U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX

AUG 08 2011

Jeffrey S. Berlin
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Re: Norfolk Southern Railway Company/Nelson/4-3750-10-006

Dear Mr. Berlin:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Eric Nelson (Complainant) against Norfolk Southern Railway Company (Respondent) on October 14, 2009, under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. In brief, Complainant alleged that Respondent suspended him on October 12, 2009 in retaliation for reporting a workplace injury. On November 16, 2009, Complainant filed an amended complaint further alleging he was subsequently discharged him on November 13, 2009 also in retaliation for reporting a workplace injury.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is reasonable cause to believe that Respondent violated FRSA and issues the following findings:

**Secretary's Findings**

Respondent Norfolk Southern Railway Company is a railroad carrier within the meaning of 49 U.S.C. §20109. Respondent is engaged in interstate commerce within the meaning of 49 U.S.C. §20109.

Complainant was employed by Respondent as a track laborer and assigned to Respondent's facility located in Charleston, South Carolina. Complainant is an employee within the meaning of 49 U.S.C. §20109.

Complainant was suspended on October 12, 2009. On October 14, 2009, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him by suspending him in violation of FRSA. On November 16, 2009, Complainant filed an amended complaint alleging that Respondent terminated his employment effective November 13, 2009, also in violation of his protected rights under FRSA. As these complaints were filed within 180 days of the alleged adverse actions, they are deemed timely.

Complainant began working for Respondent in January 2009 as a track laborer. His normal work duties involved maintaining and repairing rails, cross ties and roadbeds. On May 13, 2009, while working with his crew on the Chandler Road track, Complainant was trying to remove a

railroad spike with a spike bar when the bar slipped off the spike. Complainant felt a sharp pain in his left arm/shoulder. Complainant's foreman at the time, Ronald "Ron" Morehead, saw what happened and told Complainant to step away for a few minutes to make sure he was all right. Complainant told Morehead he was injured and might not be able to finish the day. A coworker told Complainant that he would "carry [Complainant's] load" the rest of that work day, as Complainant could not use his left arm due to the injury. Morehead asked Complainant if he wanted to file an injury report and Complainant stated "no." One of Complainant's coworkers confirmed to OSHA that Complainant suffered some type of injury on May 13, 2009. In addition, Morehead confirmed to OSHA that Complainant slipped while performing work in May 2009, but Morehead insisted that he asked Complainant three times that day if he was okay and Complainant said that he was.

The next morning, May 14, 2009, Complainant asked to speak to Morehead and Track Supervisor Stan Simmons. Complainant and Morehead explained to Simmons what happened the previous day. Simmons asked Complainant if he was injured enough to go to the hospital. Complainant said he told Simmons he thought he was just sore and that he would take some ibuprofen and see if the soreness would go away.

On May 27, 2009, Complainant asked to speak to Morehead and Simmons after the morning safety meeting. Complainant told Morehead and Simmons that he was still taking ibuprofen for the May 13, 2009 injury, but that every time the ibuprofen medication wore off, the severe pain in his neck and left shoulder returned. At this point, Simmons got angry with Complainant for raising the May 13, 2009 injury issue again and said to Complainant: "You've got me in some real sh*t now." Complainant told Simmons that he needed to be looked at, but then changed his mind when he saw Simmons' angry face and told Simmons to "forget it." Complainant then returned to work. Complainant stated to OSHA that he was told by some "senior" employees that Simmons and Assistant Division Engineer Jerry Boone would fire anyone who reported an injury. Complainant thus decided to continue taking ibuprofen and hope that the injury would "work itself out." One of Complainant's coworkers confirmed to OSHA that Complainant mentioned an injury during their daily safety meeting. Morehead also confirmed to OHSA that Complainant asked to speak to Morehead and Simmons after a safety meeting about the possible injury. Morehead remembered that Simmons became very angry at Complainant and that they had a heated exchange resulting in Complainant not claiming an injury. In contrast, Simmons provided two statements to OSHA denying that Complainant wanted to file an injury report in May 2009. Simmons also denied ever telling Complainant "you've got me in some real sh*t now." Simmons acknowledged, however, that he got frustrated at Complainant because Complainant would not say whether or not he was injured. Simmons stated he only remembered speaking to Complainant one time about the possible May 13, 2009 injury. Complainant stated to OSHA that he was not able to sleep for many months due to the ongoing pain on his left shoulder from this injury.

