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U.S. Department of Labor
Office of Public Affairs
Atlanta, Ga.

Release Number: 12-1028-ATL

For Immediate Release

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June 18, 2012

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Norfolk Southern Railway Co. ordered by US Labor Department's OSHA to pay more than \$800,000 after terminating injured workers *Investigation found violations of Federal Railroad Safety Act whistleblower provisions*

WASHINGTON – The U.S. Department of Labor's Occupational Safety and Health Administration has found that Norfolk Southern Railway Co. violated the whistleblower protection provisions of the Federal Railroad Safety Act and consequently has ordered the company to pay three whistleblowers \$802,168.70 in damages, including \$525,000 in punitive damages and attorneys' fees. Additionally, the company has been ordered to expunge the disciplinary records of the whistleblowers, post workplace notices regarding railroad employees' whistleblower protection rights and provide training to its employees about these rights.

Three concurrent investigations were completed by OSHA's offices in Columbia, S.C.; Nashville, Tenn.; and Harrisburg, Pa. The investigations revealed reasonable cause to believe that the employees' reporting of their workplace injuries led to internal investigations and, ultimately, to dismissals from the company.

A laborer based in Greenville, S.C., was terminated on Aug. 14, 2009, after reporting an injury as a result of being hit by the company's gang truck. The railroad charged the employee, a laborer, with improper performance of duties. OSHA found that the employee was treated disparately in comparison to four other employees involved in the incident. The laborer was the only employee injured and, thus, the only employee who reported an injury. He also was the only employee terminated. OSHA has ordered the railroad to pay punitive damages of \$200,000 as well as compensatory damages of \$110,852 and attorney's fees of \$14,325.

In Louisville, Ky., an engineer at a Norfolk Southern facility was terminated on March 31, 2010, after reporting an injury as a result of tripping and falling in a locomotive restroom. The railroad, after an investigative hearing, charged the employee with falsifying his injury. OSHA found that the investigative hearing was flawed and orchestrated to intentionally support the decision to terminate the employee. OSHA has ordered the railroad to pay the employee \$150,000 in punitive damages, \$50,000 in compensatory damages and \$7,375 in attorney's fees.

On July 22, 2010, a railroad conductor based in Harrisburg, Pa., was terminated after reporting a head injury sustained when he blacked out and fell down steps while returning from the locomotive lavatory. The company, after an investigative hearing presided over by management officials, found the employee guilty of falsifying a report of a work-related injury, failing to promptly report the injury, and making false and conflicting statements. The day before the injury, the employee had been lauded for excellent performance, highlighted by no lost work time due to injuries in his 35-year career. OSHA found that the investigative hearing was flawed, and there was no evidence the employee intended to misrepresent his injury. OSHA is ordering the railroad to pay the employee \$175,000 in punitive damages, \$76,623.27 in back wages plus interest and \$17,993.43 in compensatory damages, as well as all fringe benefits.

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“Firing workers for reporting an injury is not only illegal, it also endangers all workers. When workers are discouraged from reporting injuries, no investigation into the cause of an injury can occur,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. “To prevent more injuries, railroad workers must be able to report an injury without fear of retaliation. The Labor Department will continue to protect all employees, including those in the railroad industry, from retaliation for exercising these basic worker rights. Employers found in violation will be held accountable.”

These actions follow several other orders issued by OSHA against Norfolk Southern Railway Co. in the past year. OSHA’s investigations have found that the company continues to retaliate against employees for reporting work-related injuries and has effectively created a chilling effect in the railroad industry.

Any party to this case can file an appeal with the Labor Department’s Office of Administrative Law Judges.

Norfolk Southern Railway Co. is a major transporter/hauler of coal and other commodities, serving every major container port in the eastern United States with connections to western carriers. Its headquarters are in Norfolk, Va., and it employs more than 30,000 union workers worldwide.

OSHA enforces the whistleblower provisions of the FRSA and 20 other statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, maritime, health care, workplace safety and health regulations, and consumer product safety laws.

Under the various whistleblower provisions enacted by Congress, employers are prohibited from retaliating against employees who raise various protected concerns or provide protected information to the employer or to the government. Employees who believe that they have been retaliated against for engaging in protected conduct may file a complaint with the secretary of labor for an investigation by OSHA’s Whistleblower Protection Program. Detailed information on employee whistleblower rights, including fact sheets, is available online at <http://www.whistleblowers.gov>.

Note: The U.S. Department of Labor does not release names of employees involved in whistleblower complaints.

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