



**In the Matter of:**

**DENNIS COATES,**

**ARB CASE NO. 14-067**

**COMPLAINANT,**

**ALJ CASE NO. 2013-FRS-003**

**v.**

**DATE: August 12, 2015**

**GRAND TRUNK WESTERN RAILROAD  
CO.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Robert E. Harrington, III, Esq.; *Harrington, Thompson, Acker & Harrington, Ltd.*;  
Chicago, Illinois**

*For the Respondent:*

**Joseph D. Weiner, Esq.; *Little Mendelson, P.C.*; Minneapolis, Minnesota**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge***

**ORDER AFFIRMING THE ADMINISTRATIVE LAW JUDGE'S  
ATTORNEY'S FEE AND COSTS ORDERS**

This case arises under the employee protection provisions of the Federal Rail Safety Act

of 1982 (FRSA).<sup>1</sup> On July 17, 2015, the Administrative Review Board (ARB or Board) issued a decision affirming an Administrative Law Judge (ALJ) decision that Grand Trunk Western Railroad Co. (GTW) violated the FRSA because Coates's protected activity was a contributing factor in GTW's refusal to return Coates to work and in the termination of his employment.<sup>2</sup>

The issue before us is GTW's appeal of the ALJ's attorney's fees and costs awards.<sup>3</sup> Having prevailed on the merits of his whistleblower complaint, Coates is entitled to a monetary award that includes his "litigation costs, expert witness fees, and reasonable attorney fees."<sup>4</sup> The ALJ awarded a total of \$190,272.50 in fees<sup>5</sup> and \$5,840.93 in costs. We review an ALJ's attorney's fees award under an abuse of discretion standard.<sup>6</sup> Here, over the course of two years of litigation, Complainant (1) filed a complaint on September 19, 2011, which OSHA dismissed; (2) requested a hearing; (3) successfully opposed a motion for summary decision; (4) prevailed after a two-day evidentiary hearing and submitting a post-hearing brief, among other litigation efforts. The ALJ provided sufficient reasons and bases for the hourly rates he applied, the hours approved, and the total amount awarded in fees and costs. While the number of hours awarded is significant, we cannot say that the ALJ abused his discretion in the fee award. We affirm. Coates is also entitled to fees and costs associated with this appeal.<sup>7</sup>

---

<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson Reuters Supp. 2015), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53, and as implemented by federal regulations at 29 C.F.R. Part 1982 (2014) and 29 C.F.R. Part 18 Subpart A (2014).

<sup>2</sup> For the ARB's authority, see Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

<sup>3</sup> The ALJ issued an order awarding attorney's fees on June 4, 2014, and an amended order awarding litigation costs, on June 30, 2014.

<sup>4</sup> 49 U.S.C.A § 20109(e)(2)(C).

<sup>5</sup> The ALJ's June 4, 2014 Attorney Fee Order reflects that total fees for Thompson equaled \$105,882.50, and total fees for Harrington equaled \$84,390.00. It is not clear how Thompson's fees went from \$105,882.50 to \$105,821.00 (a difference of \$61.50). As the ALJ found that the total fees were \$190,272.50, and there is nothing to account for a reduction, we conclude that the latter number was a mistake, and Thompson's fees were in fact, \$105,882.50.

<sup>6</sup> *Luder v. Cont'l Airlines, Inc.*, ARB No. 13-026, ALJ No. 2008-AIR-009, slip op. at 2 (ARB Jan. 7, 2015).

<sup>7</sup> 29 C.F.R. § 1982.110(d).

## **CONCLUSION**

Accordingly, we **AFFIRM** the ALJ's attorney's fees and costs awards for services performed before the ALJ.

Coates shall have thirty (30) days from receipt of this Order in which to file a fully supported statement with the ARB for costs and fees incurred opposing GTW's petition for review (appealing the ALJ's award of fees and costs), with simultaneous service on opposing counsel. Thereafter, GTW shall have thirty (30) days from its receipt of the statement to file a response.

**SO ORDERED.**

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

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

**JOANNE ROYCE**  
**Administrative Appeals Judge**