On Friday, October 9, 2009, Complainant suffered a second injury on his left side (shoulder and neck) while working at the Jamestown, North Carolina crossing worksite. Complainant was working with two coworkers and a flagman, who was overseeing the project. While lifting some rubber with one of his coworkers, Complainant twisted and felt a sharp pain from the left side of his neck to his left shoulder. Complainant stated to OSHA that he did not say anything about the injury to anyone and continued to work that day because he feared for his job. After work, Complainant went home and went to sleep. Complainant told OSHA that he was in pain when

fearing that they will be targeted and eventually terminated from employment.[3] Simmons himself admitted becoming angry at Complainant for vacillating about whether he was injured or not.

Feeling the threat of losing his job, Complainant was reluctant to report the second injury he suffered on October 9, 2009. It was not until Complainant could not sustain the ongoing pain and discomfort any longer that he felt he had no choice but to report the injury on his next day at work, October 12, 2009. Even after reporting the injury, Complainant tried to minimize the injury so that it would not be classified as an FRA reportable injury because he feared that he would lose his job if the injury was classified as FRA reportable. Immediately upon reporting the injury, he was suspended pending an investigation. At the conclusion of the investigation, he was terminated.

Complainant's physician's note belies Respondent's determination that Complainant falsified the injury. Dr. Copeland's medical diagnosis on the medical work restriction slip, in which she checked the "worker's compensation" box, indicates that there is a reasonable basis to conclude that Complainant did, in fact, suffer an occupational injury. Moreover, the FRA cited Respondent for not reporting this on-the-job injury.

Subsequent to his October 9, 2009 injury, Complainant has been experiencing ongoing and progressive medical problems significant enough to require surgery. Since the October 9, 2009 injury, Complainant has undergone continuous medical treatment, including surgery, which has prevented him from returning to the position of track laborer. His surgeon indicated in his release note dated June 2, 2010 that "I have explained to him that he may just want to try to live with the situation and the pain as best possible and resume somewhat of a functional existence. He may need to see a chronic pain setting." As a result, the Department is not ordering reinstatement or backpay in this case given the expectation that Complainant will be medically unable to return to work at full capacity due to the injury.

More importantly, Respondent's immediate retaliation against this employee for reporting the October 9, 2009 injury exhibited reckless disregard for the law and indifference to complainant's statutorily-protected rights. Complainant and other employees indicated that they were reluctant to report workplace injuries because they feared that Respondent would suspend and then terminate them. Such conduct by Respondent has, as a general matter, a "chilling effect" on the workplace. Furthermore, Respondent has been cited previously by the Federal Railroad Administration for harassing and intimidating employees from reporting injuries, a violation of 49 CFR 225.33(1) and for failure to document an FRA reportable injury, a violation of 49 CFR Part 255.11). Respondent's disregard for Complainant's rights under FRSA warrants punitive damages.

Since Complainant's suspension and subsequent termination, Complainant has suffered unnecessary pain and mental anguish. He has been diagnosed with Post Traumatic Stress Disorder (PTSD) due to the extreme amount of mental stress he has endured. He is currently on medication to alleviate the depression he has succumbed to.

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[3] These employees also stated that Respondent is ranked top in low injury and illness rates among the railroad industry companies as evidenced by their receipt of the prestigious E.H. Harriman Rail Safety Gold Medal Award for 22 consecutive years. They stated that this is directly related to the low number of injury and illness reports filed.

work. Dr. Copeland said she did not feel comfortable doing this because she felt that taking the weight restriction off could aggravate the injury further. Complainant said he would keep taking ibuprofen but that, more importantly, he needed his job back. Dr. Copeland later faxed Respondent an amended note removing the weight lifting restriction and called Complainant to inform him of this change. Boone confirmed receiving the faxed copy of the new medical slip with the removed weight lifting restriction but stated that Complainant was still going to be suspended pending a formal investigation. Complainant was immediately charged with two counts: 1) late filing of an injury, and 2) falsifying an injury.

