U.S. Department of Labor

Occupational Safety and Health Administration
J.F.K. Federal Building, Room E340
Boston, MA 02203
Telephone (617) 565-9857
Fax (617) 565-9827
Web: www.whistleblowers.gov

VIA UPS #: 1ZX104980298973078

September 28, 2018

[redacted]
Corporate Counsel
Springfield Terminal Rwy. Co.
Pan Am Railways, Inc.
1700 Iron Horse Park
N. Billerica, MA 01862

Re: Springfield Terminal Railway Company / [redacted]

Dear M[redacted]:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by [redacted], (hereinafter "Complainant") against Springfield Terminal Railway Company (a subsidiary of Pan Am Railways Inc.) (hereinafter "Respondent")[1] on February 16, 2017 under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. In brief, Complainant alleged that Respondent retaliated against him by issuing him a notice of "investigational hearing" and requiring his participation at the hearing after Complainant reported a work-related injury.

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

Secretary's Findings

Complainant reported a work-related injury on January 30, 2017. Complainant contends that the Notice of Investigational Hearing Respondent issued to him on January 31, 2017 (the "Notice of Hearing"), and being subjected to an investigational hearing where he was required to prove his innocence or be subject to discipline, up to and including termination, constituted adverse action.

[1] Respondent explained to OSHA that Pan Am Railways Inc. is the parent holding company of Springfield Terminal Railway Company. Moreover, a number of documents received from Respondent during OSHA's investigation were identified as Pan Am Railway documents.

On February 16, 2017, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of the FRSA. As this complaint was filed within180 days of the Notice of Hearing, it is timely.

Respondent is covered under the FRSA because Respondent is a railroad carrier within the meaning of 49 U.S.C. § 20109 and 49 U.S.C. § 20102. Respondent provides railroad transportation, in that it transports goods using the general railroad system, and is engaged in interstate commerce within the meaning of 49 U.S.C. § 20109. Complainant is covered under the FRSA because Complainant is an employee within the meaning of 49 U.S.C. § 20109. In January 2017, Complainant had been employed as a welder for Respondent for over three years. Complainant is a member of the Brotherhood of Maintenance of Way Employee Division (BMWED).

On January 30, 2017, Complainant was assisting in the removal of an existing and defective rail on a track located in Andover, Massachusetts. Rail rollers were being used to hold the rail and allow it to roll while it was being suspended by a swing loader rail crane. Complainant was instructed by his foreman to hit a tie plate with a hammer to free the rail being removed. At the same time as Complainant hit the tie plate, the rail rollers released, which resulted in the rail suddenly jumping up and striking Complainant's knee. Complainant immediately reported his injury and requested and received medical assistance.

The next day, January 31, 2017, Complainant received the Notice of Hearing related to his injury. The investigational hearing was convened pursuant to Article 26 of the Collective Bargaining Agreement ("CBA"), which is titled "Discipline."

In pertinent part, the Notice of Hearing, which was signed by a Charging Officer, states as follows:

> You may, if you desire, arrange to be accompanied by a representative as provided in the applicable schedule agreement. You may produce witnesses on your own behalf without expense to the company and you or your representative may cross-examine witnesses. You are expected to be present throughout the entire proceeding.
>
> This notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident [which resulted in Complainant's injury] . . .
>
> Also to be investigated at this hearing are any possible Safety violations of the Pan Am Safety Rulebook. Additionally, please be advised your service record will be reviewed during this investigation.

Article 26.4 of the CBA states that the types of discipline that can be assessed following an investigational hearing include a "reprimand, disqualification, deferred suspension, relevant training, actual suspension, and dismissal."

The investigational hearing concerning the January 30, 2017 work-related injury (the "Hearing") was originally scheduled for February 23, 2017. Complainant's and Respondent's representatives mutually agreed to reschedule the Hearing to April 18, 2017.

The Hearing was held on April 18, 2017. The cover page of the Hearing Transcript, dated April 18, 2017 ("Tr".) lists the charge as "allegedly struck in knee area of left leg by the string of rail being moved by the Swing Loader. Possible Safety violations of the Pan Am Safety Rulebook." (Tr. at p. 1). The Hearing was initiated by Respondent to determine "if [Complainant's] injury was avoidable." Tr. at p. 7. During the Hearing, the Charging Official stated that there was "nothing listed as a specific charge on a safety violation," and that he did not find any safety rule violation that "pinpointed this particular event." Tr. at pp. 15, 17. The only individual called as a witness at the Hearing by the Respondent, other than the Charging Official, was the foreman in charge of Complainant's worksite on January 30. The foreman, who had been employed with Respondent for over 37 years, testified that Complainant was not working in an unsafe manner when he was injured. Tr. at pp. 20-21. Complainant also testified that he was performing his duties in a safe manner on January 30, 2017 when the injury occurred. Tr. at p. 28.

