

OSHA Regional News Release

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Region 4

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Norfolk Southern Railway Co. ordered by US Labor Department to pay more than \$300,000 for violating Federal Railroad Safety Act Tennessee whistleblower to receive compensatory and punitive damages, attorney's fees CHATTANOOGA, Tenn. – The U.S. Department of Labor has found that, once again, Norfolk Southern Railway Co. has violated the whistleblower protection provisions of the Federal Railroad Safety Act. An investigation by the department's Occupational Safety and Health Administration revealed that the railroad terminated an employee in retaliation for reporting a workplace injury.

The department has ordered the company to pay the affected employee more than \$300,000 in damages, including \$200,000 in punitive damages, \$75,000 in compensatory damages and \$25,123.40 in attorney's fees. Additionally, the company must expunge the disciplinary record of the employee as well as post a notice regarding employees' whistleblower protection rights under the FRSA and provide training to its employees about these rights.

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

The Chattanooga-based employee in this case reported an injury when he hit his hard hat against a horizontal support beam. After conducting an investigative hearing, the railroad charged the employee with falsifying his injury and subsequently terminated him on Oct. 8, 2010. The employee appealed, and a Public Law Board upheld the railroad's decision while reducing the termination to a suspension with no back pay. OSHA found that the railroad's investigative hearing was severely flawed and orchestrated to intentionally support management's decision to terminate the employee.

"Railroad workers throughout this country have the right to report an injury without fear of retaliation," said Cindy A. Coe, OSHA's regional administrator in Atlanta. "The Department of Labor will continue to protect all employees, including those in the railroad industry, from retaliation for exercising these basic worker rights, and employers found in violation will be held accountable."

Either party to this case can file an appeal to the Labor Department's Office of Administrative Law Judges.

OSHA and the U.S. Department of Transportation's Federal Railroad Administration have signed a memorandum of agreement to facilitate coordination and cooperation between agencies regarding the enforcement of the FRSA's whistleblower provisions. The act protects railroad employees from retaliation when they report safety violations, or work-related personal injuries or illnesses.

Under the agreement, the FRA will refer railroad employees who complain of alleged retaliation to OSHA. OSHA will provide the FRA with copies of the complaints it receives under the FRSA's whistleblower provision, as well as any findings and preliminary orders that OSHA issues. The agencies jointly will develop training to assist FRA enforcement staff in recognizing complaints of retaliation and to assist OSHA enforcement staff in recognizing potential violations of railroad safety regulations revealed during whistleblower investigations.

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.

OSHA enforces the whistleblower provisions of the FRSA and 21 other statutes protecting employees who report violations of various securities laws, trucking, airline, motor vehicle, transportation, nuclear power, pipeline, environmental, 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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