



Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters

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For Immediate Release
February 28, 2013

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OSHA Finds Another Injured Worker Unlawfully Fired by Norfolk Southern RR *Railroad again found in violation of FRSA*

Washington, DC: The Occupational Safety and Health Administration (OSHA) yesterday issued another significant finding against the Norfolk Southern Railway (NS) for violating the Federal Railroad Safety Act (FRSA). This was the third of three separate findings against NS issued on February 27, 2013, and the latest in a series of cases in which OSHA, after a full investigation, concluded that NS fired Brotherhood of Maintenance of Way Employees Division (BMWED) members merely for seeking medical attention for on-the-job injuries. Section 20109 of the FRSA provides railroad workers with rights and remedies against unlawful railroad company retaliation for reporting injuries, seeking medical attention, and raising safety and security concerns.

In this case, a BMWED member with a fine work record was fired by NS after getting a small piece of metal in his eye on the job and seeking medical attention to have it removed. The employee was charged by NS for making "false and conflicting" statements because he was unable to identify exactly when and how the metal entered his eye. Following his dismissal the employee, with the assistance of BMWED, filed a complaint with OSHA alleging retaliation for reporting the injury and seeking medical attention.

In issuing its findings OSHA ordered the NS to reinstate the employee with all rights, seniority, and benefits; pay the claimant lost wages and benefits in the amount of \$156,518.94 plus interest; compensatory damages in the amount of \$6,072.76 plus interest; \$100,000.00 for humiliation and mental and emotional pain; punitive damages of \$150,000.00; and reasonable attorney fees. OSHA also ordered NS to expunge the employee's record and restore Railroad Retirement Board credits lost since being unlawfully fired.

OSHA found that the railroad "created an atmosphere which discourages employees from reporting workplace injuries unless absolutely necessary." Furthermore, stated OSHA, "this is not the first case where OSHA has found reasonable cause to believe that Respondent retaliated against an employee in violation of the FRSA by instituting disciplinary proceedings and terminating an employee for reporting a workplace injury."

Since just the beginning of 2012, OSHA has ordered NS to pay over three million dollars in back pay, compensatory and punitive damages, and attorney fees and costs to employees for violating their rights under the FRSA.

BMWED President Freddie N. Simpson said, "OSHA is doing a great job in enforcing a law passed with strong bipartisan support and signed into law in 2008. Enforcement of this law

protects not just workers but public safety as well. Assistant Secretary of Labor Dr. David Michaels and his staff at OSHA have thoroughly investigated this complaint and have delivered fact-based justice to another BMWED member. I hope this worker and his family can find some comfort in the fact that they have been vindicated and their integrity has been restored.”

President Simpson added, “BMWED is willing to work cooperatively with the NS to insure that the rights of BMWED members to report injuries and safety concerns free from retaliation are respected. With three significant findings issued against NS on the same day, upper management undoubtedly knows there is a serious problem. BMWED stands willing and able to help NS replace this retaliatory culture with positive, cooperative programs which will improve worker morale, safety, and productivity.”

The claimant in this case was represented by BMWED-designated attorneys. A copy of the OSHA findings, as well a copy of a related OSHA News Release, is posted at www.bmwe.org.

BMWED, a division of the Rail Conference of the International Brotherhood of Teamsters, represents 35,000 members who build, inspect, construct, maintain and repair railroad tracks, bridges, and related infrastructure throughout the United States. The International Brotherhood of Teamsters represents 1.4 million hardworking men and women throughout the United States, Canada and Puerto Rico.

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