At the conclusion of the Hearing, the Complainant's representative gave a closing statement in which he stated that holding the Hearing, which could result in discipline, was an adverse action under the FRSA; he also stated that holding the Hearing sent a negative message to Respondent's work force about the consequences of reporting work-related injuries. Tr. at p. 32. As support for his assertion, he quoted from an Administrative Law Judge decision dated June 24, 2015, in which the court stated:

> When there is a reportable injury at Pan Am 99% of the time formal charges are brought against the injured employee. . . . No energy is expended and no investigation conducted on what the Railway may have done wrong when the injury occurs. The corporate mantra appears to be that if the injury occurs on the job, it must be the fault of the employee who was injured. . .[2]

(Tr. at p. 33).

Approximately a week after the Hearing, Respondent advised Complainant that no disciplinary action would be taken against him as a result of the January 30, 2017 work-related injury.

Protected Activity

Complainant engaged in protected activity on January 30, 2017, when he reported a work-related injury to his supervisor.

Knowledge of Protected Activity

Respondent admits it had knowledge of Complainant's protected activity.

Adverse Action

Complainant asserts that receiving the Notice of Hearing, and being subjected to the Hearing, where he was required to prove his innocence or be subject to discipline, up to and including termination,

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[2] *See In the Matter of: Raye v. Pan Am Railways, Inc.*, 2013-FRS-084 at 19-20 (ALJ June 25, 2014), *aff'd* 2016 WL 6024265, ARB No. 14-074, ALJ No. 2013-FRS-084 (ARB Sept. 8, 2016), *aff'd* 855 F.3d29 (1st Cir. 2017).

constituted adverse action. Respondent disputes that the foregoing actions constitute adverse action. OSHA has determined that there is reasonable cause to conclude that the actions identified by Complainant constitute adverse action.

FRSA prohibits a railroad carrier from discharging, demoting, suspending, reprimanding, or "in any other way discriminating" against an employee if such discrimination is due, in whole or in part to the employee's report of a work-related injury. 49 U.S.C. 20109(a)(4). The Secretary's regulations further specify that adverse actions prohibited under FRSA include intimidating, threatening, or coercing an employee based in whole or in part on the employee's protected activity. 29 CFR 1982.102(b)(1). Thus, under FRSA adverse action includes events that would "dissuade a reasonable railway employee from engaging in protected activity." *See, e.g., Short v. Springfield Terminal Railway Co.*, 2017 WL 3203391, at*2 (D. Me. July 26, 2017) (denying summary judgment for the defendant and holding that a reasonable jury could find that an employer's charging letter and disciplinary investigation, which were related to the reporting of a work-related injury, could "deter[] a reasonable employee from engaging in protected activity" even where no discipline ultimately resulted from the hearing).

Of particular relevance to this case, the Department of Labor has taken the view that an action is presumptively adverse if it: "(a) it is considered discipline by policy or practice, (b) it is routinely used as the first step in a progressive discipline policy, or (c) it implicitly or expressly references potential discipline." *Williams v. American Airlines*, ARB No. 09-018, 2007-AIR-004, slip op. at 11 (ARB Dec. 29, 2010), *cited in Vernace v. Port Auth. Trans-Hudson Corp.*, ARB No. 12-003, slip op. at 2 & n.4, 2010-FRS-018 (ARB Dec. 21, 2012) (finding that an employer's charging letter and disciplinary investigation, which related to reporting a work-related injury, constituted adverse action under the FRSA and stating that Congress "re-emphasized the broad reach of FRSA when it expressly added 'threatening discipline' as prohibited discrimination in Section 20109(c) of the FRSA whistleblower statute").

The Notice of Hearing and Hearing in this case were aimed at evaluating whether discipline was warranted and referenced that fact on their face. The Notice of Hearing was issued by a "Charging Officer" who testified at the Hearing for the carrier. The Notice of Hearing stated that its purpose was "to develop the facts and place your responsibility, if any, in connection with the incident(s)." It used terms that would be generally understood to indicate that the Hearing would be a relatively formal and adversarial process, stating that the employee could be accompanied by a representative, produce witnesses on the employee's behalf, and cross-examine witnesses. The notice also indicated that the employee's service record would be reviewed during the investigation. The Hearing transcript indicates that the Hearing was conducted pursuant to Article 26 of the collective bargaining agreement, which governs employee discipline. Under the circumstances, the Notice of Hearing and the Hearing were both disciplinary, and therefore presumptively adverse, under the Department of Labor's administrative case law.

