SEPTEMBER 22, 2026 | KEY OSHA CASES EXPLAINED

A Willful Citation Vacated and Attorneys' Fees Awarded: Inside Secretary of Labor v. Finley Farmers Grain & Elevator Co.

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As of September 4, 2026, an extremely rare order against OSHA has become final and enforceable, requiring the agency to reimburse nearly $78,000 of attorneys' fees to a small farmer-owned cooperative. The Administrative Law Judge (ALJ) awarded fees to Finley Farmers Grain and Elevator Co., a small farmer-owned cooperative, because he found OSHA was not substantially justified in continuing to pursue its case after its own witnesses undercut its legal position during depositions.

The case involved fall protection — consistently among OSHA's most frequently cited areas — and the unique rules governing employees working on top of rolling stock, including railcars, trucks and other mobile equipment.

In June 2024, OSHA issued Finley Farmers a Willful citation and a six-figure proposed penalty following a serious workplace accident. Ultimately, Finley Farmers — represented by Conn Maciel Carey's Eric J. Conn and Lindsay A. DiSalvo — had not only gotten the Willful citation completely vacated but also secured a rare award of attorneys' fees against OSHA under the Equal Access to Justice Act (EAJA). Here's how it happened.

The Underlying Facts

Finley Farmers operates a grain elevator in Finley, North Dakota. As part of normal operations, Finley Farmers' employees performed loading-preparation work on top of the railcars positioned in a location that was not near a building or structure before the cars were moved to the facility to be filled with grain. Employees performed this prep work pursuant to its established procedure for the work but without the use of fall protection PPE due to the position of the railcars.

On December 4, 2023, an employee was injured when he fell from the top of a railcar while preparing it for loading. Finley reported the accident to OSHA, which opened an inspection at the worksite. OSHA ultimately issued a Citation alleging one Serious violation and one Willful violation, with combined proposed penalties of $120,993 — $112,926 of which was attributable to the Willful item. That Willful item, Citation 2, Item 1, alleged a failure to provide and require personal fall protection under 29 C.F.R. § 1910.132(a), and, in the alternative, a violation of the General Duty Clause, Section 5(a)(1) of the OSH Act.

The Summary Judgment Win: The Miles Memo Sets OSHA's Enforcement Policy

As summarized in our previous post, Finley Farmers moved for summary judgment on the Willful citation, and on July 24, 2025, an Occupational Safety and Health Review Commission ALJ granted the motion in full, vacating Citation 2, Item 1.

The decision turned on nearly 30-year-old OSHA guidance, specifically a 1996 memorandum commonly referred to as the Miles Memo, which addresses fall protection on "rolling stock" such as railcars. The Miles Memo states that it is not appropriate to cite the PPE standard, § 1910.132, for failure to require use of personal fall protection *unless* the rolling stock is positioned inside of or contiguous to a building or structure where the guidance recognizes that fall protection is feasible. The ALJ held that this guidance operates as an exemption to § 1910.132(a) and that Finley Farmers met its burden of proving the exemption applied because the railcars at issue sat roughly 300 feet from any structure. The Court rejected OSHA's attempt to disregard its own decades-old memo, holding that this position was "arbitrary and capricious."

The ALJ also held that because § 1910.132(a) squarely addressed the cited fall hazard, longstanding Commission and federal court precedent barred OSHA from also citing the same conduct under the General Duty Clause. The Court further noted that even where the General Duty Clause can apply to rolling-stock fall hazards, it is limited to administrative measures distinct from requiring fall protection equipment — not a backdoor way to require what the Miles Memo states is exempted under § 1910.132(a).

In response to OSHA's argument that Finley was obligated to move railcars next to the loadout facility before employees could begin work, the ALJ found nothing in the Miles Memo or Commission case law imposed such a duty.And OSHA's attempt to enforce the law in this manner had not provided fair notice to Finley Farmers that the Agency intended to enforce § 1910.132(a) or the General Duty Clause in this manner.

The EAJA Win: Finley Farmers Awarded Fees

Following the summary judgment ruling, Finley Farmers pursued recovery of its legal fees under the EAJA. EAJA fee awards against OSHA are exceedingly rare, in part because the types of employers eligible for recovery of fees under the EAJA are limited and in part because an eligible employer must overcome a high bar: establishing that the federal government's position was not "substantially justified."

Due to the clear guidance supporting their position – the Miles Memo and supporting Commission precedent – Finley Farmers asserted that OSHA was not substantially justified in pursuing the Willful citation. And the ALJ agreed, granting Finley Farmers request for fees incurred defending against the Willful citation after the depositions taken in May 2025. In effect, the deposition testimony from OSHA's witnesses conceded the Agency's theory rested on wanting to depart from its own guidance rather than any recognized exception to it. The ALJ held that once those depositions revealed the weaknesses in OSHA's theories, OSHA should have reassessed its case and its failure to do so meant its position was no longer "substantially justified." The ALJ found that OSHA's decision to continue litigating after this point was "precisely the kind of unreasonable authority Congress sought to deter through the EAJA." Based on this determination, the ALJ awarded Finley Farmers just under $78,000 in attorneys' fees to be paid by the Agency.

A recent *Inside OSHA* article also reported on the Finley Farmers decision, underscoring the rarity of the EAJA fee award and the broader implications for OSHA enforcement. The publication explained how OSHA's position was undercut after its own witnesses conceded critical points during deposition, leading the ALJ to conclude that the Agency's continued litigation fell short of the "substantially justified" bar. The article further noted commentary from Conn Maciel Carey LLP attorney Lindsay A. DiSalvo, who stated, "We are incredibly proud to have guided our client, a small farmer-owned cooperative, through this complex case to ultimately obtain pure vindication."

This case is a useful reminder for employers that long-standing OSHA guidance can bind the Agency and its attempt to deviate from that guidance deprives the regulated community of fair notice of how the law will be enforced. It also reinforces the availability of checks on Agency action, like the EAJA. Although the EAJA's application is limited, employers who successfully challenge OSHA citations should evaluate whether the government's position was substantially justified throughout the litigation, and, if not, this could be a tool available to the employer if it meets the necessary qualifications.

Finley Farmers Grain & Elevator was represented in this matter by Eric J. Conn and Lindsay A. DiSalvo of Conn Maciel Carey.