

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

\* \* \* \* \*

Interview of: PHILIP WOLTEMATH

St. Paul, Minnesota

Wednesday,  
May 27, 2015

The above-captioned matter convened, pursuant to notice.

BEFORE: RICHARD HIPSKIND  
Investigator-in-Charge



I, Phillip Woltemath, have read the foregoing pages of a copy of my testimony given during an interview in the accident investigation of the construction gang foreman employee fatality on BNSF Railway Company on May 25, 2015, at about 11:38 a.m. in Minneapolis, MN and these pages constitute a true and accurate transcription of same with the exception of the following amendments, additions, deletions or corrections:

pg 1, 3, 4 line 6, 5 lines 15 & 20, 29 line 19, certificate page Phillip is misspelled

<u>PAGE NO:</u>	<u>LINE NO:</u>	<u>CHANGE AND REASON FOR CHANGE</u>
<u>6</u>	<u>15</u>	<u>out on "a" word missing</u>
<u><del>8</del></u>	<u><del>2</del></u>	<u>"that" instead of what wrong word</u>
<u>17</u>	<u>17</u>	<u>"panels" instead of "vehicles," wrong word</u>
<u>24</u>	<u>6</u>	<u>roadmaster call extra word</u>
<u>36</u>	<u>11</u>	<u>"weekdays" instead of "weekends" wrong word</u>
<u>36</u>	<u>12</u>	<u>"weekdays" instead of "weekends" wrong word</u>
<u>4</u>	<u>14</u>	<u>would "like" word missing</u>
<u>7</u>	<u>9</u>	<u>"slow down" instead of "slow and" word missing</u>
<u>12</u>	<u>21</u>	<u>"try to" instead of "try pull" word missing</u>
<u><del>2</del> 15</u>	<u>23</u>	<u>"help to" instead of "help labor" word missing</u>
<u>17</u>	<u>10</u>	<u>"back then" instead of "back when" wrong word</u>

I declare that I have read my statements and that it is true and correct subject to any changes in the form or substance entered here.

Date: 6-22-15

Witness: [Signature]

## APPEARANCES:

Richard Hipskind  
NTSB

Steven Jenner  
NTSB

Dale Johnson  
FRA

John Palacios  
BNSF

George Loveland  
Brotherhood of Maintenance Of Way Employees

Thomas Julik  
FRA

John Smullon  
FRA

John Mozinski  
BMW EDE

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I N T E R V I E W

1  
2 MR. HIPSKIND: Good morning, everybody. My name is  
3 Richard Hipskind, and I am the investigator-in-charge and the  
4 Track and Engineering Group chairman for NTSB, for this accident.  
5 We are here today on May 27, 2015, at the Holiday Inn Downtown in  
6 St. Paul, Minnesota, to conduct an interview with Mr. Philip  
7 Woltemath, who works for the BNSF Railway, or BNSF. This  
8 interview is in conjunction with NTSB's investigation of a  
9 maintenance-of-way employee fatality on BNSF's Midway Subdivision  
10 in Minneapolis, Minnesota, near Minneapolis Junction, on May 25,  
11 2015. The NTSB accident reference number is DCA-15-FR-011.

12 Before our interview and questions, let's go around the  
13 table and introduce ourselves. Please spell your last name, and  
14 please identify who you are representing, and your title. I would  
15 everybody to speak clearly and loudly enough so we can get an  
16 accurate recording.

17 I'll lead off and then pass off to my right. Again, my  
18 name is Richard Hipskind. The spelling of my last name is H-I-P-  
19 S-K-I-N-D. I am a railroad accident investigator, the  
20 investigator-in-charge, and the Track and Engineering Group  
21 chairman for this accident.

22 DR. JENNER: Good afternoon. I'm Stephen Jenner. I do  
23 human performance investigations with the NTSB.

24 MR. JOHNSON: I'm Dale Johnson. That's J-O-H-N-S-O-N.  
25 I represent the FRA, and I'm a track safety inspector.

1           MR. PALACIOS: I'm John Palacios. That's P-A-L-A-C-I-O-  
2 S. I'm with BNSF Railway, and I'm the director of engineering  
3 safety.

4           MR. LOVELAND: George Loveland, L-O-V-E-L-A-N-D, vice  
5 general chairman for the Brotherhood of Maintenance of Way  
6 Employees Division.

7           MR. JULIK: My name is Thomas Julik. Last name is  
8 spelled J-U-L-I-K. I am with the FRA as a safety inspector in the  
9 track discipline.

10          MR. SMULLON: I am John Smullon, Federal Railroad  
11 Administration, operating practices safety inspector. I'm here  
12 posted just working as a scribe for this interview.

13          MR. HIPSKIND: And Mr. Woltemath, would you please  
14 introduce yourself?

15          MR. WOLTEMATH: My name is Philip Woltemath, W-O-L-T-E-  
16 M-A-T-H, and I'm a BNSF maintenance employee.

17          MR. HIPSKIND: And, Mr. Woltemath, do you mind if we can  
18 go forward on a first name basis?

19          MR. WOLTEMATH: That's fine.

20          MR. HIPSKIND: Philip or Phil, either one?

21          MR. WOLTEMATH: Either one.

22          MR. HIPSKIND: Okay, Phil, do you wish to have a  
23 representative with you here at this interview today?

24          MR. WOLTEMATH: Yes.

25          MR. HIPSKIND: And, John, would you please introduce

1 yourself, and go on the record.

2 MR. MOZINSKI: John Mozinski, M-O-Z-I-N-S-K-I, BMWED,  
3 vice chairman, secretary/treasurer.

4 MR. HIPSKIND: And Phil, do we have your permission to  
5 record this discussion with you today?

6 MR. WOLTEMATH: Yes.

7 MR. HIPSKIND: Okay.

8 INTERVIEW OF PHILIP WOLTEMATH

9 BY MR. HIPSKIND:

10 Q. First thing, Phil, I want you to address is just give me  
11 a little insight, background information about when you hired on,  
12 maybe how many years you've worked. And give me kind of a  
13 synopsis of the different jobs, job titles you've held, and bring  
14 me up to present date, please.

15 A. I hired on in August of 2007 and started out on  
16 maintenance gang as a trackman. And then from there to here, I've  
17 been on RSG gangs, the P-811, rail gangs, tie gangs a little bit.  
18 A little bit of trackman, but mostly running machines, group 3's,  
19 group 2's, group 5's. And currently I'm on a group 2 front-end  
20 loader on CG08.

21 Q. Okay, CG08 is the gang number that you're assigned to?

22 A. The construction gang, that's correct.

23 Q. Construction gang; CG. Okay. So Phil, here's what I  
24 want to roadmap for you, and then I want to sit back listen to  
25 your account of the day of the accident. I want to try to get an

1 understanding from you about how you came to be part of that gang  
2 that day, and maybe for the weekend, how that process unfolded.  
3 But then I want you to kind of move forward to the day of the  
4 accident and I want to understand how your day started out, if  
5 there was a job briefing, and kind of go into some detail about  
6 that, and then begin to cover the tasks that you guys performed  
7 that day, and then just in general your recollection of your  
8 movements and the tasks that you were assigned and what you went  
9 to. But then I want you to kind of slow and to go into even  
10 greater detail of when you guys eventually got over there to  
11 unload the track panels, okay?

12 A. Okay.

13 Q. I know I gave you a lot there to talk about, but just  
14 begin and give us your thoughts.

15 A. Well, I came to this gang because, by the schedule, I  
16 would get to spend quite a bit of time close to home. And then I  
17 actually haven't gotten to take much advantage of that because my  
18 car has been in the shop for a few months now, which sounds  
19 ridiculous, but it's true. And so I've been working a lot of  
20 weekends because I really can't go home. Nobody lives that close  
21 to me, and I figure I might as well work. I mean, I'm a hunter, I  
22 like to fish, that kind of stuff, and that's usually in the fall.  
23 So right now I don't have anything going on, so I have been trying  
24 to take advantage of my weekends, you know, working as much as  
25 possible.



1           And on that day we -- you know, just the weekends were  
2 always a little more relaxed, you know. We kind of were -- we'd  
3 start the day just a little bit later. You know, get to sleep in,  
4 because we were never in a rush. So we had our job briefing  
5 Monday morning at the hotel at 8:00, and we went over what the  
6 day's work was going to be, what our protection was going to be.  
7 We didn't go into great detail, but, I mean, it was just kind of  
8 short and sweet.

9           We left the hotel, went down to Union Yard, and the  
10 first task at hand was going to be putting together a number 11  
11 turnout on a switch that was supposed to go in today, I think,  
12 Wednesday? And we got it, knocked out. It really doesn't take  
13 that long to do that even with only five people doing it. But  
14 again, we were in no rush.

15           And after completing that, we had to go over and unload  
16 the track panels. And then, I was the first one to take off. I  
17 had to stop and get fuel in my loader. And then Roe Morgan  
18 followed me in the van because he didn't know where Minneapolis  
19 Junction was. And so he followed me and we got out to Minneapolis  
20 Junction. And that's where we waited for Tyrell to get there so  
21 he could put up the derails and give us our protection on that  
22 industry track.

23           After Tyrell got there and got the switches and  
24 everything locked out, or the derails up, we went ahead and  
25 started unchaining the cars. I don't really know how long it

1 took. But again, just no rush, just kind of taking our time. It  
2 was a holiday. And so the pay was good, so nobody was in a rush.  
3 We got all the panels done, or unchained, and Dave and I went to  
4 our loader so we could start getting ready to unload. There was  
5 two cars that had panels on them. Each car had two stacks of  
6 seven panels high. Dave was going to unload the car on the right;  
7 I was going to unload the car on the left. Everybody had gotten  
8 down off of the cars, except Tyrell. Tyrell was still up there,  
9 so I just sat and waited because that was the car that I was going  
10 to unload off of.

