

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: WILLIAM DAVID JOHNSON

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

JOHN PALACIOS, Director of Engineering Safety
BNSF Railway

JOHN MOZINSKI, Vice Chairman, Secretary-Treasurer
Brotherhood of Maintenance of Way Employees
Division
(Representative on behalf of Mr. Banks)

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

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I N T E R V I E W

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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 the NTSB for this
5 accident. We are here today on March -- or, excuse me, on
6 May 27th, 2015, at the Holiday Inn Downtown in St. Paul,
7 Minnesota, to conduct an interview with Mr. William D. Johnson,
8 who works for the BNSF Railway, or BNSF.

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

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

20 Again, my name is Richard Hipskind. The spelling of my
21 last name is H-i-p-s-k-i-n-d. I am a railroad accident
22 investigator, the IIC for this accident, and the Track and
23 Engineering Group chairman.

24 DR. JENNER: Good morning. I'm Stephen Jenner,
25 J-e-n-n-e-r, human performance investigator with the NTSB.

1 MR. DALE JOHNSON: Good morning. I'm Dale Johnson,
2 J-o-h-n-s-o-n, and I am the FRA track safety inspector.

3 MR. SOUTHWORTH: My name is Jim Southworth,
4 S-o-u-t-h-w-o-r-t-h. I'm also a rail accident investigator. On
5 this accident, I'm looking at operations and mechanical.

6 MR. PALACIOS: I'm John Palacios, P-a-l-a-c-i-o-s, BNSF
7 Railway, director of engineering safety.

8 MR. LOVELAND: Good morning. My name is George
9 Loveland, L-o-v-e-l-a-n-d, Brotherhood of Maintenance of Way
10 Employee, vice general chairman.

11 MR. JULIK: Good morning. My name is Thomas Julik.
12 Last name is spelled J-u-l-i-k. I'm an FRA safety inspector in
13 the track discipline.

14 MR. WILLIAM DAVID JOHNSON: I am William D. Johnson,
15 J-o-h-n-s-o-n, BNSF employee, track hoe operator.

16 MR. HIPSKIND: Okay. Mr. Johnson, you're our
17 interviewee today, and do you wish to have a representative with
18 you?

19 MR. WILLIAM DAVID JOHNSON: Yes.

20 MR. HIPSKIND: And if you'll introduce yourself, please?

21 MR. MOZINSKI: John Mozinski, representative,
22 M-o-z-i-n-s-k-i, BMWED, vice chairman/secretary-treasurer.

23 MR. HIPSKIND: Okay. Mr. Johnson, do you mind if we
24 conduct this interview on a first-name basis?

25 MR. JOHNSON: That's fine with me.

1 MR. HIPSKIND: And do you go by William or David?

2 MR. JOHNSON: I go by David.

3 MR. HIPSKIND: All right. David, one more question.

4 Are you okay with us recording our discussion this morning?

5 MR. JOHNSON: Yes.

6 INTERVIEW OF WILLIAM DAVID JOHNSON

7 BY MR. HIPSKIND:

8 Q. All right. Let's go forward then. David, what I would
9 like for you to do is just give me a little bit of your history of
10 employment. I don't need a specific date, but just give me kind
11 of a month and a day -- or month and a year from when you hired
12 on, and just kind of go over the different positions you've held
13 and your present position.

14 A. I was hired in May 2011. Started out as a trackman,
15 became a truck driver. I have started my operator rights shortly
16 after I was hired on. I ran a loader, track hoes, backhoes, and I
17 currently run an excavator.

18 Q. Sorry. I had a little thing to take care of there.

19 All right. Well, let's go forward to the day of the
20 accident. And some of the things I want you to cover for us --
21 and I want you to talk, and I want to sit here and listen, if you
22 don't mind. If you'll cover maybe any conversation or
23 communication that maybe you and the crew had the previous day.
24 And some of what I'm looking to understand in greater detail is
25 what was the decision process to -- for you and your co-workers to

1 assemble on the day of the accident? Where did you gather? When
2 did you start? And just take us through all the things that you
3 recall of that day, if it included a job briefing, the
4 instructions provided and how you were going to go about the task.
5 And then I know we're going to lead into the accident, and I want
6 you to just continue talking, and tell us about your recollection
7 of how all of that unfolded and the aftermath, if you would,
8 please.

