



In the Matter of:

WEBSTER WILLIAMS, JR.,
COMPLAINANT,

v.

GRAND TRUNK WESTERN
RAILROAD COMPANY,
RESPONDENT.

ARB CASE NOS. 14-092
15-008

ALJ CASE NO. 2013-FRS-033

DATE: DEC - 8 2017

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Robert B. Thompson, Esq. and Robert E. Harrington, III, Esq.; *Harrington, Thompson, Acker & Harrington, Ltd., P.C.*; Chicago, Illinois

For the Respondent:

Holly M. Robbins, Esq. and Joseph D. Weiner, Esq.; *Little Mendelson, P.C.*; Minneapolis, Minnesota

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

ORDER OF DISMISSAL

This case arises under the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA),¹ and its implementing regulations.² On December 5, 2016, the Administrative Review Board (ARB or Board) issued a decision affirming an Administrative Law Judge (ALJ) decision finding that Complainant established that Respondent retaliated against him in violation of the FRSA and awarding expungement of any reference related to the charges and disciplinary action, reinstatement to his former position, back wages, compensatory

¹ 49 U.S.C.A. § 20109 (Thomson Reuters 2016).

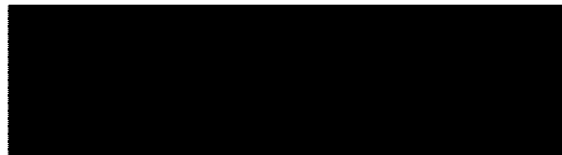
² 29 C.F.R. Part 1982 (2016).

damages, and a reasonable attorney's fee, whereupon Grand Trunk Western Railroad Company (Grand Trunk) appealed to the United States Court of Appeals for the Sixth Circuit.

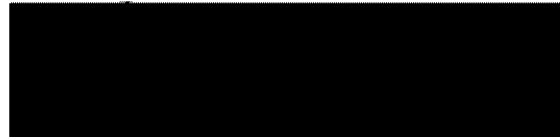
The FRSA provides that a railroad carrier may not retaliate against "an employee for requesting medical or first aid treatment."³ The Sixth Circuit disagreed with the Board's conclusion that this provision protects employees who sustain off-duty injuries. Thus, the court held that Section 20109(c)(2) does not protect Williams from retaliation for following a treatment plan for non-work-related conditions.⁴ Consequently, the court granted Grand Trunk's petition for review and remanded the case to the ARB to dismiss the complaint.

Accordingly, consistent with the Sixth Circuit's opinion, the ARB's Final Decision and Order of December 5, 2016, is **VACATED**, and this case is **DISMISSED**. Moreover, as Williams did not successfully prosecute his complaint, we deny his attorney's petition for work performed before the Board.

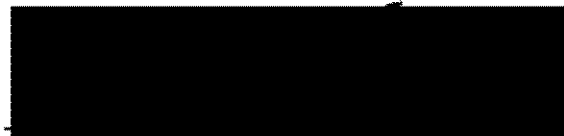
SO ORDERED.



JOANNE ROYCE
Administrative Appeals Judge



PAUL M. IGASAKI
Chief Administrative Appeals Judge



E. COOPER BROWN
Administrative Appeals Judge

³ 49 U.S.C.A. § 20109(c)(2).

⁴ *Grand Trunk Western R. R. Co. v. U.S. Dep't of Labor*, 875 F.3d 821 (6th Cir. Oct. 11, 2017).