

Safety & Health

OSHA Orders \$1.1 Million in Damages Against Railway After Safety Complaints

By Michael Bologna

CHICAGO—Norfolk Southern Railway Co. has been ordered to pay more than \$1.1 million in compensatory and punitive damages following a pair of whistleblower complaints alleging that the freight rail company illegally fired three workers who complained about safety issues, the Labor Department's Occupational Safety and Health Administration announced Feb. 28.

Virginia-based Norfolk Southern criticized OSHA for conducting a "flawed" investigation and vowed to appeal the agency's determination. The company said an appeal would void OSHA's decisions and trigger legal proceedings.

OSHA said it found violations of the whistleblower provisions of the Federal Railroad Safety Act (FRSA) involving workplace accidents in Indiana and Pennsylvania. Since August 2007, when OSHA was given authority over FRSA whistleblower complaints, the agency has received more than 1,200 complaints. Sixty percent of the complaints involved allegations that an employer retaliated after an employee reported a workplace injury.

Indiana Crane Operator

In one investigation, OSHA said a crane operator based in Fort Wayne, Ind., was terminated after reporting an injury that required the extraction of a sliver of metal and rust from his eye. Norfolk Southern accused the worker of making false statements with respect to the injuries, but OSHA's investigation concluded that the individual would not have been fired if he had not made the report.

OSHA ordered the rail company to pay \$100,000 in compensatory damages, \$175,000 in punitive damages, and \$156,518 in back wages. The agency also ordered the employer to pay \$6,072 to compensate the crane operator for penalties incurred when he redeemed savings bonds prior to their maturity date following termination.

Welder, Helper Fired

In the second complaint, a thermite welder and a welder's helper in Western Pennsylvania were terminated after they were involved in an accident while traveling in a company truck. The two men initially declined medical treatment, but later sought treatment at a local hospital. Norfolk Southern conducted an investigation and concluded the men engaged in misconduct by providing false reports about their injuries.

OSHA determined the men were fired for reporting their injuries to their employer. In line with that view, the agency ordered \$150,000 in compensatory damages, \$300,000 in punitive damages and \$233,508 in lost wages, benefits, and out-of-pocket expenses.

OSHA said Norfolk Southern has been involved in several retaliation complaints over the last two years.

“The Labor Department continues to find serious whistleblower violations at Norfolk Southern and we will be steadfast in our defense of a worker's right to a safe job, including his or her right to report injuries,” Seth D. Harris, the acting secretary of labor, said in a statement.

Railroad Rejects Findings

Norfolk Southern rejected OSHA's findings and said it would appeal the determinations to an administrative law judge.

“Norfolk Southern disagrees with OSHA's decisions in these cases, which are the result of a flawed, one-sided procedure in which the railroad was not permitted to question the employees under oath or cross examine witnesses,” company spokeswoman Susan Terpay told BNA.

Terpay added that the company was “disappointed and surprised” by the orders because OSHA had encouraged the parties to reach negotiated resolutions. She said OSHA was aware that settlement offers had been exchanged and mediation was under consideration when the announcement was made.