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Employees Sue Knorr, Wabtec After DOJ No-Poach Settlement

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Law360 (April 16, 2018, 8:34 PM EDT) -- Employees of rail equipment suppliers [Knorr-Bremse](#) and Wabtec have filed suit in Pennsylvania federal court over an alleged long-running agreement between the rivals not to poach each other's workers, after the [U.S. Department of Justice](#) reached a settlement with the companies earlier this month.

A proposed class of current and former employees of Knorr-Bremse AG and [Westinghouse Air Brake Technologies](#) Corp., known as Wabtec, filed their complaint April 11 over no-poach agreements that were supposedly in place from 2009 until 2016. An attorney for the workers, Sathya Gosselin of [Hausfeld LLP](#),

told Law360 on Monday that while the [DOJ's settlement](#) included commitments from the companies to not use such agreements in the future and to cooperate with the agency's ongoing investigation, it didn't address the wages and benefits workers lost as a result of the practice.

"We now pick-up where the Department of Justice left off," Gosselin said. "There needs to be a place at the table for the employees that have been harmed here ... to seek compensation, much as with any antitrust litigation in the price-fixing arena."

If the DOJ probe — and its broader focus on no-poach agreements — results in any enforcement actions or further settlements, more private litigation is likely to follow, Gosselin said, noting that the area is a focus for Hausfeld. He said the firm has been seeing these types of agreements crop up over the last decade or so and that they can have serious detrimental effects.

"It's very alarming that employers are taking such a broad approach to limiting employee mobility across the United States in a way that I think stifles innovation, chills compensation and leads to further income inequality," Gosselin said.

The DOJ reached a civil settlement with Knorr-Bremse and Wabtec in early April over agreements between the companies not to solicit or hire away each other's workers. According to a government complaint filed alongside the settlement, an agreement was first struck by senior executives from Wabtec and a Knorr-Bremse subsidiary in January 2009, followed by a pact in 2011 between Knorr-Bremse and a third rival, [Faiveley Transport SA](#). Wabtec then reached its own agreement with Faiveley in 2014, before later [purchasing the company](#) in a \$1.8 billion deal in 2016, the complaint said.

The agency argued that the agreements limited access to job opportunities for U.S. rail industry workers, reduced their mobility and deprived them of information they could have used to negotiate better employment terms.

The employee suit filed last week echoes those claims, as well as the government's contention that there is "high demand for and limited supply of employees" with the experience needed to fill jobs in the rail equipment industry. The workers' suit also contends that the industry is "insular" and that companies often turn to rivals when looking to fill vacant positions.

Hiring from a competitor means less training for a new employee than for someone from outside the industry, and means the competitor will incur a cost replacing the worker. But the no-poach pacts, the complaint argues, eliminate those competitive forces.

"If each defendant was truly acting in its own independent self-interest, it would solicit the others' employees, including through offers of increased employment benefits and pay," the complaint said. "Defendants' no-poach agreements, however, restrained competition for employees and disrupted the normal bargaining and price setting mechanisms that apply in the labor market."

The suit alleges the agreements constitute a per se violation of the Sherman Act, and seeks treble damages for the proposed class members. Gosselin said Monday that there could be "thousands" of workers that were impacted.

The companies have denied any wrongdoing in spite of the settlement with the government, and a

representative for Wabtec told Law360 on Monday they believe the private suit “is without merit.” They said the company intends to “vigorously” defend its position that the recruiting policies were consistent with antitrust laws. Representatives for Knorr-Bremse did not immediately respond to a request for comment Monday.

No-poach agreements have been an enforcement focus in the U.S. over the last several years, but received renewed attention when the DOJ and the [Federal Trade Commission](#) issued joint guidance in 2016 saying they could be treated as criminal antitrust violations, the way traditional price-fixing and other cartel conduct is handled. Prior no-poach cases, including those involving technology giants [Apple Inc.](#), [Google Inc.](#) and [eBay Inc.](#) in 2010, were treated as civil offenses, resulting in settlements that terminated the agreements. But criminal charges offer a stronger deterrent with hefty fines and the threat of imprisonment for executives involved.

The DOJ has been hinting at coming criminal cases [since early this year](#), but handled the settlement with Knorr-Bremse and Wabtec as a civil matter, because the companies had terminated the agreements prior to the 2016 guidance.

Gosselin said that while these particular types of agreements are relatively new, there have been cases in the past targeting wage-fixing and other types of anticompetitive conduct related to employment.

“The larger anticompetitive effects are common to a broader group of employer agreements,” he said.

He said the DOJ’s stepped up enforcement position could potentially reduce the prevalence of no poach agreements, but also said the firm has seen them persist since the guidance was given.

“I would hope that criminal prosecutions would deter future no-poach agreements among employers, but only time will tell,” Gosselin said.

The employees are represented by Michael D. Hausfeld, Brian A. Ratner, Sathya S. Gosselin, Melinda R. Coolidge, Scott Martin, Irving Scher, Jeanette Bayoumi and Brent Landau of Hausfeld LLP; David B. Spear of Minto Law Group LLC; and Joshua H. Grabar of [Grabar Law Office](#).

Counsel information for the companies was not immediately available Monday.

The case is Carruth V. Knorr-Bremse AG et al., case number [2:18-cv-00469](#), in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Breda Lund.

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