

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of:

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MAINTENANCE-OF-WAY EMPLOYEE
FATALITY, BNSF RAILWAY, MIDWAY
SUBDIVISION, MINNEAPOLIS,
MINNESOTA ON MAY 25, 2015

Docket No.: DCA-15-FR-011

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Interview of: JOHN PALACIOS

Holiday Inn Downtown
St. Paul, Minnesota

Wednesday,
May 27, 2015

The above-captioned matter convened, pursuant to notice.

BEFORE: RICHARD HIPSKIND
Investigator-in-Charge

APPEARANCES:

RICHARD HIPSKIND, Investigator-in-Charge
Chairman, Track and Engineering Group
National Transportation Safety Board

STEPHEN JENNER, Ph.D., Human Performance Investigator
National Transportation Safety Board

DALE JOHNSON, Safety Inspector-Track Division
Federal Railroad Administration

GEORGE LOVELAND, Vice General Chairman
Brotherhood of Maintenance of Way Employee Division

THOMAS JULIK, Safety Inspector-Track Division
Federal Railroad Administration

KEVIN WILDE, General Director-System Safety
BNSF Railway

JOHN SMULLEN, Safety Inspector-Operating Practices
Federal Railroad Administration
(Observer)

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I N T E R V I E W

1
2 MR. HIPSKIND: Good afternoon, everybody. My name is
3 Richard Hipskind, and I am the investigator-in-charge and the
4 track group and engineering -- and the Track and Engineering Group
5 Chairman for NTSB for this accident. Just a second.

6 We are here today on May 27th, 2015, at the Holiday Inn
7 Downtown in St. Paul, Minnesota, to conduct an interview with
8 Mr. John Palacios. I got that wrong, didn't I? He's -- please
9 pronounce it for me.

10 MR. PALACIOS: John Palacios.

11 MR. HIPSKIND: Palacios. Thank you, John. Who works
12 for BNSF Railway, or BNSF.

13 This interview is in conjunction with NTSB's
14 investigation of a maintenance-of-way employee fatality on BNSF's
15 Midway Subdivision in Minneapolis, Minnesota, near Minneapolis
16 Junction on May 25th, 2015. The NTSB accident reference number is
17 DCA-15-FR-011.

18 Before we begin our interview and questions, let's go
19 around the table and introduce ourselves. Please spell your last
20 name, and please identify who you are representing and your title.
21 I would remind everyone to speak clearly and loudly enough so we
22 can get an accurate recording. I'll lead off, and then pass off
23 to my right.

24 Again, my name is Richard Hipskind. The spelling of my
25 last name is H-i-p-s-k-i-n-d. I am a Railroad Accident

1 Investigator, Investigator-in-Charge, and the Track and
2 Engineering Group Chairman for this accident.

3 DR. JENNER: Stephen Jenner, J-e-n-n-e-r. I'm a Human
4 Performance Investigator with the NTSB.

5 MR. JOHNSON: I'm Dale Johnson, J-o-h-n-s-o-n. FRA
6 Safety Track Inspector.

7 MR. LOVELAND: George Loveland. Last name is spelled
8 L-o-v-e-l-a-n-d. Vice General Chairman, Brotherhood of
9 Maintenance-of-Way Employee Division.

10 MR. JULIK: My name is Thomas Julik. The last name is
11 spelled J-u-l-i-K. I'm a Safety Inspector in the Track Division
12 for FRA.

13 MR. SMULLEN: I am John Smullen, S-m-u-l-l-e-n, with the
14 Federal Railroad Administration, Operating Practices Safety
15 Inspector. I am posted here as an observer today.

16 MR. WILDE: Kevin Wilde, W-i-l-d-e. General Director of
17 System Safety, BNSF Railway.

18 MR. HIPSKIND: And, Mr. Palacios, would you introduce
19 yourself to the record?

20 MR. PALACIOS: Yes. My name is John Palacios, spelled
21 P-a-l-a-c-i-o-s. I'm with BNSF Railway. I'm the Director of
22 Engineering Safety.

23 MR. HIPSKIND: Okay. John, do you mind if we continue
24 our discussion on a first-name basis?

25 MR. PALACIOS: Yes, please.

1 MR. HIPSKIND: And that way I will not butcher your last
2 name --

3 MR. PALACIOS: Thank you.

4 MR. HIPSKIND: -- so many times for the record. Okay.

5 MR. PALACIOS: Thank you.

6 MR. HIPSKIND: No, thank you. You have sat in on the
7 four way maintenance-of-way interviews today. Is that correct?

8 MR. PALACIOS: Yes.

9 MR. HIPSKIND: And so you know the questions I'm going
10 to ask you. Do you want to have a representative with you here
11 today?

12 MR. PALACIOS: No.

13 MR. HIPSKIND: Okay. And do we have your permission to
14 record this interview -- this dialogue with you, today?

15 MR. PALACIOS: Uh-huh. Yes.

16 MR. HIPSKIND: All right.

17 INTERVIEW OF JOHN PALACIOS

18 BY MR. HIPSKIND:

19 Q. John, why don't you take us through your railroad
20 history. And give me some idea of when you hired on -- I know
21 that was a long time ago -- but some of the highlights of your
22 career, job titles, and bring me up to date and how long you've
23 been in your current position, please.

24 A. Okay. I started on the former Santa Fe Railroad in
25 January 26th, 1981, as a trackman. I spent a couple of years in

1 college, and then got hired on the railroad. I worked as a
2 trackman, truck driver, machine operator. I then got promoted to
3 a foreman, gang foreman, section foreman in '83. And '85, I --
4 '86, I became a track supervisor.

5 In '95, I became an assistant roadmaster on the exempt
6 side, in California. In '97, I became a roadmaster. I was a
7 roadmaster for 9 years. 2005, I became manager of roadway
8 planning. I oversaw all the big gangs and their locations they
9 worked, and the money spent on capital projects. In 2007, I
10 became ADMP, which is the assistant director of maintenance
11 productions, which I oversaw the execution of steel gangs, tie
12 gangs, production gangs, construction gangs. In 2008, I became a
13 division engineer in Flagstaff, for a short duration. In 2009, I
14 became division engineer in Northern California, in Fresno. In
15 2012, December, I became the director of engineering safety, which
16 is the position I'm in right now.

17 Q. Okay. Thank you for the detail and the brevity there,
18 John. I think the best way for us to proceed here is for me to
19 simply ask you your current duties and responsibilities, and kind
20 of step out of your way and sit back and hear what you have to
21 say.

22 A. Okay. As the director of engineering safety, I oversee
23 safety programs, safety initiatives for the engineering team on
24 the BNSF. I oversee the safety aspect of the safety assistants,
25 which there is 56 of them systemwide. I facilitate the SACP, and

1 I also facilitate the Safety Advisory Committee, which are groups
2 that work with the general chairman on safety issues; both groups
3 do. I oversee the engineering safety leadership program, safety
4 initiatives, on the engineering side.

5 I also oversee the engineering hand and power tool team,
6 which is a safety program that goes out and handles tool issues,
7 any kind of safety programs. We're -- we've got a 35 member team,
8 and we go out and look at employees' trucks on the ground. We
9 look at facilities. We look at tools they use. We try to make
10 hydraulic and hand tools safer.

11 I oversee the execution of the -- the field execution of
12 our Approaching Others safety program. And that's a system
13 program for all departments. I oversee the execution of that in
14 the field. So I spend a lot of time in the field.

15 I think I've covered most of what I do.

16 Q. Okay. And one of your last comments was -- that brought
17 to my mind that I should ask you -- characterize for me percentage
18 of in the office and field, so I kind of get a flavor for that.

19 A. I would say I'm in the field 70 percent of the time and
20 30 percent in the office. Which doesn't always make Kevin happy,
21 but --

22 Q. All right. And earlier you had mentioned you have a
23 systems position. In other words, it's all of BNSF that you look
24 after?

25 A. Right.

1 Q. And in that context you mentioned something about 56
2 assistants.

3 A. Yes. Safety assistants.

4 Q. Safety assistants. Sorry. I left out the word safety.
5 I wonder, John, are those direct reports to you or how should I
6 understand that organization of, of all that?

7 A. They report directly to the general director of
8 maintenance on which territory they're working on. But I ensure
9 that they are training the proper safety to the scheduled forces
10 on the ground, and I also make sure that I work in conjunction
11 with the rules -- director of rules, out of Manexa, to make sure
12 that these guys are training our scheduled folks on the proper, on
13 the proper regulatory and BNSF safety initiatives.

14 Q. Okay. And you did bring up the title of the director of
15 rules.

16 A. Uh-huh.

17 Q. And so elaborate on that a little bit, about how your
18 job is different from that job.

19 A. He sets the safety program, the rules training, what's
20 taught in the rules training, the questions that go on the test.
21 He also oversees some of the regulatory programs that the safety
22 assistants are teaching to the scheduled folks. And that's the
23 primary job of the safety assistant, is -- all he does is he's a
24 liaison between the scheduled folks and the management folks. He
25 handles any issues, safety issues that are occurring on his

1 particular beat. And the safety director, pretty much, we meet
2 with those guys four times a year and we -- which is a week-long
3 meeting with them. And we give them the direction on what to
4 train, what safety initiatives to support.

