



In the Matter of:

JOHN YOUNGERMANN,

ARB CASE NO. 11-056

COMPLAINANT,

ALJ CASE NO. 2010-STA-047

v.

DATE: February 27, 2013

UNITED PARCEL SERVICE, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Paul O. Taylor, Esq., Truckers Justice Center, Burnsville, Minnesota

For the Respondent:

**Daniel K. O'Toole, Esq. and Vance D. Miller, Esq.; Armstrong Teasdale LLP,
St. Louis, Missouri**

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

FINAL DECISION AND ORDER

John Youngermann filed a complaint under the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations.² After a hearing, a U.S. Department of Labor (DOL) Administrative Law Judge (the ALJ) determined that Youngermann's employer, United Parcel Service, Inc. (UPS), violated the STAA. The ALJ ordered that UPS reinstate Youngermann with no

¹ 49 U.S.C.A. § 31105 (Thomson Reuters 2012) (STAA).

² 29 C.F.R. Part 1978 (2012).

loss of work time and awarded back pay with interest, emotional damages, and other compensatory damages. The ALJ also assessed \$100,000 in punitive damages against UPS. UPS appeals only from the ALJ's assessment of punitive damages. We affirm that assessment.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under the STAA and its implementing regulations at 29 C.F.R. Part 1978.³ In reviewing STAA cases, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole.⁴ The ARB reviews the ALJ's conclusions of law de novo.⁵

BACKGROUND⁶

Respondent UPS is an "employer" within the meaning of 49 U.S.C.A. § 31101(3). From August 25, 1977, until April 15, 2009, when UPS discharged him, Complainant Youngermann worked as a feeder driver operating tractor-trailer vehicle combinations having a gross vehicle weight rating of 10,001 pounds or more on the highways transporting property in interstate commerce. On April 15, 2009, Youngermann refused to haul a UPS loaded trailer that UPS dispatched him to pick up at a customer's facility and return to the Respondent's facilities (referred to as the "Earth City Hub") because the trailer had no working tail lights or side marker lights and because the tractor pulling the trailer had an inoperable low beam headlight. Youngermann informed the UPS dispatcher of these conditions and that, given the hour (it was after 7:30 p.m. and "close to dark"), he did not consider it safe for him to pull the trailer back to the UPS facility. A pointed discussion ensued by phone between Youngermann and his supervisor, followed by telephone conversations with several UPS managers. All instructed him to immediately return to the Earth City Hub with the tractor-trailer, insisting that it was safe

³ Secretary's Order No. 2-2012, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

⁴ 29 C.F.R. § 1978.110(b); *Jackson v. Eagle Logistics, Inc.*, ARB No. 07-005, ALJ No. 2006-STA-003, slip op. at 3 (ARB June 30, 2008) (citations omitted).

⁵ *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004).

⁶ The Background section is derived from the parties' stipulations and the ALJ's statement of the case. Administrative Law Judge's Exhibit 1; *see* Administrative Law Judge's Decision and Order (May 5, 2011) (D. & O.) at 2-9.

for Youngermann to drive the vehicle in its condition with the tractor's high beam lights on and using the trailer's flashers. Despite the collective insistence and instructions, Youngermann refused to drive, stating his belief that it would be unsafe and illegal given the condition of the trailer and tractor.

When it became clear that Youngermann would not drive the tractor-trailer, the Respondent's Division Manager issued instructions for another driver to drive the vehicle back to UPS's Earth City Hub. Upon arriving at the location where the tractor-trailer remained, the alternate driver was apprised of the problems with the vehicle and refused to drive the tractor-trailer unless the UPS supervisor, who had accompanied him to the location, followed immediately behind the tractor-trailer during his return. The driver was concerned because of the potential hazard created by the fact that he would not be able to use his turn signals while traveling with the rear lights flashing as he had been instructed to do. The UPS supervisor, accompanied by Youngermann, followed directly behind the tractor-trailer back to the Earth City Hub in a separate vehicle.

