

# WHAT YOU SHOULD KNOW ABOUT YOUR RIGHT TO STOP RAILROAD HARASSMENT

**By John P. Kujawski**  
**IBEW FELA Designated Legal Counsel**

I bring to your attention recent and significant changes in Federal Law regarding threats, intimidation, and harassment against railroad workers by their employers. You are no doubt aware of the harassment, intimidation, and threats made by railroad supervisors against employees who have been injured; who have filed an injury report; who have sought medical attention; or who have reported unsafe tools, equipment, or conditions. Many of you have been victims in the past of this harassment and intimidation. You may have been removed from duty for a period of time or even fired for exercising your legal rights. Individuals have been reluctant to speak up "on the record" concerning safety violations or unfair treatment for fear of being fired, disciplined or otherwise being retaliated against by the railroad. Now, Federal law provides railroad workers with tangible legal protections and remedies for certain types of harassment and retaliation.

## **What types of activities does the Statute protect?**

The legislation was passed in August 2007. It provides specific Whistle-Blower protections for railroad workers pursuant to Title 49 U.S.C. Section 20109. An excerpt of the Act is included in this article. The law provides that a railroad may not **discharge, demote, suspend, reprimand or in any other way discriminate against an employee for assisting in any investigation or providing information as outlined in Section 20109.**

This protection extends to any railroad worker providing information to a supervisor or other person who has the authority to investigate, discover or stop the conduct in question. The federal protection also extends to a worker who refuses to violate, or who refuses to help violate, a railroad safety requirement.

Most significantly, this law also protects a worker when he REPORTS a work-related illness or injury or, taking it a step further, files a lawsuit for personal injuries pursuant to the Federal Employers' Liability Act, or agrees to testify in

such a suit. Finally, the new protections also apply when a worker refuses to work in what he believes to be a hazardous situation or reports that hazardous condition.

This law does not provide a remedy for harassment or intimidation not set forth and enumerated in the Statute. Please read the Statute to understand its comprehensive application.

## **What are your legal rights if you have been a victim of railroad harassment?**

If an employee believes that his or her rights pursuant to this new law have been violated or that they have been a victim of railroad harassment and intimidation, there is a procedural requirement that first must be met. Before allowing a suit to be filed, the law requires that a complaint be filed with the Secretary of Labor within 180 days of the alleged violation. The complaint will be forwarded to the Whistleblower Department of OSHA. This requirement is absolute, and if it is not adhered to, no suit will be allowed.

The Secretary of Labor will have an opportunity to investigate and/or rectify the situation within 210 days. If this matter cannot be administratively resolved within 210 days, the employee may then file a federal lawsuit and is entitled to a **jury trial**. A worker may seek a "right to sue letter" from the Secretary of Labor before the expiration of 210 days which would bestow upon them the right to sue.

## **What damages are available?**

Damages include:

- (a) reinstatement with the same seniority status that the employee would have had, had he not been discriminated against;
- (b) any back pay with interest; and
- (c) damages including compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees; damages may include punitive damages in an amount not to exceed \$250,000.00.

You would be entitled to a jury trial and the jury would be allowed to consider all evidence germane to this issue including the past conduct of the Railroad and the consideration of all other instances of job intimidation and harassment contrary to the Statute. With this legislation, no railroad worker should be afraid or reluctant to file a Report of Injury or pursue his remedies under the law.

## **HOW TO LEGALLY PROTECT YOURSELF**

1. If you are injured and need assistance in filling out a Personal Injury Report, immediately call your local chairman and one of the attorneys designated by the IBEW.
2. If you want to prevent the Railroad from interfering in your medical treatment, please contact one of the designated attorneys immediately.
3. If you believe that you are a victim of any type of threat, harassment or intimidation by the railroad for pursuing certain rights as set out by the Statute, please call one of the designated counsel for an immediate consultation to see if the Act applies, and if suit could be filed.

Members of the IBEW and attorneys on your list of FELA Designated Legal Counsel worked diligently to pass this new Federal Act. It is in place for the benefit of every railroad worker in the country. It is important for you to have knowledge of this new remedy and to utilize it when necessary.

*John P. Kujawski is the founder of the law firm of Kujawski and Associates and is one of your IBEW Designated FELA Legal Counsel with offices in O'Fallon, IL. For more information regarding this topic, he can be contacted at 1-800-775-6511.*

*For more information about **all** IBEW Designated FELA Legal Counsel nationwide and the DLC program, please visit the IBEW website at [www.IBEW.org](http://www.IBEW.org), and then access the Railroad Department.*

**Effective: August 3, 2007**

**§ 20109. Employee protections**

**(a) In general.**--A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done--

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by--

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(7) to accurately report hours on duty pursuant to chapter 211.

**(b) Hazardous safety or security conditions.**--(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for--

(A) reporting, in good faith, a hazardous safety or security condition;

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if--

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that--

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only paragraph (1)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

**(c) Enforcement action.--**

(1) **In general.--**An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a) or (b) of this section, may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

**(2) Procedure.--**

(A) **In general.--**Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b), including:

(i) **Burdens of proof.--**Any action brought under (c)(1) shall be governed by the legal burdens of proof set forth in section 42121(b).

(ii) **Statute of limitations.--**An action under paragraph (1) shall be commenced not later than 180 days after the date on which the alleged violation of subsection (a) or (b) of this section occurs.

(iii) **Civil actions to enforce.--**If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in 42121.

(B) **Exception.--**Notification made under section 42121(b)(1) shall be made to the person named in the complaint and the person's employer.

(3) **De novo review.--**With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(4) **Appeals.--**Any person adversely affected or aggrieved by an order issued pursuant to the procedures in section 42121(b), may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. The review shall conform to chapter 7 of title 5. The commencement of proceedings under this paragraph shall not, unless ordered by the court, operate as a stay of the order.

**(d) Remedies.--**

(1) **In general.--**An employee prevailing in any action under subsection (c) shall be entitled to all relief necessary to make the employee whole.

(2) **Damages.--**Relief in an action under subsection (c) (including an action described in subsection (c)(3)) shall include--

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(3) **Possible relief.--**Relief in any action under subsection (c) may include punitive damages in an amount not to exceed \$250,000.

(e) **Election of remedies.--**An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.

(f) **No preemption.--**Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) **Rights retained by employee.--**Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(h) **Disclosure of identity.--**

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosures shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.