U.S. Department of Labor

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

JUN 12 2012

Scott Sheets, Esq.
Huddleston Bolen, LLP
611 Third Avenue
P.O. Box 2185
Huntington, West Virginia 25722-2185

RE: Norfolk Southern Railway Company/Kintner/4-1221-10-007

Dear Mr. Sheets:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Joel Kintner (Complainant) against Norfolk Southern Railway Company (Respondent) on July 28, 2010, under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. In brief, Complainant alleged that Respondent terminated him on March 31, 2010 in retaliation for reporting a workplace injury.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is reasonable cause to believe that Respondent violated FRSA and issues the following findings:

Secretary's Findings

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

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

Complainant was terminated on March 31, 2010. On July 28, 2010, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him by terminating his employment in violation of FRSA. As the complaint was filed within 180 days of the alleged adverse action, it is timely.

Complainant began working for Respondent in 1995 and obtained switchman/trainman/conductor seniority in 1996 and engineer seniority in 2000. As an engineer for Respondent, Complainant operated locomotive engines on the third shift, along with a switchman and a conductor, at Respondent's Louisville, Kentucky facility.

Complainant was a member of the United Transportation Union (UTU) and held various union representative positions, including Local Chairman, during the course of his employment. While he worked for Respondent, Complainant had represented other employees who were injured and had to go to the hospital.

On November 17, 2009, Complainant started work at 11:59 p.m. for the third shift. Before the start of the shift, at around 12:10 a.m. on November 18, 2009, Complainant and 20 other employees participated in required warm-up exercises. The exercises lasted approximately five to ten minutes and consisted of arm circles, head tilts, lunges, and squats. Trainmaster Nathan Singer, as well as Complainant's co-workers -- Mr. Chris Perkins, the switchman, and Mr. David Ross, the conductor -- were among those who participated in the warm-up exercises. Neither Complainant's co-workers nor Mr. Singer reported that Complainant was unable to complete the warm up exercises or that they observed any indication that he was injured.

Following the warm-up exercises, Complainant boarded locomotive 5059 as assigned. It was dark and the lighting was poor. As is customary, Complainant began by performing an observation/inspection of the cab, looking for anything out of the ordinary. Complainant turned on all breakers that were needed for the engine's operation and then exited the cab to power it up. Complainant returned to the cab of the locomotive and entered the nose of the cab with a flashlight to inspect the restroom facilities. Complainant entered the restroom at approximately 12:50 a.m. using a flashlight to look for the switch. According to Complainant's hand written injury report on Railroad Form 22, he *"tripped over knuckle pin*[1]*. I fell forward & hit head & then fell backwards & landed on my rear end."* After collecting himself, Complainant walked back into the locomotive cab and sat down on a chair.

When Complainant's co-workers, Mr. Perkins and Mr. Ross, boarded the engine, Complainant told them what happened. Both co-workers stated that Complainant told them he rolled on something in the restroom. They also stated that they went to the restroom and found a knuckle pin lying on the floor. Complainant told his co-workers that he had a headache and his back was hurting but that he hoped the symptoms would go away. When Complainant's back started to tighten up, he decided to notify the trainmaster because he was in pain. Complainant contacted the yardmaster by radio at 1:16 a.m. on November 18, 2009, and said he needed a trainmaster to come to his engine. Complainant did not tell the yardmaster the reason he needed a trainmaster because he did not want to report the injury over the radio. The yardmaster contacted trainmaster Ray Rennard and asked about his location because Complainant wanted someone to look at an engine. The yardmaster did not know what Complainant wanted but assumed it was a locomotive related issue. At 1:26 a.m., Complainant called the yardmaster again over the radio and asked whether the yardmaster had reached anyone. The yardmaster said yes and that it might take a while for a trainmaster to come to Complainant's engine. The yardmaster asked if there was something wrong with the locomotive and Complainant responded, *"I need ASAP please."* The yardmaster asked what Complainant needed and Complainant said, *"I need em here ASAP please."*

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[1] A knuckle pin is a 1 ½ inch metal pin that is part of the coupling mechanisms of railroad cars and locomotive engines.

Shortly thereafter, Mr. Singer and Mr. Rennard arrived at Complainant's locomotive. Mr. Singer boarded the locomotive while Mr. Rennard stayed on the ground. Complainant told Mr. Singer about the incident and said he wanted to get checked at the hospital because the pain was increasing and his back was starting to stiffen up. Mr. Singer stated Complainant told him that he hit the sink so hard that it knocked out his ear plugs. As Complainant prepared to leave the locomotive, Mr. Singer asked if he needed any help. Complainant asked Mr. Singer to get his bag and then climbed off the locomotive. As he prepared to leave the locomotive with Complainant, Mr. Singer flashed his light into the restroom and saw a knuckle pin lying against the wall on the right side of the restroom floor.