After they returned to UPS's facility, Youngermann was summoned to the Division Manager's office where his supervisor and several managers with whom he had previously spoken by phone met with him. During this meeting, UPS's Automotive Fleet Manager at the Earth City Hub, one of Youngermann's supervisors, reviewed the differences between the Department of Transportation ("DOT") requirements under the regulations at 49 C.F.R. Part 396 pertaining to commercial motor vehicle safety standards and the requirements of the Commercial Vehicle Safety Alliance ("CVSA") "*North American Standard Vehicle Out-of-Service Criteria*" upon which UPS had relied in instructing Youngermann to drive the tractor-trailer. The Automotive Fleet Manager was aware, at the time he ordered Youngermann to drive the tractor-trailer, that operating it with the defective equipment would constitute a violation of these DOT regulations.⁷

By letter dated April 16, 2009, signed by the UPS Division Manager, UPS notified Youngermann of his discharge from employment. Shortly after UPS terminated Youngermann for insubordination, UPS found a discrepancy on his timecard and terminated Youngermann for the additional reason of "dishonesty." Youngermann, who was a union steward at the time, filed a grievance protesting his discharge. Through the collective bargaining grievance procedure, UPS reduced Youngermann's discharge to a ten-day suspension without pay and reinstated him April 30, 2009. Youngermann appealed his suspension. As a result of the ruling on appeal, UPS reduced his suspension to one day without pay and reinstated Youngermann as of April 17, 2009.

⁷ While the defective tail lights and side marker lights and defective head lamp are not identified as items that would place the vehicle out of service under the Out-of-Service criteria, the Fleet Manager acknowledged at the hearing before the ALJ that he was aware, when he ordered Youngermann to drive, that operating without working marker lamps and tail lamps violated DOT regulations, as did the Respondent's Division Manager. D. & O. at 8; Hearing Transcript at 226, 263-264.

Youngermann filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (OSHA), claiming that UPS violated the STAA’s employee protection provisions when it discharged him. OSHA issued a determination in Youngermann’s favor, whereupon UPS filed objections and requested a hearing before a DOL administrative law judge. Subsequent to a hearing, the ALJ found that UPS violated the STAA’s whistleblower protection provisions when it discharged Youngermann for engaging in conduct that the STAA protects. The ALJ ordered relief including the award of \$2,122.12 in back pay plus interest; \$5,000 in compensatory damages, and \$100,000 in punitive damages. UPS filed a petition for review with the Administrative Review Board (ARB) appealing only the ALJ’s punitive damages award.

DISCUSSION

The STAA provides that “relief in any action under subsection (b) may include punitive damages in an amount not to exceed \$250,000.”⁸ Neither the statute nor the associated regulations contain guidance on when this form of relief is warranted or how to determine an appropriate amount. DOL jurisprudence regarding punitive damages for violations of the whistleblower provisions is limited.

When DOL case law does not provide controlling authority, we often look to Title VII precedent for guidance given the similarities in the anti-discrimination statutes.⁹ Recourse to Title VII case law to assist in our adjudication of punitive damage awards under whistleblower statutes is particularly instructive given the similar purposes of promoting prevention and remediation found in the two Acts, coupled with the fact that Title VII punitive damage provisions, like those under STAA, contain statutory caps on punitive damage awards. Nevertheless, the statutes have significant differences.¹⁰ Consequently, we do not adopt Title VII principles without “careful and critical

⁸ 49 U.S.C.A. § 31105(b)(3)(C).

⁹ 42 U.S.C.A. § 2000e, et seq. (Thomson Reuters 2012); see *Hirst v. Southeast Airlines, Inc.*, ARB Nos. 04-116, -160; ALJ No. 2003-AIR-047, slip op. at 9 (ARB Jan. 31, 2007) (“In deciding whistleblower cases . . . , the Secretary and this Board often have relied upon cases arising under Title VII of The Civil Rights Act of 1964.”).