5 Q. And as part of these quarterly meetings with other
6 managers out involved with safety on BNSF, I'm going to guess that
7 some of the stuff you cover from -- periodically are changes,
8 changes in rules and field applications?

9 A. I make sure that the men understand that, but most of
10 that comes -- if any -- if there's any rules changes, that'll come
11 out from system. And I'll just make sure that the guys understand
12 it and -- when they're out in the field.

13 Q. Okay. Fair to say that you move around a lot?

14 A. I do.

15 Q. Is there a method to all of that? I mean, in terms of a
16 goal of coverage, being in all the right places, or --

17 A. I try to spend my time on all of our regions equally. I
18 drop in on job safety briefings to ensure that they're performed
19 in an engaging, exposure-based job briefing like we have taught
20 them to do. I drop in on their -- when they're out working on the
21 track and just look at their safety work practices.

22 Q. Okay. Let's talk about your understanding of, maybe,
23 the last 5 to 10 years -- I want to go back around 5 or 10 years
24 ago with regard to adjacent track protection. Now, if you guys
25 call it something different, you can school me on that. But I

1 think you know and I think I've shared with you that I'm curious
2 to have a very detailed discussion about what I would term is the
3 evolution; if wording has changed, if practices or procedures have
4 changed. This is why we want to interview you. We want to
5 understand that in great detail.

6 A. Okay.

7 Q. So are you willing to take that on?

8 A. Yes.

9 Q. Okay. The floor is --

10 A. I'll tell you what I know.

11 Q. Okay. Sure, sure. Go ahead.

12 A. Okay. So -- and we're going to talk about on-track
13 safety and --

14 Q. We're going to talk about whatever you want to talk
15 about.

16 A. Okay. So on-track safety or roadway worker safety,
17 which is the same thing to us, for the last -- going back 10
18 years, I would say the last 8 of those, 9 of those have been
19 taught by the safety assistants. It was part of their program.
20 It was part of safety certification. Safety certification is
21 probably 8 to 10 modules, which included roadway worker or on-
22 track safety, and that was taught by the safety assistants to the
23 men.

24 Just recently, we moved on-track safety into the rules
25 set. So now the safety assistants no longer teach it. It's

1 taught by the rules field manager. And that included the changes
2 that were done with the adjacent track rule last year, which went
3 in effect -- I believe it was in July. You guys are the -- you
4 guys wrote it -- July 1st, right? Yeah, it went into effect July
5 1st. So now that is all taught by a manager of rules, which all
6 he does is field training. That's all he does, is go out and
7 teach rules.

8 And I know earlier we discussed gang start-ups. These
9 rules guy will hit the gang start-ups, when the gangs are starting
10 up. But -- and when he's not doing gangs at gang start-up, he'll
11 -- he's got a schedule on his particular division. And there's 13
12 of these guys, and they'll hit -- they're make sure that all,
13 everybody gets trained by the rules here. And he'll set up the
14 training dates. And they're usually a 1-day deal, with a test. I
15 think it was 30 questions this year. This year's program has 30
16 questions.

17 Q. And to support the documentation on all this training,
18 do you log who attends and do you maintain a database about who
19 attended what training where, the employee's name and all that?

20 A. Yes. That is recorded by the rules trainers.

21 Q. Okay. So, if we ask for training records for the five
22 employees that were on this gang performing this task of the
23 unloading, that's something that you could share with us, the
24 investigation?

25 A. Yes.

1 Q. All right. I will make that a request with you and
2 BNSF's party spokesman, Kevin Wilde, as part of this interview,
3 this discussion.

4 A. Okay.

5 Q. Okay. That we would like those records for the five
6 going back a few years. We want to see the pattern, and we want
7 to understand who was where and what kind of training they got
8 exposed to.

9 A. So, like I said, I hope I answered your question about
10 how on-track safety -- 10 years going forward.

11 Q. Yes.

12 A. Just recently it got moved into the rules arena. But
13 before, it was part of safety certification, which is six or seven
14 modules which include hazmat training -- what else -- machine
15 training -- machine spacing. It's just fall protection,
16 lockout/tagout. All those are modules that are incumbent in
17 safety certification. Which the employees are trained yearly on,
18 also. They have to have that training done yearly by the safety
19 assistants.

20 Q. I know some railroads engage in some -- what I would
21 call maintenance-of-way efficiency testing. And I know you're
22 familiar with the term efficiency testing over on the operating
23 side. Does BNSF have a efficiency testing program geared toward
24 the engineering personnel?

25 A. Are you talking about operations testing?

1 Q. Or operations testing. It --

2 A. Okay.

3 Q. Yeah, we can call it by some different terms. But you
4 know kind of what I'm asking, right?

5 A. That's what we call it.

6 Q. Okay.

7 A. Yes, we do on the engineering side.

8 Q. Well, tell me about that plan, that program; how is that
9 metric monitored and what are the goals and just what you know
10 about it.

11 A. Well, I don't do operations testing anymore in this
12 position. But in my prior positions, I did do a lot of operations
13 testing. And that's when we would gather up -- let's say -- I'll
14 go back to my roadmaster days. I would gather up two or three
15 roadmasters or an assistant roadmaster, and we'd go out to a gang
16 and we would test them on a certain set of particular rules
17 pertaining what they were doing that day. And then we would
18 document it in a database, whether they passed that test or they
19 failed that test. And it could be anything from PPE to their
20 protection on the track, to lockout/tagout, machine spacing,
21 circle of safety, all those. And each rule is documented in a
22 database. Each person's got to be tested every 180 days.

23 Q. Okay. With regard to the database, think about the same
24 request like on the five employees for the training, would it be a
25 burden for you to run the efficiency testing records for the five

1 employees for the last couple, 2 or 3 years?

2 A. I'll have to ask Mr. Wilde that.

3 MR. WILDE: So typically we give 12 months. Or you want
4 it longer than that?

5 MR. HIPSKIND: Twelve months is fine.

6 MR. WILDE: Thank you.

7 BY MR. HIPSKIND:

8 Q. Okay. And --

9 A. So, let me finish --

10 Q. Go ahead.

11 A. -- let me finish on that.

12 Q. Sure. Sure.

13 A. So, every manager or supervisor has an amount that he
14 has to get done. He has to get -- make sure his people get tested
15 on that. And we try to create an environment of coaching when we
16 find somebody not doing something right. We want to make that a
17 correction, an opportunity to correct things, but it is
18 documented. We do keep record of the employee.

19 Q. Is there a progressive nature to if I keep seeing you in
20 a noncompliance with a particular practice or safety rule? What
21 -- if I'm an employee, what should I be thinking?

22 A. Well, it would become a -- the first offense most of the
23 time is a coaching/counseling. And the second time it could
24 result in a -- it's based on a points system, depending on what
25 type of rule you violated. And if an employee accumulates a

1 certain amount of points, he drops into a certain category. That
2 gives us the opportunity to help that employee, watch him a little
3 closer. As far as being a tool for discipline, I don't see too
4 much -- as a division engineer or roadmaster, I never held any
5 disciplinary hearings for operations test failures.

6 Q. Okay. And when you say a points system, should I think
7 about that as a weighted system? If there's a more egregious type
8 thing that I'm in noncompliance with -- if I'm beyond the
9 counseling stage, that kind of first strike idea, the more
10 egregious things would have higher weighted points. Right?

11 A. Right.

12 Q. Okay. Lesser offenses, a more minor number of points
13 accumulation?

14 A. And we'll come out and see you a little bit more often,
15 make sure everything's going all right. And if it's a rules test
16 failure of a serious type, we'll make sure that we retest you
17 again on that.

18 Q. Okay.

19 A. For the rule, particular rule.

20 Q. Do you feel comfortable in talking about the numbers of
21 people that we're talking about on the system? In terms of what
22 you do, how many -- what kind of contacts, what kind of numbers in
23 a year are we talking about?

24 A. On operations testing?

25 Q. On operations testing.

1 A. I don't really know the numbers, but I've heard our VP
2 of safety say that last year we did 1.3 million operations tests
3 on all our employees and our failure rate was less than 2 percent.

4 Q. So the broad number is 1 million, or thereabouts?

5 A. 1.3 or 4 million. I'm not sure. I believe. I can't
6 give you exact number, but it's in the millions. And our failure
7 rate, employees that are failing the operations test is less than
8 2 percent.

9 Q. Okay. Now, I know you said you're not the rules guy.
10 But if I were a BNSF employee, whether I'm on the production side
11 of things or whether I'm on the maintenance-of-way side of things,
12 and I see you out in my work area -- all right? We're going to do
13 a little role-playing here.

14 A. Okay.

15 Q. And I've got a burning question. Can I approach you and
16 ask you about that?

17 A. Yes.

18 Q. Okay.

19 A. And I do -- me and my team, we receive quite a few
20 questions every week from employees calling us about a safety
21 procedure or about rules. And if we can't answer that, we can
22 definitely get them the answer -- to the rules people, through all
23 the subject matter experts we have in Fort Worth, through our
24 safety design people. If they come to us with a question, we'll
25 definitely get them the answer to it.

