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**Norfolk Southern Railway Co. ordered by US Labor Department's OSHA
to pay more than \$932,000 after illegally terminating 2 injured workers
Investigations found violations of Federal Railroad Safety Act whistleblower provisions**

CHICAGO – 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 two whistleblowers \$932,070.46 in damages, including \$387,813.75 in punitive damages and attorney's 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.

The investigations were completed by OSHA's office in Chicago and revealed reasonable cause to believe that the employees' reporting of their workplace injuries led to internal investigations and, ultimately, dismissals from the company.

"Firing workers for reporting an injury is not only illegal, it endangers other workers. When workers are discouraged from reporting injuries, no investigation into the cause of an injury or possible future prevention can occur," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Railroad workers must be able to report work-related injuries without fear of retaliation. The Labor Department's responsibility is to protect all employees, including those in the railroad industry, from retaliation for exercising these basic worker rights. Employers who break the law will be held accountable."

An investigation by OSHA upheld allegations made by a utility switchman based in Decatur, Ill., that he was terminated Aug. 28, 2009, after reporting an injury to his shoulder on June 24, 2009. The injury occurred while the switchman was riding a train that derailed during a shove movement of cars in the Decatur yard. Norfolk Southern alleged that the employee provided false or conflicting information regarding his injury, even though the investigative hearing and exhibits failed to show any conflict with the switchman reporting this injury. In April 2010, the Special Board of Adjustments reinstated the switchman with back pay, after a total loss of 10 months' wages, of which the company has repaid a portion.

OSHA has ordered the railroad to pay a total of \$581,438.11, including \$350,000 in compensatory damages for pain and suffering, \$150,000 in punitive damages, \$55,000 in attorney's fees, and \$26,438.11 in back wages and benefits. The company also has been ordered to reinstate the switchman to the proper seniority level, with vacation and sick days that would have been earned and credit of 10 months toward a Railroad Retirement Board Pension.

In Melvindale, Mich., OSHA's investigation upheld the allegations of a trackman who had worked at the company for 31 years that he was terminated Aug. 12, 2009, after Norfolk Southern alleged he made false statements regarding his injuries to receive time off. The trackman alleged he was injured while traveling from the Melvindale Terminal to a job site in Raisin Center, Mich., on July 6, 2009. The vehicle in which he was riding hit a rough patch of road, causing him to strike his head on the roof of the truck, resulting in a diagnosis of whiplash at a local medical facility. OSHA's investigation determined that the trackman's injury has caused severe medical problems involving his back, neck and shoulders, which restrict his ability to sit, stand, walk and operate machinery.

OSHA's order requires the company to reinstate the trackman if he is medically released by his physician and passes a functional capacity evaluation, and to pay him a total of \$350,632.35, including compensatory damages of \$150,000, punitive damages of \$150,000, attorney's fees of \$32,813.75, and medical and dental expenses in the amount of \$17,818.60, which would have been covered by employee health insurance if he had not been terminated. The trackman has been unable to work since July 2009 and collected sick benefits until Jan. 1, 2010, when he began collecting Railroad Disability benefits; thus, back wages have not been ordered.

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 these cases can file an appeal with the Labor Department's Office of Administrative Law Judges within 30 days of receipt of the findings.

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 conducted the investigation under the whistleblower provisions of the Federal Railroad Safety Act, 49 U.S. Code 20109, as amended by the 9/11 Commission Act of 2007. Railroad carriers are subject to the FRSA, which protects employees who report violations of any federal law, rule or regulation relating to railroad safety or security, or who engage in other protected activities.

On July 16, OSHA and the U.S. Department of Transportation's Federal Railroad Administration signed a memorandum of agreement to facilitate coordination and cooperation for enforcing the FRSA's whistleblower provisions. Between 2007 and 2012 to date, OSHA has received more than 900 whistleblower complaints under the FRSA. More than 60 percent have involved an allegation that a worker was retaliated against for reporting an on-the-job injury.

OSHA enforces the whistleblower provisions of the FRSA and 21 other statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, public transportation agency, maritime and securities laws. 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 to request an investigation by OSHA's Whistleblower Protection Program. Detailed information on employee whistleblower rights, including fact sheets, is available at <http://www.whistleblowers.gov>.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>.

Editor's note: The U.S. Department of Labor does not release the names of employees involved in whistleblower complaints.

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