

February 2009

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Dear Union Friend:

Yaeger, Jungbauer and Barczak has just learned that the U.S. Government has awarded damages against the UP RR in a federal whistleblower case in which our client claimed that his position was abolished for bringing safety concerns to a supervisor. Client was a welder for UP. He complained that he needed protection for himself and other workers when welding on double track. UP abolished his job in one location after he made safety complaints to force him to go elsewhere in the company. YJB and its attorney Karl J. Frisinger filed a whistleblower complaint with OSHA. OSHA awarded the following damages:

1. Government awarded reassignment to his UP Welder location and position that was abolished (and returned in GOOD STANDING).
2. Government awarded \$11,378.23 for increase in mileage that union client incurred traveling to his new work location during the time taken to process the whistleblower complaint.
3. Government awarded \$5,000 in compensatory damages that UP must pay to union client.
4. Government awarded all of his attorney fees incurred (and RR shall continue to pay attorney fees to YJB if necessary).
5. Government ordered that UP RR refrain from retaliating or discriminating against our client in the future for bringing this action.
6. Government ordered UP to now permanently display the Federal Notice entitled "Whistleblower Protection for RR Employees" in locations where employees can readily see it,

It is easy to see that this award provides far more to our client than an appeal under the Collective Bargaining Agreement could have provided.

The RR has 30 days to appeal this order. If they do, we will fight on. We will keep you posted. No employee should fear any RR anywhere. Yaeger, Jungbauer & Barczak is the nations leader in fighting against RR harassment of employees. YJB has other whistleblower cases pending against other RR's including BNSF and CSX. We will keep you informed of the evolution of this important law and protection for union members.

Bill Jungbauer
President of Yaeger, Jungbauer & Barczak
February 4, 2009

OSHA FactSheet

Whistleblower Protection for Railroad Employees

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

On August 3, 2007, the *Federal Rail Safety Act (FRSA)*, 49 U.S.C. Section 20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to transfer authority for rail carrier employee whistleblower protections to OSHA, and to include new rights and remedies.

Covered Employees

Under FRSA an employee of a railroad carrier and its contractors and subcontractors are protected from retaliation for reporting certain safety and security violations.

In general, under FRSA a railroad carrier is covered if it provides any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area, certain commuter railroad services, and high-speed ground transportation systems that connect metropolitan areas. However, rapid transit operations in an urban area that are not connected to the general railroad system of transportation are not covered.

Protected Activity

If your employer is covered under FRSA, it may not discharge 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 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, employees of railroad carriers are protected from retaliation for reporting hazardous safety or security conditions, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures.

Unfavorable Personnel Actions

Your employer may be found to have violated this statute if your protected activity was a contributing factor in its decision to take unfavorable personnel 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
- Reassignment affecting promotion prospects
- Reducing pay or hours

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged unfavorable personnel action occurs (that is, when you become aware of the retaliatory action).

How to File a Complaint

An employee, or representative of an employee who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. It is important to note that FRSA prohibits complainants from filing multiple discrimination complaints under other laws for the same allegedly unlawful act of the employer.

The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. For more information, call your closest 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 OSHA's website, www.osha.gov, and in local directories.

Complaints may be filed orally or in writing, by mail (we recommend certified mail), fax, or hand-delivered during business hours. The date postmarked, faxed or hand-delivered is considered the date filed.

Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue an order requiring your employer to reinstate you, pay back wages, restore benefits, and other possible relief to make you whole, including:

- Reinstatement with the same seniority and benefits.
- Payment of back pay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees, and reasonable attorney's fees.
- Punitive damages not to exceed \$250,000, in certain cases.

OSHA's findings and order become the final order of the Secretary of Labor, unless they are objected to within 30 days.

Hearings and Review

After OSHA issues its findings and order, either party may request an evidentiary hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision and order may be appealed to the Department's Administrative Review Board for review.

If a final agency order is not issued within 210 days from the date your complaint is filed, then you have the option to file a civil action in the appropriate U.S. district court.

To Get Further Information

For more information on FRSA and other employee whistleblower protection provisions, including copies of the statutes and regulations, go to www.osha.gov and click on the link for "Whistleblower Protection."

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:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

DEP 11/2007



[«« Back to Whistleblower Program Page](#)

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 [Back to Top](#)

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Occupational Safety & Health Administration
200 Constitution Avenue, NW
Washington, DC 20210

Rails ordered to compensate fired whistleblower

KANSAS CITY, Mo. -- The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has ordered the Illinois Central Railroad Co. and the Chicago, Central & Pacific Railroad, both headquartered in Homewood, Ill., to pay a former railroad employee more than \$80,000 in back wages, compensatory damages and attorney's fees.

OSHA investigated the employee's allegation that the railroads terminated his employment in retaliation for reporting a work-related injury he sustained while performing his job. OSHA's investigation found that officials from both railroads ordered an investigation into the cause of the employee's injury, which ultimately resulted in their decision to terminate his employment. The evidence showed that the employee was in compliance with the railroads' rules governing the reporting of work-related injuries and not at fault for his injury.

"An employer does not have the right to retaliate against its employees who report work-related injuries," said Charles E. Adkins, OSHA's regional administrator in Kansas City. "While OSHA is best known for ensuring the safety and health of employees, it is also a federal government whistleblower protection agency."

As a result of the investigation, OSHA ordered the railroads to pay the employee a total of \$80,453 that includes \$57,587 in back wages and interest, \$10,000 in compensatory damages and \$12,866 in attorney's fees. The railroad carriers were further ordered to provide whistleblower rights information to their employees. Either party in the case can file an appeal with the U.S. Labor Department's Office of Administrative Law Judges.

OSHA conducted the investigation under the whistleblower provisions of the Federal Rail Safety Act (FRSA) as amended in 2007 by the "Implementing Recommendations of the 9/11 Commission Act." Railroad carriers are subject to the provisions of the FRSA, which protects employees who report violations of any federal law, rule or regulation relating to railroad safety or security or who engage in other activities protected by the act.

Cont. on Page 2

OSHA enforces the whistleblower provisions of the FRSA and 16 other laws protecting employees who report violations of various securities laws; trucking, airline, nuclear power, pipeline, environmental, rail, workplace safety and health regulations; and consumer product safety laws. Detailed information on employee whistleblower rights, including fact sheets, is available online at <http://www.osha.gov/dep/oia/whistleblower/index.html>. Under the various whistleblower provisions enacted by Congress, employers are prohibited from retaliating against employees who raise various protected concerns or provide protected information to the employer or to the government. Employees who believe they have been retaliated against for engaging in protected conduct may file a complaint with the Secretary of Labor for an investigation by OSHA's Whistleblower Protection Program.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to assure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>. Note: The U.S. Labor Department does not release names of employees involved in whistleblower complaints.

(The preceding release was issued February 11, 2010, by the U.S. Department of Labor.)

This case was handled by Yaeger, Jungbauer & Barczak Attorneys Louis Jungbauer and Karl Frisinger along with Field Representative Dennis Beck.