Additionally, OSHA believes that a Notice of Investigational Hearing and hearing could dissuade a reasonable employee from reporting a work-related injury. Although Respondent contends that the investigational hearings are not adverse actions because they "hold no presumption of guilt and do not carry an automatic assignation of discipline," that fact is not determinative. OSHA agrees with Complainant that the prospect of discipline and the uncertainty and humiliation accompanying a

Notice of Investigational Hearing and hearing could dissuade a reasonable employee from reporting a work-related injury.[3]

Nexus

It is undisputed that Complainant's reporting of the injury caused the Notice of Hearing to be issued and resulted in Complainant being subjected to the Hearing, which could have resulted in discipline, up to and including termination. Respondent admitted in its position statement to OSHA that "[t]he occurrence and reporting of the on-the-job injury serves as the sole basis for the Carrier's action in issuing a Notice of Investigational Hearing."

Respondent has not shown by clear and convincing evidence that it would have taken the same action in the absence of the protected activity. Instead, in a position statement dated March 20, 2017, Respondent argued that there was no retaliation in this case because (1) the policy of conducting fact-finding through an investigatory hearing applies "in each instance of an accident or incident that occurs on Carrier property or is in some manner affiliated with an individual's employment with the Carrier;" (2) the investigatory hearings are necessary to provide a "safe and efficient framework for employees to perform their duties;" and (3) "the Carrier's policy and process regarding investigational hearings is consistent with its collective safety policies and standards, as well as the Railway Labor Act, 45 U.S.C. 151 et seq."

However, while issuing a Notice of Investigational Hearing and conducting a hearing may be necessary for Respondent to discipline an employee consistent with the collective bargaining agreement and the Railway Labor Act, nothing requires Respondent to initiate disciplinary proceedings in response to every accident or incident. A decision to initiate disciplinary proceedings in retaliation for a report of workplace injury is unlawful. *See Short*, 2017 WL 3203391, at*3 n.4 ("A jury could still find a retaliatory motivation behind the decision to initiate the disciplinary process in the first place. An investigation and hearing are necessary for legitimately imposed discipline, but not by themselves sufficient to defeat an allegation of adverse action.").

Respondent had options short of issuing the Notice of Hearing to learn about the circumstances of the injury. As noted above, the foreman in charge of the worksite on January 30, 2017 had worked for Respondent for over 37 years. If Respondent's true goal was to determine the facts surrounding Complainant's injury and whether it was avoidable, it could have informally asked the foreman about the incident. *See In the Matter of: Raye v. Pan Am Railways, Inc.*, 2013-FRS-084 at 13-14 (ALJ June 25, 2014) (stating that "if Pan Am's primary concern was to determine how the injury occurred, it could have informally asked [plaintiff] about the inconsistent statement rather than rushing to bring serious charges against him . . . managers can conduct an informal investigation without bringing charges against an employee"). Had Respondent conducted an informal inquiry with the foreman, it would have learned the same information it received during the Hearing, i.e.

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[3] Respondent cites three cases to support the argument that a Notice of Investigational Hearing and investigatory hearing cannot be adverse actions. *See Brisbois v. Soo Line R.R. Co.*, 124 F. Supp. 3d 891 (D. Minn. 2015); *Koziara v. BNSF Ry. Co.*, 840 F.3d 873 (7th Cir. 2016); *Heim v. BNSF Ry. Co.*, 849 F.3d 723 (8th Cir. 2017). OSHA has reviewed the cases cited by Respondent. *Heim* and *Koziara* were both decided on causation grounds, not adverse action. So discussion of adverse action in both cases is dicta. *Brisbois* is not binding on OSHA and, at least as applied to the facts of this case, appears to contradict the Department of Labor's administrative case law.

that Complainant was not working in an unsafe manner when he was injured. Thus, under these circumstances, Respondent has not shown by clear and convincing evidence that it would have taken the same action for non-retaliatory reasons separate from the protected injury report.

Complainant is Entitled to Compensatory and Punitive Damages

Complainant has suffered stress and emotional distress related to his fear that he could lose his job for reporting his work-related injury. Complainant also alleges the adverse action humiliated and embarrassed him. OSHA has therefore determined that compensatory damages in the amount of $10,000.00 are appropriate.

Respondent, according to its own position statement, sends a Notice of Investigational Hearing and holds investigational hearings, which can result in discipline up to and including termination, in every instance where a work-related injury is reported. Respondent's policy has a strong potential to chill employees from engaging in the protected activity of reporting work-related injuries and seriously undermines statutory protections set forth in FRSA. *See* H.R.Rep. No. 110-936, at 59-60 (2009) (Oversight and Investigation staff found that that railroad employees "generally perceive intimidation to the extent that those who are injured in rail incidents are often afraid to report their injuries or seek medical attention for fear of being terminated or severely disciplined," e.g. by finding employees exclusively at fault for their injuries and administering discipline and by subjecting employees who reported injury accidents to increased performance monitoring and/or a higher degree of management scrutiny, which is often followed by subsequent disciplinary action up to, and including, termination).

