier from disciplining, or threatening to discipline, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician. Stagnaro's threat on July 8 to write up Complainant for insubordination if he did not perform the fire watch could be covered by (c)(2)'s definition of discipline. However, when Stagnaro made that statement, Complainant was seeking to follow the restrictions imposed by OHS, not his treating physician. At the time, his treating physician had issued work restrictions only for July 6 and 7. In addition, having found merit under (a)(4), OSHA is not addressing whether Complainant's allegations would establish a violation of 49 U.S.C. 20109(c)(1).

[2] See generally Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 59-70 (2006).

Second, Complainant alleges that Superintendent Stagnaro's order to act as a fire watch for a fuel tank welding procedure and subsequent threat of disciplinary action for asserting that Complainant was not capable of performing the duties was an adverse action. On July 7, 2009, OHS had evaluated Complainant and determined that he was fit for duty under restrictions preventing him from heavy lifting with his left hand or flexing his left hand and requiring him to keep his third digit on the left hand covered at all times. The restrictions were in effect through July 17. Complainant's managers ignored these restrictions by assigning him fire watch duties. Those duties, when done properly, would have required him to perform duties that OHS had restricted him from performing. Additionally, Complainant's supervisor completely disregarded the safety of Complainant as well as the outside contractor who had been hired to weld the fuel tank by requiring both the contractor and the fire watch to climb inside a locomotive. Complainant was unable to flex his hand preventing safe climbing of the ladder. The purpose of the fire watch is to put out any fires that may inadvertently occur and/or prevent serious harm to the welder. Complainant was not capable of doing so. He was not able to carry a fire extinguisher because of his restrictions. If, as Respondent claims, Complainant was required to carry only a hand held radio, then Respondent was completely disregarding the safety of the welder and standard protocol. According to Ken Korzeniowski, President of IBEW, there should have been a hot works permit authorized before any welding was initiated and two members of the fire brigade should have stood as fire watch because the welding was taking place inside a locomotive rather than outside in the open air. Members of the fire brigade are NYS certified fire fighters. Complainant is not. Forcing Complainant two days after he reported an injury to choose between performing duties he was restricted from performing or facing threatened discipline was a retaliatory action. His managers' offer to drop the threatened discipline if he returned to work and the fact that Complainant was not ultimately disciplined for not performing the fire brigade duties are further evidence that Respondent's actions on July 8 were retaliatory.

Third, the repeated visits that Complainant was required to make to OHS were, at least in part, for the purpose of harassing and intimidating Complainant into returning to work so that fewer FRA-reportable lost work days would be associated with his injury. Complainant's department managers insisted that Complainant make an additional trip to OHS for an evaluation on July 14, 2009 even though Respondent had Complainant's medical excuses stating that he was unable to work and even though he already had an evaluation with OHS scheduled for July 17. It appears that the diesel shop managers, because Complainant was being taken out of service with a workplace injury they deemed minor, harassed Complainant by forcing him to travel to see Primus at OHS. Moreover, even though Complainant was seen by Primus on July 14, he was still told that he must come in for his follow-up already scheduled for July 17. It was expected his stitches would be removed on July 16 and Complainant's restrictions would be lifted. Complainant's doctor did remove the stitches on July 16 but ordered Complainant to remain out of work for one more week. Complainant was required by Respondent to come in for his appointment with OHS July 17 even though Respondent knew that he was not cleared for duty by his doctor. If Complainant declined to go to OHS, he would be subject to discipline. Moreover, Respondent had Complainant's Form MD-23, and (assuming he signed it voluntarily) OHS was authorized to contact the treating doctor. And OHS had already evaluated Complainant and knew first hand the extent of his injury. Respondent contends that because Complainant was not under doctor's orders not to travel, the requirement to visit OHS four times between July 7 and July 24 did not constitute an adverse action. However, the demands by Complainant's

managers that he visit OHS and requiring four visits during this time period under these circumstances were excessive and harassing, were driven by retaliatory motives, and could dissuade a reasonable employee from reporting an on-the-job injury.