1 Q. Okay. Well, let's continue with the role-playing here
2 for a minute, okay?

3 A. Okay.

4 Q. So, I am that maintenance-of-way employee. And let's
5 just say, for the sake of this exercise, I'm a little bit new.
6 I'm not an old head. I'm just kind of new and I'm trying to
7 figure out everything that I need to do to be right, everything
8 that you expect me to do to make sure that things are right, for
9 my safety, for other people's safety.

10 And with that laid out -- you know where I'm going to
11 go. I'm going to approach you, and the question I'm going to ask
12 you is: I don't think I really totally understand the adjacent
13 rule, you know, with on-track safety and all that. And I want to
14 add some color to this, that, you know, sometimes I'm in these,
15 you know, job briefings and I don't know if I'm getting told the
16 right thing or not. So, with that, help me. What would -- how
17 would you address an employee that presented that kind of a
18 question to you?

19 A. Well, I would try to understand what part of the
20 adjacent track rule he does not understand. And if I could, I
21 will -- you know, I'll sit him down and go over the rule book with
22 him, and we'll find the rule that he's having some problem with
23 and we'll have a discussion on it. And if I can't -- if he has
24 any questions and I'm not around, then I'd definitely give him the
25 phone number to the rules guy. And like I said, there's 13 of

1 those rules examiners systemwide that just handle engineering.
2 And then they have his -- a boss that they report to. So, I got
3 all their numbers for that -- depending on what particular region
4 I'm on, I'll divert him to the rules guy, the rules examiner.

5 Q. Okay. Well, is it all right for me to get into some
6 specifics with you about what I don't understand --

7 A. Yeah.

8 Q. -- about adjacent track?

9 A. Okay.

10 Q. Well, one of the things I don't understand is, are there
11 some yardstick measurements that I need to understand about
12 adjacent track? Because I run into that all the time, and
13 sometimes I don't know where I'm going to end up working because I
14 haven't been there. We're off site or we're at some other
15 location, and the foreman's describing it to me, but then when we
16 get out there, maybe something about the rule maybe got
17 misunderstood by my foreman. So what do I need to know about that
18 kind of a metric?

19 A. You'll have to first determine your location. You'll
20 have to determine whether that's a control track that's adjacent
21 to where your work location is. And then you're going to also
22 have to determine the method of operation on that particular
23 track. And all that can be found in the timetable. You're going
24 to have to determine how close the tracks are from the
25 (indiscernible), and then you're going to have to determine what

1 you're going to be -- what kind of work you're going to be
2 performing.

3 Q. Okay. Well, let's go over all those things because I
4 think I need to know all of them.

5 A. Okay.

6 Q. So, I am near a main line, single main track. Don't
7 know exactly the operating speed, but I'm pretty sure I see
8 signals off in the distance, wayside signal mast. So I'm pretty
9 sure they tell me that it could be traffic control territory, and
10 that all seems exactly right to me. How close can I be or is
11 there a certain footage about if my work is going to be close
12 enough to that main track, I need to do something extra?

13 A. Well, you're going to have to determine if the track
14 center between each track is 19 feet or less. And --

15 Q. It's less.

16 A. Okay. If it's less, then you're going to have to
17 determine whether that's a controlled track or not.

18 Q. It is.

19 A. Then you're going -- whatever -- depending on what type
20 of work you're performing, you're going to need some protection on
21 that track, on that adjacent track. Positive protection on that
22 adjacent track.

23 Q. So positive protection to you means exclusive track
24 occupancy?

25 A. Let's say it's CTC territory, for example. You're going

1 to need a Form B or you're going to need track and time.

2 Q. And Form B is something that my foreman set up through
3 the dispatcher so that I can control train movement in and out of
4 a given location A to B?

5 A. It --

6 Q. Milepost to milepost?

7 A. Yes. That's usually a planned -- planned work. A Form
8 B has got to be issued 12 to 15 hours prior to it taking effect.

9 Q. I can't wake up -- my foreman can't just wake up that
10 morning and say we're going to have Form B protection out there?

11 A. He cannot produce it like that. He has got to have it
12 out --

13 Q. And if he does, that should be a red flag to me that
14 maybe something isn't exactly right. Right?

15 A. It's the right for every employee to know what the form
16 of protection is.

17 Q. Well, most often he gets track and time. And I know
18 he's calling the dispatcher, so -- that's what we use most of the
19 time and so I should feel okay with that?

20 A. After you verify the location of the track and time and
21 you've actually looked at the copy of the track and time, and
22 there's -- or, we got a rule that says that when an employee is
23 obtaining track and time, that another employee is also verifying
24 that, listening in. And then after the track and time is
25 obtained, he has to go out and have -- and inform all the other

1 members of the crew what the track and time is.

2 Q. Okay. And I'm not trying to make this difficult, but I
3 was listening to you and you said some of the answer to my
4 question is to determine the type of work I'm doing. And even
5 though I'm kind of a new employee, I know that when I get over
6 near the foul of that main track, like 4 feet or less, or that I'm
7 actually working on it, I know I have to get some kind of positive
8 protection. And I know it's dependent on the authorized speed
9 through the area. Okay, I know that.

10 A. Okay.

11 Q. But sometimes, we're just working on a track and we're
12 never going to be over on the main track. So how should I
13 understand that the type of work I'm doing sometimes means I have
14 to get adjacent track protection? What are some examples of
15 those?

16 A. I guess I really don't understand what you're trying to
17 ask of me.

18 Q. Well, if --

19 A. You want to say that again?

20 Q. If I'm on an adjacent track, less than 19-foot track
21 center to an active main line track.

22 A. Okay.

23 Q. For purposes of this, let's just say -- let's keep it
24 uncomplicated. It's a single main track. I know it's CTC. I
25 know they run trains through there every so often. Is the work

1 that I do on that adjacent, say, yard track -- if I'm changing out
2 a rail, if I'm changing out ties -- should I be getting adjacent
3 track protection?

4 A. Yes.

5 Q. And the reasoning behind that is what?

6 A. Is if you're going in close within that 19 foot, you
7 have to have some type of protection on that opposite track, that
8 control track. So if you -- and if you're going to have a boom in
9 the air or if you're going to have -- removing your ties in that
10 direction, if you're going to have anybody between the rails, that
11 adjacent track has got to be protected.

12 Q. I think in your description you're thinking that I'm
13 going to have some kind of mechanized machinery on the track I'm
14 working on, right?

15 A. I'm trying to imagine what you're doing, but --

16 Q. Okay. I --

17 A. If you're doing them by hand or if you're doing them
18 with a machine.

19 Q. If I do it by hand, does it change my adjacent track
20 protection requirements?

21 A. It does not, until you encroach beyond that closest rail
22 to the adjacent track. If you stay on this side of it, you're
23 okay.

24 Q. Closest rail to the main track that I'm working on. Or
25 did I get that wrong?

1 A. You're -- you told me you were changing ties on a yard,
2 on a --

3 Q. Yes, I --

4 A. -- yard track.

5 Q. And I'm not going to be --

6 A. And there's a main track next to it.

7 Q. Yes.

8 A. Okay. And the track centers are less than 19 feet?

9 Q. Yes. That's right.

10 A. And you're doing -- and you're changing ties by hand?

11 Q. Yep. We're doing the old timey thing.

12 A. You're going to get somebody hurt doing that.

13 Q. Okay.

14 A. The way you -- if you stay on the track you're working
15 on, if you don't get outside of that furthest rail, you can
16 continue your work on the outside. But if there's any chance that
17 some type of work you're going to do, whether it's spiking it --
18 the tie down or nipping it up on the outside of that closest rail
19 to the adjacent track, you cannot be out there.

20 Q. Can I -- if my foreman tells me that he's going to put a
21 watchman lookout out there on that main track to protect in case I
22 do that incidental fouling, is -- am I good to go?

23 A. I think we -- and I'll have to look the rule up, but I
24 think if you're not going to make the track impassable, you can
25 work under a lookout protection on that adjacent track. But the

1 situation has got to be right. It's got to be --

2 Q. Yes.

3 A. -- according to the track speed. You got to be able to
4 have your sight distances. That's all got to be taken into
5 consideration before you work under lookout protection. You have
6 to have a designated place of safety already established. They
7 have to point out approaching train approaches, and you're going
8 to have to make sure you corral everybody into that designated
9 place of safety 15 minute -- 15 seconds prior to the arrival of --
10 depending on what distance you're looking at on the lookout.

11 Q. Okay.

12 A. It's something that's pretty well set up, if you're
13 going to use lookouts.

14 Q. But the short answer is I have to be pretty conversant
15 on the type of work that I'm doing that's near that main track,
16 provided I've -- my adjacent -- the track I'm working on is less
17 than 19-foot track centers to that main track.

18 A. Yes.

19 Q. Okay. So you've convinced me that probably to changing
20 ties out by hand is probably not the thing I'm going to be engaged
21 in the most. But from time to time the foreman has us drive the
22 truck around and we do support production gangs that come through.
23 And so on this adjacent track -- we're not doing any work on it.
24 But as often is the case, somebody puts a flat car or somebody
25 puts a gond on there and the foreman tells us to go over and get

1 material from the flat car or from the gond. And so we back the
2 section truck up to the field side, away from the main line, and
3 then we climb in the gond and do something.

