

**Pennsylvania Federation BMWED - IBT
Northeast System Federation BMWED- IBT
Amtrak Eastern General Committee - BRS
American Railway and Airway Supervisors Association - IAM**

421 North Seventh Street
Suite 299
Philadelphia, PA 19123

overnight mail

April 13, 2016

National Railroad Passenger Corporation
Joe Boardman, President
60 Massachusetts Avenue
Washington, DC 20002

Mr. Boardman:

**STATE OF EMERGENCY CURRENTLY EXISTS
ON AMTRAK'S NORTHEAST CORRIDOR
PASSENGERS AND EMPLOYEES IN IMMINENT DANGER!**

On April 3, 2016 Amtrak train 89 collided with a backhoe performing track work on Amtrak's mainline in Chester, PA. This collision resulted in the deaths of a equipment operator and a supervisor, both long service and dedicated Brothers. In addition, dozens of passengers were injured, thankfully none fatally. We believe that a "perfect storm" of corporate changes, made since you became the President of Amtrak, are largely responsible for this terrible tragedy. This includes changes in management competence, employee training, safety procedures and close call reporting, generational changes in employee makeup, the corporate culture which is now based upon fear and intimidation and punitive disciplinary programs designed to silence people rather than correct problems like those that resulted in this terrible tragedy. We believe that this immediate threat continues and creates a hazardous condition which presents imminent danger to those who are working, or riding, on Amtrak's mainline North East Corridor.

To be clear, and to avoid any misunderstanding, this letter is being written to you within the framework of the Federal Railroad Safety Act, 49 U.S.C. & 20109(b), ("FRSA" which states, in part, as follows:

- (b) *Hazardous safety or security conditions, --*
 - (1) *A railroad carrier engaged in interstate or foreign commerce, or an officers or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for –*
 - (B) *refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or*
 - (2) *A refusal is protected under paragraph (1)(B) and © if –*

- (A) *the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;*
- (B) *a reasonable individual in the circumstances then confronting the employee would conclude that –*
 - (i) *the hazardous condition presents an imminent danger of death or serious injury;*
 - (ii) *the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and*
- [C] *the employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.*

1. Close Call Reporting Procedures

In early 2000 Amtrak, with the support of the engineering unions, adopted a corporate close call procedure that specifically removed employee discipline from the equation so that joint teams of management and union could investigate the close call, get to the truth of the matter and take steps to prevent them. A copy of this close call procedure is attached for your ready reference but it states, in relevant part,

“Employees must be encouraged to share experiences that can benefit themselves or others. This is best accomplished in an environment free of criticism, discipline, and retaliation. Response to the voluntary reporting of close calls must be non-punitive in order to foster honesty and forthrightness. Employees must feel they can speak freely when reporting close calls.”

The idea is that we investigate all incidents in an atmosphere free of intimidation before they become fatalities, or other serious accidents. In the last few years there has been a significant turnover in managers which resulted in new managers who have no railroad experience, or appreciation for our history on this subject and they have assumed the leadership at Amtrak. In late 2014, when these senior managers learned of the existence of this close call policy they promptly terminated it.

From 2000 - 2014 (14 years) there were four employee fatalities in the engineering department, two were the result of employees being struck by trains. From 2014, without the close call policy in effect, to the present (less than 2 years) there have been three employee fatalities in the engineering department, all struck and killed by trains.

Recently, you wrote and misinformed the employees that the engineering Unions were the hold up in the implementation of the Federal Railroad Administration’s, “Confidential Close Call Reporting System.” While it is true we have been reviewing the proposal and have not signed it because we do not believe it gives sufficient protection to all involved in the close call report, management has also not been willing to sign the document. If Amtrak were to reinstate the Close Call Reporting Policy that was in place in 2000, and make it an attachment to the FRA agreement we will sign it tomorrow. **However, in any event:**

We demand an immediate reinstatement of the Close Call Policy that was in effect in 2000 and made into an agreement with the engineering unions and further that it can not be changed or modified except in accordance with the Railway Labor Act.

2. Employee Training Inadequate and Pathetic

On October 1, 2003, Amtrak management unilaterally took Roadway Worker Protection (RWP), Northeast Operating Rules (NORAC) and physical characteristics training and qualification from the engineering department and put it under the Human Capital Department. These positions were made management positions and some of the rank and file trainers accepted these positions. Up until this time the training was performed by rank and file engineering department employees who had practical experience and knowledge in the areas that they were teaching. The teaching was relevant and based upon practical experience.

Very few of the former engineering department rank and file trainers, if any, are left and the training is now provided by management "trainers" who have no practical experience working on the railroad. This book training without the practical experience is very poor. There are also instances where the information being taught is not correct. Recently, one of our senior foreman had to challenge a "trainer" when the trainer said the only time that shunt straps were to be applied to a track is when a piece of track equipment is on it for five minutes or more, which is clearly not supported by NORAC Rule 140-S2. In another instance, with the same "trainer" and foreman the trainer said that employees only had a right to "challenge," and not refuse to work, when confronted with a situation in which they are ordered to work in violation of the RWP rules. This is clearly not the case and we have agreements that specifically state otherwise.

All references to the shunting rules were unilaterally removed from the RWP training and the RWP manual in July 2014. The shunting rules need to be returned to the RWP training and the manual. Everyone is trained on RWP, but not everyone is trained on NORAC. Shunting issues played a major role in the Chester accident and reducing the number of employees who are trained and have knowledge of the shunting rules is an error.

In 2009 labor and management developed a "Hot Spot RWP" book to assist in the placing of sufficient watchmen, to be used when the method of protection is gang watchmen, to ensure that employees are in a place of safety 15 seconds before the train passes their worksite. There are many places on the railroad where multiple watchmen are needed and this has always been a source of conflict between management and labor. The purpose of the book was to assist by defining the minimum necessary to perform the work safely. These minimum numbers were developed by teams of management and labor going to each location on the railroad and timing the approach of a train around curves and other sight obstructions and then agreeing on the minimum number of watchmen that are needed. The training department is refusing to supply these books to the RWP training classes. Trainers in the RWP training are stating that the book is no longer relevant. Managers are stating to our rank and file that System Safety is saying that the book is no longer in effect. Unless I am mistaken, the infrastructure has been pretty much the same for the last 100 years and the increase in train speeds in the last 10 years will not have an effect on the numbers needed.