11           And Dave went to make his first pick. He was picking up  
12 two panels. And it was at this time when Tyrell, who was right in  
13 front of me, looked over and tapped his hardhat to imply a hot  
14 rail was coming. I got on the radio. I relayed to Dave that we  
15 had a hot rail. And I looked back up at Tyrell, I looked back to  
16 my right; I saw the panel sliding off. I was thinking it's going  
17 to be close, I hope he misses that second locomotive. And then  
18 that's when the panel hit the locomotive and the locomotive drove  
19 the panel into the next stack and the next stack. And I'm not  
20 sure if Tyrell jumped or if the jostle caused him to fall, but he  
21 fell on the ground on the field side of the cars and he was in a  
22 lot of pain and I didn't know what to do.

23           And that was when the first panel came down and landed  
24 on top of him. It hit him and kind of bounced a little bit. I  
25 don't know if he was dead right away or not. When the panel come

1 up a little bit, he rolled, either under his own power or from the  
2 momentum of the panel. And I remember thinking I need to get up  
3 there with my loader and get this panel lifted off of him because  
4 otherwise he won't be able to breathe.

5           At the time I thought surely he's still alive. And then  
6 as I'm getting ready to pull up there, a second panel come down  
7 and hit the side of the panel that was on him, and there was a  
8 very graphic sight, and I knew that it was over. I didn't know  
9 what to do. I've never seen anything like that in my life. I  
10 hope never to see it again.

11           By this time I was trying to call 911 on the radio, but  
12 I just -- I really didn't know what I was doing. Jesse was on the  
13 phone with 911. The train crew had stopped and asked if everyone  
14 was okay. And I said no, and they called emergency services, and  
15 I was just froze in my loader until emergency services got there.  
16 When the ambulances got there, I was able to move my loader and  
17 just turn it sideways to give the emergency responders more room.  
18 But I already knew that it was over.

19           Q. All right. Thanks for that, Phil. Let me go back and  
20 try to maybe pull out some more details based on some other stuff  
21 that we've kind of heard previous. In your explanation, you  
22 talked about seeing Tyrell up on one of the piles.

23           A. Yeah.

24           Q. And for the car that you were going to unload, was he on  
25 the east pile of that car or the west pile?

1           A.    I'm trying to think.  He was on the left.  So that would  
2   be the west pile, which is where I was already lined up to go and  
3   make a pick.  But with him up there, I couldn't pick up any panels  
4   so I was just waiting.

5           Q.    So when we say the west pile, we're talking about the  
6   pile at the very far end?

7           A.    Yes.

8           Q.    So the last pile?

9           A.    Yes.

10          Q.    That's the pile you're going to pick, and then Dave's  
11   going to work on the pile --

12          A.    In the other car.

13          Q.    The farthest away of the four piles?

14          A.    Yes.

15          Q.    So if the pile that Dave's working on, we call A, and  
16   the next pile toward you is we call it B, that's on the first car;  
17   A and B are on the first car.

18          A.    Yeah.

19          Q.    And so if we continue the numbering or lettering, the  
20   pile that Tyrell was not on would be pile C, or stack C?

21          A.    That's correct.

22          Q.    And you are absolutely sure he was on pile stack D?

23          A.    Yes.  He was right in front of me on stack D.

24          Q.    No doubt about it?

25          A.    No doubt about it.

1 Q. Okay. And is -- should I think of the position of your  
2 loader as forks forward?

3 A. Yes.

4 Q. Facing the car, getting ready to do some unloading?

5 A. Yes. I had positioned my loader forks forward, centered  
6 on the panel, pulled back far enough away where -- I had shut my  
7 loader off while we were unchaining and everything, just -- I  
8 don't know, there's no point in burning the fuel when we were  
9 doing all that. But it was already staged ready to go and unload  
10 these panels. And so when everything got unchained, I just went  
11 in there and I got ready. And when I had got in the loader, there  
12 was three people on the panels. I believe Roe was up there,  
13 Tyrell, and Jesse. And then Dave had already gotten down and was  
14 going to his loader. And then Roe and Jesse got down, and Tyrell  
15 was still up there.

16 Q. Was Tyrell being up there, was that part of the plan?

17 A. I'm not sure. I don't know if he had a lookout form  
18 filled out or if he was just -- since we weren't fouling, if he  
19 was just looking out. I don't know. I don't know.

20 Q. Well, let's talk about that. Because I -- you used some  
21 words, and I want to try pull a little broader understanding  
22 there. In your explanation you said something about Tyrell or  
23 that you saw Tyrell tap the top of his hard hat. Is that correct?

24 A. Yes.

25 Q. Okay. The transcription can't hear your head nod, so be

1 mindful of that. But explain to me as if I don't know, that's the  
2 universal sign in railroading for what?

3 A. That means there's a hot rail, a train coming by.

4 Q. Okay, did he happen to point in any direction or just  
5 tap his hard hat?

6 A. He didn't point, he just -- he tapped his hard hat. And  
7 I --

8 Q. And you --

9 A. -- I saw the light power coming. And I got on the radio  
10 and I said, Dave, there's a hot rail coming.

11 Q. A radio in your cab?

12 A. Yes.

13 Q. And it's on what channel? We know there's a couple  
14 channels that were --

15 A. It was on channel 55.

16 Q. And why is it on 55?

17 A. Because that's the channel that we have designated as  
18 our work channel.

19 Q. Phil, do you recall whether Tyrell had a handset with  
20 him?

21 A. No. I don't think he did.

22 Q. You don't think he did?

23 A. I don't think he did.

24 Q. It may have likely, what, been in his truck or  
25 something?

1           A.    Yes.

2           Q.    Okay.  We've kind of been wondering about that.  So I  
3 know you can't speak for Tyrell's intent, and if you guys didn't  
4 discuss it before, let me just ask you, why do you think Tyrell  
5 was up there?

6           A.    I don't know.  We believed that under the adjacent track  
7 rule we did not need protection on the main line because we had no  
8 intent to foul.  All of our work was going to be done on the field  
9 side with the loaders and everything.  And I don't know if he was  
10 up there just in case or if, before he got down, he saw an  
11 airplane.  I couldn't speculate on any of that.  I just know that  
12 when we began -- well, when Dave was making his first pick, that  
13 Tyrell was still on the other car.

14          Q.    The one that you were going to --

15          A.    The one that I was going to unload off of.

16          Q.    Okay.  When Dave went to make his lift was any of your  
17 attention turned that way, or not?

18          A.    I saw that he was working on picking up the two panels  
19 and I was really looking forward at Tyrell waiting for him to get  
20 down.  Because we had already talked about, you know, when we got  
21 done with this, we were going to go grab some lunch.  And, I mean,  
22 the place we were going to eat was right there, so we weren't in  
23 any rush.  And I don't know if anybody else had had that  
24 conversation or if that was just something between me and Tyrell.  
25 We were just kind of, you know, taking it easy on the holiday.

1 Nobody was in a rush. And so I don't know. I've gone over and  
2 over in my mind what he was still doing on them cars. I feel that  
3 with him on that car and Dave making a pick on the other car, I  
4 feel that he was in a safe place even though -- I don't think  
5 there's a rule against it. I could be wrong. But I feel that he  
6 was in a safe place because no unloading from that car was  
7 happening. And I was just waiting for him to get down so that I  
8 could start unloading and we could, you know, get the task done.

9 Q. Okay. Tell me a little about the machine that you were  
10 operating that's assigned to you.

11 A. Yeah.

12 Q. Do you feel comfortable with operating that machine?

13 A. Yeah, I've been on it since the start of the year. It's  
14 a Cat 966M front-end loader. I've got a joystick for drive, and  
15 my boom is operated off of levers. It's pretty easy after you  
16 start -- after you get used to it, it's pretty user friendly.

17 Q. Okay, tell me about the maintenance and inspection of  
18 the piece of equipment that you operate. Do you maintain a  
19 logbook, or how should I understand that?

20 A. I do. I hadn't been running my loader much lately  
21 because we have the other loader. And so sometimes, with us  
22 having a small crew on a construction gang, sometimes we need  
23 extra help labor and stuff, so sometimes I would help labor and  
24 the other guy would run the loader and vice versa. I mean --

25 Q. Okay. Well, any issues with your piece of equipment?



1           A.    No.  It seemed to run fine.  I mean, it never acted in a  
2 way that was a malfunction.  It's got a pretty smooth operation to  
3 it.  And, I mean, obviously it takes a little bit of getting used  
4 to if you're not used to the joystick as opposed to having a  
5 steering wheel, but a lot of people think it's easier because you  
6 can move a lot more fluid.  I don't know if that answers your  
7 question.

8           Q.    Yeah, sure.  And in terms of your experience, had you  
9 used that type of machine to unload track panels before?

10          A.    I hadn't to unload.  One of the other operators had  
11 unloaded from Minneapolis Junction and unloaded a lot of panels.  
12 I don't know how many for sure, three or four cars, we unloaded  
13 with the front-end loader there the first week that we were here  
14 when it was just the operators and Tyrell.  And we had no issues  
15 whatsoever.

16          Q.    Okay, but Phil, I want to be clear, because -- I missed  
17 a word maybe that you said there.  Back at the first part of the  
18 year, the construction year, production year, a similar set of  
19 flat cars was placed on that track?  Was that -- is that how I  
20 should understand this?

21          A.    There was at Minneapolis Junction, the first week we  
22 were here -- must have been 2 weeks ago, there was a set of panels  
23 on the flat cars that we unloaded with a loader and had no issues  
24 whatsoever.  We unloaded them.  We stacked them.  But it wasn't me  
25 that operated, it was the other -- there were two operators.