¹⁰ For example, STAA’s punitive damages provision merely states, “Relief in any action under subsection (b) may include punitive damages in an amount not to exceed \$250,000,” but Title VII provides for the recovery of punitive damages where it is shown that the unlawful discrimination was undertaken “with malice or with reckless indifference to the federally protected rights of an aggrieved individual.” 42 U.S.C.A. § 1981a (b)(1). Also, the 1991 Title VII amendments limit the total combined amount of compensatory and punitive damages a plaintiff may recover, peg the size of the cap to the number of employees an employer employed, and prohibit judges from informing jurors of the caps.

examination.”¹¹ Precedent interpreting Title VII, while persuasive is not controlling in interpreting the STAA’s punitive damage provision.

Further complicating our analysis of punitive damage awards is the confusion in the federal courts over the proper standards to apply to awards in employment discrimination cases. The decision in *Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999), upon which we rely in part to affirm the ALJ’s award of punitive damages in this case, is considered by one legal commentator, Professor Joseph A. Seiner, as the U.S. Supreme Court’s “clearest statement of how punitive damages should be analyzed under Title VII.”¹² Nevertheless, the same commentator also noted, “While *Kolstad* resolved many questions for this area of the law, it also generated significant confusion in the lower courts over the proper standard to apply in workplace cases.”¹³ Nevertheless, a survey of federal cases interpreting Title VII punitive damage awards, along with the Board’s limited body of precedent, provide the contours of punitive damage jurisprudence sufficient to affirm the ALJ’s award in this case.

1. The ALJ’s determination that punitive damages are warranted

Consistent with Supreme Court precedent,¹⁴ the ARB’s review of a punitive damages award involves a two-part analysis. We first evaluate whether the ALJ properly determined that punitive damages were warranted. If the Board concludes that the award is warranted, we must determine whether the amount awarded is sustainable.

The Board has embraced the common law standard for determining when an award of punitive damages is warranted that the Supreme Court adopted in Section 1983 actions.¹⁵ Turning to the first prong of our analysis, the Board has held that the award of

¹¹ *Williams v. American Airlines, Inc.*, ARB No. 09-018, ALJ No. 2007-AIR-004, slip op. at 12-13 n.59 (ARB Dec. 29, 2010) quoting *Federal Exp. Corp. v. Holowecki*, 552 U.S. 389, 393 (2008).

¹² Joseph A. Seiner, *Punitive Damages, Due Process, and Employment Discrimination*, 97 IOWA L. REV., 473, 475, 478 (2012).

¹³ *Id.* at 475.

¹⁴ *See, e.g., Smith v. Wade*, 461 U.S. 30, 52 (1983) (“To make its punitive award, the jury was required to find not only that Smith’s conduct met the recklessness threshold . . . , but *also* that his conduct merited a punitive award of \$5,000 in addition to the compensatory award. . . .”)(emphasis in original).

¹⁵ *See Ferguson v. New Prime, Inc.*, ARB No. 10-075, ALJ No. 2009-STA-047 (ARB Aug. 31, 2011) (punitive damages award affirmed in *Ferguson v. New Prime, Inc.*, ARB No. 12-053, ALJ No. 2009-STA-047 (ARB Nov. 30, 2012); *Leveille v. New York Air Nat’l Guard*, ARB No. 98-079, ALJ Nos. 1994-TSC-003, -004 (ARB Oct. 25, 1999).

punitive damages is warranted “where there has been ‘reckless or callous disregard for the plaintiff’s rights, as well as intentional violations of federal law.’”¹⁶ Employing language similar to that which later appeared in Title VII’s provision for punitive damages,¹⁷ the Supreme Court concluded in *Smith* that “a jury may be permitted to assess punitive damages in an action under § 1983 when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.”¹⁸ As the Court subsequently explained in *Kolstad*, “While the *Smith* Court determined that it was unnecessary to show actual malice to qualify for a punitive award, . . . its intent standard, at a minimum, required recklessness in its subjective form.”¹⁹