Further, due to previous FRSA complaints filed against Respondent, it had extensive knowledge of the FRSA anti-retaliation provisions before the actions at issue took place. Indeed, the Department of Labor's Administrative Review Board had already awarded $250,000 in punitive damages against Respondent in September 2016, less than five (5) months before the retaliatory conduct in this case, in an attempt to punish and deter Respondent from future violations of the FRSA. *See Raye v. Pan Am*, 2016 WL 6024265, at *9, ARB No. 14-074, ALJ No. 2013-FRS-084 (ARB Sept. 8, 2016).

Respondent's actions in this case, when viewed in conjunction with Respondent's extensive knowledge of the statutory requirements, and prior history of FRSA retaliation violations, show that Respondent exhibited reckless or callous disregard of Complainant's statutory rights and intentionally violated the FRSA. OSHA has therefore determined that punitive damages in the amount of $75,000.00 are warranted.

In light of the above, OSHA issues the following order:

ORDER

1. Upon receipt of the Secretary's Findings, Respondent shall immediately remove the Notice of Hearing dated January 31, 2017 and all subsequent documentation regarding the Hearing from Complainant's permanent personnel file.

2. Respondent shall pay Complainant compensatory damages in the amount of $10,000.00 for pain and suffering, including mental distress, humiliation and embarrassment.

3. Respondent shall pay Complainant punitive damages in the amount of $75,000.00 for reckless disregard for the law and callous indifference to Complainant's rights under the FRSA.

4. Respondent shall pay Complainant reasonable attorney's fees.

5. Respondent shall expunge Complainant's employment records of any reference to the exercise of his rights under the FRSA.

6. Respondent, as well as Respondent's agents, representatives, employees or any person in active concert with them, shall not retaliate or discriminate against Complainant in any manner for engaging in any activity protected under FRSA or instituting or causing to be instituted any proceeding under or related to the FRSA. In particular, Respondent shall not issue any Notice of Investigational Hearing to Complainant or subject Complainant to an investigational hearing in connection with any report of a work-related injury or illness if Respondent does not have reasonable cause to believe that discipline may be warranted.

7. Respondent shall post immediately in a conspicuous place in or about Respondent's Andover facility, including in all places where notices for employees are customarily posted, including Respondent's internal web site for employees or e-mails, if respondent customarily uses one or more of these electronic methods for communicating with employees, and maintain for a period of at least 60 consecutive days from the date of posting, the attached "Notice to Employees," to be signed by a responsible official of Respondent and the date of actual posting to be shown thereon, as well as the attached OSHA Fact Sheet.

8. Respondent shall train its managers and employees assigned to the Andover 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: Galen Blanton, Regional Administration, U.S. Department of Labor, OSHA, JFK Building Room E-340, Boston, MA 02203.

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
Phone: (202) 693-7300
Fax: (202) 693-7365

With copies to:

Complainant
c/o Marc Wietzke, Esq.
Flynn & Wietzke, P.C.
1205 Franklin Avenue
Ste. 370
Garden City, NY 11530

Regional Administrator
U.S. Department of Labor-OSHA
25 New Sudbury Street
JFK Federal Building Room E-340
Boston, MA 02203

Sincerely,

Kristen M. Rubino

Kristen Rubino
Regional Supervisory Investigator

cc: Marc Wietzke, Esq. VIA UPS: 1ZX104980299987883
Chief Administrative Law Judge, USDOL
Federal Railroad Administration (FRSA) Federal Railroad Administration

NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

SPRINGFIELD TERMINAL RAILWAY CO., PAN AM RAILWAYS, INC. has been ordered to make whole an employee who was found to have been retaliated against for exercising his/her rights under the Federal Rail Safety Act (FRSA). Springfield Terminal Railway Company / Pan Am Railways, Inc. has also taken affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the FRSA.

PURSUANT TO THAT ORDER, SPRINGFIELD TERMINAL RAILWAY CO., PAN AM RAILWAYS, INC. AGREES THAT IT WILL NOT:

1. Discharge or in any manner discriminate against any employee because such employee has engaged in any activity, filed any complaint or instituted or caused to be instituted any proceeding under or related to the employee protection provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. §20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law No. 110-53., or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself/herself or others of any right afforded by the FRSA.

2. Discharge, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has reported a workplace injury or illness.

3. Deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

4. Discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.

OSHA Occupational Safety and Health Administration
www.osha.gov

SPRINGFIELD TERMINAL RAILWAY CO., PAN AM RAILWAYS, INC. Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.

OSHA Occupational Safety and Health Administration
www.osha.gov

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