1 Q. Okay, that's what I wanted to get at. You were there,  
2 but on that particular day you weren't assigned as an operator;  
3 you witnessed and viewed the unloading, but you weren't the actual  
4 operator?

5 A. No. I witnessed the other guy do it, and then I was  
6 helping as a laborer, helping tie up the chains after we got the  
7 panels off.

8 Q. And was Tyrell, was he the foreman, the EIC, employee-  
9 in-charge on that particular day? We're talking not the day of  
10 the accident, but back when.

11 A. Tyrell -- right. Tyrell I believe was in charge. We  
12 were working with the other crew that Evan is on, the local  
13 support gang. And I'm not -- I believe that it might have been  
14 Evan that had already taken the track out of service. Yes, we  
15 went there and they had already had that track out of service and  
16 they already had the cars untied. And we just went and unloaded  
17 the vehicles with one front-end loader.

18 Q. Okay, now I don't mean this to be a trick question, and  
19 if you recall, fine. But in that day's activity that you're  
20 talking about way back when, were you part of any job briefing for  
21 that task that was being accomplished that day?

22 A. I don't remember. That was 2 weeks ago. I mean, we --  
23 I'm sure we briefed about it. Where those panels were, it was  
24 actually further to the east where there was wider track centers.  
25 I don't know if that made a difference. I don't think so, but I

1 think that our job brief was with Evan on where we were unloading  
2 from, where we were putting them to. I believe that it was with  
3 Evan. I think that he was more the employee-in-charge on that one  
4 because we had just got to the area, unfamiliar, didn't really  
5 know what was going on.

6 Q. Okay, any issues with how the work progressed on that  
7 particular day?

8 A. No, everything went smooth. I mean, when Rob was  
9 unloading those panels -- Rob's our other group 2 operator. When  
10 he was unloading those panels, he didn't even shift any ties.  
11 Everything unloaded very smooth. Nothing was jostled. It went  
12 like how they should have.

13 Q. Okay, now let's talk about Monday again. And over the  
14 course of your employment operating a machine like that, that you  
15 had the day of the accident, have you ever used a machine like  
16 that to unload track panels, regardless of the year or location?

17 A. I haven't unloaded off of a car. I have picked panels  
18 up and put them down in stacks that are on the ground.

19 Q. Using what kind of equipment?

20 A. A front-end loader with forks.

21 Q. Okay.

22 A. The same principle, but the panels we're setting on the  
23 ground as opposed to on the flat car.

24 Q. Okay, so you -- I'm going to use a word here. You had a  
25 feel for how to maneuver the panels?

1           A.    Yes.  The key is to find the center, so that way it  
2  doesn't flop around on you.  And on those pre-built panels, the  
3  tie spacing is usually right on.  So you can just count the ties  
4  in.  You've got your center mark.  You pick it up.  It's usually a  
5  good lift; it doesn't rock or anything.  You grab it, you set it  
6  down, you go back and get another one.

7                    It's a lot different than if you're pulling a panel out  
8  of the track that was in the ballast.  You can pick it up, ties  
9  might fall off, there's rock and stuff in there.  The panel might  
10 wobble on you.  Picking up these new panels, it's a lot more  
11 sturdy.  Because it's from the factory, it comes spaced properly  
12 and it's -- if you get in the middle, you've got a good balance  
13 point.

14          Q.    Okay, and then I was waiting for that word to be  
15 introduced.  It's a balanced load?

16          A.    Yes.

17          Q.    Easier to handle, not likely to shift on you?

18          A.    Right.

19          Q.    Okay.  The equipment that you run, does it have any kind  
20 of warning lights, a Mars light on top, or anything like that?

21          A.    What do you mean?

22          Q.    Oh, you know, like a swirling yellow thing on the top of  
23 your equipment, a light?

24          A.    They have strobe lights.

25          Q.    A strobe light.  Is there a strobe light on top of your

1 equipment?

2 A. It's on top of both loaders, yes. It's not actually on  
3 top. It's connected behind the cab, and then you flip it up. And  
4 it's -- all of our equipment has to have a strobe light.

5 Q. Okay. Should I understand the operation of that light  
6 to be that when you turn on the key it's on continuous?

7 A. Mine is. I think you can shut it off, but I'm not sure.

8 Q. Okay, we can leave that as something that we'll look  
9 into and figure out one way or the other.

10 A. Okay. I believe that you can shut it off just like all  
11 the lights, but I'm not sure. I know when we moved the machine up  
12 here and I turned the key on, the light was flashing and I  
13 couldn't figure out what it was. And I turned around I saw the  
14 light had been flipped down. Because when they lowboy'd it up,  
15 they flipped it down so they'd have a little more clearance. And  
16 so I had to flip it back up.

17 Q. Did you see the kind of domino effect of one panel  
18 pushing another panel and all that? Were you in a place to kind  
19 of see all that unfold?

20 A. Unfortunately, I was. I was up sitting in my loader at  
21 a high point of view, where I wasn't sure where or if the panel  
22 was going to hit the locomotive. But when it did hit, I saw the  
23 locomotive drive the panel that had fallen to the north side get  
24 driven into the next stack and then the next pile get driven. And  
25 I can't remember which panel fell where off of what stack because

1 it happened so fast, but I just remember the two specific panels  
2 that fell. And that's -- it just -- everybody always says it  
3 happened so fast, but it did.

4 Q. Okay, but thinking back on the lettering of the stacks  
5 of panel, A, B, C, D.

6 A. Right.

7 Q. Should we understand that a panel got in the foul of the  
8 moving locomotive from A?

9 A. Yes.

10 Q. And then went to B?

11 A. Yes.

12 Q. And B to C, and C to D?

13 A. I don't remember if C knocked a panel off of D or if it  
14 just jostled, but I know that a panel from B hit panel C, and then  
15 I remember seeing Tyrell fall to the ground.

16 Q. Do you think he fell to the ground or do you think he  
17 jumped to the ground?

18 A. I really -- I'm not sure.

19 Q. Okay.

20 A. I think that he might have -- from the impact, I think  
21 he might have slipped, but he easily could have jumped just to try  
22 to get out of the way.

23 Q. Okay.

24 A. I believe he was facing that way. I'm not sure. When  
25 he heard it, he had to have looked that way. And being that high

1 up, even jumping, he would get hurt pretty bad.

2 Q. Okay. After the incident happened and you were aware  
3 that Tyrell has mostly likely expired, do you recall any other  
4 employees coming around or approaching the group?

5 A. Kind of when it -- I think it was after the second panel  
6 had hit, I saw Dave and Roe running. And when the second panel  
7 came down, I actually lost sight of the body. It was just in a  
8 way where I couldn't see the body anymore. And I just remember  
9 looking over, and I'd already seen enough that I knew -- as you  
10 put it that the bell had rang. I saw Dave come up running, and I  
11 just remember him putting his hands up, and just devastation. I  
12 mean, and it was either then -- I think it was right then that  
13 Jesse was behind me trying to use his cellphone to get ahold of  
14 emergency services to come and help.

15 Q. Okay. Do you recall maybe a crew member from the crew  
16 that was operating the locomotive approaching the gang or talking  
17 to the gang?

18 A. They had stopped the train and they had come out of the  
19 door of the locomotive. They were still standing on the  
20 locomotive, I believe on the deck, and they asked if everybody was  
21 okay. And I said, no, everybody's not okay. And they asked do we  
22 need emergency services -- I'm pretty sure they asked that -- and  
23 I said, yes. And they went back into the locomotive and I tried  
24 calling on 36. I was in such a panic I don't even know if I hit  
25 the right buttons.

1           But I asked them, I said, what channel are you -- is the  
2 road channel right here, because in the yard it was 36 but then it  
3 was also 70. So they'd been running the Form B's on 36, so I  
4 thought that would be the appropriate channel to call on. And I  
5 went over to 70, and I listened to the call. And that's probably  
6 where my radio is still at, is on channel 70. And I just froze.  
7 I just sat there until the ambulances got there. And then like I  
8 said, I moved my loader from facing the cars to being parallel  
9 with the cars to try to be out of the way for emergency services.

10          Q.    And when you say cars, you're talking about those  
11 antique cars that's on that track back away from the pocket track?

12          A.    Well, I was kind of by them, but I had been facing the  
13 panel cars.

14          Q.    Right.

15          A.    And I just -- I just turned my loader just to the side  
16 so I was parallel to that industry track.

17          Q.    Okay.

18          A.    I just thought if the ambulance needed to drive up  
19 there, I didn't know -- I didn't know if I needed to stay there.  
20 I didn't know what to do.

21          Q.    But mainly it was to get out of the way to facilitate  
22 the emergency response?

23          A.    Yes.

24          Q.    Okay. And how did your day end up? Did you end up  
25 providing a statement? Did you provide samples? Take us through



1 some of that.

2 A. They asked us -- the fire department and the police  
3 briefly talked with us, kind of asked us what happened, who was in  
4 charge. And at this time I had been on the phone. I never  
5 remember to save phone numbers in my cellphone. I called our  
6 assistant foreman, and I asked him to have our roadmaster to call  
7 me immediately because we had had a fatality. I didn't say who it  
8 was. I just told him we had a fatality and he needed to get ahold  
9 of me.

10 And then a minute or two later, our roadmaster,  
11 Ryan Wonola, was in contact with me. I briefed him about what had  
12 happened. At this time I was still in the loader. I hadn't been  
13 able to get down yet. But we were trying to get the process going  
14 of notifying the next of kin. Because I have worked with Tyrell's  
15 dad before; he's a great guy. And I'm sure the other officers for  
16 the BSNF were trying to get some work done with notifying next of  
17 kin. And then there was a roadmaster there, Jeremy something, the  
18 local roadmaster kind of asked us what had happened and we told  
19 him. He asked us to go down a ways away from the scene because we  
20 just didn't need to be there.