Complainant's investigative hearing was held on October 29, 2009. Complainant was represented by his union chairman, Gary Cox. During the hearing, when Complainant attempted to raise the May 13, 2009 incident, the hearing officer would not allow any testimony regarding this incident. As a result of this investigative hearing, Complainant was found guilty of falsifying his October 9, 2009 injury because, Respondent concluded, no injury had occurred;[1] he was discharged effective November 13, 2009.

49 U.S.C. §20109(a)(4) states that "A railroad carrier engaged in interstate or foreign commerce... may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done...to notify, or attempt to notify, the railroad carrier, or the Secretary of Transportation of a work-related personal injury or work-related illness of any employee."

The evidence shows that Complainant suffered a work-related injury on October 9, 2009. This was his second injury to the same part of his body (left shoulder and neck). Complainant did not report his initial injury for fear of losing his job[2]. Complainant's fears proved to be justified since; as soon as he reported the October 9, 2009 injury on October 12 he was immediately suspended and subsequently terminated.

All the elements of a prima facie case are present in this complaint. Complainant engaged in protected activity when he reported an injury on October 12, 2009. Respondent knew of Complainant's injury when Complainant reported the injury. Complainant suffered adverse actions when he was suspended and subsequently terminated.

The preponderance of the evidence indicates that Complainant suffered severely in this case. Norfolk Southern Railway Company successfully discouraged Complainant from reporting the May 13, 2009 injury and seeking medical treatment. This was corroborated by witness statements of Respondent's employees. Employees interviewed during this investigation stated that Norfolk Southern Railway Company has been targeting employees who report injuries by suspending them pending an internal investigation and subsequently terminating their employment. They further indicated that they too are reluctant to report an injury and/or illness,

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[1] Consequently, Respondent told OSHA, the late-filing charge became moot given Respondent's determination that no injury had actually occurred.

[2] The evidence shows that Complainant suffered a work-related injury on May 13, 2009 but declined to report it for fear that his job would be terminated. Respondent knew of the May 13, 2009 injury and dissuaded Complainant from filing an injury report at that time. From May 2009 to October 2009, Complainant took ibuprofen with the hope that the pain would subside or at the very least be bearable so that he would not have to report it and thus fear losing his job.

he woke up that next day. Complainant was off work that weekend and thus did not report the injury to Respondent over the weekend.

On Monday, October 12, 2009, supervisor Bruce Beddix noticed that Complainant was not using his left arm during morning exercises and asked him why. Complainant said that he injured himself on the previous Friday while they were moving some rubber. Simmons asked what happened. Complainant told Simmons that he twisted and felt pain on Friday while at work and that the pain got worse that night at home after work. Simmons asked if Complainant needed to go to the doctor. Complainant initially said "yes," but when he saw the "look" on Simmons' face, he changed his mind and said "no, I'm going to take a couple of ibuprofens and see if the pain will go away." He then started for the job site where they were to load cross ties in Jamestown, North Carolina.

When Complainant arrived at the jobsite in Jamestown, North Carolina that morning, he called Simmons and informed him that he needed medical attention as the pain was not subsiding. Simmons told Complainant to come into the office and tell foreman Dustin Rogers what was going on. Complainant went to Respondent's office and filed an injury report that morning. Complainant told Simmons that he was going to use his own insurance so that the injury would not be classified as a reportable incident under the Federal Railroad Administration's (FRA) regulations, but Simmons indicated that this could not be done. Simmons took Complainant to the Urgent Medical Care in Pomona, North Carolina, where Complainant saw Dr. Copeland. Complainant asked Dr. Copeland not to prescribe him any medications as the injury would then be classified as an FRA reportable injury. Complainant told Dr. Copeland that if the injury was classified as an FRA reportable injury, he would lose his job. Dr. Copeland examined Complainant, diagnosed him with a strained trapezium, and gave him a 20 pound weight lifting restriction. She completed a medical work restriction slip for Complainant, including checking the "worker's compensation" box on that slip. She told Complainant not to do anything repetitious with his left arm for four days.

Upon returning to the Respondent's office from the medical center, Complainant heard a phone conversation between Simmons and Boone, who asked what were the locations of the two coworkers who were working with Complainant at the time of the incident on October 9, 2009. Boone later came into the office and looked over the medical work restriction slip Complainant was given by Dr. Copeland, the incident report, and Complainant's injury report.