In addition, the training that was adequate for a bargaining unit where with most foreman routinely had ten or more years of foreman seniority, and the average seniority in general was twenty years, is not adequate for the current bargaining unit where the majority of workers have less than five years seniority and half or more of the foremen have less than five years seniority in the foreman classification. The training program needs to be completely revamped because of these new realities

and must include practical field experience. Also, training should include an effective mentoring program for all foreman in general, but mandatory for first time foreman and for foreman who are starting a first time assignment.

With respect to the training we demand the following:

- 1. All regulatory training and qualification, including but not limited to RWP, NORAC and physical characteristics, be returned to the jurisdiction of the engineering department and that agreements be reached with the three unions concerned to have this training and qualification performed by rank and file bargaining unit employees.**
- 2. Currently, there is one Supervisor foreman mentor for all 250 track foremen. This program must be greatly augmented so that all first time foreman are given at least 30 days of on site, day to day mentoring by qualified and experienced engineering department employees and all foreman who report to an assignment for the first time are provided ten days of mentoring, or more if requested or needed. That Amtrak immediately sit down with the three engineering department unions and work out agreements to accomplish this.**
- 3. That Amtrak immediately sit down with the three unions involved and we appoint a working committee tasked with revamping the RWP, NORAC and physical characteristics training and qualification process to make it more effective and include as much practical foundation as possible. That this committee be given the resources and time to complete their duties in 30 days, and report back their recommendations, and that Amtrak immediately sit down with the three unions involved and work to implement these recommendations.**
- 4. That the shunting rules be restored to the RWP manual.**
- 5. That the Hot Spot book be reissued to each employee at the RWP qualification classes, that it become an integral part of the training program, that clear instructions be issued to all Managers to use and implement the minimum numbers suggested whenever watchmen protection is to be used and that an employee advisory be sent to all employees highlighting the need to use the Hot Spot book when posting watchmen.**

Management Competence and Developing a Corporate Culture of Fear and Intimidation

Since you assumed the reigns of Amtrak you have systematically replaced the senior operations management, who had extensive railroad operations and maintenance experience, with a

team that has no experience in these areas. This team of know nothing railroad managers have systematically begun to purge and discharge many middle level managers who have vast railroad operations and maintenance experience. This has resulted in a climate of fear and intimidation where railroad management employees are afraid to speak up, or take initiative to manage the railroad. This has also resulted in bad leadership, or no leadership in the field. Your team has consolidated all power and decision making into their small circle. This results in managers who need authority to make day to day decisions to manage their areas of jurisdiction, they do not have necessary decision making authority to effectively manage. What little authority they do have they are afraid to exercise for fear they will be disciplined. An example of this problem is, we now work for a Chief Engineer who does not have authority to advertise bargaining unit vacancies in his own engineering department even when the collective bargaining agreement Amtrak has signed requires him to do so.

While exercising no leadership in the field, and squelching any manager that seeks to exercise leadership, your team has brought us the cardinal rules and a discipline policy that is so draconian that no one wishes to voice an opinion for fear of being severely disciplined, or getting someone else severely disciplined. It has also resulted in decisions like the one to bring former Chief Engineer Robert Puciloski of Metro North to fill the New York Division Engineer's position. Metro North might have an even worse record with respect to employee and passenger safety than Amtrak. Illustrative of newly hired Amtrak Division Engineer Puciloski's role at Metro North is information found in the attached Dailey News report where he readily admits that basic track inspection and maintenance procedures were not followed causing a derailment under his jurisdiction. This type of bad decision making and staffing decisions is rampant throughout the company.

This issue was recently highlighted in a Philadelphia Inquirer news article dated July 12, 2015, by veteran transportation reporter Paul Nussbaum titled, *"TURMOIL AT THE TOP, SOME SEE AMTRAK'S MANAGEMENT TURNOVER AT CRITICAL TIME."* This article was written following the tragic aftermath of the May 12, 2015, accident that took the lives of 8 passengers and is very critical of the changing Amtrak management. He quotes a former Amtrak executive as saying, *"But people are more concerned about keeping their jobs than doing their jobs."* A copy of the article is attached.

The issue of a culture of fear and intimidation developing under your administration is reinforced again in the press in an October 15, 2015, article written by investigative reporters Stuart Silverstein and Brian Joseph for FairWarning titled, *"For Big Railroads, a Carload of Whistleblower Complaints."* Amtrak has the dubious distinction of being in the top ten companies in the COUNTRY for OSHA whistleblower complaints which charge Amtrak with retaliation against employees who raise safety concerns. A copy of this article is also attached.

There are other examples of bad decision making that is a direct result of the corporate culture you have brought to us. Amtrak ordered the same men who worked regularly with the men who were killed on April 3 to pick up the pieces of the backhoe that was scattered all over the tracks from the accident. There are no words that can adequately describe this level of ignorance. A humane and reasonable management would have sent each of these men and women home for a week or at least not permitted them on the tracks so they can heal. Your idea of sending out an 800 number so EAP can give them a hug, as a sufficient response to this tragedy, is unfortunately something we have come to expect. Not one manager had the courage to stand up and say it was wrong for the long term friends and coworkers of the fatally injured employees, to be on the tracks, or picking up after the accident.

In order to correct this very real problem, we demand:

- 1. Amtrak discharge DJ Stadtler, Executive Vice President Chief Operations**

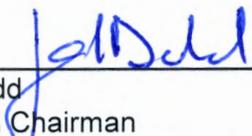
Officer; Barry Melnkovic, Executive Vice President Chief Human Capital Officers; Scott Naparstek, Senior Vice President Operations and Michael Logue, Chief Safety Officer and replace them with individuals who have extensive experience in operating and maintaining a railroad.

- 2. That the dismissal policy associated with the cardinal rules be disavowed and the traditional discipline matrixes be reinstated. We agree with Amtrak that the cardinal rules should be followed. We do not think terrorizing the employees is the way to get them followed. Your current policy only allows us to only know when the cardinal rules are being violated when there is a serious incident. Surely, we can do better than this. The policy does not work and is self- defeating. It is a policy designed by a management team that does not know how to manage a railroad.**

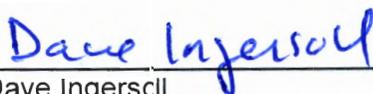
- 3. Amtrak negotiate with the Unions to amend their seniority retention provisions that permits Amtrak managers who are fired for other than theft of fighting be permitted to fill vacancies back into the craft from which they were promoted.**

Do not underestimate our resolve to protect the lives of the members of our Unions. We are willing to take any and all steps necessary to ensure that the lives of our members and the riding public are protected. Please implement these reforms immediately. If you desire to meet we are ready to meet to discuss these reforms and their implementation. If you will not meet with us personally please arrange for us to meet with someone who has the authority to act for Amtrak.

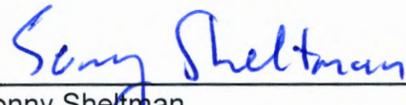
For the safety of the men and women who spill sweat and blood on this railroad every day we await your response.



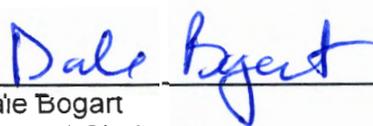
Jed Dodd
General Chairman
Pennsylvania Federation BMWED - IBT



Dave Ingersoll
General Chairman
Amtrak Eastern General Committee - BRS



Sonny Sheltman
General Chairman
America Railway and Airway Supervisors
Association



Dale Bogart
General Chairman
Northeastern System Federation BMWED -
IBT

REPORTING POLICY FOR "CLOSE CALLS" ON OR ABOUT RAILROAD RIGHT-OF-WAY

Introduction "Close calls" are occurrences that could have easily resulted in accident or injury. These potentially serious events must be identified quickly in order to conduct timely, thorough inquiries, and determine actions necessary to prevent recurrence. An appreciation for "lessons learned" will foster greater awareness and understanding of potential hazards and present opportunity for new and renewed prevention efforts. The goal must be to prevent a recurrence - possibly one with serious outcomes

Employee Participation Employees must be encouraged to share experiences that can benefit themselves or others. This is best accomplished in an environment free of criticism, discipline, and retaliation. Response to the voluntary reporting of close calls must be non-punitive in order to foster honesty and forthrightness. Employees must feel they can speak freely when reporting close calls

Description Determination of a close call can be subjective and ultimate classification rests on the judgment of those involved. If one or more individuals believes the incident was a close call, it should be addressed as such. To encourage reporting of all related events, two classification levels have been established: First Level and Second Level

- **First Level**
Includes life threatening events or those that could have resulted in serious injury. Prime examples include near strikes of employees, equipment, or materials.
 - **Second Level**
Events that may not require immediate attention, but warrant response and/or intervention. In cases when dispatcher notification does not occur or is unnecessary, employees should directly contact their immediate supervisor or call the Engineering Action Line at **1-800-288-1310**. Examples: absence or placement of watchmen, clearing times for workers (15 seconds), absence of whistle boards, trains not blowing, etc.
-

Reporting Policy for "Close Calls" (continued)

FIRST LEVEL	
STEP	DESCRIPTION
1	Engineer, pilot, or equipment operator immediately reports incident to Train Dispatcher . Provides pertinent details such as milepost, track, equipment/train description, number of employees, etc. If incident is observed by workers on the right-of-way only, involved employees must notify immediate supervisor who will conduct steps 4, 5, and 6 below.
2	Train dispatching office notifies Trouble Desk, Division General Manager, and local Safety Department , (incidents involving Police, Mechanical, Commissary, or other groups should be directed to the Safety Department).
3	Trouble Desk immediately notifies appropriate supervision .
4	Immediate supervisor establishes response team with focus on interpreting events and finding cause, not blame. Team to include local Safety Representatives and/or Liaisons and the Safety Department.
5	Results of team inquiry shared with the departments involved. Affected department reviews outcomes with employees(s) who reported close call and develops summary for general distribution.
6	Inquiry team provides Engineering Employee Services and Safety Department with information required to maintain incident log and identify areas requiring action (i.e., training, procedural changes, counseling). Engineering Employee Services will provide a general overview to all employees concerned and can be contacted at (ATS 728-2882 or -3580) for information regarding specific events.

SECOND LEVEL	
STEP	DESCRIPTION
1	Employee(s) contacts supervisor or calls Engineering Action Line at 1-800-288-1310.
2	Immediate supervisor establishes inquiry team , which includes local Safety Representatives and/or Liaisons and the Safety Department. Engineering Action Line concerns will be addressed jointly by the Engineering Employee Services and Safety Departments.
3	Affected department reviews outcome with employee(s) initiating report of close call. Inquiry results shared with the affected dept.'s employees and summary prepared for general distribution .
4	Engineering Employee Services notified by response team of findings, conclusions, and recommendations. Logs incident into database.

NEW YORK

Metro-North chief admits to dropping ball in derailment

PETE DONOHUE

NEW YORK DAILY NEWS 11/06/2013 4:15 PM ET



Emergency workers arrive at the scene of a train collision, Friday, May 17, 2013 in Fairfield, Conn. Two Metro North commuter trains serving New York City collided during Friday's evening rush hour, sending 60 people to the hospital, including five with critical injuries, Gov. Dannel Malloy said.

Metro-North dropped the ball on track inspection and maintenance prior to a train derailment and collision in Connecticut that injured dozens and caused \$18.5 million in damage, the railroad's chief engineer conceded at a Wednesday hearing in Washington, D.C.

Robert Puciloski, appearing at a National Transportation Safety Board hearing, acknowledged there were red flags that should have triggered more aggressive action prior to the May 17 accident in which an eastbound train derailed and was then slammed by a westbound train on the adjacent track, injuring 76 people.

Six weeks before, Metro-North inspectors discovered that a pair of "joint bars" connecting two sections of rails were cracked, a condition that can occur when there is inadequate support beneath a section of track, according to hearing testimony.

The bars were replaced - but problems again emerged just two days before the accident. Inspectors reported a "pumping condition," meaning the ties and rails were moving up and down under the weight of trains, and "inadequate ballast support," according to hearing testimony.

"What does this tell you?," NTSB Chairwoman Deborah A. P. Hersman asked Puciloski.

"It's definitely saying there's a condition going on there that needed to be evaluated and taken care of more than what was done," Puciloski said. "That's definitely the case."

Puciloski also said he was surprised to discover that the inspectors who conducted the May 15 inspection did not include in their report to supervisors measurements of the track's movements to be compared against federal and Metro-North standards.

"They should be measuring and identifying what the condition is," Puciloski said. "I can't explain why they have

Inspectors told investigators they felt pressure from supervisors to complete inspections quickly and not impede the flow of trains carrying hundreds of thousands of commuters daily. The two track inspectors responsible for the Bridgeport stretch had to check 90 miles of track in about five hours, according to the testimony. They travel together on a vehicle that rides on the rails and have to check up to four sets of parallel tracks at a time, according to the testimony.



Robert Puciloski, Metro-North's chief engineer, testifies before the National Transportation Safety Board (NTSB) investigative hearing in Washington, Wednesday, Nov. 6, 2013, on two recent Metro-North Railroad accidents that occurred in Connecticut.

Metro-North's chief engineer also testified that the railroad has fallen behind on its self-dictated schedule to replace ties and resurface trackbeds.

Just 11 days after the derailment and collision, Metro-North foreman Robert Luden was struck and killed on the job by a passenger train in West Haven, Conn., routed onto a track that was supposed to be out of commission for a construction project.

Since the twin tragedies, Metro-North has launched a top-to-bottom overhaul of track operations and maintenance procedures, Pulciloski said.

Investigation records released yesterday, meanwhile, include the dramatic description of the May 17 derailment by that train's engineer, Steven Bauer.

Bauer recalled coming "around a curve and at the last second, I might have saw something that was unusual...that might have been a broke rail, and by the time I saw it, I was on top of it ... It definitely was too late to stop or anything."

The cars behind the engineer's cab went off the rails and "were on the ground," Bauer said. "There was all kind of screaming and yelling."

Part of the derailed train extended over the adjacent tracks, on which another train appeared.

"I'm screaming 'emergency, emergency' as I'm seeing the train come towards me," he said.

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CONVERSATION:**

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SUNDAY
BUSINESS

E2
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Charlie Widger dares
to push the limits.

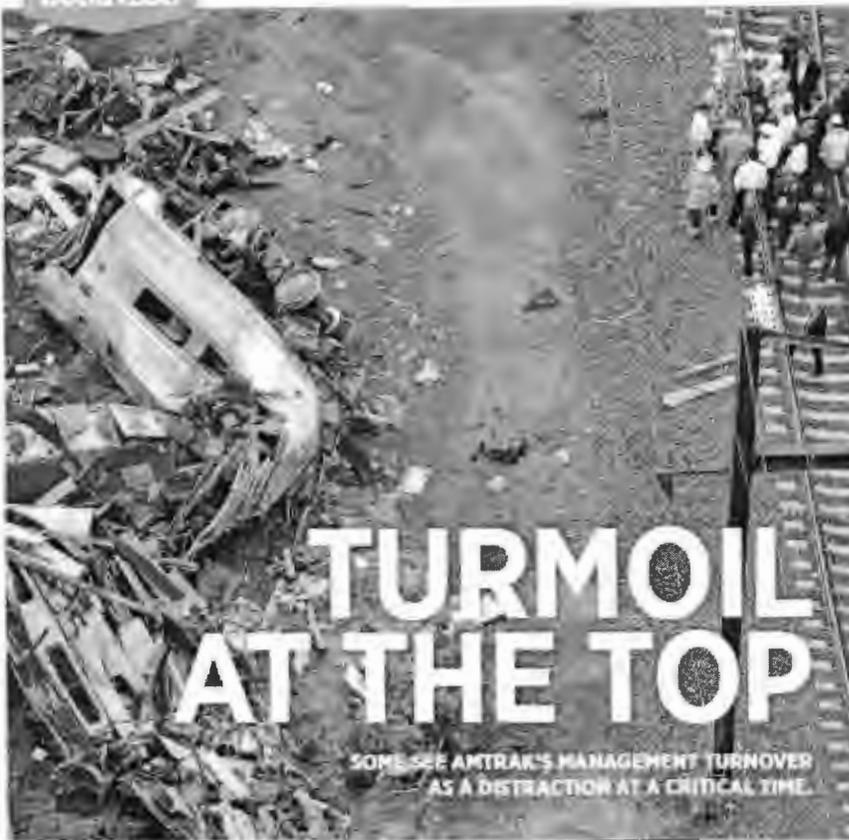
E5
What to look for in the
wearable tech world.

EXECUTIVE Q&A | E3
Toll Brothers CEO
talks "Pozatcher" site.

E9
Macy's and Men's
Wearhouse enter a
formal relationship.



SMALL
Firm gets its foot in the
door with doormats. E4



TURMOIL AT THE TOP

SOME SEE AMTRAK'S MANAGEMENT TURNOVER AS A DISTRACTION AT A CRITICAL TIME.

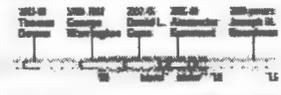
Scenes of the Post Richmond derailment. Former executives say Amtrak may not have been quick enough to fix issues after previous fatal accidents. **DEAN HANLEY / AP**

A s it prepares from its severe recession at the Northeast Corridor, Amtrak faces frequent management turnover and several changes in addition to chronic financial and political challenges. Former Amtrak executives say the turmoil at the top in recent years has disrupted railroad management and frustrated employees from their daily duties. Service changes, a former Federal Railroad Administration (FRA) director and now an adjunct professor at railway management at Michigan State University, said "rapid changes in management are never good, unless they're aimed at getting rid of underperforming people. Management turned in is of concern." With upper management in flux, former Amtrak executives say Amtrak may not have worked aggressively enough when deadly train wrecks in

A Changing Cast of Managers



Amtrak's presidents since 2011



other passenger railroads — on Oct. 1, 2014, in New York and on July 24, 2013, in Spain — is already built up to rail standards that could have prevented the May 12 derailment in Philadelphia that killed eight passengers and injured 200. But fatal accidents involved speeding trains that derailed going on two miles an hour. That's also what happened in the Philadelphia crash, as the steepen curve between Washington and New York.

"After that kind of accident, everybody is put on notice," said a former Amtrak executive, who requested anonymity, of the wrecks in New York and Spain. "You would think you would take a look at your maintenance system and say, 'We don't want that to happen here.'" "But people are more concerned with keeping their jobs than doing their jobs." **See E10B on E7**

E10
U.S. insurers aspire
to be acquired, with
tax cuts one goal.

E12
Pa. looks to beef up
standards for
home-improvement
work.

By Jason
Stoltz
in
Philadelphia Sports
Quick page with
Westman
in
John
Inside
Corrections

Navy Yard: 10 years into a growth plan



Office workers at the Navy Yard with Arsenal Central Green, a park opened last month that features tennis courts, exercise stations, and outdoor games. **AP/WIDE WORLD**

W hen company engineer Ben Hesse started working at the Philadelphia Navy Yard almost a decade ago, the 400-acre property was a virtual desert of concrete industrial buildings and abandoned parking lots. Many of those buildings were built up Urban Outfitters' headquarters, while the rest were offices are being stripped into office parks intended by such corporations as Goldman Sachs. "I love it," said Hesse, a research contractor for the U.S. Navy, as he stood a block east in a landscaped park that opened last month. "Wow, we have all these buildings." Ten years after the Navy Yard's first new offices opened, plans to transform the site from a hodgepodge of the city's haphazard industrial might into a vibrant new neighborhood. **See E10B on E11**

PHILADELPHIA PHILADELPHIA INQUIRER



May 23 crash scene. Only after the derailed did Amtrak quickly install automatic-braking circuitry on the northeast side of the Frankford Junction curve. (AP Photo/Philadelphian)

PHILADELPHIA (From E6)
Only after the Philadelphia deraison — as the result of the National Railroad Accident Board — did Amtrak quickly install automatic-braking circuitry on the northeast side of the Frankford Junction curve, which would have prevented the fatal deraison.

Amtrak had installed the braking system 10 years earlier on the southeast side of the curve and in several other tight curves on the Northeast Corridor, a notoriously slow-speed route if the engineer doesn't.

"Clearly one of the reasons in the Metro-North deraison [in 2014] could have been, let me take a look at all my sharp curves and make sure I have protection for all my sharp curves," said rail expert Alan Zarembo of the University of Delaware. "With the benefit of 20/20 hindsight, it would have been a good idea."

Amtrak president and CEO Joseph Boardman rejected the argument that Amtrak missed a chance to prevent the deadly Philadelphia deraison.

He said the lack of automatic-braking circuitry on the northeast side of the Frankford curve was based on Amtrak's assumption that trains wouldn't cover the curve at more than the 60-mph maximum speed allowed on the preceding straightaway.

"I'm sure that an engineer might actually accelerate into the northeast curve, but that's a discussion of culpability, not that we didn't anticipate it," Boardman said in a congressional hearing last month. "I wish a reasonable decision reached by reasonable experts under reasonable circumstances."

Amtrak spokesman said that after the deadly March 8 deraison on Dec. 4, 2011, in the Bronx, N.Y., Amtrak followed safety recommendations from the NRC, including employees of rules and safety engineering producing a video document on safety and maintenance and having supervisors hold face-to-face meetings with employees to discuss the rules reminder and share the video.

Amtrak also increased operational staff to verify that its rules were following the speed rules, said the spokeswoman, Christine Louch.

Boardman, meanwhile, defended Amtrak's management practices, the focus in a series of congressional hearings in the railroad's 50-year history as it merges business and operations and pleads a Congress.

The recent turnover has affected senior executives and key operational positions.

For example, Amtrak's chief engineer, Rodrigo Diaz, was on his job on May 11, one day before the deadly deraison of that rail in Philadelphia's then Frankford neighborhood.

He is based in Philadelphia to manage 4,000 people who maintain Amtrak's tracks, infrastructure, signals, switches, and bridge, and he is the third person in the critical post in two years.

Amtrak also has had three deputy chief engineers of public transit in two years, in charge of maintaining track, signals, and traction power.

In addition, in the last 3½ years, Amtrak has installed a new chief financial officer, chief transportation officer, controlling officer, chief of research and strategy, general manager for long-distance services, chief of customer services, general man-

COVER STORY

At Amtrak, turmoil at the top



Change is constant, but these aren't hurricanes. It's just a storm. There are additions to try to continue to try to improve safety, customer service, and financial outcomes. And we're making progress in all those areas.

Joseph Boardman, Amtrak President and CEO

ager of state-supported services, and public chief.

"Knowledgeable people are leaving, and no one really seems to want them, just as a case where great things are needed to expand the infrastructure," another former Amtrak executive, who also resigned unexpectedly, said.

Boardman disagreed, saying that many of the railroad's management changes are significant improvements, the result of the strategic plan he created in late 2012 as reorganizing Amtrak into four "business lines."

"Change is constant," the Amtrak CEO said. "In these times, however, there are additions to try to continue to try to move forward to improving our strategic plan ... to improve safety, customer service, and financial conditions."

"And we're making progress in all of those areas."

Boardman cited stability and revenue growth, new train orders, and declining fuel the last four years as evidence of this progress.

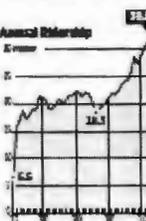
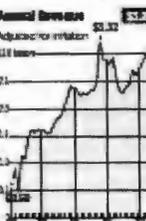
Amtrak carried 60 million passengers last year to 11th increase in 21 years, while its total revenue of \$4.2 billion, also a record.

The railroad's operating income from the federal government declined from \$65 million in fiscal year 2012 and has this year.

Amtrak has never been able to meet its congressional mandate to earn a profit. It reported \$4.4 billion from Congress this year to cover the operating deficit, as well as capital costs for construction, new vehicles, and debt payments.

Federal aid may be less next year. On June 3, the U.S. House approved a proposed budget that would cut Amtrak's funding by about 10 percent, or \$400 million, U.S. Sen. Tom Carper (D,

Amtrak's Rocky Rise



Amtrak's revenue and operating income.

organizational chaos and shifting management responsibilities.

Amtrak board Chairman Anthony Ciampi, a New Jersey lawyer who formerly chaired the Port Authority of New York and New Jersey and the New Jersey Economic Development Authority, said the changes have made Amtrak more efficient, though "it's a work in progress."

"I think we can run the company better than we do," Ciampi said. "I think we can be faster now than we did last year, and we're a better last year than the year before. We've definitely got one of the world's best."

Others, including the union that represents Amtrak workers who maintain the tracks, electric lines, and other equipment, are much more critical.

"Our senior managers have made us so uncertain in operating or building a railroad," said officials of the Brotherhood of Maintenance of Way Employees, which is in negotiations for a new labor contract.

"The union's struggle to maintain safe working conditions is hampered by Amtrak's senior management's lack of complete control and railroad non-performance," they said in a recent union statement.

The union also cited the problems with Amtrak's "Safe-3-Step" program launched in a re-organizational year by Amtrak's top-

per general Tom Howard.

Howard said the reported employee injuries at Amtrak increased from 661 in 2004, when the program began, to 1,011 in 2014, while employee injury claims increased by about 80 percent from 2004 through 2014, with a cost of \$16 million.

Boardman dismissed the union leadership's complaint as self-serving.

He said the union's "constant" has to do with negotiating the new contract and finding its way, and there's no safety here, he said. "We have very positive relations with the union."

About 80 percent of Amtrak's 60,000 employees are represented by 10 unions.

Howard, the Amtrak spokesman, said the employees' representative injury rate has dropped by 7 percent since October 2014, and the injury severity rate of employee injuries is down by 20 percent since then.

A Republican spokesman who headed the 2014 House bill that reauthorized Amtrak, Howard said, said the program was drafted by the House Transportation Committee and the Senate Commerce Committee. "That was the year he drafted the five-year strategic plan with a stronger focus on the business line and customer services."

These moves prompted the major overhaul of the management team at Amtrak, which through the decades has seen many such reorganizations.

Boardman's appearance may be in order because Congress has passed legislation that Amtrak board is to cut costs and increase revenue.

"It's got a board of directors of 100 people," said Howard, the passenger advocate, referring to Congress. "When you have a congressman deciding the price of a hamburger in a dining car, how can you possibly make the best decisions for the customer?"

"When you're in a railroad mode, you've got control of your destiny," he said. "I don't think where they are."

Boardman, the second-largest receiving producer in Amtrak's history, said he would target his predecessors to reorganize the railroad. "Because I went to a reorganized production."

He acknowledged that he has exceeded revenues from corporate managers and employees, but said more have embraced his changes.

Howard, the Amtrak inspector general, reported last year that Amtrak had made significant progress implementing its 2012 strategic plan and accomplishing "positive results," while noting that "a number of challenging reasons for its advancement."

These challenges include attracting and keeping key employees, "but this challenge will ultimately be experienced by employees in key positions critical to Amtrak's long-term success," according to the inspector general's report.

In another report, Louis T. Campagna, a former Federal Railroad Administration official and a railroads activist in the World Bank, said last year: "Over its history, Amtrak has had too many political appointees to survive but never enough to survive properly or to prosper in any single market and there is no convincing reason to think it will change significantly with the existing organizational structure."

Amtrak's 2015 revenue was \$4.2 billion, up from \$4.1 billion in 2014. Operating income was \$0.8 billion, up from \$0.7 billion in 2014. Total revenue was \$4.2 billion, up from \$4.1 billion in 2014. Operating income was \$0.8 billion, up from \$0.7 billion in 2014.

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For Big Railroads, a Carload of Whistleblower Complaints

Posted By [Stuart Silverstein and Brian Joseph](#) On October 21, 2015 @ 12:01 am In FairWarning Investigates, Whistleblowers, Workplace, Workplace Safety and Health | [10 Comments](#)

As both a veteran railroad worker and union official responsible for safety, Mike Elliott became alarmed when he learned of trouble-plagued train signals in his home state of Washington.

Signals, he said, at times would inexplicably switch from red to yellow to green – potentially creating confusion that could lead to a crash. Elliott raised that and other signal issues repeatedly with his managers at BNSF Railway Co. But eventually, Elliott concluded that “these guys are running me around in circles.”

So Elliott, 57, of Tacoma, Wash., pressed his concerns with the Federal Railroad Administration, summarizing the matter in a January 2011 letter. The FRA investigated, and discovered 357 safety violations, including 112 signal system defects.

Speaking up for safety, though, only made matters worse for Elliott at BNSF, where he already had clashed with managers. Within weeks the company fired Elliott from his job as a locomotive engineer – an act that a federal jury this summer ruled was illegal retaliation by BNSF against a whistleblower.

The June 30 decision by the Tacoma jury, which awarded Elliott \$1.25 million but is being appealed, spotlights the unjust punishment that critics say sometimes is meted out to railroad workers who report injuries or safety problems. These critics, including plaintiff lawyers and union officials, along with others who have examined railroad practices, say the harsh treatment reflects old, hard-line management tactics that persist in corners of the industry.

Under the 22 federal whistleblower laws administered by the Occupational Safety and Health



Mike Elliott, a former BNSF employee who sued the railroad for retaliation. (Photo by Michael Dwass)

Administration, American workers who disclose hazards or engage in other “protected activity” are shielded against retaliation by their employers. The protected activities vary by industry, but include reporting injuries, disclosing the misuse of public funds and refusing to perform dangerous tasks that would violate safety rules. OSHA protection covers, among many others, truck drivers, public transit employees, nuclear plant operators and, since 2007, railroad workers. Yet despite the broad safeguards for railroaders – or perhaps partly because of them – complaints of illegal retaliation abound in the industry.

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From October 2007 through June 2015, OSHA figures show, railroad workers filed more than 2,000 retaliation complaints, although the pace has slowed lately. Among the top 10 targets of complaints over the nearly eight-year period, seven were railroads, led by the two largest U.S. railroads, BNSF (409 complaints) and Union Pacific (360).

OSHA investigators and Labor Department administrative law judges repeatedly have upheld complaints against the railroads, more than half of which involve illegal retaliation against workers who report personal injuries.

In one such case an administrative law judge in 2013 ruled against Union Pacific, declaring: “The actions by Union Pacific have been so egregious in this case, and Union Pacific has been so openly blatant in ignoring the provisions of [federal law], that I find punitive damages are necessary to ensure that this reprehensible conduct is not repeated.”

Top Targets of Retaliation Complaints

Federal laws bar employers from retaliating against workers who reveal safety hazards or engage in other "protected activity," such as reporting injuries or disclosing the misuse of public funds. Workers can file retaliation complaints with the Occupational Safety and Health Administration. Below are the 10 leading targets of retaliation complaints in recent years. Railroad companies, shaded in green, are seven of the top 10. The figures cover the nearly eight-year period from Oct. 1, 2007 through June 30 of this year.

Company	Total
United States Postal Service	578
BNSF	409
Union Pacific	360
CSX	267
Norfolk Southern	247
Canadian National	151
United Parcel Service	139
Amtrak	119
AT&T	103
Metro-North	102

Source: Occupational Safety and Health Administration
 Credit: Michelle Ziomek & Stuart Silverstein / FairWarning

In January of that year, BNSF, without admitting wrongdoing, signed an unprecedented accord with OSHA after the federal agency alleged that several of the company's policies discriminated against injured employees. Among other things, the accord eliminated giving demerit points to workers who report injuries.

At the time, OSHA's chief, David Michaels, said in a statement that the accord "sets the tone for other railroad employers throughout the U.S. to take steps to ensure that their workers are not harassed, intimidated or terminated, in whole or part, for reporting workplace injuries."

Safety "a top priority"

Officials of the Association of American Railroads, the leading industry group, declined to be interviewed for this story. Instead, the AAR issued a brief statement saying, "The safety of employees and communities along the nation's 140,000-mile rail network remains a

top priority for the entire industry and is taken very seriously."

Union Pacific also refused interview requests. So did BNSF, which was created by the 1995 merger of Burlington Northern Inc. and Santa Fe Pacific Corp., and is now a unit of investor Warren Buffett's Berkshire Hathaway Inc. However, in a prepared statement after the jury decision in the Elliott case, BNSF said it "is proud of its safety culture and retaliation against safety complaints is contrary to how we operate and the training our people receive." The company added that Elliott "was dismissed for unrelated rules violations."

(On Oct. 1, the federal judge who heard Elliott's case, Ronald B. Leighton, a Republican appointed by George W. Bush, rejected BNSF's motion for a new trial. He ruled that the

disciplinary proceedings against the former employee were “seriously flawed” and that BNSF executives “displayed personal animosity against Mr. Elliott.”)

The alleged violations defy a key intent of federal whistleblower laws: to encourage employees who discover possible hazards to come forward before an accident happens. The potential value of such an early warning system is underscored by the deadly passenger rail accidents and oil train wrecks in recent years.

Joseph C. Szabo, who headed the FRA from 2009 until this January, said industry supervisors often are under “immense pressure” to curb costs by moving trains quickly out of rail yards. That, in turn, translates into pressure on rank-and-file workers “to ignore safety protocols and to just get the damn train out of town.” That’s why, Szabo said, it’s “critically important” that railroad workers are “very comfortable in doing the right thing without any fear of retribution.”

Award is canceled

Likewise, safety advocates say, the ability of workers to report injuries without jeopardizing their livelihoods is crucial in a field with many hazardous jobs. Railroads have relatively high rates of on-the-job fatalities – although the toll has fallen dramatically over the last three decades. What’s more, injury totals may be substantially higher than reported. In 2012, amid widespread suspicion that railroads were undercounting injuries, in part by pressuring workers not to report them, the industry dropped its 99-year-old annual Harriman safety award, which was largely based on employee injury reports.

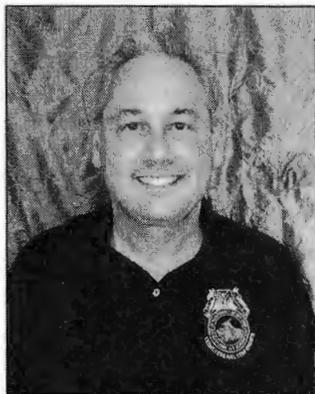
Norfolk Southern, which had won Harriman safety “gold award” 23 years in a row before the honor was scrapped, was the target of 247 whistleblower complaints during the nearly eight-year period tracked. That was the fifth-highest total among all U.S. employers.

Railroad whistleblowers under federal law must first file complaints with OSHA; they can pursue their cases through conclusion with the agency or, if their issues haven’t been resolved, after 120 days they can opt out and take their cases to court.



Railroad workers face pressure “to ignore safety protocols and to just get the damn train out of town.”

– Joseph C. Szabo, former head of the Federal Railroad Administration.



“I don't know why they're so hard on their employees ... I just don't get the railroads at all.”

– Mike Koziara, who won a lawsuit claiming that BNSF illegally fired him for reporting an on-the-job injury.

In fact, both OSHA and federal juries over the past year have issued a string of big decisions against railroads in cases brought by whistleblowers, although the companies have appealed many of the rulings. Those whistleblowers include:

–Mike Koziara, 55, who in March won an award of \$425,725 after a federal jury found that BNSF illegally fired him for reporting an on-the-job injury.

In September 2010, Koziara, a 32-year veteran of the company, was a section foreman, a job that put him in charge of track maintenance for a 40-mile stretch of rail along the Mississippi River in Wisconsin. The day he was hurt, Koziara was leading a group of employees tasked with removing large, wooden planks from a road crossing in East Winona, Wis., when he was struck in the left ankle by a 1,200-pound plank.

“It hurt,” Koziara said, but he didn’t think it was serious.

Three days later, after the 72-hour period allowed for reporting injuries was over, he went to see his doctor for a physical. There, she took one look at his leg and sent him for an X-ray. The results showed Koziara had a cracked tibia, or shinbone.

“I just don’t get the railroads”

He reported the injury to BNSF the next day. A few days later, the company charged him with failing to be “alert and attentive.” As punishment, he was given a 30-day suspension and a one-year probation. But it didn’t stop there.

While the railroad investigated Koziara's injury, it learned that he recently had given about 20 used rail ties to a local farmer. Koziara maintains he had gotten permission to take some ties – and that it otherwise would have cost the railroad money to dispose of used ties – but BNSF charged him with theft. He was fired on Nov. 9, exactly two months after he was injured.

"I don't know why they're so hard on their employees," said Koziara, who is now retired. "They'll get more out of us if they were just better to us. I just don't get the railroads at all."

–Steven Annucci, a coach cleaner for Metro-North Commuter Railroad. Last December OSHA found that he should receive \$250,000 in punitive damages, the maximum permitted in a railroad retaliation case.

Annucci hurt his knee in November 2011, when he tripped on a wooden board sticking up about six inches above a paved walkway in a train yard in Stamford, Conn. General Foreman Prena Beliveau drove Annucci to the hospital. On the way there, Annucci secretly recorded their conversation.

According to OSHA, Beliveau told Annucci that if you have an injury on your record at Metro-North you're not going to move up — you're going to be a car cleaner for the rest of your career. Beliveau also said everybody at Metro-North who gets hurt is written up for safety.

Animus is clear

Annucci reported the injury anyway. A couple weeks later, Metro-North formally reprimanded him for safety violations, although he kept his job. A year later Annucci was charged with failing to properly clean vomit from a train car, and was reprimanded again. In its December ruling, OSHA found that "animus is clear in this case" and ordered Metro-North to pay Annucci attorney's fees and \$10,000 in compensatory damages, along with the punitive damages.

–Union Pacific apprentice machinist Brian Petersen, 31, who was fired after a co-worker drove over his feet in the parking lot of a train yard in North Platte, Neb.. In a pair of rulings last November and February, the railroad was ordered to pay Petersen more than \$400,000 in back pay, attorney fees and damages. In the spring, the two sides reached a confidential settlement.

The case stemmed from a 2009 accident. Petersen claimed he was leaning against his car,



"In many cases, the [employee's] argument is simply, 'Well, the railroad managers didn't like the fact that I reported my injury so they were looking for an excuse to get me.'"

– James Whitehead, a management lawyer who has represented railroads.

checking his cell phone for messages, when a colleague roared into the space next to him. Union Pacific concluded that Petersen was inattentive and careless, then fired him a few days later when he was seen standing on some motors to write down their serial numbers when he should have been using a ladder.

Key Laws Protecting Railroad Workers

Rail Safety Improvement Act of 2008

Bars railroads from denying or delaying medical treatment of injured employees.

2007 Amendment to Railroad Safety Act

Protects workers from retaliation for reporting injuries and safety or security problems. Transferred oversight of whistleblower complaints from the Federal Railroad Administration to the Occupational Safety and Health Administration.

Federal Railroad Safety Act of 1970

Permits Secretary of Transportation, through the Federal Railroad Administration, to write safety regulations for the industry.

Department of Transportation Act of 1966

Created the Federal Railroad Administration to oversee train safety.

Railway Labor Act of 1926

Guarantees workers the right to organize and join unions.

Federal Employers' Liability Act

1908 statute allows railroad employees to sue for compensation for on-the-job injuries. Unlike "no fault" workers' compensation, the law requires claimants to prove that employer negligence caused their injuries.

Brian Joseph and Michelle Ziomek / FairWarning

The administrative law judge who considered the case in 2013 – the one who condemned Union Pacific for "egregious" actions – said the rules the company charged Petersen with breaking "are written in such a manner that anyone who is injured and reports it will have violated at least a part of one or more of them."

Experts often trace railroad managers' behavior to the way the industry emerged in the mid-19th century. Back then, many railroad officials came from the officer ranks of the Civil War armies. "It was traditionally an industry in which the boss is the absolute boss ... all the way up the hierarchy. You don't question the boss' authority," said historian Maury Klein, the author of a half-dozen books on railroads.

Paramilitary structure

Szabo, the former FRA chief, said railroads have embraced more enlightened practices over the past decade or so, but management still has elements of "a paramilitary structure, very much command and control."

To this day, railroads remain discipline-minded. Operating and safety manuals run hundreds of pages. Suspected violators, including workers who get hurt, face internal investigations.

Critics still echo Congressional investigators who in 2007 found that railroad companies, along with federal regulators, are “more oriented toward assigning blame to a single individual, without a thorough examination of the underlying causes that led that single individual to commit an error.”

In part, the hard-nosed culture reflects an effort to cope with the inherent dangers of rail transportation. “Small screw-ups can sometimes lead to somebody getting killed,” said Mark Aldrich, author of the 2006 book, “Death Rode the Rails.”

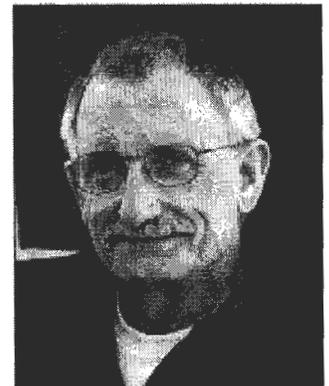
Safety has improved substantially in recent decades, Aldrich and other experts say, but the pressure on middle-managers to move as quickly as possible while also holding injuries to a minimum still creates incentives to ignore or conceal mishaps. “I don’t think this is a problem that’s going to go away,” Aldrich said.

Defenders of the industry say the volume of whistleblower cases isn’t a good barometer of actual wrongdoing because the discipline in dispute often stems from violations by the employees that are completely unrelated to their injuries.

“In many cases, the [employee’s] argument is simply, ‘Well, the railroad managers didn’t like the fact that I reported my injury so they were looking for an excuse to get me,’” said James Whitehead, a management lawyer who has represented railroads and who teaches employment law at the University of Chicago.

Experts say much of the worker litigiousness stems from a 1908 law that excluded railroad employees from state workers compensation systems. Instead, it required them to go to court if they wanted to seek compensation for on-the-job injuries. That created a strong market for personal injury attorneys who specialize in railroad litigation. And those lawyers were quick to file whistleblower complaints after Congress in 2007 and 2008 modified the Federal Railroad Safety Act, adding anti-retaliation measures for rail workers.

As a result of those measures, railroad employees often have a lighter burden of proof when they pursue retaliation claims than do workers in other fields. Likewise, railroad employees often have rights other workers lack, such as the ability to file complaints over alleged retaliation due to reporting personal injuries. They also can take claims to federal court if their cases aren’t resolved within 210 days – a prospect that railroads often dread. “There can be a lot of emotion in these cases, and they can be challenging cases to defend” when they go before a jury, Whitehead said.



“It was traditionally an industry in which the boss is the absolute boss ... all the way up the hierarchy. You don’t question the boss’ authority.”

--Maury Klein, a historian who has written about railroads.

Tensions smolder

Mike Elliott's case reflects the workplace tensions that sometimes smolder in the railroad industry. The beginning of the end for Elliott at BNSF came in March 2011, when he was chairman of the Washington legislative board of his union, the Brotherhood of Locomotive Engineers and Trainmen.

Elliott, an ex-Marine, got into a parking lot scuffle with Dennis Kautzmann, a supervisor who Elliott claimed harassed him for several years due to his safety advocacy. The parking lot incident, Elliott's lawyers argued in their successful federal lawsuit, was instigated as part of a scheme by BNSF managers to get Elliott fired because he triggered the federal safety investigation. They said Kautzmann had no other reason, after Elliott had clocked out for the day, for pursuing him from a BNSF building into the parking lot. (In his Oct. 1 ruling rejecting a new trial, Judge Leighton agreed that Kautzmann "staged" the conflict.)

Kautzmann, in a memo describing the March 2011 confrontation, said he followed Elliott into the parking lot simply to make sure Elliott understood the details about an upcoming engineer recertification evaluation. He said he brought along another BNSF employee "to assist me in having Mr. Elliott stop." Kautzmann said he then stepped in front of Elliott's car, but Elliott didn't stop and ran into him, throwing Kautzmann onto the car's hood. After that, Kautzmann said, Elliott angrily got out of the car and punched him in the mouth.

Kautzmann pressed charges after the parking lot incident, and Elliott was criminally prosecuted, but a jury acquitted him. Yet BNSF conducted two internal investigations, and issued decisions both times calling for Elliott's firing. A federal arbitration board upheld the findings.

At the federal trial challenging the firing, BNSF argued that Elliott's firing couldn't have been retaliation for reporting safety problems because it had little knowledge of Elliott's recent contacts with federal regulators.

But Elliott's lawyers presented evidence that BNSF was well aware that their client was in touch with regulators in the months before his firing. For instance, the lawyers pointed to an email about train signal problems that Elliott sent to a government official, and "cc-d" to company officials, in September 2010, several months before the federal inspections.

Despite winning the federal suit, Elliott expects a drawn-out appeals process, and he has decided against seeking reinstatement to his job at BNSF. Instead, he is working these days as a lobbyist and spokesman for the union. The role is crucial, he says, because his former co-workers at BNSF need someone to speak out about safety issues.

"The culture and the workplace fear of reporting injuries or safety problems hasn't changed," Elliott said. "Our members are still afraid."

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