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Contact: Scott Allen  
Phone: 312-353-6976  
Email: [allen.scott@dol.gov](mailto:allen.scott@dol.gov)

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Joanna Hawkins  
215-861-5101  
[hawkins.joanna@dol.gov](mailto:hawkins.joanna@dol.gov)

## **Norfolk Southern Railway Co. ordered by US Labor Department's OSHA to pay \$1.1 million after terminating 3 workers for reporting injuries** *Investigation found violations of Federal Railroad Safety Act whistleblower provisions*

**WASHINGTON** – Norfolk Southern Railway Co. has been ordered to pay \$1,121,099 to three workers following an investigation by the U.S. Department of Labor's Occupational Safety and Health Administration, which found that the company violated the whistleblower provisions of the Federal Railroad Safety Act. Two investigations, conducted by OSHA staff in Chicago and Pittsburgh, found that three employees were wrongfully fired for reporting workplace injuries. In addition to monetary remedies, the company has been ordered to expunge the disciplinary records of the three whistleblowers, post a notice regarding employees' whistleblower protection rights under the FRSA and train workers on these rights.

Railroad carriers are subject to the FRSA, which protects employees who report violations of any federal law, rule or regulation relating to railroad safety or security, or who engage in other protected activities.

"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," said acting Secretary of Labor Seth D. Harris. "When workers can't report safety concerns on the job without fear of retaliation, worker safety and health suffer, which costs working families and businesses alike."

One investigation involved a crane operator based in Fort Wayne, Ind., who was removed from service after reporting an eye injury requiring the extraction of a sliver of metal and rust ring from his eye. The injury occurred while he was operating a crane in support of a bridge-building operation in Albany, Ind. The employee was taken out of service and formally terminated on Aug. 24, 2010, after an internal investigation determined he had made false statements concerning the injury.

OSHA's investigation concluded that the worker would not have been terminated if he had not reported the injury. The agency has ordered the railroad to pay him a total of \$437,591.70 in damages, which includes \$100,000 in compensatory damages for pain and suffering, \$175,000 in punitive damages, and \$156,518.94 in back wages and benefits. It also includes compensation of \$6,072.76 to the crane operator for penalties incurred when he had to cash in savings bonds prior to their maturity date after being terminated. In addition to damages, the company has been ordered to pay reasonable attorney fees. Further, OSHA has ordered the railroad to reinstate the worker to the proper seniority level, with vacation and sick days that he would otherwise have earned.

OSHA's second investigation involved a thermite welder and a welder's helper based in western Pennsylvania. Both employees had worked at the railroad for more than 36 years without incident when they reported injuries sustained as a result of an accident caused by another vehicle that ran a red light and hit a second vehicle, which in turn collided with the company truck in which they were riding.

The employees initially reported minor shoulder area pain plus some stiffness and soreness. Later, when questioned by management, they initially declined medical treatment, but as the pain increased, sought and received treatment at a local hospital. They were then taken out of service pending an investigative hearing and formally terminated. Management concluded that the employees' reports about their condition were false and conflicting and constituted misconduct.

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OSHA's investigation found that the employees were terminated for reporting injuries to management. The agency has ordered the railroad to pay them \$683,508 in damages, including \$300,000 in punitive damages; \$233,508 in lost wages, benefits and out-of-pocket costs; and \$150,000 in compensatory damages for pain and suffering. Interest on back pay due will accrue daily until the employees are paid. In addition to damages, the company has been ordered to pay reasonable attorney fees.

These actions follow several other orders issued by OSHA against Norfolk Southern Railway Co. in the past two years. OSHA's investigations have found that the company continues to retaliate against employees for reporting work-related injuries, and these actions have effectively created a chilling effect in the railroad industry.

"The Labor Department's responsibility is to protect all employees, including those in the railroad industry, from retaliation for exercising these basic worker rights," said Dr. David Michaels, assistant secretary of labor for occupational safety and health. Railroad workers must be able to report work-related injuries without fear of retaliation."

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 worldwide.

Any party to these cases can file an appeal with the Labor Department's Office of Administrative Law Judges within 30 days of receipt of the findings.

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 whistleblower provisions. Between August 2007, when OSHA was assigned responsibility for whistleblower complaints under the FRSA, and September 2012, OSHA received more than 1,200 FRSA whistleblower complaints. The number of whistleblower complaints that OSHA currently receives under the FRSA surpasses the number it receives under any of the other 21 whistleblower protection statutes it enforces except for Section 11(c) of the Occupational Safety and Health Act of 1970. 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 whistleblower provisions of the 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 Whistleblower Protection Program. Detailed information on employee whistleblower 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>.

**Editor's note:** The U.S. Department of Labor does not release the names of employees involved in whistleblower complaints.

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