

## RAILROAD COMPANY ORDERED TO PAY TERMINATED EMPLOYEE \$300,000



A Nebraska-based Union Pacific Railroad Co. has been ordered to reinstate an employee who had reported a work-related injury and was subsequently terminated. The Occupational Safety and Health Administration (OSHA), a section of the U.S. Department of Labor (DOL), issued the order for the company to pay the employee in Idaho a total of 300,000 dollars in back wages, compensatory damages, attorney's fees and punitive damages. The employee claims that, after informing the company of an injury sustained on the job, the man was given suspension without pay and then fired approximately three weeks later. As a result, he filed a whistleblower complaint with the OSHA. An investigation apparently supported the employee's claim, believing that the suspension and termination were based solely on the man reporting an injury to the railroad company. This would be a direct violation of the whistleblower protection provisions under the Federal Railroad Safety Act (FRSA). According to the OSHA, the company had previously violated the FRSA



in four additional instances in the U.S. since 2009.

As per the OSHA's order, the company will reinstate the man's position and cover the monetary compensation. The railroad company has also been ordered to not retaliate against the employee. In a press release on the DOL's website, Assistant Secretary of Labor for OSHA Dr. David Michaels said, "This case sends a clear message that OSHA will not tolerate retaliation against workers for reporting a work-related injury. An unreported injury is an uninvestigated injury. Nothing is learned that can help prevent the next injury. The safety of all workers is endangered when employers intimate injured workers so that they do not report injuries." A whistleblower complaint is one that alleges misconduct from a department or company. The OSHA's whistleblower protection provisions were implemented to protect employees from retaliation for exercising rights afforded by the Occupational Safety and Health Act of 1970. Section 11(c) of the Act states: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Rights protected by the OSH Act include an employee participating in safety and health activities, such as complaining to the OSHA, seeking and/or participating in an OSHA inspection, and reporting an injury, illness or fatality related to work. A retaliation claim filed with OSHA would entail an employee who was involved in a protected activity experiencing "adverse action" – generally defined as any action that would prevent a worker from partaking in protected activity. The OSHA lists the following as actions that may be deemed adverse: termination, blacklisting, demoting, denying overtime/promotion, disciplining, denial of benefits, failure to hire/rehire, intimidation, threats, reassignment that affects the likelihood of promotion and reducing pay/hours.