21 So we went to the east end of those museum cars there  
22 and we were just kind of down around the van. And I don't know,  
23 after an hour or so, we went and sat in the van. And I could  
24 still see the scene, so I had to back up just to get that out of  
25 our sight. The fire department had a -- I don't know if he was a

1 chaplain, there to kind of talk with us, to consult us and kind of  
2 just see how everybody was doing. I know we were just all in such  
3 shock from what had happened that -- it wasn't long ago, but it's  
4 just -- even right after it happened, it just seemed like it had  
5 been hours because it was just running over and over and over in  
6 our heads. And I think when the accident happened it was sometime  
7 around 11:45, I believe, 11:30, 11:45. And then it was probably  
8 around maybe 3:30 when we were finally taken off of the scene and  
9 taken back to the GOB building.

10 Q. GOB stands for what?

11 A. General office building, I believe is what. And then we  
12 were taken in a room there and we sat there for a while. And we  
13 were waiting on the guy to come and do the breathalyzer and the  
14 urine samples. And this time it was probably about 4:00, 4:15. I  
15 was getting phone calls from co-workers asking me for details,  
16 because the father had already heard rumors that the company, 4½  
17 hours later, hadn't given him the news.

18 And it was about this same time that the company had  
19 their claims people there wanting to take statements from us. And  
20 we gave a brief statement. And I just wanted to get out of there.  
21 I was ready to jump out of my skin. I couldn't get out of there  
22 soon enough. I didn't know why we were being held there. If  
23 they wanted to take a urine sample, they should have made that  
24 call hours sooner.

25 Q. By a brief statement, do you mean like a hand-written

1 statement?

2 A. Yes, a hand-written statement. We were all pretty  
3 distraught over the ordeal so we weren't really wanting to go into  
4 great detail because it was still just the shock was there. So we  
5 gave a brief statement, and we were just wanting to get out of  
6 there and go back to the hotel where we would call our families  
7 and just take a little bit of time to digest what had happened,  
8 because it was a life changing event.

9 Q. Okay. I think you've taken us through most of it. And  
10 I appreciate the fact that you were very candid and very detailed.  
11 Let me have some of the other investigators join us, and see  
12 what's on their mind, okay? You still good to go?

13 A. Yeah.

14 MR. HIPSKIND: All right, Mr. Johnson, can I ask you to  
15 -- if you have any questions?

16 MR. JOHNSON: Yes.

17 BY MR. JOHNSON:

18 Q. Let's see. Philip, on that day, what do you think your  
19 role was that day? I know you say you're a machine operator, but  
20 you said you do other things too. So what do you really think  
21 your role was that day?

22 A. Well, it's a small crew. And just it's kind of a -- we  
23 think of BSNF as kind of a family business because we're all a  
24 family, we all work together. So if you see somebody working  
25 their butts off, you go and you help them, because nobody should

1 have to work that hard. So we all just kind of fill in the role.  
2 If somebody's working, we try to help them to lighten the load for  
3 them. So when there's labor to be done, if there's no machines to  
4 be operated, we labor. If there's machine work to be done, we're  
5 on machines and the laborers do the labor.

6 Q. Okay.

7 A. We just -- we all try to share the workload to make the  
8 day go by faster and easier. Because sitting there watching one  
9 person struggle at a task is not the right thing to do. It  
10 doesn't matter what the job title is.

11 Q. Okay. And again, who was in charge that day?

12 A. Tyrell Anderson.

13 Q. Tyrell. And you had explained earlier that the team had  
14 done a briefing. But I didn't hear, when you got to the job site  
15 where the panels were, can you kind of go over what -- I remember  
16 you saying you were there with Jesse?

17 A. With Roe.

18 Q. With Roe. You got there first?

19 A. Yeah, Roe had followed me in the van because he didn't  
20 know where Minneapolis Junction was. At least I don't believe  
21 that he did.

22 Q. Okay.

23 A. So I just had him follow me. I was in my loader, and I  
24 just had him follow me because I knew where I was going because we  
25 had been there 2 weeks before unloading the other panels.

1 Q. Okay.

2 A. So we got there and we just waited because we couldn't  
3 unchain those panels until we had our protection.

4 Q. Okay.

5 A. Which was switches and derails.

6 Q. So that's where I'm missing something, is how did you  
7 know the protection was complete?

8 A. We had briefed in the morning. And it -- we covered in  
9 the morning briefing, we covered what tasks we had for the day and  
10 what our protection would be. Now, the number 11 switch, it was  
11 out of track. So you don't need any protection, you know. It was  
12 in a puddle, because apparently it rains a lot up here. But, you  
13 know, we got that all done. And then when we got up to  
14 Minneapolis Junction, we were waiting for Tyrell to establish our  
15 protection.

16 Q. So that's what I mean, did he communicate that to you  
17 that it --

18 A. We went over it in the briefing.

19 Q. Okay. So you did have a briefing there?

20 A. It was the briefing in the morning.

21 Q. Okay.

22 A. I mean, we talked a little bit before I left.

23 Q. Yeah.

24 A. And he was like, well, wait for me because I'm going to  
25 put up the derails. I mean, I don't know, that's kind of an

1 informal briefing. I mean, it's not a, you know, stand around  
2 for --

3 Q. But he did communicate to you that the derails were in  
4 place and the switches were locked out?

5 A. Yes. We waited for him before we could touch anything  
6 and he had the derails down.

7 Q. Okay. Okay, and you had said you'd been involved in  
8 this task before, but you didn't do it but you were involved with  
9 it?

10 A. Yes, I was -- we were here -- just half of the gang was  
11 here 2 weeks ago, and one the tasks that we had to do was to  
12 unload some panels. And so we took one of our loaders over there,  
13 just the one, and the rest of us were just there to help tie  
14 chains down and whatnot, help Evan's crew.

15 Q. Yeah.

16 A. And everything went smooth that day. I mean, none of  
17 the panels shifted; nothing was slipping or falling. Everything  
18 went smooth like it was supposed to.

19 MR. JOHNSON: Okay, thank you Philip. I believe I'm  
20 done.

21 MR. HIPSKIND: Thanks Dale.

22 George, can I lean on you to ask some questions on some  
23 new subject matter if you have something?

24 BY MR. LOVELAND:

25 Q. Yeah, just a couple things, Phil, if you got a second.

1 So you guy's talked about your protection when you got there and  
2 you had your tracks locked out for the work you were going to do?

3 A. Well, when Roe and I had got there --

4 Q. Before you started your work.

5 A. We were waiting for Tyrell to get there. Tyrell and  
6 Jesse were coming together and they got the derails up.

7 Q. But before you started your work, you had your  
8 protection established?

9 A. Before we went and unchained any cars, absolutely.

10 Q. And the same process you did the time before?

11 A. Yeah, the derails were already up and we briefed with  
12 Evan's crew and they told us that the derails were up.

13 Q. But the conditions were the same? As far as working  
14 conditions.

15 A. We had the same task, but -- are you okay?

16 Q. Um-hum.

17 A. We had the same task, but it was a little farther to the  
18 east, where the track centers were a little wider. I don't think  
19 that that really had a bearing on the situation, because by our  
20 understanding of the rule, we had no intent to foul the track so  
21 we did not need adjacent protection.

22 Q. If you thought you would have, you would have?

23 A. If we thought we would have, we would've had Tyrell get  
24 track and time, and if they would've not given us track and time,  
25 we would have just come back and done it another day.

1 Q. On the first time you guys were there unloading the  
2 panels were the weather conditions the same? Was it dry? Had it  
3 been raining or was it raining, or do you even remember?

4 A. I don't remember. I mean, I don't -- it wasn't as wet.

5 Q. Okay.

6 A. I don't remember if it was dry or if there was a little  
7 bit of water standing, but I'm not sure.

8 Q. I want to touch on the machine aspects here just a  
9 little bit. I know you talked about you've moved panels and stuff  
10 before with the forks on a loader.

11 A. Right.

12 Q. On the loader. Is it -- can you just pull right up to  
13 the panel or do you got to kind of finesse to get the forks to  
14 reach both rails?

15 A. You kind of have to kind of finesse it just a little bit  
16 because the forks aren't super long, so you kind of got to work  
17 your way under there. But if you come in at a little bit of an  
18 angle, you can just slide right under there, and then you just  
19 kind of bump it up, and then you'll pull it to you. Not push  
20 away, pull it to you.

21 Q. So if you're working at -- up here like this above you  
22 trying to get it in, it's a little more difficult than if you're  
23 looking at it down here.

24 A. I wouldn't say so.

25 Q. Okay.



1           A.    About like any machine, visibility can be issues in  
2 certain different levels.  So sometimes working up here you  
3 actually can see your forks better than when you're working down  
4 here.

5           Q.    Okay.

6           A.    Because you've got the front of the machine, you've got  
7 the frame of the forks.  So when you're up here, sometimes you  
8 actually have better visibility.

9           Q.    If the forks were a foot or so longer, would that make  
10 it easier to handle panels with it?

11          A.    I would say so.  I would say if they were a little bit  
12 longer, you could definitely get under there easier.

13          Q.    Without the finesse?

14          A.    Yes, because it seems like when you get the forks under  
15 there, the frame of the forks is almost on the tops of the tie  
16 (indiscernible).  So if the forks were a little longer it would be  
17 easier.  I mean, they're -- when you go to make your pick, there  
18 could be a little bit of a -- it could slide towards you a little  
19 bit, but as long as you're picking up, I don't think that would be  
20 an issue.