At Complainant's request, Mr. Singer took him to the University of Louisville Hospital. At approximately 2:10 a.m., Mr. Singer accompanied Complainant to the registration desk at the hospital and told the clerk that Complainant was an employee of Respondent and was injured on the job. Complainant told the clerk that he wanted to put the emergency room visit on his personal Blue Cross insurance (rather than claiming the visit through Respondent's Claims Department). Complainant stated in his OSHA interview that he did not want Respondent to have his medical records because he had witnessed Respondent's retaliation against other employees by using an injured employee's medical records against them. Complainant alleged that he feared Respondent would try to use his medical records to fire him and that is why he used his personal Blue Cross insurance.

While at the hospital, Complainant was initially told to sit in the waiting room to see a doctor. While waiting, Complainant called union representative and local chairman Phil Culver, who arrived shortly. Minutes later, Complainant was called back to a room and, while he was gone, terminal superintendent Michael Crask arrived at the hospital at or about 2:30 a.m. After an initial examination, Complainant was put in a neck brace, given a pain pill, and returned to the waiting area.

Complainant alleged that, when he returned to waiting area, Mr. Crask stated, *"what in the hell have you done?"* Mr. Crask denied making the comment and asserted he just asked whether Complainant was hurt. According to Mr. Culver, Complainant had a knot on his forehead the size of a golf ball. According to Mr. Singer, who testified at Respondent's March 17, 2010 investigative hearing, *"[t]here was a small red mark about the size of the tip of my thumb . . . [a] little red mark towards the top of his hair line."* Mr. Singer also noted that the injury *"was a small round red mark on Kintner's forehead at the hair line."* At the investigative hearing, Mr. Crask stated that *"Mr. Kintner had no indications of any kind of bruising"* and *"[t]here was a red spot on his forehead but there was no type bruising or any swelling or anything like that."* Mr. Crask also noted that the injury *"was just a round red mark like a small coin, right at his hair line."* At the investigative hearing, Mr. Crask read the conductor's interview statement into the record that said *"it was a red mark, I'd say it was red about 3 inches across."* Mr. Crask also stated at the investigative hearing that the injury *"was just a red mark, like an irritation-skin irritation of some sort. You know it may have been from his cap, I don't know but it wasn't anything to do with a lick to the head."* Complainant provided OSHA with a picture taken, while he was at the hospital on November 18, 2009, showing he was in a neck brace and had a raised knot on his forehead that was about the size of a quarter.

Complainant was released from the hospital and instructed to see his physician the next day. As Complainant was leaving the hospital, Mr. Crask asked to see the physician's notes. Complainant did not want to give the records to Mr. Crask because he feared Mr. Crask would try to use the records against him. Complainant alleged that Mr. Crask said it would make Mr. Crask's job a lot easier if Complainant provided the medical records. Mr. Crask denied making the statement. Mr. Culver asked Mr. Crask if Complainant had complied with all of Respondent's rules regarding reporting the injury. Mr. Crask agreed that he had, and then said Complainant could go home.

Pursuant to Respondent's standard accident procedure, Mr. Crask initiated an investigation to determine how the accident occurred. Mr. Crask sent trainmasters Moreatha Flaggs and John Pope to investigate. Mr. Flaggs and Mr. Pope talked to Complainant's two co-workers before they were sent home for the rest of the day. Complainant's co-workers left at approximately 6:30 a.m. on November 18, 2009. The managers asked what the co-workers saw regarding Complainant's injury. Neither co-worker witnessed Complainant's injury but they were the first employees that Complainant told about the injury. Mr. Flaggs and Mr. Pope then went to the locomotive's restroom in an attempt to understand how the accident could have occurred. They determined that Complainant could not have been injured as he alleged because the sink was at a 90 degree angle from the bathroom door. The co-workers were interviewed two more times in the next three days and signed witness statements created by Mr. Crask on November 20, 2009. Although Respondent's position statement maintained that none of the co-workers from Complainant's shift had seen a knuckle pin on the bathroom floor, Mr. Ross and Mr. Perkins confirmed that they had seen a knuckle pin on the bathroom floor after Complainant was injured.

