



Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters

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BMWED Efforts Preserve Strong Whistleblower Protection for Rail Workers

Washington, DC: After months of effort and engagement with the Occupational Safety and Health Administration/Department of Labor (OSHA), BMWED's substantial efforts have paved the way for strong whistleblower protection for BMWED members and all railroad workers nationwide.

On August 3, 2007, the Federal Rail Safety Act (FRSA), 49 U.S.C. Section 20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* to transfer authority for rail carrier whistleblower protections to OSHA. The law provides railroad workers with rights and remedies against unlawful carrier retaliation for reporting injuries and violations of federal laws and regulations related to railroad safety and security. In addition, the intent of the whistleblower law is to protect rail workers from retaliation for reporting hazardous safety or security conditions, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structure.

Since the whistleblower law went into effect, rail carriers have routinely raised a facile defense to Section 20109 whistleblower complaints, falsely claiming that a rail employee's grievance filed under the terms of the collective bargaining agreement became an "election of remedies" barring the filing of a complaint under Section 20109. Based upon that facile defense, OSHA/DOL initially adopted a policy which forced rail workers to forfeit their contractual rights in order to pursue a whistleblower complaint under Section 20109. After many months of intensive engagement by BMWED, OSHA/DOL has reversed its policy, effectively opening the door to genuine whistleblower protection for railroad workers as the Congress intended.

"This is a significant victory for BMWED and all of Rail Labor," said BMWED President Freddie N. Simpson. "The National Division Officers fully understood what was at stake, and our Executive Board approved the expenditure of funds necessary to take on this significant fight. The substantial efforts of our National Division Officers, BMWED legal counsel, and our legislative and safety departments have delivered this victory for BMWED and all of Rail Labor," said Simpson.

Whistleblower complaints must be filed within 180 days after an employee becomes aware of retaliatory action. Railroads found to have violated a rail worker's rights under Section 20109 may be ordered by OSHA/DOL to reinstate a dismissed employee, provide back pay, restore seniority and benefits, and provide other such relief to make an employee whole. In addition, railroad carriers can be ordered to pay punitive damages not to exceed \$250,000 for violation of the law.

"Thanks to the efforts of the BMWED, the tide has finally turned and railroads will now be held liable for their unlawful retaliation against rail employees," said Simpson. "Railroads will no longer be able to retaliate against railroad employees who report injuries and safety violations with impunity. This is a substantial victory for all of Rail Labor and every rail worker nationwide, and I am proud that BMWED led the way to this important victory,"

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