Ty Hyderally ! □

LAW OFFICES OF
TY HYDERALLY, PC
ATTORNEYS AT LAW
96 PARK STREET
MONTCLAIR, NEW JERSEY 07042
(973) 509-0050
FAX (973) 509-2003

115 E. 57th Street
New York, NY 10022
(646) 435-9450

Of Counsel

Sean Callagy, Esq. ! "
Ronald J. Wronko, Esq. ! "

Member of New Jersey Bar !
Member of New York Bar "

Employment Law Chair □

Reply to Montclair

Writer's Ext. 118
tyh@employmentlit.com

September 10, 2013

VIA DELIVERY BY DEFENDANTS

Clerk, United States District Court
M.L. King, Jr. Federal Building and
U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Bill Balram v. Pacific Rail Services, et al.
Civil Action No.:03-CV-6054 (JAG)
Our File No.: 1279

Dear Sir or Madam:

Please be advised that we represent the plaintiff, Bill Balram ("plaintiff") in the above referenced matter. Please be so kind as to accept plaintiff's supplemental letter response brief in lieu of a more formal motion in opposition to defendants, Pacific Rail Services and Tim Byrne's ("defendants") motion for summary judgment *and* in support of plaintiff's affirmative cross motion for summary judgment.

OPPOSITION TO SUMMARY JUDGMENT

On April 16, 2004, Defendants withdrew their motion as to Counts I, II, and III. They have withdrawn this part of the motion as the case law clearly sets forth that the determination of a DOL Hearing Officer cannot collaterally estop plaintiff's right to go forward before the Courts on his or her claims. This argument is butressed by the fact that the DOL Hearing Officer never dealt with any arguments pertaining to retaliation, discrimination, or worker's compensation retaliation. In fact, there was no presentation of

witnesses or evidence and plaintiff was not represented by counsel at the unemployment hearing. Defendant's factual basis of the argument as to Count IV is the same as for Counts I-III.

Further, as noted in the Cross-Motion for Summary Judgment, the Unemployment Appeals Tribunal decried that "Claimant was *not* discharged for misconduct with the work." (Def's Br. Ex. "E") (emphasis added). This is restated in the decision wherein the Appeals' officer clearly states that "the claimant was *not* discharged for misconduct connected with the work. *Id.* However, for some inexplicable reason, defendants maintain their motion as to Count IV.

Further, it is of interest that defendants state the reason for the withdrawal of their motion as to Counts I-III is based upon a recently decided case (Hennessey v. Winslow Township, et al., No. A-5010-02T5 (App. Div. April 16, 2004) when there exists a plethora of earlier case law that clearly warranted plaintiff sending defendants Rule 11 notification. (Exhibit "1"). In fact, the case they point to has nothing to do with the facts in this case as there was never a litigated hearing before an Administrative Law Judge pertaining to the issue of discrimination or retaliation or worker's compensation. One can only surmise that the reason for defendant's correspondence surrounds issues related to client relations or billing justifications. However, it is untoward that defendants wish to take up more of the Court's time with maintaining such a frivolous pleading.

We thus respectfully request that the Court deny defendants' motion for summary judgment with costs and fees awarded to plaintiff's counsel and further grant plaintiff's cross motion for Summary Judgment.

Respectfully submitted,

LAW OFFICES OF TY HYDERALLY, PC
Ty Hyderally, Esq. (TH 6035)
Attorneys for Plaintiff

Encl.

cc: Paul Castronovo, Esq. (via facsimile and regular mail w/ encl.)
The Honorable G. Donald Haneke,U.S.M.J. (for service by defendants w/ encl.)