

## Federal Courts Reject Railroad's Election-of-Remedies Defense



YJB Attorney **Christopher W. Bowman** recently secured favorable orders from two Federal Courts in litigating claims under the Federal Rail Safety Act's whistleblower protections. In both cases, the railroad industry argued that an employee who challenged discipline via the Union's contract waived his right to assert that the railroad violated the FRSA.

In *Rookaird v. BNSF Ry. Co.*, Chris convinced the Western District of Washington that the railroad's argument failed as a matter of law. The decision, believed to be the first in the country where a railroad employee moved for summary judgment on the defense, concluded that only the legal question of whether an employee's decision to seek relief under the CBA (including appealing the termination to the Public Law Board) barred a subsequent action for the railroad's violation of federal statute. Consistent with the Fifth Circuit's opinion in *Grimes v. BNSF Ry. Co.* (where Chris served as lead appellate counsel), the court concluded in no uncertain terms that the railroad's position "fails as a matter of law."

Two weeks later, a Federal Magistrate in the District of Minnesota took the analysis one step further, invoking the "extreme measure" of striking the alleged election-of-remedies defense after concluding that it was "legally insufficient" as being "foreclosed by prior controlling decisions or statutes." Despite this high bar, Chris convinced the court that the railroad industry's interpretation of the statute was precluded by the plain language used by the Congress; the statute simply does not say what the railroad needed it to say. The Minnesota Court also rejected the railroad's argument that Federal Courts lack jurisdiction to hear an FRSA claim when the employee does not give the Labor Department 15-days advance notice of bringing a claim in Federal Court.

From Firm President **Bill Jungbauer's** testimony before the United States Congress to Chris's motion practice on behalf of discriminated-against railroad employees, as well as the tireless representation of those employees by all of YJB's attorneys and staff, Yaeger & Jungbauer has been on the forefront of protecting union workers' rights under the statute. If you or someone you know works for the railroad and is looking for a free consultation with an employee, have them call the YJB Offices at 1-800-435-7888 today.