4 Am I doing something wrong by going in the gond or on
5 the flat car getting material to go out and support this gang?

6 A. And the adjacent track -- the control track is less than
7 19 feet track centers?

8 Q. Oh, but of course it is.

9 A. You have to have -- we have a rule -- I want to say it's
10 12.1.4 that states unloading material next to an adjacent track --
11 it's part of the adjacent track rule, that you must have a job
12 briefing before you start that. You must determine the track and
13 you must determine if you're going to be in the foul of that
14 track, or intent to foul, which is the word we changed out for
15 potentially fouling it. You do have to establish protection on
16 that adjacent track.

17 Q. Okay.

18 A. Positive protection.

19 Q. Well, some of the terminology that you just used, in the
20 foul of the adjacent track and all that, can we talk about --

21 A. Can I read you the rule?

22 Q. Pardon?

23 A. Can I read you the rule?

24 Q. Yes. If you want to.

25 A. Yeah.

1 Q. No, I think -- at this juncture, I think that would be
2 helpful.

3 A. Okay. It's rule 12.1.2. It's called Fouling Adjacent
4 Tracks. It says, "Do not foul adjacent tracks with roadway
5 maintenance machines unless working limits have been established
6 on the adjacent track. Before using a boom where an adjacent
7 track may be fouled by the boom or loaded -- or loads handled,
8 working limits must be established on the adjacent track.
9 Movements within the adjacent track, working limits may only be
10 permitted by the EIC. Do not use a lookout to provide protection
11 for equipment or material fouling an adjacent track."

12 So, you can't even use a lookout if you're less than 19
13 feet and you're unloading material next to a control track.

14 Q. What's the railroad's thinking behind that part of it,
15 that I can't even use a lookout?

16 A. It's just that if we're going to encroach on that
17 control track, that we want to have positive protection set up on
18 that.

19 Q. And that's to ensure what?

20 A. That's to ensure if some of the material or one of the
21 machine booms gets in foul of that other track -- a lookout is not
22 designed to stop the train. You're not going to stop a train
23 under a lookout protection. You're going to ensure that you're
24 doing minor work and you can get out of the way. If you get in
25 foul of that track with a boom or with a load, you're going to

1 have to have some type of ability to stop that train.

2 Q. An impression I got from listening to you read that rule
3 was that one of the operative words in that rule was the idea of
4 something mechanized, a boom, a crane. And I think what you just
5 pointed out to me is sometimes those things break down and, God
6 forbid, if they get in the foul of an oncoming train. That could
7 turn out to be a bad thing, right?

8 A. Yes.

9 Q. Okay. But just -- and, again, I'm not trying to be
10 difficult here. I want to parse out that if the foreman tells me
11 to back up a section truck to the side of a gondola or flat car
12 and I am not using a boom and I'm not using a crane, and he just
13 wants me to go in there and start throwing some bags of anchors
14 onto the back of the truck, is a lot of the previous discussion
15 we've had about this and the requirement for adjacent track, does
16 that apply then?

17 A. If he's just going to climb into the gondola?

18 Q. Yes.

19 A. Or the flat car?

20 Q. Yes. It does get to be a little tricky, right? I mean,
21 matching up the words with different degrees of real world and
22 what I can do and what I can't do.

23 A. I would say if the intent is not to foul the adjacent
24 track, you're okay to do that.

25 Q. Well, I would say in that -- when that foreman told me

1 to get up in the gond and throw the bags of anchors in the back of
2 the truck, over the side of the gond into the back of the truck,
3 we talked about -- you know, I said, well, you know, I don't know
4 everything about the rule, but do I need to have adjacent track;
5 and he told me no, that he didn't think that anything that we were
6 going to do was going to foul the main track. So I guess he was
7 -- in this particular scenario, he was telling me right?

8 A. And you're -- remember, you're just throwing anchors
9 over the side, right?

10 Q. Okay. So, if --

11 A. You don't have a boom out. You don't have nothing.

12 Q. Okay. So, is my takeaway from our discussion about a
13 lot of the different things I do out there in varying degrees --
14 sometimes I do things by hand; sometimes I do things with a
15 machine; sometimes I do it with cranes; sometimes I have a piece
16 of equipment that is on the track that we're unloading from -- it
17 all makes some of the application of the rule different, right?

18 A. Right.

19 Q. So what's the underlying thing here that my gang and the
20 co-workers I work with and the foreman -- what is it that we're
21 trying to do here? Is it a matter of assessment of risk involved?
22 Is that part of it?

23 A. Well, we definitely want to assess the situation. Every
24 situation is different that you're going to pull up on. We want
25 the employee to take a good assessment of that. We want him to

1 take into consideration what type of task he's going to be
2 performing. And then we want him to make the most safest decision
3 that he can out there, according to the rules.

4 Q. Okay. Well, you and I have had a good conversation
5 about this. Help me to understand what is BNSF's commitment in
6 their training modules? How would some of this same thing that
7 you and I've talked about for several minutes here, how would --
8 how do you think that would be presented to the people that are in
9 the room getting trained?

10 A. You're talking during the rules examination?

11 Q. Not -- well, if you want to talk about that. But I'm
12 also talking about just getting people in there before the exam,
13 just in that kind of training moment, and really, John, I don't
14 want to -- what I want you to understand is I'm really looking for
15 how is the trainer interpreting some of these rules? You know,
16 how is he pulling the words off the page in the rule and giving me
17 guidance in the real world? That's really kind of what I want to
18 talk about with you. How do we get that done in a really good
19 way?

20 A. Well, I know that there are several modules that were
21 put out along with the -- on this adjacent track. There were
22 several question and answers scenarios. And we can definitely get
23 you those also. And those are tools that the roadmaster or the
24 foreman can use when talking about potential adjacent track
25 scenarios.

1 Q. Okay. And let me jump back to a data point you
2 introduced in this conversation. You looked over at our FRA
3 investigators who are here in this -- participating in this
4 interview, and you said something about a change date or a start
5 date or revise date. And I think you assigned that to something
6 like July of just last year.

7 A. Right.

8 Q. Talk to me and characterize BNSF's efforts in response
9 to that change. And I think on this particular thing, we are
10 talking exclusively about the adjacent track rule. Was that the
11 point of --

12 A. Uh-huh.

13 Q. Well, take me through some of that.

14 A. How it kind of got rolled out? Is that what you want to
15 know?

16 Q. Exactly.

17 A. Okay. Well --

18 Q. Rolled out is a pretty good term.

19 A. I think it was probably in May or so, once we notified
20 the employees that there was going to be an adjacent track rule
21 changes. The training team out of Manexa came out and they
22 trained all the managers on the division. They went to every
23 single division, and they trained them on the adjacent track rule
24 and the changes. And this is prior to the July 1st. And then
25 they -- each one of the 13 field trainers spent time training each

1 employee in groups on the adjacent track rule. There was a -- I
2 know there was a hotline where you can call in any type of
3 questions that you didn't understand on the adjacent track rule,
4 as we rolled it out. And this was all prior to the July 1st
5 implementation of the -- when the rule took effect. This was all
6 done prior to that.

7 Q. In anticipation of it?

8 A. In anticipation, to make sure everybody understood it
9 prior to it taking effect.

10 Q. Okay. And then after it took effect, can you
11 characterize whether other efforts -- because it's kind of been my
12 experience -- and now I've got to come out of the role-playing and
13 back to NTSB investigator -- that sometimes after a rules change,
14 when the rubber starts meeting the road and people are trying to
15 work their way through a recent rule change, whether it be on the
16 regulatory side or in a company's safety rules, operating rules,
17 change of procedures, practices, a lot of times all the gangs over
18 a lot of different locations, they're not on the same page. Did
19 you experience any of that and, if so, how did you address it?

20 A. I did not experience any of it. I'm not sure what the
21 rules team experienced as far as understanding of the rule. But I
22 know that they made it a big part of the 2015 rules training.

23 Q. Okay.

24 A. So, it's a big -- it's a majority of the rules training.
25 And I've heard of certain teams having some adjacent track rule

1 questions, and those were quickly solved by the rules team.

2 Q. Is it possible that questions that people brought up in
3 one part of the country are somehow distributed and put out as a
4 safety alert or a safety memo to everybody systemwide?

5 A. There was several safety alerts and briefings put out on
6 adjacent track rules.

7 Q. Do you have that kind of documentation?

8 A. Yes, we do.

9 Q. Is that something that you could provide me?

10 A. Yes.

11 Q. Okay. One last thing, and then I want to give some
12 other guys -- to let them ask you some questions.

13 A. Okay.

14 Q. Yeah. Tell me -- give -- you pick the example of work,
15 but I'd like for you to stay close to some of that example that --
16 when we were doing the role-playing, about that we -- I am working
17 on a track adjacent to a main track and I am closer than 19 feet.
18 Okay? Let's make that a given in our discussion.

19 A. Okay.

20 Q. And so, here is what's going to help me the most. Give
21 me an example that tells me how I did my work prior to the recent
22 revision, and then let's talk about that same work and how the
23 revision changed maybe what I had to do with that same set of
24 circumstances.

25 A. Well, I think that some of the change was the 19-foot

1 rule. If it's above 19 feet or less than 19 feet.

