RWU Members Testify at OSHA Whistleblower “Listening Session”

In May, the Occupational Safety & Health Administration (OSHA) conducted a “Listening Session” to ostensibly learn how the whistleblower laws were working in the field. A handful of railroad workers and RWU members were present to testify. While we feel this is nothing more than a “dog and pony show”, that it was worth the effort for the record. Below is an edited version of the testimony of RWU General Secretary Ron Kaminkow:

My name is Ron Kaminkow. Since 1996 when I hired out in Chicago, I have been a railroad worker, first as a brakeman and conductor, and since 1999 as a locomotive engineer. I have worked for three different Class One railroads. I have operated trains over the rails of all the Class One railroads in this country, in both passenger and freight service, in eight states. I have witnessed retaliation and threats of retaliation by the rail carriers on a regular basis throughout this time. I currently serve as the General Secretary of the cross-craft group Railroad Workers United (RWU), an organization made up of railroad workers of all crafts from all unions and rail carriers in North America.

My statement to this year’s “listening session” varies little from my statement of 2020. For rail workers, the law itself appears so fatally flawed, that it is questionable if OSHA can do much unless and until the law is modified.

Five or six years ago, our members were delighted when railroad workers began to win whistleblower cases under the new law. Sadly, we quickly became disillusioned with the inability of railroad worker whistleblowers to ultimately prevail. And for the handful that did, the long, arduous process they were subjected to made it a deterrent for others wishing to assert their whistleblower rights.

On April 26, 2016 we arranged a meeting in Washington, DC with OSHA field managers and four rail worker whistleblowers headed by Jeff Kurtz, a former locomotive engineer, former Chairman of the Iowa State Legislative Board for the BLET, who has also served as a representative in the Iowa state legislature. The four expressed their collective frustrations as rank & file railroad workers with the whistleblower law and its application. Jeff would stay on and address the full Whistleblower Advisory Committee the following day.

Meantime, at RWU’s 5th biennial Convention in early April of 2016, we adopted a resolution calling for substantial changes to the law and its application in order for it to be effective. It had become painfully obvious that serious changes were needed. Sadly - to the best of my knowledge - none of these changes have been implemented, and a bad situation seems to have become worse in recent years. Our organization – once so optimistic about the prospects – has generally moved on to other issues and struggles where we feel we might be of some service.

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The Resolution from five years ago is as relevant – if not more so – today as it was in 2016. It stated that relying on the government to police the railroad corporations and defend those disciplined and fired for reporting on-the-job injuries and workplace hazards had been a failure.

Six years ago, 7 of the top 10 companies in terms of the number of whistleblower complaints filed in the U.S. were large rail carriers. The Federal Rail Safety Act (FRSA) whistleblower law is only available to a worker after the Department of Labor decides a case has merit, representing only a tiny percentage of the actual violations by the rail carriers.

The rail carriers have appealed each and every time that a worker has won a whistleblower case, denying the worker the OSHA award and job reinstatement, prolonging the process for years to come. And the rail carriers - at any time during the appeals process - are allowed the option to effectively buy off whistleblowers with cash settlements and thereby eliminate any reference to the original OSHA finding of carrier guilt as part of the settlement.

The OSHA whistleblower punitive damage cap that can be levied against a railroad carrier is set by law at $250,000, not nearly enough to dissuade the financially well-endowed Class One railroads from violating the law.

The law has no provision to mandate a change in corporate policy and has no provision that the carriers educate and inform their employees about the whistleblower law. No individual managers or corporate boards have ever been disciplined - and apparently will not be - under the whistleblower law.

Therefore, in order to make the law effective, we propose the following:
1 – Workers who have an active whistleblower case should have the right to remain on the job pending the final outcome of the case.
2 – The maximum fine of $250,000 be raised to a more substantial level to deter violations of the law.
3 – The OSHA ruling be enforced with no ability for the carrier to appeal to the courts. And if the ruling is appealed to the courts, then the OSHA ruling be admitted as evidence at trial.
4 – Whistleblower rights be clearly outlined and presented to every worker covered by a whistleblower law.
5 – Managers who violate workers’ rights to a safe and healthy workplace be disciplined.

Finally, we would like to see the former Whistleblower Protection Advisory Committee restored, as it offers some means by which whistleblowers can be assisted. And given the number of whistleblower complaints filed by rail workers, it would be wise to include a rail worker on the Committee.

The current law as structured has provided the illusion that a worker has whistleblower rights. But in fact, as currently constructed, it simply leads the naive down the garden path, under the guise of providing protection while offering none.

Ron Kaminkow hired out in Chicago as a brakeman with Conrail in 1996, promoted to conductor and then engineer. He went on to work for Norfolk Southern (1999) and then Amtrak (2004). He currently works as a locomotive engineer in Reno, Nevada where he is the VP and Delegate of BLET #51. He serves as the General Secretary of RWU.