9 A. We started out in the morning with our briefing at 8:00
10 in the lobby of our hotel. We discussed what we were going to do,
11 and our first job was to build the turnout for a number 11 switch.
12 And later on that day, we were going to unload panels that was
13 mentioned should have been loaded 5 or 6 days ago from that day.

14 So we had our briefing in the lobby, 15, 20 minutes. We
15 all left. I was driving a Ford F-550 crew truck. Tyrell, one of
16 our other -- a welder helper, was driving his pickup truck. Phil
17 and Roe were in the van. We all made our usual store stop on the
18 way out to the job.

19 We get to the job. We have another small briefing on
20 where the switch is, which was on the other end of the yard from
21 where it was going to be placed on Wednesday's window, because
22 apparently the number 11 switch that was supposed to go there
23 hadn't arrived yet, so we were going to use a different switch.
24 So we went to the other end of the yard with the section truck and
25 started building the turnout.

1 It was wet out there. There was a lot of water.
2 Basically the switch was in a puddle of water. It was humid,
3 foggy out. I noticed all the buildings downtown, you couldn't see
4 the tops of them.

5 We built the turnout. Everything went great. We were
6 in no hurry. Nobody's really in a hurry when we're working
7 overtime. We finished the turnout, got it done, wrapped up all
8 the tools, put back in the 550. And Phil was already in his
9 loader. He had brought his loader to the switch with some
10 material, plates and lags and stuff, to help build the turnout.
11 He got in his loader. He was going to go fuel it up before we
12 headed to unload the panels. And I had to go get the other
13 loader, which was back at the other end of the job or the yard, to
14 get the other loader, and it needed fuel also.

15 So Phil filled his up. I grabbed his forks for his
16 loader, brought them to him with the other loader. He was done
17 filling up his loader. I filled up my loader. And I needed my
18 forks for the loader, so I went to look for them. Everybody else
19 headed to the other jobsite, which is the Y. That's where the
20 panels were on the railcars. So when I found my forks, I put them
21 on and started heading to that jobsite and actually called Tyrell
22 to get directions how to get there. He told me. I got there, no
23 problem. This was around 10:30, I believe, 10:30, 10:45 by the
24 time I got there.

25 We had discussed derails, setting up our protection.

1 When I got there, that was already taking place. Phil was in his
2 loader. Roe, our laborer, he was talking to Phil. He was on the
3 loader with Phil, and they were talking. I pulled up in the
4 loader, my loader, and parked right next to Phil. And at that
5 time, I could see to my left that there was already one derail up
6 on the track we were working on. And then Tyrell and Jesse were
7 putting up the other derail. So we had protection on both ends.

8 Once that was done we -- all of us, me, Phil and Roe, we
9 got off the equipment. We started -- Tyrell and Jesse, we all
10 started unchaining the track panels. You know, we -- there were
11 two railcars with four stacks of panels, seven high. We've done
12 this before in Union Yard, but we've used excavators to offload
13 those. And we started unchaining all the panels; we unchain them
14 all.

15 At first, we started going around the outsides of the
16 railcars to do the side chains. And then myself, Roe, Tyrell and
17 Jesse, we climbed on top of the track panels. Because Phil's a
18 pretty big guy, he doesn't need to climb up there. So we climbed
19 up there because they have the chains. They wrap completely over
20 the track panels and hook on the sides to the other chain. They
21 link into each other. So we had to pull all those off and drop
22 them off the sides. Each stack had two -- four sets of chains
23 that went over and tied to each other.

24 We got all those off, and I climbed down the track
25 panels. And far as I knew, everybody else was off. I got in my

1 loader. Phil was in his. I moved my loader to the other end of
2 the two railcars on -- it was the east end. Phil was on the west.
3 I figured there's no reason for us to be working close to each
4 other, so I was going to go on one end, he can be on the other.

5 I have never offloaded railcars with a loader prior to
6 this. I've used excavators. So when I pulled my loader up to the
7 first stack, I thought it would be really difficult to pick that
8 first panel up by itself. So I counted, there were seven panels.
9 I figured I could take two at a time and pick the last one up by
10 itself, because I've seen loaders pick up 80-foot panels with
11 those same size loaders. And I know those loaders can pick up two
12 panels at a time, no more. It's usually just two panels.