Later that day, Simmons told Complainant that he was being taken out of service (i.e., suspended) pending a formal investigation of his injury. Complainant asked him not to do that as Complainant needed to work. Complainant said he only wanted to make sure nothing was seriously wrong with his arm and neck.

Complainant then called Boone's supervisor, Edward G. Cody, Division Engineer, and explained what was going on. Boone listened in on the conversation. Cody told Complainant that the suspension was still going to happen. Complainant was then escorted off of Respondent's property.

When Complainant got home, he called Simmons and asked whether he would be able to return to work if the weight restriction was taken away. Complainant called Dr. Copeland, explained his situation, and asked her to take off the weight lifting restriction so that he could return to

In the absence of clear and convincing evidence indicating that Respondent would have taken the same adverse action even if Complainant had not engaged in protected activity (reporting his injury), OSHA finds reasonable cause to believe that Respondent violated 49 U.S.C. §20109 and therefore issues the following order:

## Order

1. Respondent shall pay Complainant compensatory damages, totaling $20,750.11, as follows:

    a. Medical insurance co-pays for treatments totaling $305.00

    b. Medical prescription co-pays totaling $445.11

    c. Compensation for mental anguish and pain suffering in the amount of $20,000.00.

2. Respondent shall pay Complainant punitive damages in the amount of $75,000.00 for reckless disregard of Complainant's rights under FRSA.

3. Respondent shall pay Complainant reasonable attorney fees in the amount of $26,449.70.

4. Respondent shall post, for 60 days from the receipt of this order, the Notice to Employees included with this order in all of its company's areas where employee notices are customarily posted.

5. Respondents shall expunge any adverse references from Complainant's personnel records relating to the charge.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U. S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

Eric Nelson
C/O Jesse Sydnor
Lawson & Mosley
191 Peachtree Street, NE, Suite 4600
Atlanta, GA 30343

# OSHA® FactSheet

# Whistleblower Protection for Railroad Workers

**Individuals working for railroad carriers are protected from retaliation for reporting potential safety or security violations to their employers or to the government.**

On August 3, 2007, the *Federal Railroad Safety Act* (FRSA), 49 U.S.C. §20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to transfer authority for railroad carrier worker whistleblower protections to OSHA and to include new rights, remedies and procedures. On October 16, 2008, the *Rail Safety Improvement Act* (Public Law 110-432) again amended FRSA, to specifically prohibit discipline of employees for requesting medical treatment or for following medical treatment orders.

## Covered Employees

Under FRSA, an employee of a railroad carrier or a contractor or subcontractor is protected from retaliation for reporting certain safety and security violations.

## Protected Activity

If your employer is covered under FRSA, it may not discharge you or in any other manner retaliate against you because you provided information to, caused information to be provided to, or assisted in an investigation by a federal regulatory or law enforcement agency, a member or committee of Congress, or your company about an alleged violation of federal laws and regulations related to railroad safety and security, or about gross fraud, waste or abuse of funds intended for railroad safety or security. Your employer may not discharge or in any other manner retaliate against you because you filed, caused to be filed, participated in, or assisted in a proceeding under one of these laws or regulations. In addition, you are protected from retaliation for reporting hazardous safety or security conditions, reporting a work-related injury or illness, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures. You may also be covered if you were perceived as having engaged in the activities described above.

In addition, you are also protected from retaliation (including being brought up on charges in a disciplinary proceeding) or threatened retaliation for requesting medical or first-aid treatment, or for following orders or a treatment plan of a treating physician.

## Adverse Actions

Your employer may be found to have violated FRSA if your protected activity was a contributing factor in its decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Disciplining an employee for requesting medical or first-aid treatment
- Disciplining an employee for following orders or a treatment plan of a treating physician
- Forcing an employee to work against medical advice

## Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged adverse action occurred.