Terms such as “malice,” “reckless indifference,” and “callous disregard” ultimately focus on the actor’s state of mind.²⁰ Construing Title VII’s punitive damages provision, 42 U.S.C.A. § 1981a(b)(1), in light of its common law origins as adopted in *Smith*, the Court in *Kolstad* rejected the notion that eligibility for punitive damages requires a showing of actual malice or egregious misconduct.²¹ The Court acknowledged that an employer’s egregious misconduct may provide a means of satisfying a plaintiff’s burden of demonstrating that the employer acted with reckless indifference or callous disregard of one’s protected rights.²² However, the Court held, there is no requirement that an employer engage in conduct with some independent “egregious” quality before being liable in punitive damages.²³ Applying this standard in the context of Title VII, the Court in *Kolstad* concluded that “an employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages.”²⁴

¹⁶ *Ferguson*, ARB No. 10-075, slip op. at 8, citing *Smith*, 461 U.S. at 51. See also *Leveille*, ARB No. 98-079, slip op. at 6.

¹⁷ The 1991 Title VII amendments limit punitive damages awards to cases of intentional discrimination “if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.” 42 U.S.C.A. § 1981a (b)(1).

¹⁸ *Smith*, 461 U.S. at 56.

¹⁹ *Kolstad*, 527 U.S. at 536, citing *Smith*, 461 U.S. at 45-48.

²⁰ *Kolstad*, 527 U.S. at 534-535.

²¹ *Id.* at 535-536.

²² *Id.* at 538-539.

²³ *Id.* at 536-539.

²⁴ *Id.* at 536, citing *Smith*, 461 U.S. at 50.

UPS contends that it did not have the requisite intent to discriminate against Youngermann that would warrant punitive damages when its managers directed him to haul the trailer back to UPS after Youngermann refused to drive because of safety concerns. Specifically, UPS asserts that the record does not show that it acted with reckless or callous disregard for Youngermann's federally protected rights under the STAA. Rather, UPS argues that the record shows that its managers believed that the "*North American Standard Vehicle Out-of-Service-Criteria*" made it legal for them to order Youngermann to drive the vehicle and that their reliance on the Out-of-Service-Criteria reflects a "mistake or error in judgment which does not constitute reckless indifference." Respondent's Brief at 13. UPS also urges in its defense, "The record evidence clearly demonstrates that UPS strives to comply with DOT regulations and that it was acting upon its good-faith belief that it was complying with those regulations. There is simply no substantial evidence that an award of punitive damages is warranted." Respondent's Brief at 14. Finally, UPS claims to have a demonstrable commitment to safety as well as an excellent safety record. Respondent's Brief at 12-13.

Under *Kolstad*, an employer may avoid liability for punitive damages where it has made a "good faith effort" to comply with the anti-discrimination provisions of Title VII.²⁵ The Board recognized similar reasoning in cases arising under STAA.²⁶ However, UPS's alleged compliance with federal safety regulations would not demonstrate good faith compliance with *anti-discrimination* and *anti-retaliation* laws of which *Kolstad* and *Ferguson* speak. Moreover, UPS's protestations of good faith, lack of requisite intent, and commitment to safety are belied by the facts. UPS did not dispute the condition of the vehicle when Youngermann refused to drive it.²⁷ As we previously noted, both the UPS Fleet Manager, who sought to convince Youngermann that it was safe and permissible to drive the tractor-trailer based on CVSA Out-of-Service Criteria, and UPS's Division Manager, readily acknowledged at the hearing that operating the tractor-trailer with its defective equipment would constitute a violation of DOT commercial motor vehicle safety regulations.²⁸ It is difficult to credit the sincerity of UPS's asserted commitment to compliance with federal transportation safety regulations given the evidence that several managers entrusted with enforcement of these regulations knowingly refused to follow them in this case.

The substantial evidence of record supports the ALJ's rejection of UPS's argument that its managers did not act with reckless indifference to Youngermann's federally protected rights because of their reliance on the "*North American Standard*

²⁵ *Kolstad*, 527 U.S. at 545-546.

²⁶ *See e.g., Ferguson*, ARB No. 10-075, slip op. at 8.

²⁷ D. & O. at 11.

²⁸ *See discussion supra* at n.7.