13 So I lifted my forks, and I had to kind of lean down and
14 look to get a good eye because the forks are right in front of you
15 and you really can't see to get them underneath the rail. So I
16 slid -- I got my forks centered in the panels, and I slid it under
17 the second one down. And I started to raise the forks to see if I
18 had both forks underneath both rails, to see if I got a good bite
19 on the panels. I didn't, so I readjusted.

20 Approximately at that time, Phil called me on the radio
21 and said "Hot rail." I glanced to my left, saw headlights and
22 assumed it was an eastbound hot rail. I could not see to my right
23 because of all the other boxcars ahead, switch panels. So I was
24 going to finish getting my forks situated and wait for the hot
25 rail to pass.

1 And what I believe happened is the way those forks are
2 set, the length of the forks, to get them underneath both rails,
3 the ties have to go underneath the back plate of the forks to get
4 it all the way forward and that's -- I believe that's what I did.
5 And I believe it bumped the other panel, the top panel, enough to
6 slide and it -- almost at that exact time, two light cars, two
7 light engines, came from the east heading west. And they caught
8 the corner -- I don't believe it was the first engine. I believe
9 it was the second one that caught that panel and shoved it to the
10 west, hitting the second stack of panels. I don't remember
11 exactly how many it shoved off that panel, but it was a chain
12 reaction.

13 Naturally, I was freaking out and cussing, and I
14 remember I immediately lowered my forks and backed out. And I
15 looked to my left, and that's when I saw one of the panels land on
16 somebody.

17 I immediately -- I didn't realize until later that I had
18 actually left the loader in gear, but I had put the emergency park
19 on as I jumped out and ran out to -- I thought maybe I -- there
20 was something I could do to help. And that's when I realized that
21 it was Tyrell, and it was too late. Roe was standing there.
22 Jesse, I'm not sure where he was at that time. Phil was in his
23 loader still. Phil was trying to make a 911 emergency call with
24 the radio. Seconds later, that's when I saw Jesse. He was on his
25 phone making a 911 call.

1 The trainman came out to see if we were all right. I
2 stayed right -- there was a fenced-off area with vintage railcars
3 there or something and I -- that's where I stayed until everybody
4 else showed up.

5 I don't know what else to say.

6 Q. All right. Thanks, David, for taking us that far. Had
7 you had any difficulties or problems with your equipment in
8 previous days or on that day in particular?

9 A. No. That was the first thing I was -- I did that day
10 was that loader.

11 Q. And in the course of reporting to work and you know
12 you're going to be with that particular loader, is that the loader
13 or piece of equipment that you routinely work with?

14 A. No.

15 Q. It is not?

16 A. I was not assigned to that loader. I'm an excavator
17 operator.

18 Q. All right. Well, help me out. I know you've used that
19 term excavator, and help me to understand what the difference and
20 capabilities are of an excavator versus what I call like a
21 forklift. Why is one better than the other for doing what you
22 were trying to do?

23 A. Both of them are capable of doing -- moving those
24 panels. But an excavator, it can -- we can detach the buckets off
25 an excavator and set them aside and just use chains to pick up

1 panels. Normally we use two excavators to pick up panels, one at
2 each end. So when it comes to offloading them, it's -- we can
3 chain them, secure them to the excavator, pick them straight up
4 and off whatever we're picking up. With a loader, you're just --
5 you're placing the forks underneath a load, and the load is the
6 securement to the forks. It's not chained or anything. It's a
7 free load, I guess.

8 Q. Okay. Let's go back, if you want to -- let's go back to
9 the job briefing, and if you can, elaborate or give me a little
10 bit more detail about what was said there. And what I'm
11 interested in is, was -- at the job briefing, what were the tasks
12 that were laid out and the order of anything? And then we'll talk
13 about some changes, if there were any, later on.

14 A. We discussed just the two jobs that we were going to do,
15 build the turnout for the number 11 switch and offload the panels,
16 and then we were going to take lunch after that.

17 Q. Okay. And was -- when you were building the panel, was
18 there any need for any kind of roadway worker protection? Were
19 you near any tracks or --

20 A. No. No.

21 Q. Out a way in a --

22 A. It was in the middle of Union Yard that we were -- to
23 the north of us was the new asphalt being laid for the new lanes 1
24 and 2 that were going to go through. To the south of us on
25 that -- where we were working there was the main line that goes

1 through the yard. And I would say, my guess, 100 feet away.

