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US Labor Department orders Metro North Commuter Railroad Co. to pay damages to New Haven, Conn., employee who reported on-the-job injury Railroad will also pay attorney's fees, take corrective action, inform employees of rights

BOSTON – The U.S. Department of Labor's Occupational Safety and Health Administration has found that the Metro North Commuter Railroad Co. violated the Federal Railroad Safety Act when it issued a reprimand to an employee who reported a workplace injury. The railroad, which provides commuter rail service to Connecticut, New York and New Jersey, has been ordered to pay more than \$6,800 in punitive damages and attorney's fees and take other corrective action.

"Workers must be able to report on-the-job injuries to their employer without fearing that the employer will take adverse action against them for doing so," said Marthe Kent, OSHA's New England regional administrator. "Such action has a chilling effect on workers. If they are afraid to report injuries, then that silence may mask hazardous conditions that could injure or sicken other workers."

On November 2, 2010, an employee in the railroad's New Haven storeroom lost his footing, slipped and fell while descending a rolling ladder as he faced away from the ladder. He immediately reported his injury to the railroad. On Nov. 16, he received a letter of warning from the railroad stating that he had violated a safety rule. He subsequently filed a whistle-blower complaint with OSHA.

OSHA's investigation found that the railroad had not disciplined other employees commonly committing the same violation, making it appear that Metro North singled out this employee for discipline as a result of his reporting the injury. Thus, there was evidence of disparate treatment. OSHA has consistently found that a written warning constitutes an adverse action as it could dissuade a reasonable employee from engaging in protected activity.

In addition to paying \$2,500 in punitive damages to the worker and \$4,331.25 in attorney's fees, Metro North has been ordered to remove disciplinary information from the employee's personnel record and to provide whistle-blower rights information to its other employees. Either party in the case can file an appeal with the Department's Office of Administrative Law Judges.

On July 16, 2012, 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 whistle-blower provisions. Between August 2007, when OSHA was assigned responsibility for whistle-blower complaints under FRSA, and September 2012, OSHA has received more than 1,200 FRSA whistle-blower complaints. More than 60 percent of the FRSA complaints filed with OSHA involve an allegation that a railroad worker has been retaliated against for reporting an on-the-job injury.

OSHA enforces the whistle-blower provisions of 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, worker safety, 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 Whistle-blower Protection Program. Detailed information on employee whistle-blower 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>.

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