21               MR. LOVELAND:  That's all I got.  Thank you, Phil, I  
22 appreciate that.

23               MR. HIPSKIND:  Thanks, George.

24               John?

25               MR. PALACIOS:  I got some things.

1 BY MR. PALACIOS:

2 Q. You said you had a job safety briefing at the motel in  
3 the morning, right?

4 A. At the motel.

5 Q. And then you had another one down at the panel site?

6 A. It was --

7 Q. Or just a short one?

8 A. It was just an informal one. He pretty much -- I was  
9 ready to go. I had Dave bring me my fork while I was getting  
10 diesel fuel.

11 Q. Okay.

12 A. And then he had to go back and get that. And so he told  
13 me to wait until he got the derails up before we did anything. So  
14 we got there, and Roe asked me, well, what's the plan? And I  
15 said, well, we're waiting for Tyrell to get our derails up. I  
16 mean, it was just that easy.

17 Q. When did you guys make that determination that no  
18 protection was going to be needed on the main track there? Did  
19 you guys make that as a group or did Tyrell make that decision or  
20 how was that decision made?

21 A. I think it was mostly made in the morning. Me and Dave  
22 had actually talked about it at the panel site when we were  
23 unchaining them. We had talked about it again, if we needed it or  
24 not. We were looking, and we said, well, we have more than 4 foot  
25 here. If we have -- by my understanding of the rule is adjacent

1 track speaks about on the tracks equipment. What we run is off-  
2 road equipment. And that could be something that needs to be  
3 changed. The wording on it might just need to go to maintenance-  
4 of-way equipment to handle all of them. But we thought that it  
5 didn't apply to us because all the work unloading was going to be  
6 on the field side with no intent to foul the main track. We  
7 shouldn't need protection on that main track because we weren't  
8 going to be there. So then it would fall --

9 Q. You and Roe made that decision?

10 A. Me and Dave.

11 Q. You and Dave, okay.

12 A. And so then -- and we had talked about it the briefing  
13 that we were going to need switches and derails because we had  
14 more than 4 foot clearance. And so then, if we didn't need the  
15 adjacent track, it was our belief that it would fall in 4-foot  
16 rule.

17 Q. Okay.

18 A. And so we looked. We believed, and I still believe,  
19 that we had at least 4 foot, so we were not fouling that track.  
20 So in my opinion, picking up the panels off this car would be like  
21 picking up the panels off the ground 6 feet away from the track.  
22 Could you get track and time? You probably could. But is it  
23 required? No, because you're not fouling that track.

24 Q. Okay, so you and the loader operator talked about it?

25 A. Yes, while we were unchaining the cars, we had had a

1 little talk just between us two, and assessed the situation, and  
2 we thought it falls to the 4-foot rule, and we have space that we  
3 are not fouling.

4 Q. I got you. All right, appreciate that. So when you  
5 were lined up to and Tyrell was up on the panels, your intent was  
6 to grab two or just one?

7 A. You know, it all comes down to the comfort of the  
8 operator. Those machines are definitely capable of picking up two  
9 panels, and it just comes to the comfort of the operator. Would I  
10 have grabbed one or two, I really don't know. I mean, sometimes  
11 you grab two, sometimes you grab one. It's just kind of whatever  
12 you're feeling. And a big key to that could be you go up there to  
13 grab that top one, you can't see the forks. You know, and you go  
14 down to that next one, maybe you can see your forks better so you  
15 feel like it's going to be a safer pick. I mean, I don't know. I  
16 didn't get up there to make that pick.

17 Q. Okay.

18 A. I was waiting for Tyrell to get down, and then  
19 everything happened. So I don't know what the visibility would  
20 have been like on that. But it comes down to the comfort of the  
21 operator. I mean, there's people that you go up an incline like  
22 this and you're freaking out, and there's other people that go up  
23 like this because they know that it's safe and they're not going  
24 to tip over. Just every day you're on it you get more  
25 comfortable. You understand the capabilities of the machine more,

1 and so I mean don't think that there was a problem picking up two  
2 panels. I think it would have been safe, but this day something  
3 happened.

4 Q. And that loader's capable of it?

5 A. Absolutely.

6 Q. Okay, and then just one last one on your -- in your job  
7 briefing did you guys cover exposures and risk, in that morning  
8 briefing?

9 A. We covered a little bit. I mean, it was more of a quick  
10 verbal briefing. I mean, we didn't go into depth near like on the  
11 weekends or --

12 Q. On the weekends?

13 A. During the week.

14 Q. Okay.

15 A. On the weekends, it's just a little more informal, I  
16 mean, we went over what work needed done and then we went over  
17 what our protection was going to be.

18 Q. Okay.

19 A. And so, I mean, we had deemed that we didn't need  
20 adjacent track protection. And so, I guess the only risk would  
21 have been -- it was wet, and so things were a little slippery.

22 MR. PALACIOS: All right. I appreciate it. That's all  
23 I got.

24 MR. HIPSKIND: Thanks, John.

25 Tom, do you have anything?

1           MR. JULIK: Yeah, I just have a couple quick questions  
2 here.

3           BY MR. JULIK:

4           Q. Do you assist in undoing the chains off the panels?

5           A. Yes.

6           Q. Okay, were you guys working on both sides of the cars to  
7 undo the chains?

8           A. We did the field side first, and then Tyrell and Jesse,  
9 I believe, were doing the ends, and me and Dave were on the main  
10 line side, but we still believed that we had more than 4 feet so  
11 we were not foul of that track. Now, I understand that if it was  
12 two main lines, you could not be in between those tracks. But  
13 being stub track, not 4 feet away, I thought we were within our  
14 right to do it because the 4-foot rule.

15          Q. Okay. So since you guys felt that you were further than  
16 4 feet from the main track, and you already had derails set up on  
17 the industry track --

18          A. Right, right.

19          Q. So did anyone have a statement about track safety filled  
20 out or was anyone acting as a lookout?

21          A. I don't believe so.

22          Q. Okay.

23          A. I don't think -- I mean, if we weren't foul of the  
24 track, I don't think we needed a form filled out. I mean, a lot  
25 comes with that 4-foot rule. If you're not within 4 foot, you're

1 not technically fouling the track. And if you're not fouling the  
2 track, you actually don't need that statement, by my  
3 understanding.

4 Q. Okay. Do you recall what the speed of the main track is  
5 through that area?

6 A. I don't know. The power unit that was coming by wasn't  
7 going very fast, maybe 15 or 20. I'm not sure.

8 Q. Okay. And when that train was approaching, do you  
9 recall hearing if it blew its horn or was ringing its bell?

10 A. I have no idea. I was in my loader. I don't think that  
11 I heard a horn, but he could have been ringing his bell and I  
12 wouldn't have heard. And then once all the chaos happened, he  
13 probably was blowing his horn and I just -- I don't know.

14 MR. JULIK: Okay, thank you. That's all I've got for  
15 you.

16 MR. HIPSKIND: Dr. Jenner?

17 DR. JENNER: Great, thanks. Do you need a break or are  
18 you doing okay?

19 MR. WOLTEMATH: I'd rather just get this over with.

20 DR. JENNER: Great, okay. We're rounding third here.  
21 You're doing great. Thank you.

22 BY DR. JENNER:

23 Q. Just a few follow-ups. You had mentioned a Rob?

24 A. Yes.

25 Q. A person named Rob who had previously unloaded the

1 panels and it went smoothly.

2 A. Yes. He -- Rob was our other group 2 operator. He had  
3 -- he's actually just bid off and went to the surfacing gang. And  
4 Rob and Dave are both very capable operators. They know what  
5 they're doing. They know how to handle the machines. And just on  
6 that day, Rob was on his loader and we went over there with just  
7 the one loader. And I don't know if there was really a reason  
8 why, but -- then on Monday we went over with two, and whether  
9 there was one or two, I don't know if it would've changed the  
10 outcome.

11 Q. So Rob had used the similar equipment, front loader --

12 A. He had used the same loader that Dave was on to unload  
13 those panels.

14 Q. Okay.

15 A. And, I mean, I guess in a perfect world everything goes  
16 right, and that day everything went right.

17 Q. Did you observe how Rob was unloading it? Was it two  
18 panels at a time, one panel?

19 A. I think that -- I think it was mostly one panel. I  
20 don't know. When we got -- we got side tracked and some of us  
21 were talking. I mean, you don't always watch the work that's  
22 being done when you're not affected by the work.

23 Q. Right.

24 A. So I'm not sure. He had mentioned going and getting two  
25 of them. I don't know if he did it or not. I know the loaders



1 are capable of it, but that's all.

2 Q. Okay. You familiar with the excavator equipment?

3 A. I have never run an excavator. Rob and Dave are both  
4 familiar with excavators. That's what Dave primarily runs, is an  
5 excavator, and then Rob would kind of help fill in when need be.  
6 I've ran a back hoe before, but as far as an excavator, I don't  
7 know how to run one.

8 Q. Okay. Have you seen excavators being used to unload  
9 panels?

10 A. Yes. Yes.

11 Q. Okay.

12 A. Now, in this situation I don't think we could have used  
13 an excavator. I'm not sure. I'm still new to the area so I'm not  
14 familiar with everything, but an excavator you can't just drive it  
15 down the city streets. So I'm not sure if we could have gotten  
16 the excavator down the right-of-way to Union -- or Minneapolis  
17 Junction to do the unloading.

18 Q. Okay.

19 A. I mean, it would have been handy, but the loader will do  
20 the same job. Just with a loader you don't have people climbing  
21 around on top of the cars hooking chains.

22 Q. Right.

23 A. Where with the excavator, you'd have people up there  
24 hooking chains. So with the loaders there'd technically be less  
25 risk as far as your slip, trips, and falls.

