



**In the Matter of:**

**LAWRENCE J. RUDOLPH,**

**ARB CASE NO. 11-055**

**COMPLAINANT,**

**ALJ CASE NO. 2009-FRS-015**

**v.**

**DATE: April 25, 2013**

**NATIONAL RAILROAD PASSENGER  
CORPORATION (Amtrak),**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**James C. Zalewski, Esq.; DeMars, Gordon, Olson, Zalewski, Wynner & Tollefsen; Lincoln, Nebraska**

*For the Respondent:*

**Chad P. Richter, Esq.; Jackson Lewis LLP; Omaha, Nebraska**

**Before: Paul M. Igasaki, Chief Administrative Appeals Judge; E. Cooper Brown, Deputy Chief Administrative Appeals Judge; and Luis Corchado, Administrative Appeals Judge.**

### **ORDER OF REMAND OF ATTORNEY'S FEE AWARD**

This case arises under the employee whistleblower protection provisions of the Federal Rail Safety Act of 1982 (FRSA).<sup>1</sup> Lawrence J. Rudolph claimed that his

---

<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson/West Supp. 2012); as implemented by federal regulations at 29 C.F.R. Part 1982 (2012) and 29 C.F.R. Part 18, Subpart A (2012).

employer, National Railroad Passenger Corporation (Amtrak), violated the FRSA. A Department of Labor (DOL) Administrative Law Judge (ALJ) concluded that Amtrak had violated the FRSA on one of his whistleblower retaliation claims and awarded Rudolph \$5,000.00 in punitive damages.<sup>2</sup> Rudolph appealed to the Administrative Review Board (ARB), which affirmed the ALJ's decision in part, reversed in part, and remanded the case for further proceedings.<sup>3</sup>

Subsequently, the ALJ issued an attorney's fee award of \$1,000.00, plus \$1,209.12 in litigation expenses.<sup>4</sup> Rudolph appealed to the ARB. We affirm in part, reverse in part, and remand this fee award.

The ALJ based his attorney's fee determination on an erroneous and/or unclear analysis of the merits of Rudolph's complaint, which the ARB remanded for reconsideration of whether Rudolph proved that his protected activities were a contributing factor in any or all of the adverse personnel actions that Amtrak took against him. Because of the ALJ's legal errors, we necessarily must remand his decision awarding only \$1,000.00 in attorney's fees for further consideration following his decision on the merits of Rudolph's complaint and in view of any subsequent request for additional attorney's fees.<sup>5</sup>

If, on remand, the ALJ concludes that Amtrak has violated the FRSA beyond his initial findings and, as a result, is presented with a motion seeking renewed consideration of Rudolph's attorney's fee request, the ALJ should put aside purely mathematical calculations and focus on the relief to which Rudolph would be entitled, including reinstatement, back pay, and compensatory damages in determining an appropriate award of an attorney's fee.

Since the ALJ's award of litigation expenses is not contested, we **AFFIRM** the ALJ's award of \$1,209.12. For the foregoing reasons, however, we **VACATE** all other

---

<sup>2</sup> *Rudolph v. Nat'l R.R. Passenger Corp.*, ALJ No. 2009-FRS-015 (ALJ Mar. 14, 2011) (Decision and Order – Partial Approval of Complaint & Punitive Damages).

<sup>3</sup> *Rudolph v. Nat'l R.R. Passenger Corp.*, ARB No. 11-037, ALJ No. 2009-FRS-015, slip op. at 27-28 (ARB Mar. 29, 2013).

<sup>4</sup> *Rudolph v. Nat'l R.R. Passenger Corp.*, ALJ No. 2009-FRS-015 (ALJ May 10, 2011) (Supplemental Decision and Order – Partial Award of Attorney Fee & Litigation Costs).

<sup>5</sup> On appeal, Rudolph's attorney filed a motion to modify the ALJ's award of attorney's fees, seeking the full amount of the lodestar figure. In view of our remand and possible additional attorney's services, we find the motion moot.

aspects of the ALJ's Supplemental Decision and Order, reverse the \$1,000.00 award, and **REMAND** this case to the ALJ for further consideration consistent with this opinion.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**