Mr. Singer and Mr. Rennard stated in Respondent's investigative hearing, held on March 17, 2010, and during the OSHA investigation that Complainant showed no signs of being injured when he climbed off the engine on November 18, 2009. They also reported that they did not see any scuff marks or any other indication on Complainant's clothing that he had fallen on the bathroom floor. Mr. Singer and Mr. Rennard stated Complainant climbed off the locomotive by himself and walked across the tracks to Mr. Singer's car. In contrast, Complainant's co-workers stated that the "*TM's* [Trainmasters Singer and Rennard] *helped Kintner off eng.*" In the OSHA investigation, Mr. Ross stated that he saw Complainant "*gingerly climbing off the engine.*" Mr. Perkins noted that Complainant "*was kind of leaning over like his back was hurt or something*" and that Complainant "*was walking kind of stiff.*" Complainant's co-workers' testimony contradicted that of Mr. Singer and Mr. Rennard.

Over the next six days, Mr. Crask took interview statements from eight other employees. Mr. Crask's interviewing approach differed from co-worker to co-worker. In some interviews, Mr. Crask wrote down the questions asked and the answers received. In some interviews, Mr. Crask wrote some questions but mostly only answers. In other interviews, he only noted the answers received to some questions.

Respondent asserted that seven of eight *"co-workers"* who went into the restroom *"during the shift"* did not see a knuckle pin in the floor. However, none of these eight employees were Complainant's co-workers. Most were on the same locomotive as Complainant but all were on different shifts. Of these eight employees, one was an electrician from the garage, one was the third shift yardmaster, who did not work on the locomotive, three were first shift crew members on the same locomotive, and three were second shift crew members on the same locomotive. Therefore, at best, Respondent's position statement, indicating that the co-workers Mr. Crask interviewed were from the same shift, was misleading. Respondent also asserted that seven of the ten co-workers who were interviewed said they went to the restroom but did not see the knuckle pin on the floor. However, the answers provided by six of the seven crew members were not definitive. While all of those interviewed by Mr. Crask signed a statement that said they did not see a knuckle pin on the floor of the restroom on Complainant's locomotive, each worker either indicated he did not remember anything about the engine or that there could have been a knuckle pin that he did not see.

The three crew members (not Complainant's co-workers) from the second shift were interviewed by Respondent three times over the next three days and only signed Mr. Crask's hand written interview statements after they were threatened with the loss of their jobs if they did not sign. Respondent asserted that all three crew members said they went to the restroom but did not see a knuckle pin in the restroom floor. While two of the crew members' statements indicated they did not see anything on the floor of the restroom, one said he could not say there was not a knuckle pin, and the other said he did not know if there was one. Thus, their answers regarding the presence of a knuckle pin in the restroom were not definitive.

Three crew members (not Complainant's co-workers) on the same locomotive as Complainant but on the first shift were interviewed by Mr. Crask seven days after they were on the same locomotive. Respondent asserted that all three crew members said they did not see a knuckle pin in the restroom floor. However, Mr. Crask's hand written statements from each employee were not definitive. When Mr. Crask asked one crew member whether he remembered on which locomotive he worked on November 17, 2009, he responded that he did not *"remember being in nose of 5059 on 17th."* However, Mr. Crask then noted that the crew member said no when asked if he saw anything on the cab floor that he would have found problematic. The next comment in that interview was that there was no knuckle pin on the cab's floor. The next crew member told Mr. Crask that he did not *"remember anything of engine Period."* When asked by Mr. Crask if he went into the restroom that evening, that crew member said *"no"*. Based on this crew member's testimony as provided by Respondent, he clearly could not have been one of the seven that Respondent asserted went into the restroom and did not see a knuckle pin on the floor. When another crew member was asked if he remembered which locomotive he used on November 17, 2009, he responded *"no"*. However, Mr. Crask then asked if he recalled being in the restroom and he responded probably at least once or twice. Next, Mr. Crask asked if he had seen anything on the floor of the restroom and the crew member said *"not that I recall"*. Mr. Crask continued by asking specifically if he had seen a knuckle pin in the floor of the bathroom and he responded *"no I didn't"*. All three crew members' answers were not definitive, yet Mr. Crask continued asking questions

about the knuckle pin even after they said they did not remember which locomotive they were on that night.

Mr. Crask's interviews suggest that Mr. Crask was developing the questions and answers to support a pre-conceived conclusion that Complainant was guilty of falsifying his injury.

One of the other employees interviewed was the yardmaster from whom Complainant requested a trainmaster. Respondent tried to show that Complainant was not injured at the time because there was no urgency in his voice when he called the yardmaster. However, a transcript of the discussion confirmed that Complainant told the yardmaster twice that he needed a trainmaster ASAP. This interview does not support Respondent's position.