1 Q. Okay. So as you mentioned, you've never used an  
2 excavator.

3 A. No.

4 Q. But do you -- you mentioned slips, trips, and falls  
5 reduced using the front loader.

6 A. Yeah.

7 Q. Any other advantages or disadvantages you can see?

8 A. Well, I mean, with the excavators you can easily pick  
9 up, you know, two or three panels. The problems is your length of  
10 chains, and you've got people climbing up these stacks of panels  
11 hooking the chains, climbing back down so they can make their  
12 pick, and then climbing back up. And it's just -- it's not a very  
13 safe practice. I mean, if you take your time and you use your  
14 three-point contact, yeah, you can do it. And you can do it  
15 fairly safely. But, I mean, some of them creosote ties, you know,  
16 one of them's fine, the next one could be slippery. I mean, there  
17 is a risk there too.

18 I mean, I understand what you're getting at, would it  
19 have been safer with an excavator? It depends how you look at it.  
20 I mean, the lift -- if you had two excavators, you could pick them  
21 up, set them down real easy, but then we'd have to move them again  
22 probably because they'd be in the way. With the loader, you're  
23 not climbing around on top of those cars just asking to fall off.

24 Q. Right. Okay, do you think weather -- how did weather  
25 play a role in Monday's operations, or did it?

1           A.    It was wet out.  The switch panel that we built that  
2 turnout on, part of it was under water.  So, I mean, we had to  
3 deal with some water and it was muddy.  Over at Minneapolis  
4 Junction, it wasn't as muddy because they've got more of a sub-  
5 grade down, so your footing was a little better.  I climbed on the  
6 cars a little bit.  I didn't think they were that slick.  I mean,  
7 with water on those cars they're always a little slick, but I  
8 didn't think that it was dangerously slick.

9           Q.    Okay, specifically with the unloading operation, is  
10 water on the panels an issue?

11          A.    Well, I mean, with anything else, wet ties can be slick.  
12 And that could be the reason why in this day that panel slid off  
13 and 2 weeks ago maybe it wouldn't have because a dry tie has more  
14 grip.  You get that creosote when it's slippery, I don't know.  I  
15 mean, there's a lot of speculation to that.  I mean, I'm sure it  
16 didn't help.

17          Q.    You had mentioned a little while ago that things are a  
18 little more informal on weekends.  How does that -- does that  
19 include like the job briefings are more informal or is the work  
20 itself, they way you're working more informal?

21          A.    It just seems like on the weekends there's less of us  
22 there.  So it's for whatever reason on these construction gangs,  
23 they have this belief that they can split us up, and half of you  
24 go here and half of you go there.  I'm not a fan of that.  But it  
25 seems like there's a lot more different tasks being done and so

1 that's why you need a lot more thorough of a briefing during the  
2 week.

3           Now there are good job briefings and there are bad job  
4 briefings. I've been a part of job briefings that last an hour,  
5 hour and a half. Is that a good job briefing? Well, no, because  
6 it lasted so long and it covered so much stuff you lost focus of  
7 all these people. I mean, it's good to identify the risks and the  
8 work, but I'm more of a believer that if you focus on what you're  
9 doing today, how you're going to do it, what your protection is,  
10 that's a better job briefing, than, I mean -- it's no offense to  
11 the company. Sometimes when you get their higher up officials  
12 there, they want to talk about next week and what's going on next  
13 week and what's going on here and there. And that's where you  
14 start talking about next week, I work for the railroad, next week,  
15 that plan's going to change 10 times, so I might lose my focus.  
16 You know what I mean, I'm trying to focus on what the job is at  
17 hand.

18           So when there's a smaller group of people, there's less  
19 that has to be discussed, there's less tasks, and we're all going  
20 to be together. It's not going to be, you guys are here, you guys  
21 are there. So I feel like the briefing might have been short and  
22 sweet, but the information was there.

23           Q. Okay, and that was next question. You've been through a  
24 lot of job briefings.

25           A. Yeah.

1 Q. How was this? Was this thorough; was this  
2 comprehensive?

3 A. It was a typical Tyrell briefing. I mean, it's -- he  
4 doesn't do a lot of talking; he's pretty quiet. But what he says,  
5 it's short and to the point: This is what we're doing, this is  
6 our protection, let's do it.

7 Q. Okay. Now there were questions, it's a bit of a mystery  
8 why Tyrell was on top --

9 A. And that's something we're never going to know.

10 Q. Right.

11 A. I mean, I -- like I said, it could have been that --  
12 like I said, we felt that we didn't fall under the adjacent track  
13 because we're off-road equipment and we were more than 4 feet away  
14 so we weren't fouling the track. Now, because of that, it  
15 could've been, just as a precaution, he was going to be a lookout.  
16 And it could have been that he saw a pretty lady or an airplane or  
17 he was just looking around. I don't know what it was.

18 From the time that everybody got down to when Dave  
19 started making his first pick wasn't very long. I mean, Dave said  
20 he thought that Tyrell was down. He wasn't. Tyrell was still on  
21 the car. That all happened in probably a couple minutes. And so  
22 I don't know what he was doing up there, and we never will. And I  
23 wish I could change what happened, and I hope that we didn't break  
24 any rules, because if we did, then that's going to be a hard pill  
25 to swallow.

1           I feel like we were protected. I feel like we did  
2 approach the task properly and that something happened and caused  
3 a horrible accident. Now, was he a lookout up there? Not that he  
4 told us. But, I mean, did he notify that there was a train  
5 coming? Yes. Because we were on the back side of the panels, so  
6 we really couldn't see very well, but we still weren't fouling the  
7 track. So it could have been that he was standing as a lookout.

8           Q.    Would there be any other reason for him to have been up  
9 there, like problems with the chains or something?

10          A.    No. The guys were up there because the panel cars you  
11 have to un-ratchet them at the bottom and then you unhook the  
12 chains at the top. And, I mean, there's no getting around that.  
13 I mean, you've got to climb on top of them to unchain them. I  
14 mean, as far as I can tel. I mean, maybe with straps you'd be  
15 able pull them from the bottom. Maybe that'd be a safer way to go  
16 about it, but I don't know if they'd have the holding power of  
17 those chains.

18                But the other guys had gotten down. All the panels were  
19 unchained already. It was done. We were ready to start unloading  
20 them. I have no idea why he was up there.

21          Q.    Okay. We talked to Dave earlier today, and this was his  
22 first time unloading the equipment -- using this equipment doing  
23 the unloading process. Did he talk to you prior about, you know,  
24 him mentioning this is my first time? Did he have any questions  
25 for you?

1           A.    He's ran a loader before. I mean, he's a very capable  
2 operator. And he might not have done this specific task, but, I  
3 mean, he's a very good operator. I mean, just the day before we  
4 were out moving dirt around with a loader. So, you know, I mean,  
5 it's a little different, but I mean, it's still you run the  
6 machine the same way: You're driving it, you're running the boom.  
7 You're getting your boom for your bucket level, you're scooping,  
8 you're doing everything else. He knew how to run the machine.  
9 It's not a question of that.

10                   Now, maybe he could have took a different approach; I  
11 don't know. I mean, it looked like he was doing everything right  
12 from what I saw. I mean, he just pulled up to make his pick. I  
13 looked back forward. Tyrell tapped on his hardhat. I told Dave  
14 got a hot rail. And then the next time I looked over at Dave, I  
15 saw that panel fall. And then it was just too fast; there was no  
16 way to warn Tyrell. I'm assuming that he saw it, and he might  
17 have just said, crap. I don't know.

18           Q.    Okay.

19           A.    I mean, there's just so much that you can speculate  
20 about what he was doing up there, what was going through his head  
21 up there, that we're never going to know. And I'm sure you wish  
22 you had those answers, but we're never going to have those  
23 answers. I don't know if he was being a lookout or if he was  
24 just looking around. I mean, either one could be possible.

25           Q.    When you're introduced to a new piece of equipment, new

1 piece of machinery, how are you -- how do you become familiar with  
2 it? What sort of training and practice do you get?

3 A. Well, you -- if you can find a mechanic that can kind of  
4 show you a little bit of it, that's a good tool to use to get  
5 familiarized. Otherwise, if you can just find an operator that  
6 knows how to run it. And then with anything else it's -- nothing  
7 out here's hard to run, it just takes time and time in the seat.  
8 And the more time you have in the seat, the better you get at  
9 operating it.

10 And, you know, this new stuff, you have computers and  
11 stuff. And so you play with the computers, and the more you play  
12 with that, then the more familiar you get with that. I mean, with  
13 loaders you really don't have that. There is a computer there;  
14 there are different settings you can use. But you don't have to  
15 touch the computer at all, you can just run it.

16 Q. Do you feel that you've been, in the past, provided  
17 adequate time in the seat --

18 A. Yeah.

19 Q. -- before asking to do an operation?

20 A. Yeah. It's more sometimes -- it's a question of my  
21 limits over the machines limits. There's times where, like  
22 dumping rock, you've got to get into some pretty tight places.  
23 And there's a rear view camera which helps, but it's more you get  
24 familiar with the machine you're on, how to operate. And  
25 sometimes climbing over them rails to dump rock to get into



1 places, you get on them three wheels and it gets kind of nervous.  
2 But it's not going to go over. It feels a lot worse than it is.  
3 And it's more learning what the machine is capable of and what  
4 you're comfortable with.

5 I mean, if I do something and I feel like it's not  
6 something that I'm comfortable with, I'm not going to do it. You  
7 know, I'll just stop right there, and say, look I don't feel  
8 comfortable with this; can we approach it a different way, you  
9 know? And sometimes you can, sometimes you can't, you know.  
10 There's limited access out there. Not everything is like that  
11 yard where you've got all kinds of space, so --

12 Q. And just one more question about that. Does ever the --  
13 I guess some of the equipment is leased. Does ever the company  
14 that's leasing the equipment provide any written instructions or  
15 OJT?