2 Q. Okay.

3 A. So --

4 Q. And everybody that was at the job briefing was at that
5 particular task and that particular location?

6 A. Yes. We were all together.

7 Q. And how did things go just beginning, middle to end at
8 that particular task? Did everything go okay?

9 A. Yeah. Everything went smooth. Everything was -- I was
10 actually kind of surprised how well it went. But I mean --

11 Q. Okay.

12 A. -- sometimes a job like that, the less workers we have,
13 it seems to run better, and it did.

14 Q. And let's talk about or let's describe whatever
15 communication there was. As the job's completed, what was said?
16 Let's all move away from here and go someplace else, or was there
17 anything said or discussed at that time?

18 A. No. We just all agree that we were going to move to the
19 next job. Phil told Tyrell that he's got to fuel his loader. We
20 went to go do that. I packed up all the equipment back onto the
21 550 and drove it to where the loader was parked on the other end
22 of the yard to pick up that loader. That's when I noticed it
23 needed fuel also.

24 Q. Okay. The way I should understand this is Phil is your
25 counterpart. He is the other machine operator?

1 A. Yeah.

2 Q. And --

3 A. That is his machine. He is assigned to that one.

4 Q. Okay. Is it fair for me to say that your machine and
5 his machine are fairly identical in nature and capabilities?

6 A. Yes. They are identical.

7 Q. Okay. Had you run that kind of machine before?

8 A. Yes.

9 Q. Okay. So you're familiar with the controls and things
10 of that nature?

11 A. Yes.

12 Q. One thing you mentioned was -- and I'm very interested
13 in, you mentioned that Phil radioed to you and said there was a
14 hot rail and that you -- did he say he saw a headlight or did you
15 say that you saw it?

16 A. I said I thought I saw headlights to the west and I
17 thought it was an eastbound.

18 Q. Okay. And the radio that you have, it's in the cab,
19 right?

20 A. Yes.

21 Q. Had you experienced any problems with the radio?

22 A. No.

23 Q. Does the radio have multiple channel capabilities?

24 A. Yes.

25 Q. Do you recall what channel you were monitoring that day?

1 A. We were monitoring 55.

2 Q. Fifty-five. Okay. You --

3 A. That's our -- when we go to a new location, we designate
4 a radio channel as -- we try to keep it just our channel so
5 there's no other conversations from other gangs or local -- that
6 way, nobody's -- we're not all talking over each other, so --

7 Q. Okay. So take me through who all has a radio amongst
8 the five of you -- and Tyrell is the foreman?

9 A. Um-hum.

10 Q. Is he the EIC, employee-in-charge?

11 A. Yes.

12 Q. And he's the one who conducted the job briefing?

13 A. Yes.

14 Q. Does he have a radio?

15 A. He had one in his truck also. There was a radio in each
16 loader and his truck. And there's also a radio in the van, which
17 nobody was in at the time. And I'm not sure if Tyrell had one on
18 him. I know he's got a mobile or a handheld radio. I'm not sure
19 if it was on him.

20 Q. Okay. In the past, if he's had it on him, what would
21 you guess that -- is he likely to be on channel 70 or is he likely
22 to be on channel 55?

23 A. He would most likely be on 55.

24 Q. So the pattern, the practice and procedure is amongst
25 the -- your group is you're all on the same channel?

1 A. Um-hum.

2 Q. Is that correct?

3 A. Yes.

4 Q. Okay. You have to speak up a little bit. Your voice is
5 kind of drifting off there.

6 Let me thank you for where you've taken us thus far.
7 And if you're okay, I want to bring in some of our other
8 investigators and give them an opportunity to ask some questions,
9 too. They've been listening to you and me, and so I just want to
10 hear from them as well, if you're okay with that?

11 A. Yes.

12 MR. HIPSKIND: And Jim, I'm going to ask you to lead
13 off, and then I'm going to skip over John for a minute and ask
14 BMW, and then I will ask FRA a couple of questions. And then
15 John and then Steve, we'll end up with you to do some of the human
16 performance stuff. Okay? All right. So Jim?

17 MR. SOUTHWORTH: Yeah. A little later on, Dick,
18 somewhere in the interview, if you could show him the diagram, get
19 some ideas for where things were?