Vehicle Out-of-Service Criteria.”²⁹ Substantial evidence further supports the ALJ’s finding that UPS “attempted to convince [Youngermann] through *misinformation* that it was in fact not a violation to drive the truck in its condition.”³⁰ Not only did UPS attempt to convince Youngermann to drive the trailer-tractor based on the contention that doing so would not violate the “Out-of-Service Criteria,” UPS did so *knowing* that Youngermann would nevertheless be violating federal safety regulations.³¹ Knowing this, as the ALJ found, UPS supervisors and managers “repeatedly ordered [Youngermann] to drive a vehicle in violation of the regulations.”³²

We thus affirm the ALJ’s conclusion that punitive damages are warranted in this case, finding it in accordance with applicable law. The substantial evidence of record fully supports the ALJ’s determination that, “Respondent acted with callous disregard for Complainant’s rights when it continuously instructed him to drive a vehicle in violation of the regulations” based on “misinformation that it was in fact not a violation to drive the truck in its condition.”³³ We thus agree with the ALJ that, “At the very least, Respondent showed a complete disregard for the safety of Complainant and the public by continuously instructing Complainant to drive the truck after he repeatedly stated he did not feel it was legal or safe” to do so.³⁴

2. The ALJ’s assessment of the amount of punitive damages

We next turn to the question of whether the *amount* of the punitive damages award the ALJ assessed was reasonable. Neither the STAA, nor the associated DOL regulations, nor precedent provide explicit guidance for how to determine a suitable *amount* for a punitive damage award beyond the general prescription that the appropriate standard is the amount necessary to punish the respondent for its outrageous conduct and to deter the respondent and others from similar conduct in the future.³⁵ While deterrence is widely recognized as the principle objective of punitive damages, it is inherently

²⁹ D. & O. at 10-12.

³⁰ *Id.* at 19 (emphasis added).

³¹ *Id.* at 8.

³² *Id.* at 19.

³³ *Id.*

³⁴ *Id.*

³⁵ *Ferguson*, ARB No. 10-075, slip op. at 8, citing *Smith*, 461 U.S. at 51; *Johnson v. Old Dominion Sec.*, Nos. 1986-CAA-003, -004, -005; slip op. at 29 (Sec’y May 29, 1991).

difficult to quantify. Consequently, federal courts have developed a number of criteria to assist judges in analyzing and calculating more exacting punitive damages awards.³⁶

UPS's challenge to the ALJ's award is based largely upon the three factors developed by the Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). In *Gore*, the Supreme Court considered the following factors in evaluating the reasonableness of a state court's award of punitive damages challenged as grossly excessive on Due Process constitutional grounds: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the complainant and the punitive damages award; and (3) the difference between the punitive damages awarded and civil penalties authorized or imposed in similar cases.³⁷ The Court explained that such high scrutiny is required because of the constitutional implications of grossly excessive awards:

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.^[38]

However, the constitutional concern that spawned the Supreme Court's three-part "excessiveness" inquiry is not implicated in cases litigated under statutes that contain punitive damage caps or limits, such as the STAA. The Supreme Court has indicated that punitive damages awarded within limits set by statute do not implicate the constitutional due process concerns embodied in the three *Gore* factors.³⁹ The Seventh Circuit's reasoning in the context of a Title VII punitive damage award is instructive:

When Congress sets a limit, and a low one, on the total amount of damages that may be awarded, the ratio of punitive to compensatory damages in a particular award ceases to be an issue of constitutional dignity. . . .

The purpose of placing a constitutional ceiling on punitive damages is to protect defendants against outlandish awards,

³⁶ See, e.g., *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008), for an expansive discussion of the various standards applied at the state level and under common law to the award of punitive damages.

³⁷ *Gore*, 517 U.S. at 574-575.

³⁸ *Id.* (footnote omitted). See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417-419 (2003), for an extensive discussion of the procedural and constitutional issues involved in the award of punitive damages.