16 A. I don't know. We own all of our machines.

17 Q. Oh, I see.

18 A. The surfacing gang is using leased machines, but we  
19 don't run any of those machines. Our front-end loaders, our  
20 excavators are company owned, and so we don't have to go with the  
21 lease and recommendations. I mean, we have to go with the regular  
22 maintenance that our mechanics recommend, not Cat. It's just  
23 everything being standard.

24 DR. JENNER: Great, thank you.

25 MR. HIPSKIND: Okay, gentlemen, any more questions from

1 anybody?

2 MR. JULIK: I just have one last question.

3 MR. HIPSKIND: Okay, sure. Identify yourself.

4 BY MR. JULIK:

5 Q. This is Thomas Julik with the FRA. You stated that  
6 while you were undoing the turnbuckles there, undoing the chains  
7 on the cars between the industry track and the main track, that  
8 you were greater than 4 feet away from the main.

9 A. I believe so.

10 Q. How comfortable would you feel if a freight train passed  
11 you on the main track at an unknown speed with you in that  
12 location?

13 A. Well, it'd be about the same as if we're out at the work  
14 site and they say, oh, there's a hot rail, and you just go and  
15 have a seat at the ballast line or whatever. I mean, a part of  
16 our job is to inspect these passing trains. You're supposed to  
17 give them a roll-by. I mean, would it be the most fun thing in  
18 the world if it was Amtrak going by at 90 mile an hour?  
19 Absolutely not. But we weren't foul of the track. We felt like  
20 we were in a safe place, and that if a train was going by we could  
21 either -- if we saw it coming, we could either go and be between  
22 the cars, which we're not going to move because they were on an  
23 industry track, or we could just stand alongside the cars without  
24 fouling the 4 feet.

25 MR. JULIK: Okay, thank you.

1 MR. HIPSKIND: Okay.

2 DR. JENNER: I do have a couple.

3 MR. HIPSKIND: Quickly.

4 BY DR. JENNER:

5 Q. We'll call him the conductor from the train who you  
6 talked to, asked if things are okay. How far away from you or the  
7 group was he when you were having the communication?

8 A. Gosh. I believe that when he hollered out there, I was  
9 still either right on facing or I might have turned my front end  
10 just a little bit, because I was getting ready to try to go and  
11 scoop these things up to get the weight off of Tyrell. And so I'm  
12 not sure if I was straight on or if I was just off to the side a  
13 little bit. But they had gotten the train stopped and they were  
14 about somewhere right around the end of that car that Tyrell had  
15 been standing, the last car with the panels, because then after  
16 that there were the blank, the empty cars. And it was about there  
17 where he hollered out, and I was still in my loader when I  
18 answered him.

19 Q. Okay.

20 A. And so, I mean, at 30 feet.

21 Q. Could you hear each other okay?

22 A. I could hear him fine. I don't know if he could hear  
23 me; I could hear him fine.

24 Q. Right. And just in terms of your schedule, did you also  
25 work Saturday and Sunday?

1 A. Yes.

2 Q. With the same group of guys, at the same time?

3 A. Yeah. It was just the five of us that stayed the  
4 weekend to work. We were getting that switch ready to go in. It  
5 was supposed to go in today, but I believed they cancelled the  
6 window because just our group's not really fit to work right now.

7 DR. JENNER: Great, thank you.

8 MR. HIPSKIND: Okay, Phil, you're doing a great job.

9 BY MR. HIPSKIND:

10 Q. I want to -- this is a diagram that we put together thus  
11 far in the investigation. And if you'll notice the red dotted  
12 line is the main track; the blue dotted line is that pocket track.  
13 And if you could take that magic marker there and just kind of put  
14 a dot as to maybe where you were at right when all the calamity  
15 unfolded.

16 A. This isn't a very good diagram.

17 Q. Well, it's not to scale. Give yourself a second to  
18 orient here. This is that -- what they call that pocket 2 track,  
19 right?

20 A. Okay. I'm really not sure, because it should come down  
21 and then go up a little bit. Is that more to scale?

22 UNIDENTIFIED SPEAKER: Yeah, I mean, yes, it could  
23 reference it.

24 MR. WOLTEMATH: Because then down towards this end there  
25 was a wider track center --

1 MR. HIPSKIND: Okay.

2 MR. WOLTEMATH: -- where it came up. And I'm not  
3 exactly sure.

4 BY MR. HIPSKIND:

5 Q. Well, I tell you what. Marking this thing, if you're  
6 not comfortable with it, is not what I want you to do. But let me  
7 tell you what my understanding is. You were at the west end of  
8 the second car --

9 A. Yes.

10 Q. -- that had the loaded panels?

11 A. Right.

12 Q. And I'm going to say lined up with what we previously  
13 said was stack D.

14 A. Yeah.

15 Q. The stack that Tyrell was standing on.

16 A. That's correct.

17 Q. All right, that's all I needed on that.

18 I want to come back to just a fundamental, for me, a  
19 fundamental understanding of why you were out there working  
20 Saturday, Sunday, and especially Monday. How did that come to  
21 pass? How did you get selected? How should I understand that?  
22 Did you volunteer --

23 A. Yes.

24 Q. -- were you with a group? Explain that to me then.

25 A. There was a group of us that volunteered to work the

1 weekend.

2 Q. When did that happen; where did that happen; who made  
3 the offer?

4 A. They -- who was it? Bruce Criswell had asked us if any  
5 of us were going to be around for the weekend because they were  
6 going to -- I don't know if there was going to be an FRA car, or  
7 inspection, and they were thinking that we were going to be  
8 helping the local forces out fixing FRA defects. And --

9 Q. And when was that supposed to transpire?

10 A. We had this conversation Tuesday or Wednesday, I  
11 believe. It could have been Wednesday. And that was before  
12 Tyrell had decided to stay. And then when Tyrell decided to stay,  
13 I asked Tyrell, I said, well, are we going to be helping the  
14 locals or are we going to working on our stuff? And Tyrell said,  
15 no, we're going to be working on our stuff. So that's when, like,  
16 Friday night we worked on a turnout. And so Saturday we needed to  
17 get a crossing put in that went over top of a UP track in the yard  
18 there.

19 Q. A grade crossing, public grade crossing or --

20 A. Yeah. It was a concrete crossing on the -- it would be  
21 underneath -- right by that overpass. It's where the Minnesota  
22 track comes in and the UP yard track's right there.

23 UNIDENTIFIED SPEAKER: Raymond Avenue?

24 MR. WOLTEMATH: What's that?

25 UNIDENTIFIED SPEAKER: Raymond Avenue?

1 MR. WOLTEMATH: That sounds right.

2 UNIDENTIFIED SPEAKER: Or (indiscernible).

3 MR. WOLTEMATH: It was right where we had just installed  
4 that switch at. And there was where the BN comes in, and then UP,  
5 and then it branches off on that Minnesota commercial, yep. And  
6 we were putting a crossing in because the UP guys or somebody  
7 needed to get across there. So we were getting that all cleaned  
8 up and getting that crossing in so they had access to get back  
9 over there.

10 And then on Sunday, in the same area, a signal needed  
11 some help. There was a giant dirt mound right in the way where  
12 they needed to put in a bungalow. And so they got -- the signal  
13 guys got track and time, and we shuffled the dirt across the main  
14 track. And then we ran out of track and time. Then we had to go  
15 around using the crossings. And that was only a couple extra  
16 minutes, but then we hauled that dirt that was in their way, which  
17 was now in the right-of-way on -- I'm trying to get my bearings  
18 here on the south side. Yeah, on the south side of that track.

19 So got that dirt, and we hauled it down to the dirt  
20 pile, and I guess there's some reason we've got to keep it all  
21 separate, EPA stuff or something. So we kept it all in a separate  
22 pile like we're supposed, and that took quite a while. It was a  
23 pretty big dirt pile. And then the plan for Monday was just to  
24 come in, do that turnout, and then unload the panels.

25 BY MR. HIPSKIND:

1 Q. Okay, Phil, Dick Hipkind again. And I appreciate you  
2 detailing on each day the task at hand+ and what you were doing  
3 and where you were at. But I want to return to a better  
4 understanding for me about why you were even out there on  
5 Saturday, Sunday, and Monday. I'm talking about you personally,  
6 your knowledge.

7 A. I --

8 Q. When was -- was there ever a gathering of employees and  
9 anybody asking if people would volunteer or anything like that?

10 A. Yes.

11 Q. Tell me more about that.

12 A. It was in or right after one of our morning job  
13 briefings with the whole group. I believe that it was Bruce  
14 Criswell that asked if any of us were going to be staying the  
15 weekend because there was going to be an opportunity to work. And  
16 so I volunteered because I don't have a car up here. My car has  
17 been in the shop. And so whether there was work or not, I was  
18 staying the weekend. And so I'd rather work than sit in a hotel.  
19 So I volunteered to stay the weekend.

20 And I think that's -- the other people were just --  
21 there's quite a few of us that volunteer to work the weekends.  
22 Just, it's a chance to get a little bit of overtime, save up some  
23 money, and usually it's not too strenuous of work. It's more laid  
24 back. We do the task at our own pace. There's no rush. We don't  
25 have anybody trying to get us to hurry up. It's just get this



1 work done, and that's it.

2 Q. Okay, that's all helpful. Now let me slow you down a  
3 little bit, okay? Were any of the people that you worked with on  
4 Saturday or Sunday or Monday, were they in the group that you just  
5 described were asked to work the weekend?

6 A. All of us were.

7 Q. All five of you?

8 A. All five of us were at that job briefing where the  
9 weekend work was offered.

10 Q. Okay. Did you raise your hand?

11 A. Yes.

12 Q. Did they take your name?

13 A. They had us get with our assistant foreman, Brian, and  
14 with Tyrell. And the original plan was going to be to work with  
15 the local section. And then when Tyrell said he was staying,  
16 that's when we got to work on our own stuff as opposed to helping  
17 somebody else.

