

RWU Organizes Whistleblowers to Fight Back Against Railroads' Abuse

Under the multitude of federal “whistleblower” laws administered by the Occupational Safety and Health Administration (OSHA), workers in the U.S. who disclose hazards or engage in other “protected activity” are legally shielded against retaliation by their employers. The protected activities vary by industry, but include reporting injuries, disclosing the misuse of public funds and refusing to perform dangerous tasks that would violate safety rules. Since 2007, this OSHA protection includes railroad workers, and since that time, complaints of illegal retaliation abound in the rail industry.

From October 2007 through June 2015, figures of OSHA show railroad workers filing more than 2,000 retaliation complaints. Among the top 10 targets of whistleblower complaints of retaliation over this period, seven were railroads, led by the two largest U.S. railroads, BNSF (409 complaints) and Union Pacific (360). OSHA investigators and Labor Department administrative law judges repeatedly have upheld complaints against the railroads, more than half of which involve illegal retaliation against workers who report personal injuries.

Just why are railroads so hostile to their employees? Speculation abounds, but perhaps at the root is the fact that railroad workers may sue the employer under the Federal Employers' Liability Act (FELA) when they are injured on the job, making for a costly proposition for the rail carriers.

So, if the railroads take reprisal against workers for reporting workplace injuries, then the workers might just report less of them.

And railroaders who witness the reprisals taken against their co-workers may then elect to not report one, and so it goes. This would save the railroad lots of money in claims. Another factor that may lay behind the carriers' hostility towards their employees is that the big Class One railroads all avidly employ “behavior based” safety programs which shift the blame for accidents and injuries from workplace hazards to worker behaviors. As such, railroads discipline a worker as a matter of course (completely illegally) when s/he reports a workplace injury; however, the railroad simply claims that the worker is being disciplined not for reporting an injury, but for his/her improper behavior, not for not following the railroad's rules.

Whatever the case, no other industry is plagued with anywhere near the number of whistleblower complaints of retaliation as is the rail industry. And the law seems to lack any ability to deter these Fortune 500 rail corporations from ongoing and persistent violation of the law. Why? For starters, the law sets a cap at \$250,000 penalty for violators. For a corporation making billions in profit in recent decades, this is hardly a deterrent. In addition, the law allows for endless appeals by the rail carriers, who have in fact appealed *every single case* where OSHA has found in favor of the worker! And if this wasn't bad enough, the appeal goes to federal court where any and all reference to the OSHA case and its verdict is barred as admissible evidence! Finally, upon winning an OSHA case, the worker – rather than being reinstated to his/her former position by the rail carrier as ordered by OSHA – is left on the street unless and until s/he prevails at the final trial once all carrier appeals are exhausted, possibly two, three, five or ten years later! It is no wonder that the railroads continue to ignore the law, run roughshod over their employees and continue to take reprisal against railroad workers against the wishes of OSHA.

RWU has had enough, as have thousands of railroad employees. We are tired of reading the glowing reports in union newsletters about this or that OSHA whistleblower victory, when we know full well that the case will be endlessly appealed by the carrier, delaying, and therefore denying justice to our fellow workers for years to come if ever. In addition, we know that the number of actual whistleblower complaints hardly even begins to tell the story. For every worker who files, how many silently accept their fate in face of what they now know will be an endless series of appeals, headache, letdown, and heart rendering trials and tribulations?

We hope to build a Railroaders' Whistleblower Network (RWN) for whistleblowers to share information and strategies to assist one another to win cases and collectively confront an unjust system that is broken. RWU adopted a resolution in Support of Railroad Workers Whistleblowers at our 5th Biennial Convention this spring. See page 7 for more details. For a full copy of the Resolution, see the RWU website and click on the link RWU Resolutions.

As one of the first actions of the RWN, on April 21st, RWU member Jeff Kurtz spoke to the OSHA Field Managers meeting in Washington, D.C. to explain a little of what is wrong with the system in the hopes of educating them to the nature of the problem. On April 24th, as *The Highball* goes to press, Jeff will be joined by railroader whistleblowers at the spring meeting of the Whistleblower Protection Advisory Committee (WPAC) to further explain the problem and explore ways to rectify the situation. Look for a full report of this mission in *The Highball* Summer 2016 issue in July/August.

If you are a railroad workers whistleblower and are fed up, pissed off and ready to fight back, please contact the *Railroaders' Whistleblower Network* at rottenlr391@mchsi.com or 202-798-3327.

Top Targets of Retaliation Complaints

Federal laws bar employers from retaliating against workers who reveal safety hazards or engage in other “protected activity,” such as reporting injuries or disclosing the misuse of public funds. Workers can file retaliation complaints with the Occupational Safety and Health Administration. Below are the 10 leading targets of retaliation complaints in recent years. Railroad companies, shaded in green, are seven of the top 10. The figures cover the nearly eight-year period from Oct. 1, 2007 through June 30 of this year.

Company	Total
United States Postal Service	578
BNSF	409
Union Pacific	360
CSX	267
Norfolk Southern	247
Canadian National	151
United Parcel Service	139
Amtrak	119
AT&T	103
Metro-North	102

Source: Occupational Safety and Health Administration
Credit: Michelle Ziomek & Stuart Silverstein / FairWarning