

Christopher Bowman

From: Balanon, Paul S <Paul.Balanon@BNSF.com>
Sent: Wednesday, May 11, 2016 10:45 AM
To: Christopher Bowman
Cc: Michelle Friend
Subject: RE: BNSF/Wooten/8-0100-16-024

Chris:

We have good reason to challenge the erroneous OSHA Findings and we do plan to file an appeal with the Office of Administrative Law Judges. I assume you'll kick-out once we appeal?

As you know, the FRSA permits only the Secretary of Labor to bring an action in federal district court to enforce certain orders of the Secretary. See 49 U.S.C. § 20109(d)(2)(A)(iii); 49 U.S.C. § 42121(b). Federal courts interpreting the relevant provision of the FRSA have concluded these enforcement procedures apply only to the Secretary's final – rather than preliminary – orders. See *Rookaird v. BNSF Railway Co.*, No. C14-176RSL (W.D. Wash. July 21, 2015) (handled by your firm); *Solis v. Union Pacific Railroad Company*, Case No. 4:12-cv-00394-BLW (D. Idaho Jan. 11, 2013). As Judge Lasnik noted in *Rookaird*, "OSHA's preliminary order never became final, and thus its reinstatement decision is unenforceable." Rec. Doc. No. 120 at 4.

Please note that Michelle Friend will be handling this matter.

Thank you,

Paul S. Balanon | General Attorney

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From: Christopher Bowman [<mailto:CBowman@yjblaw.com>]

Sent: Wednesday, May 11, 2016 10:18 AM

To: Balanon, Paul S <Paul.Balanon@BNSF.com>

Cc: Christopher Bowman <CBowman@yjblaw.com>

Subject: RE: BNSF/Wooten/8-0100-16-024

EXTERNAL EMAIL

My apologies. I am used to "Alt+S" adding a Section Signal as it does in MS Word and not sending the e-mail as it apparently does in Outlook. My full e-mail is included below:

Mr. Balanon –

I am writing in response to the OSHA Findings in the above-captioned matter, a copy of which is attached. As you are no doubt aware, “[t]he portion of the preliminary reinstatement order requiring reinstatement will be effective immediately upon the respondent’s receipt of the findings and preliminary order, regardless of any objections to the order.” 29 C.F.R. 1982.106(b). Who should our office work with at the railroad in order to have Mr. Wooten be reinstated, as required by the order? Alternatively, if BNSF is *not* planning on appealing the findings, when can we expect to receive the check? If BNSF is not planning on appealing, I can have our office prepare the attorney fee and litigation cost portions of the award and have them forwarded to you.

Please advise as to your position.

Thank you, and I look forward to hearing from you soon.

Christopher W. Bowman  Attorney at Law

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Awarded: 1st Tier, Nationally, Railroad Law, Law Firm Rankings, US News & World Reports, 2010-2016

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