



# Amtrak Employee Reinstated Following Retaliation for Whistleblowing

January 31, 2017

A former employee of the National Railroad Passenger Corp. (“Amtrak”) was recently awarded an \$892,551 settlement and was reinstated as an Amtrak employee, following an order from the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”).

The employee worked for Amtrak as a supervisory special agent in Amtrak’s inspector general’s office. In 2010, the employee was investigating an Amtrak contractor that had been convicted of fraud in examining and testing concrete at building projects in the New York City area and had also performed testing on certain Amtrak tunnel projects. The employee raised safety concerns regarding the work of this contractor on Amtrak projects and eventually gave Amtrak’s Dispute Resolution Office information regarding the contractor in October 2010. In November 2010, the employee received a negative performance review, which he had never received before, and in March 2011, the employee was informed that his position was being eliminated due to a reorganization of the corporation. Over the following months, the employee applied for other jobs with the company but was passed up for positions because he allegedly lacked the necessary law enforcement training, despite a 40-year law enforcement career. In June 2011, the employee was officially terminated by Amtrak. The terminated employee eventually filed a complaint with OSHA, believing he was terminated for whistleblowing.

OSHA completed an independent investigation and determined that the employee engaged in protected activity under the Federal Railroad Safety Act (“FRSA”). When the employee raised concerns about safety issues and expressed support of a fellow employee’s safety complaints, he was engaging in activity that FRSA protects. Further, OSHA found that the protected activities contributed to the employee’s termination by Amtrak.

An administrator for OSHA reiterated that “an employee was terminated for pursuing and reporting safety concerns” and emphasized that retaliation for reporting such concerns is not only unacceptable but also illegal. The administrator also stated that “[w]hen retaliation occurs, it can have a chilling effect on employees and create a climate of silence where employees’ fear to speak up masks conditions that could impact their health and well-being, and that of their customers.”

As a result of its findings, OSHA has ordered Amtrak to reinstate the employee to his former or a similar position and to pay the employee a total of \$892,551, which includes back pay, interest, and both compensatory and punitive damages. Furthermore, Amtrak must post a notice to all railroad employees about their rights under FRSA. Now, both the employee and Amtrak have thirty days to file any objections to OSHA’s findings or to request a hearing before the Department of Labor.

It is important for employers to note that in addition to FRSA, OSHA enforces the whistleblower provisions of twenty-one other statutes. The whistleblower provisions of these statutes protect employees who report violations of various laws, including environmental laws, worker safety laws, health care reform laws, consumer product laws, and securities laws. Employers must make themselves aware of whistleblower provisions that might apply to them. Further, employers should understand that they are “prohibited from retaliating against employees who raise various protected concerns or provide protected information to the employer or to the government.” Awareness of the laws against retaliation can help avoid costly litigation and settlements that can arise from retaliation claims.

*If you have any questions or concerns regarding employment related issues, please contact James G. Ryan at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com) or at 516-357-3750. Thank you to Bridget Hart, a law clerk at Cullen and Dykman, for her assistance with this blog post.*

\*Please note that this is a general description of law and does not constitute legal advice.