Fourth, Complainant alleges he suffered an adverse action when he was ordered to participate in a safety counseling and was issued a written note of reprimand for causing his injury. Respondent asserts the counseling session is corrective and instructive, not disciplinary. However, the counseling session is noted in Complainant's employment history and reflects that Complainant had used the improper tool – thereby causing his injury. Because the counseling session is noted in his employment history and reflects that he used an improper tool that caused his injury, the counseling session is disciplinary in nature and would dissuade a reasonable employee from reporting an injury. Moreover, following Complainant's injury, his coworkers completed the task with the same tools used by Complainant. Those employees, who did not report a workplace injury, were not disciplined. This suggests that the counseling session was not for a legitimate reason and was motivated by Complainant's reporting his on-the-job injury. The legitimacy of the counseling session is further undermined by Respondent's use during the session of a Job Safety Analysis that had not yet been approved.

Fifth, Complainant alleges he suffered an adverse action when, upon his return to work at full duty status, Complainant was not given any work assignments for approximately one week. Complainant had been cleared for full duty by his physician and by OHS and returned to work on July 27, 2009, but during his first week back to work, he was not given any assignments and was forced to sit in the shop and do nothing. Respondent has not disputed this allegation. Complainant had never before been treated in this manner, and other employees who did not report injuries were not similarly benched. Requiring an employee to sit in the shop and do nothing is a recognized form of harassment and intimidation used by the railroads.[3]

None of the adverse actions could have taken place if Complainant had not reported his on-the-job injury and requested medical treatment, and therefore, a strong causal relationship exists. The adverse actions each occurred within a short period of time after Complainant reported the injury. Moreover, Respondent demonstrated animus toward Complainant for reporting his injury when it ordered him to return to the shop on the day of the injury regardless of the time he was discharged from the hospital (and well after his shift had ended) and did not provide him with any means of transportation. Respondent also demonstrated animus toward Complainant for reporting his injury by disregarding his treating physician's instructions that he not work on July 7, by permitting his managers (who are not medical professionals) to demand that he be evaluated by OHS on July 14 even though OHS did not indicate that such evaluation was necessary, and by requiring him to visit OHS a total of four times in a two and a half week period. Respondent demonstrated animus again when after returning to work full duty Complainant was told by General Foreman, Matt Dalbo if this had been any other work place, you would have been ordered to put a rubber glove on your hand and go back to work. And it is telling that, just two days after his injury, Respondent sought to require Complainant to act as

[3] U.S. House of Representatives Committee on Transportation and Infrastructure Hearing on "The Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroads October 22, 2007.

fire watch despite the fact that the restrictions on his duties made Complainant incapable of assisting the person performing the welding had an accident occurred. Respondent's threats to discipline Complainant because he voiced his concern that he was not capable of performing the task, that the task was in contravention of his doctor's orders and OHS' restrictions, and Respondent's willingness to forego the threatened discipline if he would return to work are further evidence of Respondent's retaliatory animus and Respondent's desire to punish Complainant for reporting the injury and missing days of work. Additionally, for a period of one week after Complainant returned to full duty status, Complainant was forced to sit and do nothing for the duration of his shift even though there was work to be done and all other employees were given assignments. This treatment of Complainant further demonstrates that management sought to punish him for reporting this injury.[4]

In sum, because Complainant reported a work-related injury, Respondent harassed him, interfered with his recovery and treatment, sought to assign him work duties that he should not have performed, threatened to discipline him and ultimately issued a note of reprimand against him for no legitimate reason, and punished him when he returned to work by assigning him no duties. Had Respondent been successful in its attempts to force Complainant to come back to work despite the contrary instructions from his doctor, Respondent would have skewed the reporting of workplace injury information to FRA by reducing the reported number of days lost due to injury. The actions taken against Complainant appear calculated to send the message to Complainant and other employees that they are better off not reporting injuries at all. Had Complainant not reported a work-related injury, Respondent would not have made such efforts because Complainant would have simply taken sick leave without any time off recorded as lost time due to a work injury.