20 MR. HIPSKIND: Oh. Yeah. Let me --

21 MR. SOUTHWORTH: You don't need to do it now. Just so
22 we get that.

23 MR. HIPSKIND: Yeah. Just give me a second here, Jim.

24 BY MR. HIPSKIND:

25 Q. David, this is one of the things that we produced within

1 the investigation so far. And it's just a -- our best guess on
2 the diagram, the layout of that area. And if you want to mark on
3 there where you were or where you're lifting and all this and
4 that. This red dotted thing is the main line, and if I'm reading
5 this correctly upside down, the blue dotted line is -- you call
6 that the number 2 pocket track or the steam engine track? Do you
7 have a particular name for that?

8 A. No. That was the first time I've been in that area.

9 Q. Okay. Why don't you mark up where you think you were,
10 just best guess, on that?

11 A. That's where the steam track would be, steam engine --

12 Q. Is that -- I think this blue dotted line is the steam
13 engine track.

14 A. Is that another one that was coming off?

15 Q. I think so. Yeah.

16 A. We were further down this way. I mean, the scale is not
17 right. But I would say my loader was here. Phil's was right
18 here. And then that was a train car like that.

19 Q. Okay.

20 A. And Tyrell's truck was over here. The van was parked
21 out of the way back here. And you had those chained-off, vintage
22 cars behind this --

23 Q. Well, just kind of draw a line where those vintage cars
24 were resting.

25 A. They were like right behind this.

1 MR. HIPSKIND: Okay. Let me share that with Jim. Pass
2 that down to him.

3 BY MR. SOUTHWORTH:

4 Q. Okay. Great. You okay? You want a little break?

5 A. I'm all right.

6 Q. Okay. You said something about Phil was assigned to
7 that fork loader?

8 A. Yeah.

9 Q. Are you not assigned to the other fork loader?

10 A. No.

11 Q. Just for this job?

12 A. My assignment is the excavator.

13 Q. Is an excavator?

14 A. That's what I've been on.

15 Q. Okay. And there was not one there that day available?

16 A. We have two of them. They were at Union Yard.

17 Q. Union Yard. Why weren't you in the excavator? Just --

18 A. Oh, we did not -- there was no way to transport any to
19 the Y.

20 Q. Okay. They got to be trailered?

21 A. Yeah.

22 Q. Okay. You've got some experience, though, operating
23 that piece of -- that type of -- piece of equipment, the fork
24 loader?

25 A. Yes.

1 Q. And you're comfortable with that?

2 A. Yes.

3 Q. Okay. What kind of daily -- is there any daily
4 inspections or anything that you do on the equipment?

5 A. Yes. You check fuel, oil, hydraulic oil.

6 Q. Anything on steering or anything like that?

7 A. No.

8 Q. Do you do a radio check?

9 A. Yes.

10 Q. Do you have to inspect the forks themselves?

11 A. You do a visual inspection.

12 Q. And if they're cracked, file them down or something like
13 that? No?

14 A. If it's a crack, I believe we take them out of service.

15 Q. Okay.

16 A. I've never seen one cracked though.

17 Q. Yeah. They're pretty big forks. It's not like material
18 handling in the warehouse or something like that. These are meant
19 for heavy lifting.

20 A. And they're brand new.

21 Q. Okay.

22 A. We've only used them for 6 months.

23 Q. Okay. Had you ever done anything like this operation
24 before using those forks on panels?

25 A. I have moved -- that particular loader?

1 Q. Yes. With the forks.

2 A. No.

3 Q. Okay. And let me make sure I'm clear. With the
4 excavator, it's done with two excavators, one on each end, and
5 they're chained?

6 A. Yes.

7 Q. When they lift?

8 A. Yeah, lift up --

9 Q. And then you use the radio to talk back and forth, that
10 kind of --

11 A. Yeah, we've done that.

12 Q. Okay.

13 A. Other guys have used the loader to do the -- offload
14 track panels before, but I -- that was my first time using that
15 loader to take off a railcar.

16 Q. Okay. Was there any instruction given to you from Phil
17 or anybody else?

18 A. No. I felt confident enough that I could do it.

19 Q. Okay. All right. That's all I have for now. Thank
20 you.

21 MR. HIPSKIND: Thanks, Jim.

22 Mr. Loveland, can we ask you to continue?

23 BY MR. LOVELAND:

24 Q. David, just a couple of questions and maybe one even for
25 clarification. Probably everybody at this table knows what an

1 excavator is but somebody looking later -- can you tell us what an
2 excavator actually is?

