

# **OSHA Orders Employer to Pay Damages to FRSA Whistleblower**

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Transportation workers have to feel free to report safety hazards. That was the principle at the foundation of the recent finding by the U.S. Department of Labor's Occupational Safety and Health Administration ([OSHA](#)) in a case brought by a whistleblower against the commercial rail carrier CSX Transportation Inc. In the case, OSHA concluded that CSX had unlawfully retaliated against an employee who had raised concerns about safety hazards and ordered the organization to pay punitive damages. The agency's decision represents a victory for [transportation whistleblowers](#) and for public safety.

## **About the CSX Whistleblower Case**

The CSX case is typical of the kind of retaliation cases that go to OSHA. The employee in the case, acting in his capacity as a union official, wrote a letter to a supervisor in one of the railroad's locomotive shops detailing numerous safety hazards that he and his coworkers believed were causes for concern. The letter also stated that if the safety issues were not addressed, the union would withdraw its support for the shop's safety committee.

Management then suspended the employee for five days, alleging that he was responsible for a safety infraction. The employee filed a charge with OSHA, alleging that CSX had retaliated against him for reporting safety concerns, in violation of the Federal Railway Safety Act ([FRSA](#)). After investigating his claims, OSHA concluded they had merit and found in his favor.

OSHA ordered CSX to pay the employee's attorney's fees as well as \$5,000 in punitive damages. It also ordered the company to expunge the original suspension from the employee's records and to initiate training programs to prevent future retaliation against employees who raise concerns about safety.

The punitive damages are particularly noteworthy because they demonstrate that even when the economic losses resulting from retaliation are relatively minor – as in this case where the employee only lost five days' pay – retaliated-against employees can still receive significant damages for their employer's actions. In the OSHA press release announcing its findings, Robert Kulick, OSHA's regional administrator in New York, explained the rationale behind the findings, stating that “[t]he company's retaliation needlessly cost [the employee] time, money, and distress.”

## **Victory for Transportation Whistleblowers**

This case was a win for transportation workers. OSHA clearly recognized that any retaliation against workers who raise concerns about potential transportation safety hazards, no matter how insignificant the concerns may seem, poses a risk to the public and unfairly punishes workers who are simply doing their duty. Federal law has rightly made transportation safety a priority and utilizes whistleblower protections in order to achieve it. Employees in the transportation industry who have been retaliated against for reporting safety concerns can file a charge with OSHA, which then

investigates the matter and issues a finding. As in the CSX case, when OSHA finds that an employee was retaliated against in violation of the whistleblower protections, it orders the employer to pay damages to the employee.

In addition to the protections for railroad workers found in the FRSA, there are also protections for airline workers in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ([AIR21](#)), employees in the commercial motor vehicle industry in the Surface Transportation Assistance Act (STAA), public transportation agency workers in the National Transit Systems Security Act (NTSSA), and seamen in the Seaman's Protection Act (SPA). These statutes protect workers who report safety concerns to either their employer or a government agency.