18 Q. Was Tyrell in the group when the person -- Bruce is his  
19 name, right?

20 A. Yes.

21 Q. Do you know what his title is? Is he like a production  
22 roadmaster?

23 A. He's like the project manager up here, I think, or --

24 Q. But somebody --

25 A. It's somebody in a management spot with these

1 constructions gangs, I believe. I don't -- he's not a local  
2 roadmaster. He's higher than that.

3 Q. Was this offer to work the weekend, is this the first  
4 time that that's ever happened in your life?

5 A. No. We've worked a lot of weekends this year.

6 Q. And was the call for volunteers in a similar manner and  
7 pattern that you just described to me?

8 A. Yes. It would be at the job briefing. They would ask  
9 if anybody was staying the weekend and would like to work.

10 Q. Okay, sorry to be so poignant on these things. Forgive  
11 me. Was Tyrell there?

12 A. I believe so. I believe that this happened on  
13 Wednesday, I think.

14 Q. Wednesday -- Wednesday prior to the Monday of the  
15 accident?

16 A. I believe so. There was -- Tyrell had went home over  
17 the weekend.

18 Q. The previous weekend?

19 A. Yes. And he flew in and his flight got in very late.  
20 And so that Monday, he was late to the briefing because he didn't  
21 get in until like 3 in the morning and he needed to get some sleep  
22 obviously. I believe that the work was offered Wednesday or  
23 possibly Tuesday, but one of those 2 days, where they offered it  
24 in the briefing, if anybody that was staying would like to work  
25 because there would be work available.

1 Q. Okay.

2 UNIDENTIFIED SPEAKER: Can we take a timeout on this, or  
3 -- I mean --

4 MR. HIPSKIND: Yes. If you'll -- we're going to do a  
5 timeout.

6 (Off the record.)

7 (On the record.)

8 BY MR. HIPSKIND:

9 Q. Okay, we're back on the record. And Phil, I'm not  
10 trying to belabor this point. I get it that somebody was looking  
11 for volunteers. And how did you understand the number of days  
12 that you could work? What -- I mean, there's a couple of ways to  
13 look at that. Tell me how you looked at it.

14 A. I looked it as they were asking for volunteers to work  
15 the weekend. And a holiday weekend or regular weekend, your rest  
16 days are your weekend. So I -- we all looked at it as working  
17 every day -- Saturday, Sunday, and Monday -- so we could get some  
18 of the tasks done and then the gang would come back on Monday --  
19 Tuesday.

20 Q. In the course of -- and you worked with these other four  
21 individuals?

22 A. Right.

23 Q. And Tyrell was the foreman?

24 A. Right.

25 Q. And over the course of Saturday, Sunday, and Monday, was

1 he directing what you would do and where you would go?

2 A. Yes. He was the one that was providing us with the  
3 day's work. He was the one that was telling us what time to meet,  
4 and he was telling us when to go in.

5 Q. Okay.

6 A. He was our employee-in-charge.

7 Q. So it was no surprise to you, the work that was laid out  
8 for Saturday?

9 A. Saturday, no. We had talked about that Friday. We had  
10 waited on the local surfacing gang. And there was a question of  
11 whether we should put that crossing in, because if they needed to  
12 surface it again, we would have to take it back out. And Tyrell  
13 said UP is really wanting this crossing put in. So the surfacing  
14 gang went through it. They got it to where it is --

15 Q. The surfacing gang went through on what day, do you  
16 know?

17 A. On Friday.

18 Q. Okay.

19 A. After we installed -- we took out some track and we did  
20 kind of a line-over and we put in some panels to connect the  
21 turnout to the Minnesota track. Then the local surfacing gang,  
22 not our surfacing gang, but the local surfacing gang tamped  
23 through there. And the next day, Saturday, we went out there.

24 Q. You put the crossing in?

25 A. We cleaned all the rock out, got the crossing back in

1 service, dressed it all up, so that way UP could use their  
2 crossing.

3 Q. Were you surprised at the selection of assignments for  
4 Sunday?

5 A. Sunday I was a little surprised. I didn't know anything  
6 about signal and their pile of dirt. I understand how they don't  
7 have the equipment to move it. And so we were working together  
8 with them to get that out of their way so that they could do their  
9 work. They worked the weekend too.

10 Q. Was there a signal foreman or signal supervisor present?

11 A. There was about five of them. I don't remember --

12 Q. Five, meaning five foreman, or?

13 A. Five signal employees.

14 Q. Okay.

15 A. I don't know who was in charge. I had a copy of the  
16 track and time, but I threw it away.

17 Q. Okay, that was Sunday's work, correct?

18 A. Sunday's, yes.

19 Q. You spent pretty much all day with the signal crew,  
20 right?

21 A. Yes, yes. In the same vicinity of where we worked  
22 Friday and Saturday, right there by that overpass.

23 Q. Was the work that you were tasked to do on Monday, was  
24 that a surprise to you?

25 A. No, we had talked about that prior. We knew -- I don't

1 know about the whole group, but me and Tyrell had talked about it  
2 prior, how we were going to work on that turnout and that we were  
3 going to unload panels.

4 Q. And you talked about that when? When did you have that  
5 discussion?

6 A. Sometime Sunday afternoon sometime. I'm not sure  
7 exactly when.

8 MR. HIPSKIND: Okay. Gentlemen, any more questions?  
9 John? Anybody? Dale?

10 BY MR. HIPSKIND:

11 Q. All right, let's kind of go forward. Give me a second  
12 here to get my computer fired up.

13 Are there any questions that we should have asked that  
14 we did not ask you?

15 A. I don't know. I guess my -- not necessarily question,  
16 but my concern would fall with the adjacent track rule. I believe  
17 that it is a little cloudy. I think across the board, all the  
18 employees, I think it's a little hard to understand. I mean, I  
19 know the carrier and the FRA are working to make it clear, but  
20 there's still a lot of questions on this. And I think -- I feel  
21 that we were in the right. And if something needs to change in  
22 that rule, then so be it. We need to prevent this from happening  
23 again. And if we were in the wrong on this rule, then maybe the  
24 company needs to take a day out of the year to cut down the  
25 production and to just sit everybody down, do a stand down, and go

1 over this.

2 Q. Okay.

3 A. And it doesn't just have to be about this. I mean,  
4 there's constantly track and time issues and everything else. I  
5 mean, we could just make it a whole track occupancy deal, to where  
6 everybody's a little bit more comfortable in understanding. I  
7 mean, that -- there's just -- there's a lot of murkiness in the  
8 way we as employees read that adjacent track. And that's  
9 something going forward that I think would help everybody. Not  
10 just in this case, but further down the road.

11 Q. Okay, thank you for that, Phil. Phil, is there anything  
12 else you want to change about anything we've talked over the  
13 course of the last hour and a half, couple hours?

14 A. No, I think we've pretty much covered everything.

15 Q. Okay, and you know you can reach out to me; you've got  
16 my contact information. Is there anyone else that you think we  
17 should interview? You know we've interviewed Dave and we're going  
18 to interview the other two co-workers that you were with. Anybody  
19 else?

20 A. I don't see where it would be beneficial to the  
21 investigation to interview people that weren't there. I think  
22 interviewing other people would just be speculation and not  
23 firsthand knowledge. It all comes down to operator's comfort. I  
24 mean, we were the ones that were there. We were the ones that saw  
25 what happened. And I think that if you're looking for the

1 knowledge on what happened that day, what could have happened  
2 differently, and where to go from there, I think that the four of  
3 us are the ones that share that knowledge.

4 Q. All right.

5 MR. HIPSKIND: John, it's time for you to chime in. Are  
6 there some areas of clarification that you want to comment on?

7 MR. MOZINSKI: Yeah, there's actually two. There's been  
8 a lot of talk about the overtime on the weekend. And just for  
9 clarification, under our agreement, overtime has to be approved by  
10 a supervisor; all your time is reviewed by a supervisor and it's  
11 given approval. Each gang has a budget that they control the  
12 overtime; it's just not handed. Anytime you even work a bit of  
13 overtime, it's looked at, especially on the big RSG gang. So, I  
14 mean, I just wanted to clarify that for the overtime.

15 MR. HIPSKIND: Okay.

16 MR. MOZINSKI: And then obviously the adjacent track  
17 rule, which I brought up in David Johnson's, I mean, I just  
18 believe that that needs to be looked at. And I think that  
19 could've -- if the rule were back, reverted back, I think this  
20 would have been avoided.

21 MR. HIPSKIND: Okay, duly noted.

22 And Phil, a little bit of our new changes to interviews.  
23 I'm going to ask you the four questions now, okay?

24 MR. WOLTEMATH: Okay.

25 BY MR. HIPSKIND:



1 Q. Did you understand that the purpose of this  
2 investigation is to increase safety and not to assign fault, blame  
3 or liability?

4 A. Yes.

5 Q. And did we discuss the fact that NTSB cannot offer a  
6 guarantee of confidentiality or immunity from legal or certificate  
7 actions?

8 A. Yes.

9 Q. And did you understand in our previous conversation that  
10 a transcript or summary of the interview will go into the public  
11 docket?

12 A. Yes.

13 Q. And you understand what the public docket is? We talked  
14 about that?

15 A. Yes.

16 Q. Okay, and you understood that as interviewee you could  
17 you have one representative and that that was your choice?

18 A. Yes.

19 MR. HIPSKIND: Okay, thank you very much for standing up  
20 at the canvas and painting such a clear picture for us. Your  
21 interview has been, in my humble opinion, very helpful.

22 So with that we will close the interview.

23 (Whereupon, the interview was concluded.)

24

25

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 Philip Woltemath

DOCKET NUMBER:                DCA-14-LM-016

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.

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Keith J. Maurer  
Transcriber