³⁹ See *Cooper Indus. v. Leatherman Tool Grp.*, 532 U.S. 424, 433 (2001).

awards that are not only irrational in themselves because out of whack with any plausible conception of the social function of punitive damages but potentially catastrophic for the defendants subjected to them and, in prospect, a means of coercing settlement. That purpose falls out of the picture when the legislature has placed a tight cap on total, including punitive, damages and the courts honor the cap.^[40]

Because the ALJ's punitive damage award was well within the range statutorily prescribed by the STAA, the *de novo* *Gore* constitutional inquiry does not apply. In the absence of a constitutional challenge, the size of the punitive award is fundamentally a fact-based determination.⁴¹ We are thus bound by the ALJ's findings if they are supported by substantial evidence on the record considered as a whole.⁴²

In assessing the evidence in support of the *amount* of damages awarded, the focus "is on the character of the tortfeasor's conduct – *i.e.*, whether it is of the sort that calls for deterrence and punishment over and above that provided by compensatory awards."⁴³ UPS contends its conduct was neither reckless nor harmful and therefore lacked the necessary reprehensibility to support the ALJ's assessment of \$100,000 in punitive

⁴⁰ *Lust v. Sealy, Inc.*, 383 F.3d 580, 590-91 (7th Cir. 2004). *See also Abner v. Kansas City Southern R. Co.*, 513 F.3d 154, 164 (5th Cir. 2008) ("Given that Congress has effectively set the tolerable proportion, the three-factor *Gore* analysis is relevant only if the statutory cap itself offends due process. It does not and, as we have found in punitive damages cases with accompanying nominal damages, a ratio-based inquiry becomes irrelevant."); *Cush-Crawford v. Adchem Corp.*, 271 F.3d 352, 359 (2d Cir. 2001) ("To the extent that courts worried about unleashing juries to award limitless punitive damages in cases where no harm had occurred, this concern is eliminated by the imposition of the statutory caps."); *Romano v. U-Haul Intern.*, 233 F.3d 655, 673 (1st Cir. 2000) ("A congressionally-mandated, statutory scheme identifying the prohibited conduct as well as the potential range of financial penalties goes far in assuring that appellants' due process rights have not been violated.").

⁴¹ *Lust*, 383 F.3d at 590 (in particular cases it may be necessary to determine whether the award "may be higher than the evidence warrants," citing *Hennessy v. Penril Datacomm Networks*, 69 F.3d 1344, 1355-56 (7th Cir. 1995), and *Ramsey v. American Air Filter Co.*, 772 F.2d 1303, 1314 (7th Cir. 1985)).

⁴² *See Cooper Indus.*, 532 U.S. at 435, "The factual findings made by the district courts in conducting the excessiveness inquiry, of course, must be accepted unless clearly erroneous," quoting *U.S. v. Bajakajian*, 524 U.S. 321, 336 (1998).

⁴³ The primary purpose of punitive damages is "to punish [the defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future." RESTATEMENT (SECOND) OF TORTS § 908(1) (1979).

damages. Further, UPS claims the award was not necessary for deterrence where the record shows that “UPS strives to comply with DOT regulations and that it was acting upon its good-faith belief that it was complying with those regulations.” Respondent’s Reply Brief at 7. However, “it is well established that it is insufficient for an employer simply to have in place anti-harassment policies; it must also implement them.”⁴⁴ The ALJ declined to credit the sincerity of UPS’s commitment to its company-wide safety policies given the evidence that several managers entrusted with their enforcement failed to follow them. Instead, the ALJ noted the “callous disregard” for Youngermann’s rights when several UPS managers “continuously” instructed him to violate those rights. According to the ALJ, UPS compounded this recklessness by attempting to convince Youngermann through “misinformation” that he was not violating DOT regulations.⁴⁵

The Respondent next argues that an award of \$100,000 is disproportionate to the compensatory damages awarded. Consistent with Title VII case law, we decline to impose a bright-line ratio that a punitive damages award cannot exceed.⁴⁶ The statutory limit on punitive damage awards strongly undermines the concerns that underlie the reluctance to award punitive damages where minimal or no compensatory damages have been awarded. “To the extent that courts worried about unleashing juries to award limitless punitive damages in cases where no harm had occurred, this concern is eliminated by the imposition of the statutory caps without proof of actual harm.”⁴⁷

