

## **OSHA orders railroad to pay man it fired \$288,000 for saying he was hurt on the job**

Norfolk Southern Railway Co. has been ordered to pay a Savannah-based employee \$288,700 for punishing him because he said he was hurt on the job.

The federal government says the employee, whose name it withheld, was fired on trumped-up charges and pressured into admitting misconduct.

The Norfolk, Va.-based firm, which can appeal the fine, did not respond Friday to a phone call made to seek comment.

The penalties, levied by the U.S. Occupational Safety and Health Administration, follow several others against the railroad in the past two years. They total more than \$2 million.

"Investigations have found that the company continues to retaliate against workers for reporting work-related injuries," said OSHA spokesman Michael D'Aquino.

And that, D'Aquino added, "effectively created a chilling effect within the railroad industry."

The current case dates back to Sept. 19, 2009.

That day, D'Aquino said, the man "had to use additional force" to move a switch to allow a train in the Savannah area to go from one set of tracks to another.

While off-duty two days later, he felt a sharp pain in his lower back while getting up from his chair and immediately reported the injury to his supervisor, D'Aquino said.

A few days after that, OSHA said, the railroad took him off the job. At an investigative hearing, according to the agency, the railroad claimed he falsified an injury, reported it late and gave conflicting information.

He was fired, but an OSHA probe found he was punished for reporting a workplace injury and following the company's reporting policy.

He later signed papers acknowledging wrongdoing and withdrawing an appeal of the company's disciplinary charge so he could return to work. But he did so "under duress by the railroad," D'Aquino said.

"The company's investigative hearing," he added, "was severely flawed and intentionally designed to support its decision to terminate the worker.

"Moreover, OSHA's investigation revealed callousness in the steps the railroad took to retaliate against this employee."

Among them: "coercion into admitting wrongdoing when the record shows that the employee was simply following company policy."

The agency said the railroad violated whistle blower protection provisions of the Federal Railroad Safety Act.

It ordered the company to expunge the employee's disciplinary record, post a notice on whistle blower protection rights law and train its employees on those rights.

Money the company must pay the worker includes:

- \$150,000 in punitive damages;
- \$125,000 for mental anguish, pain and suffering;
- \$10,550 in back pay and costs related to buying back lost retirement benefits;
- \$3,150 in attorney's fees.

D'Aquino said the law bars employers from punishing "workers who raise various protected concerns or provide protected information" to the employer or the government.

"Railroad workers continue to be harassed, intimidated and even terminated for reporting workplace injuries," said Cindy A. Coe, OSHA's regional administrator in Atlanta.

Coe said OSHA "will continue to protect all railroad employees from these retaliatory acts and will hold employers accountable for their illegal actions."

Any appeal by the railroad must be filed with the U.S. Department of Labor's Office of Administrative Law Judges.

D'Aquino said the company was notified of the fines on Tuesday. As of Friday, he said OSHA had not been told of an appeal.

Norfolk Southern hauls coal and other commodities and serves major container ports, such as Savannah's, on the East Coast.