Don't Get Railroaded™
The Journey of an Amtrak Engineer to Get Back to Work after her Injury

All railroad workers are protected by the Federal Railroad Safety Act (FRSA) which was enacted in 2008:

(1) to promote safety in all areas of railroad operations, and
(2) to ensure that railroad employees engaging in certain protected activities under the Act could do so without the fear or threat of discrimination or retaliation from their railroad employer.

A recent federal Department of Labor administrative law judge ("ALJ") decision highlights the tactics that railroads use against their employees and one possible statutory remedy for those tactics.

An Amtrak Engineer, J. Nagra, suffered a neck injury in a train/truck collision. Due to the severity of the injury, this engineer was forced to be out of work for almost 2 years while she received medical treatment for her injuries. Nagra continually treated to get better in order to return to engineering with Amtrak. Her treating neurosurgeon noted she was highly motivated to return to work. During the time that she was recovering, Nagra filed an injury lawsuit under the Federal Employers' Liability Act [FELA] lawsuit to protect her rights if she was not able to return to work. Unfortunately, the federal court presiding over her FELA case dismissed Nagra's claims against Amtrak. Nagra never received any money for her case from Amtrak by settlement or a jury verdict.

Even though Amtrak paid absolutely nothing to Nagra, Amtrak was not interested in having a 19-year employee back at work, even after her case was dismissed. The railroad's in-house lawyer, outside lawyer, and several middle managers in labor relations and in Amtrak's transportation department disliked Nagra. They saw her FELA case as a chance to be rid of her forever. When the treating neurosurgeon eventually decided she had recovered well enough to return to work, the railroad refused to allow her to do so. Amtrak justified this under its "estoppel policy." "Estoppel" is a legal standard that prevents a person or company from saying one thing and then changing a position after somebody else has relied on the first position. The purpose of the estoppel doctrine is to prevent injustice by stopping people and companies from being inconsistent in their positions, such as receiving money for a permanent disability while trying to go back to work.

Amtrak managers and labor relations who did not want Nagra back at Amtrak said it did not matter whether her doctor released her to return to work. Amtrak took the position that she was barred from returning because her FELA lawsuit alleged that she was disabled. They said because she alleged in the FELA case that she might not ever be able to return to work, now it did not matter that her doctor opined that her recovery enabled her to mark up again.

The particular kind of estoppel that applies to the allegations people make in lawsuits is called "judicial estoppel." It has several elements, all of which must exist, or the doctrine does not apply. One of the elements requires proof that the person (or company) who is supposedly being inconsistent in their position ***prevailed*** in litigation on the claim they are now trying to disavow.

Nagra ***did not*** prevail. Her FELA lawsuit was dismissed. She got nothing for it. The people at Amtrak who refused to allow her back ***knew*** that Nagra's lawsuit had been dismissed. Certain managers in her division went as far as congratulating the claims representative for "zeroing out" Nagra's FELA claim. "Zeroing out" means convincing the Judge or Jury to give the injured plaintiff zero dollars for his/her injuries.

Despite this evidence and sworn testimony, Amtrak refused to allow Nagra to return to work even after her treating neurosurgeon reviewed her job description and said, in writing, that she could safely do her job as an engineer. Amtrak failed to provide any Federal Railroad Administration medical fitness standards or any internal Amtrak medical fitness standards that would prevent Nagra from returning to engineering. Essentially, Amtrak failed to provide one piece of medical evidence preventing Nagra from returning to work. Amtrak labor relations simply ignored the medical opinion of the treating neurosurgeon, who released Nagra to return to service. Amtrak went so far as to argue that the doctor's written opinion that Nagra could return to work was "disingenuous." Basically, Amtrak decided to cherry-pick from Nagra's medical records the instances where her doctor kept her from returning to work when (1) she was preparing for neck surgery and (2) recovering from neck surgery. Ironically, Amtrak refused to believe that Nagra could recover and return to work after surgery, despite her doctor's release. As railroaders are well aware, company doctors always tell railroaders they are able to return to work soon after an accident.

Railroads have been able to punish employees who suffer injuries at work by not allowing them to return to their careers. As in Nagra's case, Amtrak refused to allow her to take a return-to-work physical. Years ago, Nagra might have been stuck with Amtrak's refusal to allow her to take a return-to-work physical, and her railroad career might have been over.

Today, fortunately, she has a remedy.

Nagara filed a retaliation claim under the Federal Railroad Safety Act ("FRSA"). The FRSA provides:

(2) Discipline.–A railroad carrier or person covered under this section may not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician, except that a railroad carrier's refusal to permit an employee to return to work following medical treatment shall not be considered a violation of this section if the refusal is pursuant to Federal Railroad Administration medical standards for fitness of duty or, if there are no pertinent Federal Railroad Administration standards, a carrier's medical standards for fitness for duty. For purposes of this paragraph, the term "discipline" means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record. 49 U.S.C. § 20109(c).

A Department of Labor Administrative Law Judge ("ALJ") listened to the evidence at the trial and determined Nagra was right. The ALJ explained 49 U.S.C. § 20109(c) means exactly what it says: if the treating physician says the employee can return to work, the railroad must allow it, unless FRA medical standards or the railroad's own internal medical standards say otherwise. Here, Amtrak did not rely on FRA medical standards or any internal medical standards of its own.

As stated by the Judge:

“Respondent failed to avoid liability in this matter because it failed to provide any evidence that there is an Amtrak medical fitness standard or FRA medical fitness standard keeping Complainant from returning to work as required under section (c)(2) of the Act. Further Respondent has failed to provide any evidence that Complainant's personal injury reporting did not in some way contribute to the discrimination and discipline allegedly imposed by Lech under the doctrine of estoppel. In Ms. Lech's word, a defense I find ‘disingenuous.’”

This case has far reaching implications beyond Nagra’s attempt to return to work. If successful in this endeavor, Amtrak would have used Nagra’s case as the leading example to refuse an employee, who is fit for duty, from returning to service at its own whim rather than based on the clear provisions of the law. Without the Court’s intervention, Amtrak could unilaterally and illegally pick and choose which employees can return to work, creating a chilling effect on employee protection under the FRSA. Amtrak would have been left unchecked to discourage employees from treating for their injuries, reminding employees that they might not be allowed to return to their careers, using the story of Jonette Nagra as a cautionary tale. Fortunately, the Judge saw through this “disingenuous” defense and justice prevailed for Nagra, who received full reinstatement to her engineering position with her seniority rights. Amtrak was required to pay significant damages for its punitive behavior.

As railroaders, it is important to remember that you are protected from this type of behavior from the carriers. Whether you are treating for your on-duty injuries and being kept out of work based on your doctor’s orders, or you are trying to get back to work after your doctor has released you, the FRSA whistleblower laws protect you.

Carisa Oden
Danny Poolson
Poolson Oden Law Firm
www.poolsonoden.com