## How to File a Complaint

A worker, or his or her representative, who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the worker lives or was employed, but may be filed with any OSHA officer or employee. For more information, call your nearest OSHA Regional Office:

- *Boston* *(617) 565-9860*
- *New York* *(212) 337-2378*
- *Philadelphia* *(215) 861-4900*
- *Atlanta* *(404) 562-2300*
- *Chicago* *(312) 353-2220*
- *Dallas* *(972) 850-4145*
- *Kansas City* *(816) 283-8745*
- *Denver* *(720) 264-6550*
- *San Francisco* *(415) 625-2547*
- *Seattle* *(206) 553-5930*

Addresses, fax numbers and other contact information for these offices can be found on the Whistleblower Protection Program's website, www.whistleblowers.gov, and in local directories. Complaints may be filed orally or in writing, by mail (we recommend certified mail), e-mail, fax, or hand-delivery during business hours. The date of postmark, delivery to a third party carrier, fax, e-mail, phone call, or hand-delivery is considered the date filed. If the worker or his or her representative is unable to file the complaint in English, OSHA will accept the complaint in any language.

### Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue a preliminary order requiring the appropriate relief to make you whole. Ordered relief may include:

- Reinstatement with the same seniority and benefits.
- Payment of backpay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees and reasonable attorney's fees.
- Punitive damages of up to $250,000.

OSHA's findings and preliminary order become a final order of the Secretary of Labor, unless a party objects within 30 days.

### Hearings and Review

After OSHA issues its findings and preliminary order, either party may request a hearing before an administrative law judge of the U.S. Department of Labor. A party may seek review of the administrative law judge's decision and order before the Department's Administrative Review Board. Under FRSA, if there is no final order issued by the Secretary of Labor within 210 days after the filing of the complaint, then you may be able to file a civil action in the appropriate U.S. district court.

### To Get Further Information

For a copy of the statutes, the regulations and other whistleblower information, go to www.whistleblowers.gov. For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

**This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.**

**For more complete information:**

**OSHA® Occupational Safety and Health Administration**

**U.S. Department of Labor**
**www.osha.gov**
**(800) 321-OSHA**

DEP 8/2010

# Hoja de Datos OSHA®

# Protección a los denunciantes internos para los trabajadores ferroviarios

**Los trabajadores de las transportistas ferroviarias están protegidos de represalias por denunciar ante sus empleadores o el gobierno de posibles contravenciones a la seguridad.**

El 3 de agosto de 2007, se enmendó la *Ley Federal de Seguridad Ferroviaria* (FRSA), sección 20109 del título 49 del Código Federal, con la *Ley para la Aplicación de las Recomendaciones de la Comisión del 11 de septiembre* (ley pública 110-53) a fin de transferir la autoridad para las protecciones a los denunciantes internos del sector de los trabajadores ferroviarios a la OSHA e incluir nuevos derechos, recursos y procedimientos. El 16 de octubre de 2008, la *Ley para el Mejoramiento de la Seguridad Ferroviaria* (ley pública 110-432) enmendó FRSA una vez más a fin de prohibir específicamente la imposición de medidas disciplinarias a los empleados por solicitar tratamiento médico o seguir las órdenes del tratamiento médico.

## Empleados cubiertos

Conforme a la FRSA, el empleado de una transportista ferroviaria, contratista o subcontratista está protegido de represalias por notificar ciertas violaciones de la seguridad.

## Actividad protegida

Si su empleador está cubierto por la FRSA, no puede despedirlo ni tomar ningún tipo de represalia en su contra porque usted haya brindado información, haya hecho que se brindara información o haya colaborado en una investigación de un organismo regulador o de las fuerzas del orden federal, un miembro o comité del Congreso o su empresa sobre una presunta violación de las leyes y los reglamentos federales que rigen la seguridad ferroviaria o en relación con fraude flagrante, derroche o abuso de fondos destinados a la seguridad ferroviaria. Su empleador no puede despedirlo ni tomar ningún tipo de represalia en su contra porque usted haya presentado, haya hecho que se presentara, haya participado o colaborado en un proceso regido por una de estas leyes o reglamentos. Por otra parte, usted está protegido de represalias por haber notificado condiciones peligrosas, lesiones o enfermedades ocupacionales, rehusarse a prestar servicio en ciertas condiciones o a autorizar el uso de algún equipo de seguridad, vías o estructuras. También puede estar protegido si se percibió que participó en las actividades descritas anteriormente.

Además, también está protegido de actos de represalia (en forma de cargos en un proceso disciplinario) o de amenaza de represalia por haber solicitado tratamiento médico o de primeros auxilios o por haber acatado las órdenes o seguido el plan de tratamiento indicado por el médico a cargo.

