
Guide to the FRSA

Your resource for stopping workplace harassment



What is the FRSA?

The Federal Rail Safety Act (FRSA) is a powerful federal law, which provides protections for railroad employees against retaliation and intimidation by the railroads for reporting injuries or unsafe work conditions. Under the FRSA, employees of railroads may file complaints with OSHA if they have experienced discrimination or retaliation for engaging in good-faith protected activity in the workplace.

An employee prevailing in any action under the FRSA is entitled to all relief necessary to make the employee whole, including reinstatement with the same seniority; backpay with interest; compensatory damages; court costs; expert witness fees; and, in certain cases, punitive damages of up to \$250,000.

What action by the railroads violates the FRSA?

The railroad will be found to have violated the FRSA if the employee's protected activity was a contributing factor in the railroad's decision to take unfavorable personal action against the employee. Thus, a railroad may not discipline an employee if such discipline is due, in whole or in part, to the employee's lawful protected activity.

What is "protected activity"?

Under the FRSA, "protected activity" includes, among other things:

- Reporting an on-the-job injury;
- Reporting hazardous safety conditions;
- Reporting a violation of any federal law relating to railroad safety or security;
- Refusing to work when confronted by an imminent hazardous safety condition; and,
- Requesting prompt medical treatment for work-related injuries.



What is the deadline for filing a Complaint?

An FRSA complaint must be filed within 180 days after the employee becomes aware of the retaliatory action taken by the Railroad.

The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed. Upon the opening of an FRSA complaint, OSHA will conduct an investigation into the merit of the case before issuing its findings and an order.



How does the Investigation work?

After OSHA opens a case, the regional OSHA supervisor will send a letter notifying the employee that the complaint has been reviewed, given an official case name and number, and that the case has been assigned to an investigator. Also at that time, the supervisor will prepare a letter notifying the railroad that a complaint alleging discrimination has been filed by the employee and requesting that the railroad submit a written position statement.

John Steel and John Moss have almost 50 years combined experience handling hundreds of cases on behalf of rail workers who have been injured and harassed on the job.

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How does the Investigation work? (continued)

It is the duty of the investigator to gather all the facts surrounding the complaint through a field investigation. The general requirements of the investigator are to investigate the employee's allegations through witnesses and other evidence, determine the railroad's answer to the allegations, and resolve discrepancies. To do that, the investigator will interview the employee, interview the railroad, question witnesses, and look at documents. The investigator may also try to get the parties to settle the case.

Once the field work is complete, the investigator will submit a recommendation to his supervisor for disposition of the case. OSHA will then enter a disposition of the case, and if the railroad is found to have retaliated against the employee, OSHA will order the railroad to take action to make the harmed employee whole.

What remedies are available to an employee who has been retaliated against?

If the evidence supports the employee's claim of retaliation and a settlement cannot be reached, OSHA can order the railroad to take action to make the employee whole, including one or more of the following:

- Reinstatement of the employee;
- Pay back wages, with interest;
- Restore benefits;
- Reinstatement of seniority;
- Compensation for special damages, including reasonable attorney's fees, expert witness fees, and court costs; and,
- Punitive damages up to \$250,000.

What are the opportunities to appeal?

If no objections are made to OSHA's preliminary order entered after the investigator's report is filed, then that order becomes final. However, either party may appeal to an Administrative Law Judge, and then to the Administrative Review Board. There is also the option of filing the FRSA case in federal court after 210 days if there is no final decision from OSHA.

FRSA Results at Steel & Moss

Administrative Law Judge Rules Against NSRC in Charleston SC Whistleblower Case

On January 8, 2013, Administrative Law Judge Daniel A. Sarno doubled the award from OSHA and awarded our client, Brandy Thompson, \$30,000 in compensatory damages plus attorneys' fees for the railroad's retaliation against her deceased husband Jeff after he reported a hazardous material leak in the yard in Charleston, South Carolina. In the Order, the Judge strongly criticized the railroad for its lack of impartiality at the disciplinary hearing and its handling of the matter. "The procedure leading to Complainant's suspension without pay for falsification of an injury was manifestly one-sided and failed to constitute a good faith effort to determine the objective merit of the charges." This Order sends a strong message to Norfolk Southern that it cannot retaliate against its employees who report personal injuries and dangerous work conditions.

OSHA finds that Norfolk Southern retaliated against transportation worker from Savannah

On November 27, 2012 OSHA issued a Merit finding in favor of our client Chuck Mull from Savannah, GA. Following a report of a personal injury, the carrier terminated Mull for what it alleged was falsification of an injury, making false and/or conflicting statements, and failing to properly report a personal injury. Mull countered that under the manifestation policy, he was perfectly within his rights to report his injury two days later when the pain became severe and when it "manifested" itself.

OSHA agreed with Mull. It found that at Norfolk Southern workers were taught that they did not need to report an injury until they needed medical attention, which is exactly what Mull did. He fully complied with his understanding of the manifestation policy. OSHA also found that the carrier's offer of a "Leniency Waiver" to allow Mull to return to work was coercion to compel Mull to admit guilt in exchange for permission to return to work.

OSHA awarded Mull \$288,250.57 for his lost wages, lost service months, punitive damages, compensatory damages, and attorney fees. The case shows the powerful effect of the FRSA in curbing the carrier's aggressive and unlawful behavior towards rail workers.

For more information visit www.steel-moss.com or www.railinjuries.com. You can also contact the firm at (800) 776-0098.