PENALTIES AGAINST INDIVIDUALS

When an Employee Will Be Liable

A railroad worker can be fined for a federal safety violation only if it is "willful." To be considered willful by FRA, the violation has to be one that is an intentional voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law. It is not necessary to show evil intent nor actual knowledge of the law to prove a willful violation. Rather, it requires knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will be sufficient to show that the alleged violator must have known of the facts based on reasonable emphasis drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal brake test that was not in fact performed would not be able to defend against a willful claim simply by stating ignorance of the fact that the test was not performed.

The employee has a right to protest a direct order by a supervisor to violate the law. Where such a protest is shown to have been communicated to the supervisor, the employee communicating it will have demonstrated lack of willfulness. This does not mean that a person who does not communicate such a protest will be deemed to have acted willfully. That will depend on the particular circumstances of the case.

The Procedures FRA Will Follow to Impose a Fine

1. When an FRA inspector discovers what he considers to be a violation by an employee, he will draft a violation report. This is essentially a recommendation to the Office of Chief Counsel to assess a penalty based upon the evidence in the report. The inspector will inform the employee in writing of his intent to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of Chief Counsel. This procedure will give the employee an opportunity to seek counsel, obtain documents, or take any other steps to aid in his or her defense.

2. Next, if the Office of Chief Counsel concludes that the case is meritorious it will issue a penalty demand letter. Such letter will summarize the claims, and enclose the violation report with a copy of all the evidence on which FRA is relying. The letter will make clear that FRA encourages discussions, through the mail, over the phone, or in person, of any defenses or mitigating factors the employer may wish to raise. That letter will also advise the employee that he or she may wish to obtain representation by an attorney and/or collective bargaining representative.

3. In the event that a compromise cannot be reached, FRA will send the individual a letter warning of its intention to request that the Attorney General sue for the initially proposed amount and giving the person 30 to 90 days to decide if the penalty shall be paid before the lawsuit commences.
The Amount of Penalties

The penalties which can be imposed by the FRA on an individual are between $250 up to $10,000 per violations, except for a grossly negligent violation or pattern of repeated violations which creates an imminent hazard of death or injury (or has actually caused death or injury), a penalty of up to $20,000 per violation may be assessed. These penalties, under the safety statutes, are applicable to all except the Hours of Service Act violations. The Hours of Service Act penalty provision imposes a fine up to $1,000 per violation.

In addition, the FRA may suspend or disqualify an individual whose violations of the safety laws is shown to make that individual unfit for the performance of safety sensitive functions. It should be noted that this does not require a showing of willfulness, as does the imposition of fines. The FRA also may remove an employee under its powers in the Emergency Order provisions of the Federal Railroad Safety Act.

49 U.S.C. § 21301