Finally, UPS argues that a comparison of punitive awards in similar cases support a reversal of the ALJ’s award. However, the provision allowing punitive awards for STAA violations is relatively new and there is not yet a body of case law from which we might glean comparable awards. We note however that a punitive damage award of \$100,000 was assessed in *Anderson v. Amtrak*, ALJ No. 2009-FRS-003, slip op. at 26-27 (Aug. 26, 2010) (case settled December 22, 2010) under circumstances similar to the case before us. In *Anderson*, the ALJ determined that Amtrak retaliated against a complainant for reporting a workplace injury and awarded the large punitive award despite the fact that Amtrak had reinstated the complainant not long after terminating her employment. Furthermore, punitive damage awards of the size assessed here are common in civil rights litigation.⁴⁸

⁴⁴ *Swinton v. Potomac Corp.*, 270 F.3d 794, 810-11 (9th Cir. 2001) (and cases cited therein).

⁴⁵ D. & O. at 19.

⁴⁶ *See, e.g., Abner*, 513 F.3d at 163.

⁴⁷ *Cush-Crawford v. Adchem Corp.*, 271 F.3d 352, 359 (2d Cir. 2001),

⁴⁸ *See, e.g., Abner*, 513 F.3d at 165 (\$125,000.00 in punitive damages affirmed in Title VII and §1983 case where no compensatory damages awarded); *EEOC v. Federal Express Corp.*, 513 F.3d 360, 376 (4th Cir. 2008) (\$100,000.00 punitive award affirmed in ADA

Ultimately, punitive damages are awarded to accomplish the twin aims of punishment and deterrence. As the Supreme Court instructs, “society has an interest in deterring and punishing *all* intentional or reckless invasions of the rights of others, even though it sometimes chooses not to impose any liability for lesser degrees of fault.”⁴⁹ To that end, we find that the ALJ’s punitive damage assessment of \$100,000 is sufficient in size to deter a company such as UPS from similar conduct without being grossly excessive. Although a respondent’s wealth alone cannot provide a basis for an otherwise unwarranted punitive damage award, it may be considered in determining the size of a suitable award.⁵⁰ Particularly where compensatory damages are not large, a relatively high punitive damage award may serve the purpose of deterring respondents unaffected by a small compensatory award.⁵¹ A substantial punitive damage award also serves the public interest by encouraging enforcement of anti-retaliation laws even against respondents with the resources to mount aggressive defenses.⁵² Given that the ALJ’s punitive damage award in the amount of \$100,000 falls within the mid-range of the statutory amount deemed appropriate where violations of STAA are found to warrant an assessment of punitive damages, we are of the opinion that the ALJ’s award is supported by substantial evidence of record and is in accord with applicable law, and thus should be sustained.

case); *Chalfant v. Titan Distrib., Inc.*, 475 F.3d 982, 991-92 (8th Cir. 2007) (\$100,000.00 punitive award affirmed in ADA case); *Rodriguez-Marin v. Rivera-Gonzalez*, 438 F.3d 72, 84 (1st Cir. 2006) (punitive awards of \$120,000.00 and \$195,000 affirmed); *Rivera-Torres v. Ortiz Velez*, 341 F.3d 86, 102-03 (1st Cir. 2003) (\$250,000.000 punitive damage award affirmed in § 1983 case); *Salitros v. Chrysler Corp.*, 306 F.3d 562, 574-75 (8th Cir. 2002) (\$100,000.00 punitive award affirmed in Americans with Disabilities Act (ADA) case); *Cush-Crawford*, 271 F.3d at 359-60 (\$100,000.00 punitive award affirmed in Title VII case where no compensatory damages awarded).

⁴⁹ *Smith*, 461 U.S. at 54-55.

⁵⁰ *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 (2003).

⁵¹ *See Farfaras v. Citizens Bank & Trust of Chicago*, 433 F.3d 558, 567 (7th Cir. 2006) (“One purpose of punitive damages is to dissuade defendants who are unaffected by compensatory damages from the misapprehension that they are beyond the reach of civil penalties.”).

⁵² *See Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003).

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ's punitive damages award of \$100,000.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge