TESTIMONY OF CHARLES R. EHLENFELDT

1115 West Deschutes Avenue
Post Falls, ID 83854
208-777-2576

BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
OCTOBER 25, 2007

INTRODUCTION

Mr. Chairman, Members of the Transportation and Infrastructure Committee, thank you for allowing me to testify today and listening to my personal experience of harassment and intimidation by the BNSF. This harassment and intimidation began after I was injured. I was investigated by the railroad on two separate occasions. I was prohibited from marking off work based on my injury. Finally, I was terminated for doing something that numerous other employees, including officials, had done. In fact, another employee engaged in the same activity as I had and to my knowledge, she was not terminated. The only difference is that I had an FRA reportable injury.

I hope that my personal experience of harassment and intimidation by the BNSF will prompt action by Congress to prevent future workers from having to endure harassment and intimidation.

FRA REPORTABLE INCIDENT- INACCURATELY REPORTED

I was hired by the BNSF in July of 1997. I remember being extremely happy that day and I planned on working for the railroad for my entire life. Everything changed when I injured my back on August 1, 2002 while operating a poorly maintained switch. Since the accident, I have had two major back fusion surgeries. From the date of the incident, I have been harassed, intimidated, and treated unfairly by the railroad. I was called into the Supervisor's office almost immediately after the incident. Both the Superintendent and Trainmaster were in the office. I had no Union representation or even a neutral person with me at that time. The two officials closed the door and drilled me with questions.

Photographs of the switch, which were taken on the date of the accident, were only given to me this past week, FIVE years after they were taken, and show the poor conditions. [Ex. 1]. The photographs show that the ties are hanging off the ground. The ballast is supposed to come up to the ties. I also gave a statement to a BNSF claim agent. The railroad states that they have lost the statement I gave along with a statement a co-worker gave. In addition the switch was tested on the day of the accident and showed that it was hard to operate and not within acceptable limits. [Ex. 2]. Despite these facts, the BNSF reported the cause of my injury to the FRA as human factor; they blamed me for the injury. [Ex. 3]. In my opinion, the BNSF did not accurately report my incident to the FRA.

ATTENDANCE/AVAILABILITY POLICY USED AS FORM OF HARASSMENT

The BNSF used my injury to assess trumped up rule violations against me. When I could not work due to my injury and pain in my back I attempted to call work and tell them I could not work due to my back injury. They BNSF would not allow me to stay home from work for that reason. I had to lay-off sick, rather than lay-off due to my on the job injury. This counted against me in BNSF's "attendance policy". I was eventually called to attend an investigation where they alleged I violated the attendance policy. It did not matter to the BNSF that I was injured on the job and was laying off due to the injury. It did not matter to the BNSF that two supervisor's could not explain the attendance policy to me prior to the trumped up charges being assessed against me. I had an on the job injury and the BNSF was going to punish me for that.

This practice may also lead to the inaccurate reporting to the FRA about the number of days an employee misses due to an injury. Rather than allowing me to lay off due to my on the job injury, the BNSF forced me to lay off sick.

HEALTHCARE INSURANCE USED AS A METHOD OF HARASSMENT

The BNSF eventually terminated me because I had an FRA reportable injury. This in turn cancelled my healthcare insurance and I was forced to take COBRA coverage which was $560.00 per month just for myself. The BNSF conveniently pulled my healthcare insurance just prior to my second back surgery.

While I was in the hospital having my second major back fusion surgery, the BNSF towed my car. They did not call and inform me that it was in jeopardy of being towed. I found out five days later from a fellow employee that the BNSF towed my car. I had to go to the impound lot and pay about $600.00 to recover the vehicle.

PERMANENT DISMISSAL USED AS A METHOD OF HARASSMENT

The most egregious form of harassment and intimidation came when the BNSF terminated me. I believe they terminated me because of my at work injury on August 1, 2002. On January 6, 2006, while working on a train I heated a can of soup on the sidewall heater. I had to do this because there is no other way to heat food on the train. As an engineer we often work twelve hour days. When I opened the can of soup it splashed on my face and I sustained some second degree burns. I reported this incident to the BNSF as I am required to do.

I went to the emergency room for the burns. I initially turned down pain medication from the doctor because I was worried that the BNSF would fire me for having drugs in my system. This was based on the prior harassment of the BNSF. I eventually was given morphine. While at the emergency room and on morphine two BNSF officials questioned me about the incident and wanted me to sign, what I believe, was a release of liability form.

The BNSF then required me to attend an investigation concerning this incident. Prior to the investigation beginning, I gave the railroad a doctors note that I was unable to work for the BNSF due to my back injury. [Ex. 4]. In what is more than a coincidence, I was permanently terminated after the investigation.

In the investigation, Randy Cartwright, Roadforeman, a BNSF official, admitted that it was common practice to heat food on locomotive equipment, including sidewall heaters. [Ex. 5]. Mr. Cartwright had been with the railroad since 1969 and he himself had used locomotive equipment to heat food. [Ex. 5]. To my knowledge he was never investigated by the railroad. He also testified that he knew that other people had used the sidewall heater to heat food in the past. [Ex. 5]. Despite the railroads knowledge, for many years, of this common practice there was never a rule against this practice and employees were never told not to use the sidewall heater. [Ex. 5]. In his deposition, Mr. Cartwright could not explain, in his position as a railroad official, why I was fired and he was not when we both had engaged in the same common practice. [Ex. 6].

The BNSF did issue a specific rule after two incidents occurred in the same month, my incident being one of those. [Ex. 7]. This was the first rule telling employees not to engage in this common practice that the railroad knew about. As I just stated, another employee heated food on a sidewall heater the same month as I did. To my knowledge, this employee was offered a waiver, this option was not available to me. To my knowledge this employee was not terminated. The only difference is that I had a prior FRA reportable injury.

This FRA reportable incident automatically places me in a compromised state of employment. I am aware that the BNSF has a risk assessment program. Under this program, employees are given 40 points if they are involved in an FRA Reportable incident. [Ex. 8]. Employees are only given five points if they are involved in an incident that is NOT FRA reportable. [Ex. 8]. I was involved in an FRA reportable incident. A BNSF Trainmaster told me I was a red employee because of my back injury.

EFFECT OF THE HARASSMENT, INTIMIDATION, & UNFAIR TREATMENT OF THE BNSF

I believe the facts of my case show that the BNSF harassed and intimidated me because I was involved in an FRA reportable incident. At a time when I was physically hurting; I had two major back surgeries and was in significant pain; the BNSF made the conscious decision to kick me while I was down. They cut my healthcare insurance during the time I was scheduled to have my second major back surgery and while I was in the hospital they towed my car. They brought trumped up charges against me on two occasions and assessed discipline both times. The second trumped up charge resulted in permanent dismissal. I was dismissed for heating soup on a sidewall heater, a common practice that the railroad knew about. A practice which no rule prevented. A practice that company officials had done. A practice that another employee did the same month, again, to my knowledge that employee was not permanently dismissed. The only difference between my case and the numerous other employees that have done the same thing,

including company officials, is that I had an FRA reportable incident.

If I knew the level of harassment and intimidation that the BNSF would put me through when I had my FRA reportable injury in 2002, I would not have reported my injury. The level of harassment and intimidation that I have testified to today far outweighs any benefit from reporting my injury.

I have been told by fellow employees that the BNSF has used my personal case of harassment and intimidation as a method to deter the reporting of injuries. Fellow employees have told me that statements such as "look at Ehlenfeldt, if you turn in an injury you know you'll have a target on your back", "look at Ehlenfeldt as an example of someone who retains an attorney for a personal injury . . .see where he is working now", and "You had better think twice about turning in an injury unless you want to be fired like Ehlenfeldt" have been said by BNSF officials.

Mr. Chairman, and members of the Committee, thank you for listening to my story and taking on the issue of railroad harassment and intimidation. Individual employees, such as myself, are no match against the large railroad corporations, such as the BNSF. I believe we need congressional action to solve this serious injustice. Thank you.

Charles R. Ehlenfeldt

Switch pressure test at MP 1401.6
08/01/02.
Post injury: Ehlenfeldt

EXHIBIT

1

Switch Pressure Test Parameters

1. Ensure that a switch is calibrated for the green range of forces under the following circumstances:

    - When inspecting a switch during regular turnout inspections

    - When installing a new switch and again within 1 week after **Yellow range:** Forces shown in the chart below. Schedule the switch for maintenance.

    - **Red range:** Forces above the yellow range (see the table below). The switch must be taken out of service per instructions in section 9.1.3A.

Yellow Range Force Measurements for Hand Operated Switches			
	Handle Position		
	Lift Up	**Middle (Across)**	**Push Down**
Torque Wrench Dial Reading (Ft-Lbs)	30-130	60-90	80-115

* Note: See Figure 9-5 for the correct handle position.

EXHIBIT

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Three man inspection and pressure test report, well within parameters

L.S.-Sw#	Date	Yard	M.P.	Stand Type	Point Type	Stand Model	Switch Location-Main
036-234	8/1/02	Boyer	1401.26	High target	19'6" welded 132 lb.	Racor 36H tri-handle	thur on Main

Switch Location-Turnout	PreTest Main / Turnout	Test Main / Turnout	Frog	gc
in Boyer Yd New port	20-60-60 / 20-55-70	20-60-60 / 20-55-70	rbm, good,tighten	54 1/2"

Work Done	Tested by	Weather	Note	Last tested
	DGF,CJF	WARM	3 MAN TEST. INJURY ON 8-1-02 AT 2AM.	6/5/01

FROM FORM FRA F 6180.55A

CASUALTY RECORD			
RAILROAD:	BNSF Rwy Co. [BNSF]	**INCIDENT NUMBER:**	NW0802001
DATE:	08 /01 /2002	**TIME:**	2:10AM
STATE:	Idaho	**COUNTY:**	BONNER
TYPE PERSON:	Worker on duty - employee	**AGE:**	30
EMPLOYEE JOB:	Road freight conductors (local and way freight)		
INJURY:	Sprain/strain, lower back		
DAYS ABSENT:	86	**DAYS RESTRICTED:**	237

EMPLOYEES TESTED FOR ALCOHOL USE:	NONE REPORTED
NUMBER OF POSITIVE TESTS:	
EMPLOYEES TESTED FOR DRUG USE:	NONE REPORTED
NUMBER OF POSITIVE TESTS:	
EMPLOYEE TERMINATION/PERMANENT TRANSFER:	NO
EXPOSURE TO HAZARDOUS MATERIAL:	UNK/NA
FRA FORM 6180-54 FILED:	NO
FRA FORM 6180-57 FILED:	NO

CIRCUMSTANCES	
PHYSICAL ACT:	Lining switches
EVENT:	Overexertion
RESULT:	Switch
CAUSE:	Human factor
LOCATION	
SITE:	Yard
ON TRK EQP:	Did not involve ontrack/other equipment
WHERE:	On track
NARRATIVE	

EXHIBIT

3

DR. RICHARD R. SAMUEL, M.D., A.B.F.P.
8680 N. HESS STREET, SUITE 1
HAYDEN, ID 83835
(208) 772-5204 LIC # M7185

NAME Charles Ehlenfeldt AGE

ADDRESS DATE 2/21/06

Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND

℞ To whom it may concern — Mr. Ehlenfeldt saw me today and may remain to work based on [illegible] burns that are healing well. However, he continues to have significant back pain and (R) LE radiculopathy which work will aggravate at this point. He therefore can't return to his job description at least until his neurosurgery appointment March 2, 2006.

Refill # NR

Brand Only ☐

"Brand Medically Necessary" must be handwritten by the practitioner for medicaid patients or product selection will be allowed.

6AFP1140582

EXHIBIT

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4

Investigation Data Worksheet

Audio File: NWE-2226-EHLENFELDT_Tape1_86min.wav (38724)
Submitted by: WARD ANGELOS
Pages: 25 (excluding cover page)

Date Submitted: 23-Feb-06
Date Draft copy of Transcript is required: 02-Mar-06
Final Transcript Due Date: 07-Mar-06

BNSF FILE NUMBER: NWE-TYE-02222006-1010-1170976-EHLENFELDT

Cross Reference Number: 0
Cost Center: 61588
Division Code: NWE
Department Code: TYE

Conducting Officer: WARD ANGELOS
Email: WARD.ANGELOS@BNSF.COM Phone: 509-546-0107

INVESTIGATION INFORMATION
Location: SPOKANE, WA Date: 22-Feb-06 Time: 10:10
Date of Incident: 10-Jan-06 #Exhibits: 14 #Pages: 25

PURPOSE OF INVESTIGATION:
Injury on duty

Principal: CHARLES R EHLENFELDT EID: 1170976 Craft: ENGINEER

Representative: JAMES J LARKIN Title: LOCAL CHAIRMAN Org: UTU

Witness: RANDY D CARTWRIGHT Title: ROADFOREMAN
Witness: JEFF B WHITACRE Title: HAUSER OPERATIONS MANAGER
Witness: CLARK T SIMMONS Title: TERMINAL MANAGER

EXHIBIT
tabbies
5

1 WARD ANGELOS: If that' s indeed true is that the correct
2 use of a sidewall heater on a locomotive?
3 RANDY D CARTWRIGHT: No, it is not.
4 WARD ANGELOS: I believe you stated in earlier testimony
5 that you tried to call Mr. Ehlenfeldt twice on the day
6 following his injury, is that correct?
7 RANDY D CARTWRIGHT: That is correct.
8 WARD ANGELOS: And what number did you use to contact him?
9 RANDY D CARTWRIGHT: I' m not sure, I used the CC Employee
10 where they have their latest phone numbers listed.
11 WARD ANGELOS: So it was the number of record in CC
12 Employee?
13 RANDY D CARTWRIGHT: Correct.
14 WARD ANGELOS: Thank you Mr. Cartwright.
15 CHARLES R EHLENFELDT: ____
16 WARD ANGELOS: Mr. Ehlenfeldt, try not to whisper, it
17 confuses the transcriptionist.
18 CHARLES R EHLENFELDT: Alright.
19 WARD ANGELOS: Mr. Larkin, anything further?
20 JAMES J LARKIN: Sidewall heaters, engine reservoirs, have
21 you ever known anybody to heat food on those in the past?
22 RANDY D CARTWRIGHT: Yes.
23 JAMES J LARKIN: Has it been standard practice for years?
24 RANDY D CARTWRIGHT: I don' t know about standard practice,
25 but it' s been used a lot.
26 JAMES J LARKIN: Again how long have you been an Engineer

1 and Fireman?

2 RANDY D CARTWRIGHT: Since 1969.

3 JAMES J LARKIN: Was not probably one of the first things

4 you were shown how to heat up your can of soup on the

5 water reservoir in a GP7F9?

6 RANDY D CARTWRIGHT: Wouldn't say it' s the first thing I

7 ever learned but...

8 JAMES J LARKIN: Close?

9 RANDY D CARTWRIGHT: I was, I wouldn't say I was taught but

10 I knew how to do it.

11 JAMES J LARKIN: So this has been a common practice

12 throughout the years, heat food?

13 RANDY D CARTWRIGHT: Yes.

14 JAMES J LARKIN: Up until this time, when this safety alert

15 dated January 23rd, 2006 was put out and also the General

16 Notice 905, dated January 23rd, 2006, has anybody taken

17 exception to that, to your knowledge?

18 WARD ANGELOS: Can I ask that you enter those into

19 transcript Mr. Larkin?

20 JAMES J LARKIN: Yes.

21 WARD ANGELOS: We' ll enter Safety Alert...

22 JAMES J LARKIN: Excuse me.

23 WARD ANGELOS: Yes, sir?

24 JAMES J LARKIN: Take this one, that' s one' s got email

25 addresses on it.

26 WARD ANGELOS: Okay.

1 IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT
2 OF THE STATE OF MONTANTA,
3 IN AND FOR THE COUNTY OF YELLOWSTONE
4
5 CHARLES R. EHLENFELDT,
6 Plaintiff,
7 vs. Case No. DV 05-0322
8 BNSF RAILWAY COMPANY,
9 a Delaware corporation,
10 Defendant.
11 _____
12
13 DEPOSITION OF RANDY CARTWRIGHT
14 Taken on behalf of the Plaintiff
15 March 14, 2007
16 - - -
17 BE IT REMEMBERED THAT, pursuant to the Washington Rules of
18 Civil Procedure, the deposition of RANDY CARTWRIGHT was
19 taken before KATHERINE S. VANGRINSVEN, a Certified
20 Shorthand Reporter, #3085, on March 14, 2007, commencing at
21 the hour of 2:18 p.m., the proceedings being reported at
22 3810 East Boone, Spokane, Washington.
23
24
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EXHIBIT
tabbies
6

1 Q As an official, will you look at the camera and
2 tell the jury why you, with a personal injury on a
3 railroad, and you've also acknowledged that you've done the
4 exact same thing, put a soup can on an apparatus in an
5 engine that it was not designed for, why you're still
6 working for the company and why Mr. Ehlenfeldt's fired.
7 MR. SIMPSON: Objection, foundation.
8 MR. JUNGBAUER: Just look at the camera and tell
9 them why.
10 MR. SIMPSON: I need that question again.
11 MR. JUNGBAUER: Yeah. Would you read that back
12 to him, please.
13 (Whereupon, the pending question was read back.)
14 BY MR. JUNGBAUER:
15 Q Yes. Now look at the -- tell the jury that,
16 please.
17 A I can't.
18 MR. JUNGBAUER: I have no further questions.
19 MR. SIMPSON: We'll reserve.
20 MR. JUNGBAUER: Okay.
21 THE VIDEOGRAPHER: Here marks the end of the
22 videotape deposition of Randy Cartwright. We are off the
23 record at 2:23.
24 (Whereupon, the deposition concluded at
25 2:23 p.m.)

1 CERTIFICATE
2 .
3 I, Katherine S. VanGrinsven, do hereby certify
4 that pursuant to the Rules of Civil Procedure, the
5 witness named herein appeared before me at the time
6 and place set forth in the caption herein; that at
7 the said time and place, I reported in stenotype all
8 testimony adduced and other oral proceedings had in
9 the foregoing matter; and that the foregoing transcript
10 pages constitute a full, true and correct record of such
11 testimony adduced and oral proceeding had and of the
12 whole thereof.
13 .
14 IN WITNESS HEREOF, I have hereunto set my
15 hand this 16th, March, 2006.
16 .
17 .
18 _____ _____
19 Signature Expiration Date
20 .
21 .
22 .
23 .
24 .
25 .

Safety Alert

January 23, 2006 **A-2006-03**

Burns from Hot Soup

Date and location of incident
January 2006, Northwest Division

Description of incident
In two separate incidents this month, BNSF employees sustained second-degree burns when cans of soup that had been heated on the sidewall heaters of their locomotives exploded as the employees opened or prepared to open the cans. The sudden and unexpected explosion of these soup cans caused the heated contents to be discharged onto exposed skin of their faces and hands. Heating items in such as manner should never be attempted because the content's temperature cannot be determined or controlled.

Preventive Measures
Employees should prepare soups and other hot liquids before going on duty and transfer them to a thermos in a controlled environment in their home or hotel kitchen. The liquids can then be transferred to the thermos top or other appropriate container for cooling and consumption when the movement of on-track equipment stops.

Do not use locomotive sidewall heaters **or any other** locomotive equipment to heat or prepare food. Locomotive sidewall heaters are not designed or intended to be used to heat or prepare food. Such use alters the intended function of these appliances and is not permitted.

Remember, all BNSF employees are empowered to work safely. If you think a condition is unsafe, protect it, report it, assist in correcting it, or use your expertise to provide a better and safer way.

REMEMBER - All BNSF employees are empowered to work safely. If you think a condition is unsafe, protect it, report it, assist in correcting it, or use your expertise to provide a better and safer way.

EXHIBIT
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7

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Risk Identifiers Based On The Following Points

Incident(s) Date	POINTS					
	Reportable Injury (excludes 9A/B)	Non-Reportable Injury (excludes 9A/B)	Reportable Human Factor Accident (excludes H312)	Non-Reportable Human Factor Accident (excludes H312)	Ops Testing Failure (excludes 600 series)	Ops Testing Failure (600 series, including 699)
0 – 12 months	40	5	30	15	20	5
13 – 36 months	25	3	15	8	13	3
37 – 60 months	10	1	5	3	7	2
60 + months	0	0	0	0	0	0

Listed below are the thresholds for each work group.

	Red	Yellow	Green
MOE	25+	6-24	0-5
MOW	28+	10-27	0-9
OTHER	11+	1-10	0
TYE	47+	24-46	0-23

EXHIBIT

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8