2 Q. So what was the --

3 A. Those were the -- that was the determination of whether
4 you needed the protection on the adjacent track.

5 Q. Well, what was the number -- was there a number, a
6 yardstick kind of number, in the previous wording of the rule for
7 adjacent track? Or was there no number?

8 A. I don't believe there was a number.

9 Q. So one of the --

10 A. But I'm -- like -- I'm just telling you what I know.

11 Q. Okay. That's fine.

12 A. Uh-huh.

13 Q. But to your way of thinking, one of the changes was this
14 adding of the 19 foot in the new rule?

15 A. Yes.

16 Q. Or regulation or whatever. So that started kind of
17 yard-sticking some stuff, right?

18 A. Before, we always used to determine that with the
19 potential to foul, if you have the potential to foul.

20 Q. Was that some of the wording in the previous
21 application?

22 A. That was some of the wording from the previous, yes.

23 Q. Well, potential to foul could -- would you agree that
24 can mean different things to different people?

25 A. I can't answer that. I can only answer what it means to

1 me.

2 Q. Let's talk about --

3 A. I can't answer that.

4 Q. Let's talk about what it means to you. Potential to
5 foul means to you what?

6 A. If there's any possibility.

7 Q. Okay. Are we back to there has to be a stark
8 difference? Like if we're material handling and I'm that labor
9 that's up in the gond and I'm handling bags of anchors by hand,
10 there's really no potential to foul, right?

11 A. You're going way back. We don't handle anchors --

12 Q. Well, I know.

13 A. -- by hand anymore. But --

14 Q. Okay. Well, then, let's -- your point's taken. Let's
15 get into the modern world, okay? I've got the section truck
16 backed up near the gond, but I bring in a -- like a little
17 Pettibone crane that can reach his boom over on the field side of
18 that gond, and he can mag up bags of anchors -- hoist this thing
19 and then swing it over and place those anchors in the back of the
20 truck. Is that more modern?

21 A. Sounds pretty good.

22 Q. All right. Again, I'm not trying to be difficult here.
23 But in that scenario, John, should I think of possibility to foul?

24 A. Yes.

25 Q. And how so?

1 A. You never know what's going to happen to your boom. You
2 never know if the load is going to shift or not on you.

3 Q. It's just a bag of anchors. I am on the field side of
4 the gond. I'm nowhere near that main line. I'm not even on
5 track. There's a yard there and I'm just over here on some gravel
6 stone.

7 A. I'm not working with you if you're doing that.

8 Q. Okay. And your point there is that if I'm the foreman
9 that set that up, you probably are going to take exception --

10 A. Yes.

11 Q. -- to my protection or lack thereof?

12 A. Every employee has the right to question their
13 protection without any type of retaliation.

14 Q. Yeah, but I want to be clear. Based on what you know
15 and your thought about the interpretation of that rule, that's the
16 course that you would take?

17 A. Yes.

18 Q. Or you'd bring it up at least for a point of discussion
19 in the job briefing?

20 A. I would not wait till the job briefing. I would try to
21 address that right there and then. Before it happens.

22 Q. Okay. All right. You've been very helpful.

23 A. Thanks.

24 Q. And I think our discussion was beneficial. I want to
25 think about some other aspects of this, but I want to bring in

1 some other investigators. Okay.

2 MR. HIPSKIND: Dale, let me throw it your way again.

3 BY MR. JOHNSON:

4 Q. Hello, John. I'm Dale Johnson.

5 A. Okay.

6 Q. I'm just going to ask just a couple questions. Your
7 title is director of safety?

8 A. Director of engineering safety.

9 Q. Engineering safety. Okay. And when did you arrive to
10 this incident?

11 A. To this incident that happened here at --

12 Q. That is correct.

13 A. -- Midtown?

14 Q. To Minneapolis, Minnesota, yes.

15 A. I arrived Monday about 6:00 in the evening.

16 Q. 5/25. Okay. So you were here on the day of the
17 incident, then?

18 A. Yes.

19 Q. And I have to ask this question just because so I know.
20 Why did you get called to this facility? Is this part -- or to
21 this fatality. Is this part of your responsibility that you do
22 or --

23 A. I help -- I get called on all the fatalities. This is
24 not the first one I get called out.

25 Q. Okay.

1 A. This is my third one I've been called on.

2 Q. So that's part of your job description?

3 A. Yes.

4 Q. Okay. All right. That's what I was wondering. And I
5 don't know if I can ask these questions so I don't even know if I
6 should ask them. I guess --

7 MR. HIPSKIND: Well, if you don't know if you should ask
8 him, you might want to pass on asking him for right now.

9 MR. JOHNSON: That's what I'm going to say.

10 BY MR. JOHNSON:

11 Q. I guess the other thing I was going to ask is how are
12 you or your team of 56 -- they do roll up to you, correct? Did I
13 understand --

14 A. They report to the GDMs.

15 Q. Yeah, but they -- you have --

16 A. The GDM directs them on their day-to-day chores or work
17 assignments.

18 Q. Okay. So, I --

19 A. I just oversee their -- what their safety programs that
20 they're rolling out.

21 Q. Okay.

22 A. And I also work with the rules guy to make sure that --
23 their training that they give to scheduled folks.

24 Q. Okay.

25 A. I do not take care of them on a daily basis.

1 Q. Okay. So you do not evaluate them, the field safety
2 assistants?

3 A. What do you mean evaluate? What do you mean?

4 Q. Rate them? Evaluate them?

5 A. They're scheduled people.

6 Q. Well, I understand, but -- I mean, you don't -- okay,
7 well, maybe -- how are you evaluated then, I guess? I mean, how
8 are you evaluated as far as safety?

9 A. How --

10 Q. I mean, does -- I guess I'm -- I thought the 56
11 individuals worked in cooperation with you, that you had some
12 oversight over them.

13 A. I do. I just oversee their safety, the programs that
14 they're teaching.

15 Q. Okay.

16 A. And also what the rules trainers are teaching them.

17 Q. Okay.

18 A. And making sure that what they're teaching to scheduled
19 folks is correct.

20 Q. Yeah, that's correct. All right. So you do not
21 evaluate them or their area of responsibility or anything? That's
22 the general director --

23 A. I don't believe there's any scheduled folks are
24 evaluated.

25 Q. Okay.

1 A. Not like an exempt folks --

2 Q. Yeah.

3 A. -- which is on a performance --

4 Q. That's what I was just wondering, how -- I can't
5 remember, I guess, for myself having been in the industry, I can't
6 remember how they are involved in the direct safety --

7 A. These safety assistants are assigned -- are appointed by
8 the general chairman.

9 Q. Yeah. By the union.

10 A. By the general chairman.

11 Q. That's correct, yeah.

12 A. And they serve as a, like I said, a liaison.

13 Q. Okay. I have no further questions at this time.

14 MR. HIPSKIND: Thanks, Dale.

15 MR. JOHNSON: Thank you.

16 MR. HIPSKIND: George, any questions?

17 MR. LOVELAND: Yeah, just a couple questions.

18 BY MR. LOVELAND:

19 Q. Just a clarification on that, John, about the scheduled
20 employees being evaluated. All scheduled employees are evaluated
21 on a yearly basis also. I don't know what your guys' evaluation
22 entails, but they sit down with their supervisor and they are
23 evaluated and they go over their record and everything. Any --

24 A. I don't know if that's an evaluation. I think it's
25 called an interview.

1 Q. Okay.

2 A. And that's when we go over --

3 Q. Job --

4 A. -- when the supervisor will go over his expectations for
5 safety and he'll let them look at the operations test. But --

6 Q. Okay.

7 A. I used to give performance feedback to my scheduled
8 folks, but that was nothing that was ever documented.

9 Q. That's -- I can't remember. That's why I was asking.

10 A. We used to give them feedback.

11 Q. When Mr. Mozinski was in here with the other people
12 earlier today when they were giving their interviews --

13 A. Uh-huh.

14 Q. -- I know they brought up the -- he said that there is a
15 VMW that he's been asking for clarification on the adjacent track
16 rule since it started. And I think he even said he'd done it at
17 the SACP meetings and stuff like that. Are you aware of any of
18 that stuff?

19 A. You know, I'm not really --

20 Q. The reason why I ask is because I said -- because I
21 remember you saying in testimony here that you are involved with
22 the SACP process. You're a facilitator for that.

23 A. I'm a facilitator.

24 Q. And that's why I was wondering if you had any
25 recollection of that?

1 A. All -- I don't recall them asking to rewrite the -- like
2 he's asking now.

3 Q. I think he said he asked for a clarification at that --
4 did you -- do you remember anybody asking for any clarification?

5 A. Well, I believe the clarification would come from
6 somebody that doesn't understand a certain aspect of it, right?

7 Q. Yeah. I think that's the whole idea.

8 A. Yeah.

9 Q. There was so much confusion out there, as we heard by
10 testimony from the four guys today.

11 A. There is a process for that.

12 Q. Yeah. I think all --

13 A. And that --

14 Q. -- I think all four of those guys had a different
15 understanding of it. And I think that's -- because I think
16 Mr. Mozinski said it was so convoluted that they're asking for a
17 simplification, if I remember correctly, to make it simple for
18 everybody to read. Has BNSF considered that? I know you said
19 you've got a hotline there, but have they considered a
20 simplification to make it like more in layman's, I guess you'd
21 say.