## Acciones adversas

Se puede concluir que su empleador contravino la FRSA si su actividad protegida contribuyó a la decisión de su empleador de tomar una medida adversa en su contra. Estas medidas pueden incluir:

- el despido o la cesantía
- la inclusión en una lista negra
- el descenso de categoría
- la denegación de horas extras o el ascensos
- la imposición de medidas disciplinarias
- la denegación de beneficios
- la no contratación o reinstauración en el cargo
- la intimidación
- la formulación de amenazas
- la reasignación con consecuencias para las perspectivas de ascenso
- la reducción de la compensación o las horas de trabajo
- la imposición de medidas disciplinarias a un empleado por solicitar tratamiento medico o de primeros auxilios
- la imposición de medidas disciplinarias a un empleado por acatar las órdenes o seguir el plan de tratamiento indicado por el médico a cargo
- obligar a un empleado a trabajar en contraindicación médica

## Plazo para la presentación de una reclamación

Las reclamaciones deben presentarse en el lapso de 180 días posteriores a la materialización de la presunta acción adversa.

## Cómo presentar una reclamación

El trabajador o su representante, que considere que fue objeto de represalia en violación de la presente

norma, pueden presentar una reclamación ante la OSHA. La reclamación debe tramitarse ante la oficina de la OSHA a cargo de las actividades de cumplimiento en la zona geográfica en la que reside o trabajaba el empleado, pero puede tramitarse ante cualquier funcionario o empleado de la OSHA. Si desea más información sírvase llamar a la Oficina Regional de la OSHA más cercana:

- *Boston* *(617) 565-9860*
- *Nueva York* *(212) 337-2378*
- *Filadelfia* *(215) 861-4900*
- *Atlanta* *(404) 562-2300*
- *Chicago* *(312) 353-2220*
- *Dallas* *(972) 850-4145*
- *Kansas City* *(816) 283-8745*
- *Denver* *(720) 264-6550*
- *San Francisco* *(415) 625-2547*
- *Seattle* *(206) 553-5930*

Las direcciones, los números de fax y otra información de contacto para estas oficinas se pueden encontrar en el sitio web del Programa de protección a denunciantes internos, www.whistleblowers.gov, y en los directorios locales. Las reclamaciones pueden presentarse de manera oral o por escrito, por correspondencia (sugerimos franqueo certificado), correo electrónico, fax o entregarse personalmente durante el horario de atención. La fecha de franqueo, entrega a un correo de terceros, fax, correo electrónico, llamada telefónica o entrega personal se considera la fecha de presentación. Si el trabajador o su representante no pueden presentar la reclamación en inglés, la OSHA aceptará la reclamación en cualquier otro idioma.

### Resultados de la investigación

Si las pruebas respaldan su reclamación de represalia y no puede llegarse a una solución, la OSHA emitirá una decisión preliminar en la que se solicite la reparación adecuada para su resarcimiento. La reparación ordenada puede ser:

- reinstauración con el mismo nivel de antigüedad y beneficios
- pago retroactivo con intereses
- daños y perjuicios, como compensación por daños cuantificables, honorarios de peritos y honorarios razonables de abogado
- daños punitorios por un máximo de $250.000.

Los resultados y la decisión preliminar de la OSHA se tornan una decisión inapelable de la Secretaría de Trabajo, a menos que una parte presente una objeción en el lapso de 30 días.

### Audiencias y revisión

Al cabo de la publicación de las conclusiones y la decisión preliminar de la OSHA, cualquiera de las partes puede solicitar una audiencia ante un juez de un tribunal administrativo del Departamento de Trabajo de los Estados Unidos. Una parte puede solicitar la revisión del fallo y la orden judicial del juez del tribunal administrativo ante la Junta de Revisión Administrativa del Departamento. Conforme a la FRSA, si la Secretaría de Trabajo no emite un fallo definitivo en el lapso de 210 días de la fecha de presentada la reclamación, usted puede presentar una demanda civil ante el tribunal federal correspondiente.

### Información adicional

En www.whistleblowers.gov se puede obtener una copia de las normas, los reglamentos y otra información sobre los denunciantes internos. En www.oalj.dol.gov, haga clic en el enlace para "denunciantes internos", donde encontrará información sobre procedimientos, fallos y materiales de investigación de la Oficina de Jueces del Tribunal Administrativo.