The other worker for whom Respondent provided a hand written statement was the electrician who serviced the same locomotive two days before Complainant's accident. This statement appears to be written by the electrician and just said he found no obstructions on the floors, walkways or platforms. This interview does not support Respondent's position that there was no knuckle pin on the restroom floor when Complainant was injured on November 18, 2009.

Three of the above employees who were also interviewed by OSHA, stated they were asked to provide their own hand written statements to Respondent and they did. However, the three statements were in Mr. Crask's hand writing and noted that they were Mr. Crask's personal notes. This raises concerns about the authenticity of Mr. Crask's interview notes.

Respondent scheduled an investigative hearing for Complainant on December 4, 2009, February 18, 2010, March 3, 2010 and March 17, 2010. Via email, Mr. Culver, Complainant's union representative, requested a postponement of the December 4, 2009 hearing because Complainant was under a doctor's care and unable to attend. Mr. Crask agreed to the postponement on December 1, 2009, stating *"Postponement is granted. Let me know when Mr. Kintner can be available."* Subsequently, Respondent attempted to hold the investigative hearing again in February and March 2010 but neither Complainant nor his representative attended because Complainant was still under doctor's care and unable to attend the hearings. On February 18, 2010, Respondent requested and received Complainant's medical records, which included documentation of his injury up to January 18, 2010. Also, on February 18, 2010, Respondent's Medical Director, John Knecht, sent an email to Mr. Crask stating *"the medical department has received the above named employee's requested medical records and information dated through January 18, 2010. The employee is under the care of a doctor, and has not yet been released to work. The medical department will notify you regarding any change in the employee's work status."* Mr. Crask then asked the medical department if there was anything in Complainant's records that would prevent him from attending a hearing. On February 22, 2010, Associate Medical Director Paula Lina, Respondent's physician, opined that *"available medical records do not substantiate, in my opinion, Complainant's inability to attend a company investigation."*

Even though Complainant was still under a doctor's care and not yet released back to work and, thus, was unable to attend an investigative hearing, Respondent held the hearing on March 17, 2010 without Complainant or his union representative. After the hearing, Complainant was found guilty of falsifying the November 18, 2009 injury because Respondent concluded that no injury had occurred. He was discharged effective March 31, 2010.

Based on the above, OSHA concludes that Respondent's investigation was intentionally orchestrated to support the decision it had already made to terminate Complainant's employment.

49 U.S.C. §20109(a)(4) states that "A railroad carrier engaged in interstate or foreign commerce... may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done...to notify, or attempt to notify, the railroad carrier, or the Secretary of Transportation of a work-related personal injury or work-related illness of any employee."

The evidence shows that Complainant suffered a work-related injury on November 18, 2009. Complainant reported the injury but did not go through Respondent's claims department, thus denying Respondent access to his medical records. Complainant did not go through Respondent's claims department for fear that the records would be used to terminate his employment. As a union representative, Complainant had represented other employees who reported injuries and witnessed retaliatory actions that Respondent took against them for such reporting. Therefore, Complainant tried to avoid giving Respondent access to his records. While Complainant was under medical care and unable to attend the hearing, Respondent found him guilty of providing false or conflicting information and falsifying the injury. Complainant's fears proved to be justified because he was eventually terminated for reporting injuries.

Respondent's original position statement asserted that there was no knuckle pin in the restroom and that its interviews showed that the employees "*were unanimous in stating that they never saw a knuckle pin in the bathroom*". Respondent also asserted in its original position statement that its interview statements were from co-workers on the "relevant shift" and that none of the seven co-workers "*saw anything out of the ordinary on the bathroom floor*". That position was proven false because eight of the ten crew members interviewed were not on the same or relevant shift. Subsequently, Respondent shifted positions and asserted that none of the employees who went to the restroom prior to Complainant's shift saw the knuckle pin. However, Respondent's statements confirmed that one of the seven specifically stated he did not go into the restroom at all. OSHA's investigation also showed that none of the remaining crew members definitively stated there was no knuckle pin.[2]

Respondent argued that even if there was a knuckle pin in the restroom, the accident could not have happened as alleged by Complainant because it could not reenact the

[2] Moreover, given the small size of the knuckle pin and the fact that no one was looking for it, failure to see it would not be surprising even if employees had been on a relevant shift, had gone into the bathroom, and had stated that they did not see a knuckle pin.

circumstances that led to an alleged injury. However, Respondent could not provide sufficient proof that the injury could not have occurred as alleged.

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

Respondent further disparaged Complainant in its May 13, 2011, letter in which it cast doubt on Complainant's character and motivation because of an arrest and conviction for domestic battery in May 2009. However, that incident, about two years before the injury here, had nothing to do with this case.