22 A. You know, everything that Mr. Mozinski brought up was --
23 I didn't -- you know, the 4-foot rule and all that stuff, that's
24 the first time I heard employees complaining about that. So I'm
25 not sure where that's generated from or who's generating that. Or

1 maybe the situation is generating that.

2 Q. I wanted to touch on something they talked about here,
3 and it was the ops test failure -- ops test -- not failure, ops
4 test -- ops, operations testing procedures.

5 A. Uh-huh.

6 Q. Is that to ensure that people are complying with the
7 rules? Is that -- I mean, is that a fair assumption?

8 A. Yes.

9 Q. And then -- and the reason why is -- is the reason why
10 you test every year is to refresh them on the rules, and then you
11 ops test every 180 days to make sure they're staying current with
12 the rules.

13 A. Yes.

14 Q. And I guess, I don't know if I --

15 A. They're required to produce their rule book and -- we
16 don't require them to memorize every rule, but they have to be
17 able to find the rule --

18 Q. I understand.

19 A. -- when they need to.

20 Q. I understand. Fair enough. I don't know if this is
21 even proper or not or what, but I know they said they'd like to go
22 back 2 or 3 years to see when they've been tested on the rules
23 testing, list of rules. I would like to see their operations
24 testing, go back as far as -- for each employee, as far as you go
25 back to the rules testing also, so we can see the correlation, if

1 there's any difference in the -- you know, when they're -- they've
2 done this test and this test and this testing, and their ops test
3 shows this, this, this and this, if there's any variations in
4 there. Would that be possible?

5 MR. HIPSKIND: You can bring that up as a suggestion or
6 recommendation. I cannot give you an answer about that right now.

7 BY MR. LOVELAND:

8 Q. Okay. Well, I -- I guess that's what I'm requesting,
9 that you make that available to the investigating team also. For
10 ever how far you go back for the rules testing, I would like to
11 see the correlation with the operations, either passing or
12 failing, what the testing is revealing also. Because not just
13 rules tests, we're talking about all their training. Right?

14 A. Well, I think their rules training goes back all the way
15 to where they started their employment.

16 Q. Okay.

17 A. So it could be quite lengthy for some.

18 Q. Well, I think Mr. Hipskind said he wanted to go back 2
19 or 3 years. I just request that the same be done for the ops
20 test, ops test -- ops testing, whether it be pass or fail, so you
21 can see the correlation with the testing going along with it.

22 A. Okay.

23 MR. HIPSKIND: Is that doable, Kevin?

24 MR. LOVELAND: I'm not trying to make more work for
25 anybody, by no means. But --

1 MR. WILDE: Well, we --

2 MR. LOVELAND: Just to get a fair picture, I'd like to
3 have a fair picture of it all. I'm sorry.

4 MR. WILDE: Okay. So, Kevin Wilde for the record. For
5 clarification, the request is operations testing records to match
6 the number of years that we provide training records. That is
7 doable.

8 MR. LOVELAND: Thank you, sir. Appreciate that. That's
9 all I had.

10 MR. HIPSKIND: Thanks, George.

11 Thomas?

12 BY MR. JULIK:

13 Q. All right. You mentioned that maintenance-of-way
14 employees are required to carry rule books with them.

15 A. I did not mention that. I never said that.

16 Q. You mentioned that when they're ops-tested they're
17 required to produce their rule book.

18 A. I did mention that. Yeah.

19 Q. Okay. So what rule books are maintenance-of-way
20 employees expected to follow?

21 A. Maintenance-of-way engineering safety rules,
22 maintenance-of-way operating rules, and engineering instructions.

23 Q. Okay. Is there system special instructions that they're
24 required to carry and comply with?

25 A. Yes. And the general orders also.

1 Q. Are there both system and division general orders?

2 A. Yes.

3 Q. What's the length of the safety rules document?

4 A. I have no idea.

5 Q. Can you approximate a number of pages?

6 A. I'm not going to do that.

7 Q. Do you know the length of any of these documents?

8 A. I do not. I can't give them to you without looking at
9 them.

10 Q. How many days a year are the folks -- maintenance-of-way
11 employees spend in a classroom setting trained on the various
12 rules?

13 A. Are you talking about just rules or you're talking
14 about --

15 Q. Well, any of the things that they're required to carry
16 there that you just mentioned: the EI, the maintenance-of-way
17 operating rules, safety rules, SSI, all of that.

18 A. Being trained?

19 Q. Uh-huh.

20 A. I would probably say 2 or 3 days a year.

21 Q. There is -- you mentioned earlier there is a test that's
22 30 pages -- or 30 questions long. That's --

23 A. I believe that's what it is this year.

24 Q. Okay.

25 A. I have not done my 2015 yet.

1 Q. Okay. Is that just for the on-track safety rules or is
2 that for all the rules combined?

3 A. That's for all the rules combined, I believe.

4 Q. Okay. And is that a multiple choice, open-ended
5 question, or what type of test is that?

6 A. Yeah. It's a an open book test; I know that. And I
7 believe we do not have a time period on it anymore. I haven't
8 taken mine yet, 2015. I really can't --

9 Q. Okay.

10 A. -- I really don't know if they're multiple choice or
11 what they are.

12 Q. Okay, that's fine. Is it a pass/fail type thing or --

13 A. Yes, sir.

14 Q. -- are they scored on a floating level, like 72 percent
15 or something to that effect?

16 A. It's pass or fail.

17 Q. It's simply pass or fail. Do you feel that the 30
18 questions asked in there is able to adequately ascertain the level
19 of knowledge and understanding of the rules for each individual?

20 A. I know that the rules team does a very good job of
21 selecting the questions that they ask, and selecting -- for
22 certain, we can't over every single rule in there.

23 Q. Uh-huh.

24 A. But we try to target what's going on on the railroad.
25 So those are selected questions. And there's also probably -- at

1 the end of 2014, there were three pilots that were taken. We had
2 three pilots on the rules examination, where we had groups of
3 people come in and they took a pilot test to see if that's what we
4 wanted to teach in 2013. So, it's just not something that the
5 rules examiner writes up out of his dreams about it some night.
6 It's well calculated through several pilots, which I attended a
7 pilot the year before last. I was part of a pilot group.

8 Q. So it's selected based on some historical things that
9 have been seen in previous years or --

10 A. And feedback from the field.

11 Q. Okay. Okay. So for the folks that conduct the ops, the
12 operation testing, do they receive additional training, testing
13 and certification, or do they simply go through the same rules as
14 everyone else?

15 A. State -- say that again.

16 Q. The individuals -- actually, who is tasked with
17 performing operations testing?

18 A. The management team.

19 Q. The management team?

20 A. Yeah.

21 Q. Okay. Are they -- do they receive additional training
22 or testing or certification?

23 A. Yes. There is training done for operations testing.

24 Q. There is additional training?

25 A. Yes.

1 Q. Is that annual or is that just once?

2 A. That is annual, and it's usually done at their FLS
3 training that they come to every year, which is a front-line
4 supervisor or their -- front-line supervisor training or their --
5 we have different levels of that training, depending on what your
6 position is. I'm sure you attended one of them when you were with
7 the railroad, Thomas.

8 Q. So going back to this Rule 12.1.2, it was regarding
9 fouling adjacent tracks.

10 A. Uh-huh.

11 Q. You were discussing RMMs, roadway maintenance machines.
12 What is BNSF's definition of that? When you discuss RMMs in that
13 rule, can you describe for us what it is that that's actually
14 intending to mean?

15 A. Roadway maintenance machines?

16 Q. Yep.

17 A. It could mean on-track or off-track machines.

18 Q. So that does include off-track equipment such as front-
19 end loaders, backhoes, things of that nature?

20 A. Roadway maintenance machines, yes.

21 Q. Okay. Let's look back at the adjacent control track --
22 or the adjacent track rule. When we've talk -- so what are -- you
23 briefly mentioned what some of the triggering events are as far as
24 when someone would be required to set, establish adjacent track
25 protection, i.e., when there is potential to foul. Is that

1 correct?

2 A. I did not say potential to foul. Intent to foul.

3 Q. Okay. So what are the current triggering events then?

4 A. Well, let me see if I can find them for you. And you
5 want -- you're trying to ask to determine whether authority is
6 needed on that track?

7 Q. Right.

8 A. What are the triggering events for that?

9 Q. So, previously you had -- BNSF had potential to foul in
10 their rules. Now that that has been removed, what is -- what's
11 the current, I guess, guidance that's given in the rules?

12 A. I think the potential to foul was -- we were just
13 following what the FRA said about it, to take that out. They did
14 not want to use the potential word anymore. And I might be wrong.
15 I'm not the -- I'm not right all the time. Occasionally I'm
16 wrong. But, so maybe -- I'm not quite sure what you, what you're
17 asking me. If you want me to tell you situations where it could
18 trigger the need for authority on adjacent track, or what?