**El presente forma parte de una serie de folletos informativos en los que se destacan programas, políticas o normas de la OSHA. No se impone ningún requisito nuevo de cumplimiento. Consúltese el título 29 del Código de Reglamentos Federales para obtener una lista completa de los requisitos de cumplimiento de las normas o los reglamentos de la OSHA. Esta información se pondrá a disposición de individuos con dificultades sensoriales a solicitud de la parte. Número telefónico: (202) 693-1999. Número del teleimpresor (TTY): (877) 889-5627.**

**Para información más completa:**

OSHA® **Administración de Seguridad y Salud Ocupacional**
**Departamento del Trabajo de los EE.UU.**
**www.osha.gov (800) 321-OSHA**

DEP 9/2010

# Frequently Asked Questions on Employee Protections for Reporting Work-Related Injuries and Illnesses in the Railroad Industry

**Employees working for railroad carriers who notify, or attempt to notify, a railroad carrier, the Secretary of Transportation, or any Federal, State, or local regulatory or law enforcement agency, of a work-related personal injury or work-related illness are protected from retaliation under the Federal Rail Safety Act (FRSA), 49 U.S.C. 20109. Below are some answers to frequently asked questions about these employee whistleblower protections. The specific facts of every FRSA case will be different, so the information below may not apply in every instance.**

### *Q: Who is protected under FRSA for reporting a work-related injury or illness?*

A: The Federal Rail Safety Act protects public and private sector employees of railroad carriers, as well as employees of contractors and subcontractors of railroad carriers who report a work-related personal injury or work-related illness.

### *Q: Can a railroad carrier discipline an employee for reporting a work-related personal injury or work-related illness?*

A: No. Reporting a work-related personal injury or work-related illness is specifically protected under FRSA.

### *Q: Can a railroad discipline an employee for violating safety rules which caused a work-related injury?*

A: Yes. An employee can be disciplined for violating safety rules, but not for reporting the injury.

### *Q: Is it a violation of FRSA for a railroad to harass or intimidate an employee into not reporting an injury, or to report it as non-work related?*

A: Yes. This violates FRSA.

### *Q: Is it a violation of FRSA for a railroad to classify an employee's work-related injury as not work-related?*

A: Yes. If the railroad classifies a work-related injury as not work-related in an effort to avoid having the injury be "reportable" then this practice would violate FRSA.

### *Q: Is it a violation of FRSA for a railroad to force an employee to work against medical advice?*

A: Yes. FRSA prohibits a railroad from requiring an employee to work against the orders of a treating physician. FRSA does not prohibit a railroad from requiring that an employee perform alternate duties that would be permitted under a treating physician's treatment plan.

### *Q: Is it a violation of FRSA for a railroad to discipline anyone who is injured on the job?*

A: Yes. Except to the extent that a railroad may discipline an injured employee for violating work safety rules, a railroad may not discipline employees who get injured on the job. A policy or practice that disciplines employees who receive on-the-job injuries would violate FRSA.

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In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under FRSA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint.

Sincerely,

CINDY A. COE
Regional Administrator

cc: Jesse Sydnor, Esq., Lawson & Moseley, LLP
Chief Administrative Law Judge, USDOL
Federal Railroad Administration, USDOT

# NOTICE TO EMPLOYEES

## PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

**NORFOLK SOUTHERN CORPORATION** has been ordered to make whole an employee who was found to have been retaliated against for exercising his rights under the Federal Rail Safety Act (FRSA). Norfolk Southern Corporation has also taken affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the FRSA.

## PURSUANT TO THAT ORDER, NORFOLK SOUTHERN CORPORATION AGREES THAT IT WILL NOT:

1. Discharge or in any manner discriminate against any employee because such employee has engaged in any activity, filed any complaint or instituted or caused to be instituted any proceeding under or related to the employee protection provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. §20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law No. 110-53., or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself/herself or others of any right afforded by the FRSA.

2. Discharge, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has reported a workplace injury or illness.

3. Deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

4. Discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician.

**Norfolk Southern Corporation** Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.**

OSHA Occupational Safety and Health Administration

www.osha.gov