Complainant's multiple physical therapy sessions, injections and surgeries belie Respondent's determination that Complainant falsified the injury. Complainant's latest surgery included the insertion of rods in his back, and he is currently under a doctor-prescribed pain management treatment. Complainant's doctors have informed OSHA that Complainant is unable to return to normal functional capacity and is, therefore, unable to fulfill the duties of his former position.

All the elements of a prima facie case are present in this case. Complainant engaged in protected activity when he reported an injury on November 18, 2009. Respondent knew of Complainant's injury when Complainant reported it. Complainant suffered an adverse action when he was terminated.

The preponderance of the evidence indicates that Complainant suffered severely as a result of the improper termination. Complainant has also been humiliated by being accused of lying about his injury and giving false information.

The majority of employees interviewed during this investigation stated that Respondent targets employees who report injuries. Employees who report injuries are "rule-checked" -- that is, Respondent checks the employee's work to make sure he/she followed the rules -- more often than other employees. Some of the employees interviewed further stated that if an employee reports an injury, Respondent's management would "hide in the weeds" to watch them work and try to catch them doing something wrong. Some employees indicated that they too are reluctant to report an injury and/or illness, fearing that they will be targeted and eventually terminated from employment.

Respondent's immediate retaliation against this employee for reporting the November 18, 2009 injury exhibited reckless disregard for the law and total indifference to complainant's statutorily-protected rights. As previously stated, the evidence in this case indicates that Respondent orchestrated its investigation into the circumstances surrounding Complainant's injury to support its pre-determined conclusion that Complainant falsified the injury, tried Complainant in absentia, and terminated him because he reported a work-place injury. Complainant and other employees indicated that they are reluctant to report workplace injuries because they fear that Respondent will suspend and eventually terminate their employment. Such egregious conduct by Respondent has created a chilling effect. In fact, Respondent has been cited by OSHA in

several other instances for violating the whistleblower protection provisions of FRSA by responding to reports of work-place injuries in the same manner that it did here – i.e. by conducting an investigation and disciplinary hearing foreordained to find the employee falsified the injury and terminating the employee despite evidence that the workplace injury occurred.[3] Respondent's continued callous disregard for Complainant's and other employees' protected rights under FRSA warrants significant punitive damages.[4]

In the absence of clear and convincing evidence indicating that Respondent would have taken the same adverse action even if Complainant had not engaged in protected activity (reporting his injury), OSHA finds reasonable cause to believe that Respondent violated 49 U.S.C. §20109 and, therefore, issues the following order to remedy the violation:

Order

1. Respondent shall pay Complainant compensatory damages, totaling $50,000.00 for mental anguish, pain, and suffering.

2. Respondent shall pay Complainant punitive damages in the amount of $150,000.00 for reckless disregard for the law and indifference to Complainant's rights under FRSA.

3. Respondent shall pay Complainant reasonable attorney fees in the amount of $7,375.00.

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

5. Respondent, as well as any of Respondent's agents, representatives, employees or any person in active concert with them, shall not provide any adverse information in response to any requests for information about Complainant, including (but not limited to) any requests for employment references.

6. Respondent, as well as any of Respondent's agents, representatives, employees or any person in active concert with them, shall not direct future retaliation or discrimination against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to the referenced Act.

7. Respondent shall post immediately the attached "Notice to Employees" and "Fact Sheet" in a conspicuous place in or about Respondent's Louisville Kentucky facility, including all places where notices for employees are customarily posted, including on a Website for employees, if there is one, and maintain for a period of at least 60

[3] Norfolk Southern Railway Company– 4-0520-08-008 on 4/4/11 and Norfolk Southern Railway Company– 4-3750-10-006 on 8/8/11.

[4] Based on Complainant's current physical condition related to his on-the-job injury, the Department is not ordering reinstatement or back pay in this case because Complainant is medically unable to return to work at full capacity.

consecutive days from the date of posting, said Notice to Employees to be signed by a responsible official of the Respondent and the date of actual posting to be shown thereon.

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

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U. S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

Christopher A. Keith, Esq. (Attorney for Complainant)
Wettermark Holland & Keith, LLC
2101 Highland Avenue, Suite 700
Birmingham, Alabama 35205

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

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

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

Sincerely,

CINDY A. COE
Regional Administrator

cc: Christopher A. Keith, Esq. (Attorney for Complainant)
Chief Administrative Law Judge, USDOL
Federal Railroad Administration, USDOT
Office of the Solicitor, USDOL