19 Q. Right. In general, I mean, what is -- in general, if
20 I'm going out to do track work on BNSF track what, in general, am
21 I looking for without having to look at line item specific things?
22 Or is that what an individual would have to do to determine
23 whether or not they needed to establish adjacent track protection?

24 A. Well, you're going to have to determine if it's a
25 controlled track. You're going to have to determine whether you

1 have roadway workers on the ground. You're going to have to
2 determine whether you have on-track equipment that will be
3 occupying the track. You're going to have to take the right-of-
4 way conditions and employees reaching a designated place of
5 safety, the curvature of the track, speed of the trains; if you're
6 working with a gang, spacing of the roadway workers or the
7 equipment; noise, the risk of distraction.

8 Q. So, you stated there has to be on-track -- can you -- so
9 you stated there has to be on-track RMM equipment? Is that
10 correct?

11 A. I didn't state that, no.

12 Q. Or what -- there was something to that effect in there.
13 If you can refresh just that one bullet for me?

14 A. Roadway workers on the ground, on-track equipment that
15 will occupy the track --

16 Q. Okay, that one there.

17 A. On-track equipment that will occupy the track.

18 Q. So each one of those bullets has to be met before
19 adjacent track protection is required?

20 A. Not each one of them. Just one of them.

21 Q. Just one of them? So in the example that you and
22 Mr. Hipskind were discussing as far as a boom truck off track
23 reaching into a gondola to remove anchors, is that -- and you
24 stated that he would be required to establish adjacent track
25 protection. Is that based on this rule that you're reading now?

1 A. I don't know where you're going with this. I just -- I
2 mean, we don't unload anchors from a gondola like that anymore, so
3 I'm not sure where you're going with all this.

4 Q. Okay.

5 A. Just tell me what you want and I'll just give you what
6 you want.

7 Q. Or spikes -- no, what I'm concerned here with is that
8 there seems to be a little bit of confusion among multiple
9 employees that we've discussed here today with whether or not
10 adjacent track protection was required.

11 A. I don't know if it's fair to say that there's a
12 confusion amongst a whole bunch of people. I think there is
13 confusion amongst these group of people that were here testifying.
14 Because I have not encountered a whole bunch of confusion on it.

15 Q. So, do you believe that the work group that was out
16 working here on the 25th, were they not in compliance with the
17 adjacent track protection rules?

18 A. Yes. They were not compliant with it for the work that
19 they were doing.

20 Q. They were not?

21 A. Yes.

22 Q. With the BNSF rules?

23 A. Yes.

24 Q. Okay.

25 A. I mean, they're BNSF.

1 Q. Okay. Do you feel that they were compliant with FRA
2 rules? Albeit, just some track protection.

3 A. I don't believe they were.

4 Q. Okay.

5 UNIDENTIFIED SPEAKER: They were or they weren't?

6 BY MR. JULIK:

7 Q. You said they were not?

8 A. I don't believe they were not compliant with BNSF rules
9 or FRA rules. Which I don't know where you're going with the FRA
10 stuff, but all of the BNSF rules -- which are a little bit more
11 stringent. We add a little cushion in there.

12 Q. Okay. So when a work group is assigned a task, what
13 role does their front-line supervisor, whatever level manager,
14 play as far as discussing form of on-track safety or anything of
15 that nature that should be utilized?

16 A. What's his responsibility in it?

17 Q. Um-hum. Or what's your expectation of an FLS? Let's
18 say, I'm a roadmaster and I assign a task for these guys to go out
19 and load -- unload some panels off a flat car.

20 A. Okay.

21 Q. What type of communication do you expect between that
22 roadmaster and the crew that he's assigning that task?

23 A. I would expect that that roadmaster expects those guys
24 to follow the rules. And to take everything into consideration
25 and -- before they determine what type of protection or what

1 they're going to be doing. I think the -- I'm sure that every
2 roadmaster expects that from his crew. Not to take any chances,
3 to make sure that they have -- are positive in the protection that
4 they have.

5 Q. Okay. I'm sorry if I'm mishearing you here. Kind of
6 what I'm hearing is you expect the roadmaster to have the
7 expectations. I guess my question is more along the lines of what
8 type of a dialogue would you expect?

9 A. Does this really pertain to what we're talking about
10 here? Or where are we going?

11 MR. HIPSKIND: Thomas, let me make a suggestion.

12 MR. JULIK: Uh-huh.

13 MR. HIPSKIND: Why don't we let Dr. Jenner --

14 MR. JULIK: Sure.

15 MR. HIPSKIND: -- has some questions, I understand.

16 MR. PALACIOS: Okay.

17 DR. JENNER: Okay. You need a break or you want to keep
18 on going?

19 MR. PALACIOS: No, I'm good.

20 DR. JENNER: Okay. Great.

21 BY DR. JENNER:

22 Q. If this is not relevant to you or your experience, then
23 I won't pursue it.

24 A. Okay.

25 Q. We heard -- you were in the interviews today.

1 A. Uh-huh.

2 Q. And we heard different pieces of equipment mentioned --
3 the frontend loader, the excavator and backhoe, things like that.
4 If you are able to comment, what sort of expectation do you have
5 about when a new piece of equipment is introduced, what sort of
6 training and experience should someone have on that new piece of
7 equipment before it's -- they're ready to put it into operation?

8 A. Well, I know that we have the roadway equipment
9 thoroughly go through that machine before we put it in service.
10 But in order for an employee to be qualified on that machine --
11 you know, because we've got different classes and there are
12 several machines that fall in some of these classes.

13 Q. Uh-huh.

14 A. So we give that employee a 30-day training period on
15 there, and we try to provide an experienced operator to train him
16 on that. And then at the end of those 30 days, a roadway
17 equipment employee and the roadmaster will come out and they'll
18 verify that that employee can operate that piece of machinery, and
19 then he becomes qualified on it.

20 Q. Is there ever an opportunity for the vendor of the
21 equipment to go out and give instructions, a show and tell? Is
22 that ever something that's conducted?

23 A. I have not ever seen that, but I know that -- in fact, I
24 just heard about it today, that they're having a -- they're
25 starting up -- in California, they're starting some machine

1 operator fitness for a frontend loader.

2 Q. I'm sorry?

3 A. Machine operator fitness is what it's called, for a
4 frontend loader. And it's just a contractor that comes out and
5 explains the machine to the BNSF employee.

6 Q. Okay.

7 A. But that's the first time I've heard of that happening.

8 Q. Right.

9 A. In fact, I just heard about it today.

10 Q. Okay. Is what you just mentioned about the 30-day
11 training, is that something that we can request that you can
12 provide for us?

13 A. You know, I'm not really sure how that's documented.

14 Q. Okay.

15 A. But I guess we can look into that.

16 MR. WILDE: Okay. So, again, I'm not -- for the record,
17 I'm not the expert. But BNSF is willing to give you the training
18 procedures for new operators on new pieces of equipment.

19 DR. JENNER: That's exactly what we're looking for.
20 That's good.

21 MR. PALACIOS: Okay.

22 DR. JENNER: I think that's all the questions I have.
23 Thank you.

24 MR. PALACIOS: Okay. I'll add a little bit to that.

25 DR. JENNER: Okay.

1 MR. PALACIOS: For some of our specialty machines, like
2 our tampers and our -- some of our more specialized machines, we
3 do offer training at the technical training center, for which the
4 employee will go down there for a week and get trained on it.

5 BY DR. JENNER:

6 Q. Okay, then, let me just do a follow-up.

7 A. Tampers are included in that.

8 Q. Good.

9 A. It's a specialty machine.

10 Q. Right. If you're comfortable commenting based on what
11 you've heard from the interviews today, are you comfortable with
12 what you heard about how people started using equipment to do the
13 tasks that they were performing?

14 A. I'm just plain going to state full-out here, I think it
15 happens. I think that sometimes an employee gets thrown on a
16 machine and has no experience on it, and he kind of crawls until
17 he learns that machine. And sometimes the availability of an
18 experienced operator is not always available to provide him. So
19 I'm just being honest.

20 Q. Okay.

21 A. I think it happens.

22 Q. Okay. But what would you like to see happen in those
23 circumstances?

24 A. Well, I'm with the -- some of these, a couple of
25 operators we talked to this morning, I'm all -- I think they

1 should be trained on it.

2 Q. Okay. Thanks for your honesty.

3 A. I think they -- yeah. I think that if we're going to
4 put them out there like that, I think they should be very well
5 qualified to do it.

6 Q. Okay. Thank you. That's all I have.

7 MR. HIPSKIND: Can I ask you some more questions?

8 MR. PALACIOS: Yes.

9 MR. HIPSKIND: All right.

10 MR. PALACIOS: Not about unloading anchors from the
11 gondola.

12 MR. HIPSKIND: No, no. That's just me thinking back too
13 many years ago because I've been around too long, and you made a
14 good point about maybe I better get into the modern times,
15 et cetera.

16 MR. PALACIOS: Yeah.

17 MR. HIPSKIND: And I recognize that over the decades, a
18 lot of accumulation of back injuries and whatnot, that the whole
19 science of ergonomics and utilization of machinery, especially in
20 lifting and all that, material handling, I get that.