A preponderance of the evidence indicates that Complainant suffered adverse actions in retaliation for reporting his workplace injury, and Respondent has not demonstrated by clear and convincing evidence that the same adverse actions would have been taken if Complainant had not reported his workplace injury. Accordingly, OSHA find that there is reasonable cause to believe that Respondent violated 49 U.S.C. § 20109(a)(4) of FRSA.

Respondent has repeatedly demonstrated by its conduct that is the subject of this complaint and others investigated by OSHA that, upon notifying Respondent of an on-the-job injury, Respondent will harass an employee, intimidate an employee, and bring disciplinary actions against an employee.[5] Although Respondent's retaliatory actions did not rise to the level of a

---

[4] Complainant makes additional allegations that could further demonstrate Respondent's retaliatory animus. He alleges that after he was issued the safety counseling, Matt Dalbo, General Foreman, made negative comments about Complainant's FRSA complaint and his having an attorney. The comments have been disputed by Dalbo. If true, the comments are further evidence of hostility by managers to reports of workplace injuries.

[5] See OSHA's Secretary's Findings in Metro-North Commuter Railroad Company / 2-4173-08-066, Metro-North Commuter Railroad Company / 2-6040-08-011, Metro-North Commuter Railroad Company / 2-4173-09-007 and Metro-North Commuter Railroad Company / 1-0080-09-001.

suspension or termination from employment, the actions were multiple and began as soon as Complainant reported the injury and continued even after he returned to work without any restrictions. It is recognized that such actions, especially the immediate, continuous, and prolonged harassment and the attempt to force Complainant to perform the dangerous fire watch duties, produce a chilling effect on reporting injuries in the workplace, jeopardize employee safety and dissuade others from asserting their rights under FRSA. Respondent's actions call for the imposition of punitive damages.

ORDER

Respondent shall expunge all files and computerized data systems of disciplinary actions, counseling sessions, and references to disciplinary actions or counseling actions relating to Complainant and arising out of the Complainant's July 6, 2009 injury, including without limitation the safety counseling session that Superintendent John Stagnaro conducted with Complainant on August 4, 2009.

Respondent shall amend and/or expunge statements on the IR1 & IR2 to reflect that no violation of policy and/or procedure contributed to Complainant's July 6, 2009 injury.

Respondent shall notify the Employment and Assessment and Compliance Units of its Human Resources Department that Complainant's absences from July 8-24, 2009 are considered excused absences and neither the absences nor the July 6, 2009 injury are to be counted against Complainant in any evaluation of his attendance or personnel record in connection with applications he may make for promotion or change of craft; and Respondent shall send copies of these notifications to Charles Goetsch, Esq., Cahill Goetsch & Perry, P.C.

Respondent shall post the Notice to Employees included with this order in the Harmon Diesel Shop in Croton-Harmon, NY where Notices to employees are customarily posted, as well as on its internal website.

Respondent shall provide to all its employees assigned to the Harmon Diesel Shop in Croton-Harmon, NY a copy of the FRSA Fact Sheet and Frequently Asked Questions on Employee Protections for Reporting Work Related Injuries and Illnesses in the Railroad Industry included with this Order.

Respondent shall pay reasonable attorney's fees in the amount of $13,510.

Respondent shall pay punitive damages in the amount of $30,000.

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:

Mr. Charles C. Goetsch, Esq.
Cahill Goetsch & Perry, P.C.
43 Trumbull Street
New Haven, CT 06510

Mr. Robert D. Kulick, Regional Administrator
U.S. Department of Labor, OSHA
201 Varick Street, Rm 670
New York, NY 100104

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

Sincerely,

Robert D. Kulick
Regional Administrator

cc: Mr. Charles C. Goetsch, Esq. via United Parcel Service # 1Z X10 51V 02 9711 1961
Chief Administrative Law Judge, USDOL
SOL-FLS Division
Federal Railroad Administration