

Amtrak Employee Awarded \$160K in 'Historic' FRSA Case

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An Amtrak coach cleaner has been awarded substantial damages for retaliation by her employer for reporting an on-the-job ankle sprain. The U.S. Department of Labor ordered Amtrak to pay Nicole Anderson, a Seattle, Washington Amtrak employee, \$60,000 in compensatory damages and \$100,000 in punitive damages in a decision issued last week.

Amtrak terminated Anderson's employment in November 2007 after she reported to her manager that she had sprained her ankle while working at Amtrak's King Street Station facility. While Amtrak claimed it fired Anderson for failing to exercise common sense, Administrative Law Judge Steven B. Berlin concluded otherwise, finding that Anderson established at trial that Amtrak retaliated against her in violation of the Federal Railroad Safety Act for reporting her work-related injury.

Explaining the \$100,000 punitive damages award, the judge wrote, "Amtrak's conduct reflects a degree of conscious disregard for how its practices obstruct Congress's mandate in the Federal Rail Safety Act. Punitive damages are appropriate to correct and deter this conduct."

OSHA launched an investigation into the matter after one of Anderson's co-workers reported Amtrak's action to the agency's Seattle regional office. Amtrak reduced its discipline of Anderson from termination to a 30-day suspension without pay while OSHA's investigation was pending. Following a thorough investigation, OSHA concluded in October 2008 that Amtrak terminated Anderson in retaliation for reporting her ankle sprain, and ordered the railroad to pay the worker her lost wages, expunge her employment file, and to pay her \$20,000 in punitive damages for its illegal conduct. Anderson returned to work at Amtrak in January 2008, where she still works today.

Amtrak appealed OSHA's decision to the DOL's Office of Administrative Law Judges, and that appeal culminated in a trial de novo before Judge Berlin in June 2009. Attorney Fredric A. Bremseth represented Anderson at trial. This was the first case to be tried under a 2007 amendment to the Federal Railroad Safety Act, 49 U.S.C. §20109, that makes it illegal for railroads to retaliate against employees who report work-related injuries.

As the result of Amtrak's illegal conduct, Judge Berlin ordered the railroad to:

- Expunge Anderson's personal file of any disciplinary record or negative references related to her Oct. 1, 2007 injury accident;
- Amend its disciplinary records to show no more than a verbal warning in connection with Anderson's late arrival at a safety meeting and expunge the four-day suspension without pay that Amtrak imposed for that incident;
- Pay Anderson back pay in the amount of \$2,666.67, plus interest from the date of termination until the date of payment at the rate prescribed by law;
- Pay Anderson \$60,000 in punitive compensatory damages;
- Pay Anderson \$100,000 in punitive damages; and
- Pay Anderson for her attorneys' fee and costs.

"This is an historic case," Bremseth said, "that vindicates Congressional findings that railroads do in fact engage in retaliation and harassment of injured employees in order to keep them from reporting work-related injuries." The attorney added, "We are very pleased for our client, and hope this landmark case will put railroads on notice that they can no longer intimidate their employees to keep them from reporting on-the-job injuries."

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