21 BY MR. HIPSKIND:

22 Q. And I just -- you know that the crux of the matter of
23 some of the stuff that we're looking at does -- it just weaves in
24 and out of the adjacent track rule. And you're nodding your head
25 yes, so I don't know if you mean that you're in agreement or not.

1 I'll put it in the form of a question here in a minute.

2 Are you in agreement that the evolution of wording
3 changes in the adjacent track rule has been something that has
4 been brought up throughout some of the interviews?

5 A. That we heard today, yes.

6 Q. Yeah.

7 A. Yes.

8 Q. And you may not be in agreement with -- that there
9 wasn't a sufficient amount of training or whatnot, but -- I guess
10 where I'm going with this is -- let me reformat the context of my
11 question --

12 A. Okay.

13 Q. -- if you will. If we presented or if BNSF presented
14 very similar circumstances that were actual events in this
15 accident in a training module back 6 months ago, yesterday,
16 tomorrow, and we had a classroom of maintenance-of-way people in
17 there and this particular set of circumstances was being
18 discussed, the application of the rule -- if you were the trainer
19 or if you were there monitoring how the training was going, your
20 opinion of it would be what?

21 A. I would have to say it would -- it definitely provides
22 some value to the training.

23 Q. Okay.

24 A. I think anytime you can do any type of scenario-based
25 training -- and those are real-life situations where we saw --

1 what we heard today is real life.

2 Q. Okay.

3 A. You know, an employee often finds themselves in those
4 situations.

5 Q. But if somebody raised their hand and just point blank
6 asked you should they have engaged some kind of positive
7 protection for the main line based on the material handling, et
8 cetera, your reply to that person would be what?

9 A. Yes.

10 Q. Yes.

11 A. They should have --

12 Q. And you have no doubts about that?

13 A. No doubt.

14 Q. And you feel comfortable that that is the intent of
15 BNSF's election to change the wording regarding adjacent track
16 protection?

17 A. I don't know about -- I'm definitely going to go back to
18 the director of rules and definitely explain to him and find out
19 if he's having those issues. Because he probably knows from
20 feedback from his field trainers, if he is or not.

21 Q. Okay. But --

22 A. But there -- obviously, there could be some, from what
23 we heard today, some evidence maybe to change some of it.

24 Q. Yeah.

25 A. If the employees aren't understanding it.

1 Q. And a little bit of what I was hearing today was that
2 there may be some legacy to previous training. And I think we
3 heard that maybe time and again, and I'm not sure -- I know you
4 have a couple of challenges here, one being, oh, my goodness, how
5 do we identify that; where is it? And so, that's why our request
6 for the training records for the employees. When did you change
7 your training in relation to when did you change your rule, and
8 did that stuff marry up. And was there an opportunity for these
9 employees to get up to speed with the intent and direction of your
10 change in the rule? And so that's the thing that we kind of want
11 to nail down.

12 And I think that's some of what Thomas was going for. I
13 know Thomas was also wanting to touch upon -- and I'm going to put
14 it this way: What is the expectation for supervisors to monitor
15 groups under -- that report directly to them? And that has been
16 kind of a sensitive subject, you know, because of the increase in
17 territory and because people can just be everywhere. So I hope
18 you understand that we see that as a challenge, how do we
19 adequately monitor people and get them up to speed with recent
20 rule changes? So I know that was not --

21 A. Well, I can answer that question.

22 Q. Okay. I'm not sure that was a question. But I would
23 like to hear your thoughts about what I just said.

24 A. Well, I think the supervisor has to have a big hand in
25 making sure that his employees understand the rules. I know that

1 when I was a division engineer, you know, rules classes were
2 constantly going across my division. I tried to sit in every
3 single one of them just so I understood which employees understood
4 the rules and which ones didn't. A lot of times supervisors don't
5 do that. I always did because I wanted to know which guys
6 understood and which guys didn't understand.

7 Q. Uh-huh.

8 A. And I think the employee -- the supervisor has to spend
9 quite a bit of time in their briefings talking about it. I think
10 they need to spend a lot of time on the ground checking things.
11 Boots on the ground is what we -- we have a lot of that with our
12 supervisors. They're the most closest to the action, so they
13 definitely have to be involved in their training and what's
14 expected -- what he expects of the employees.

15 Q. Okay. But inherent in the activity that you just
16 described, and back to maybe some of the point that Thomas was
17 bringing up, there has to be some level of communication and
18 instruction. You would agree with that?

19 A. Yes.

20 Q. Okay.

21 MR. HIPSKIND: Kevin, I -- John and I talked earlier,
22 and I want to be sure that -- because we have bounced around using
23 different words, different points in time, but with the same rule
24 number. And I guess I just assumed that 12.1.2 has stayed the
25 same number for the adjacent track rule protection. And so one of

1 the things I think would be helpful to our investigation is to
2 follow some of the previous rule wording and compare that to the
3 now current rule wording. And if in your opinion, that we need to
4 even maybe go back a third revision prior to the last two, I'll
5 leave that in your hands.

6 MR. WILDE: Okay. So I think what BNSF will offer, you
7 know, for the record is, is that I would make available a member
8 of our rules department --

9 MR. HIPSKIND: Sure.

10 MR. WILDE: -- at a date -- give me a little bit of
11 lead-in time, for any conversation that the parties want to have
12 concerning the rule change process around whatever maintenance-of-
13 way rule we want to talk about.

14 MR. HIPSKIND: Okay. Well, it will be the adjacent
15 track rule, just to give you a heads up. And I think you do
16 understand what our interest is there. And I just want to be sure
17 that I fully understand the nuance of the word change and also to
18 capture -- one of the things that we've bounced around a little
19 bit and had to do some role-playing was how the current rule --
20 how it would be interpreted. And that's why I did the role-
21 playing, was help me to understand how I should think about this
22 in the real world. And granted, tossing bags of anchors out of a
23 gond was a bit of an ancient thing with me, but you understand
24 that we are talking about machinery and main tracks, and whether
25 it's potential to foul, intent to foul, the 19-foot rule, we want

1 to try to come to grips with all of that.

2 MR. WILDE: Okay. So the offer stands, and we can
3 certainly do that at the convenience of the NTSB, if I just get
4 some lead-in time.

5 MR. HIPSKIND: Okay. And I will state for the record we
6 need maybe a little bit of time to understand how we're going to
7 make that request for -- of certain logistics. But I think it's
8 fair to say we will take your offer and we will reach out and
9 probably schedule that when we can.

10 MR. WILDE: Okay.

11 MR. HIPSKIND: All right. Thomas, did we get any closer
12 to getting to some of what you wanted to talk about?

13 MR. JULIK: Yes. I think we did.

14 MR. HIPSKIND: Okay. Gentlemen, is there anything else
15 that you would like to ask John?

16 All right. Now, you know I got to read you some stuff,
17 and so just hold on a minute here.

18 BY MR. HIPSKIND:

19 Q. Is there anything that you want to change or add to the
20 discussion that we've just had with you?

21 A. No.

22 Q. And I think we've covered the subject matter of is there
23 anything -- is there anybody else that you think we ought to talk
24 to, and I think we just now agreed maybe somebody in the rules
25 side of BNSF. And we'll take it up --

1 A. Yes.

2 Q. -- not that you just said it, but I think we've come to
3 somewhat of an agreement on that.

4 Is there anything that you think should be discussed,
5 changed, that would prevent a reoccurrence?

6 A. Well, I know that, you know, there were five guys there.
7 I'm kind of wishing somebody would have stood up and really took a
8 good look at that situation that these gentlemen were under, and
9 called a timeout, pulled everybody back, and talked a little bit
10 more about it before they undertook this task.

11 Q. Okay.

12 A. I wish somebody would have stood up and said timeout, we
13 need to back off of this and talk.

14 Q. Okay, understood. Anything else, John?

15 A. Nope. That's all I got.

16 Q. Okay. Let me ask you a few questions here. Okay? Did
17 you understand that the purpose of the investigation is to
18 increase safety, not to assign fault, blame or liability?

19 A. Yes.

20 Q. And that NTSB cannot offer or guarantee any guarantee of
21 confidentiality or immunity from legal or certificate actions?

22 A. Yes.

23 Q. And that a transcript or summary of the interview will
24 go into the public docket, and you're --

25 A. Yes.

1 Q. Yes?

2 A. Yes.

3 Q. And you are familiar with the concept of a public
4 docket?

5 A. Yes.

6 Q. And that you were -- as an interviewee, you were offered
7 to have one representative with you but you were okay not to have
8 a representative with you?

9 A. Yes.

10 Q. All right. John, again, thank you. Our outreach to you
11 on this was to try to understand varying sides of training,
12 safety, and to get at the nub of the nuances in rules changes and
13 some of the challenges with that.

14 So, with that, I would thank you very much and that will
15 conclude our interview.

16 (Whereupon, the interview was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: MAINTENANCE-OF-WAY EMPLOYEE
 FATALITY, BNSF RAILWAY, MIDWAY
 SUBDIVISION, MINNEAPOLIS,
 MINNESOTA ON MAY 25, 2015
 Interview of John Palacios

DOCKET NUMBER: DCA-15-FR-011

PLACE: St. Paul, Minnesota

DATE: May 27, 2015

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been transcribed
to the best of my skill and ability.

Jane W. Gilliam
Transcriber