3 A. Some people call it a track hoe. It's got tracks. It's
4 got one boom -- it's got two booms and a bucket. It's made for
5 digging, heavy lifting stuff.

6 Q. So even though these two machines can do the same thing
7 in theory, they're totally different machines?

8 A. Yes.

9 Q. You can't get on a track hoe and drive it from one
10 location to another like you can an end loader?

11 A. Yes, you can.

12 Q. On the road and everything?

13 A. Not on the road.

14 Q. Okay. It's not as mobile --

15 A. No.

16 Q. -- as a -- okay. And this is, you said -- you may have
17 already answered this, so I apologize if you have. Just looking
18 at my notes here. You've never unloaded panels off of a flat car
19 with this end loader?

20 A. No.

21 Q. Is that correct?

22 A. (No audible response.)

23 MR. HIPSKIND: You actually -- you have to speak up just
24 a little bit, David.

25 Is that it, George?

1 MR. LOVELAND: Yes, sir.

2 BY MR. JULIK:

3 Q. Okay. David, I would like to back up a little bit here.

4 What gang are you assigned to?

5 A. Construction Gang 08.

6 Q. Okay. Is that construction gang based out of the

7 Minneapolis area?

8 A. No.

9 Q. Where are you all based out of?

10 A. There is no base. It's the regional gang.

11 Q. Okay. Where do you live, then? Do you live in the

12 metropolitan area?

13 A. I live in Kansas City. I live in Kansas City.

14 Q. Kansas City. Do any of the other crew that you were

15 working with that day, does anyone live in the Twin Cities area

16 here?

17 A. No.

18 Q. Have you ever worked on the Twin Cities Division here?

19 A. No.

20 Q. Do you know if anyone else has that was with you that

21 day?

22 A. I don't believe so.

23 Q. Okay. How long has your gang been on the Twin Cities

24 Division property?

25 A. Let's see here. I believe 3 weeks.

1 Q. And has all that work been on the Midway Subdivision?

2 A. Yes, at the Union Yard.

3 Q. Do you see the track configuration of the Midway
4 Subdivision and some of the adjoining subdivisions in the Twin
5 Cities and vicinity here to be fairly simple track or is it
6 somewhat more complex than a lot of the other tracks that you've
7 worked on?

8 A. It's got a little complexity. I mean, I've worked at
9 Argentine Yard, and that's very complex. And this yard is not
10 near as big, and it's fairly simple.

11 Q. Okay. Has there been a local representative or a local
12 person from the Twin Cities Division that has worked with your
13 crew since you have been here, helping to establish -- making sure
14 you guys know where you're at and what form of protection is
15 needed?

16 A. Not that I'm aware of. I mean, we've had meetings with
17 I believe it was Bruce. I mean, foremans have their briefings
18 with him and to establish track protections and stuff. And
19 we've -- a few of us have seen a complete layout of the yard on
20 paper to get a better understanding of what it looks like.

21 Q. And who is Bruce?

22 A. I believe he's the -- he's the foreman overlooking the
23 construction gangs.

24 UNIDENTIFIED SPEAKER: He's -- can I tell -- he's the
25 roadmaster.

1 MR. WILLIAM DAVID JOHNSON: Yeah, roadmaster. That's
2 what I meant to say.

3 BY MR. JULIK:

4 Q. Do you know Bruce's last name?

5 A. Not offhand.

6 UNIDENTIFIED SPEAKER: I think Criswell.

7 MR. WILLIAM DAVID JOHNSON: Yeah. Cruzewell.

8 UNIDENTIFIED SPEAKER: What?

9 UNIDENTIFIED SPEAKER: Criswell.

10 MR. WILLIAM DAVID JOHNSON: Criswell.

11 UNIDENTIFIED SPEAKER: Criswell.

12 MR. HIPSKIND: Gentlemen, if you do chime in and have
13 something to say, be mindful you need to identify who's speaking.
14 And this is Dick Hipkind speaking now. But it does present a
15 problem to the transcriptionist. Okay?

16 BY MR. JULIK:

17 Q. So over this weekend, were you and the other four
18 employees, did you work the previous days? The incident occurred
19 on Monday. Did you also work Sunday and Saturday prior to it?

20 A. Yes.

21 Q. Was it just the four of you working both of those days
22 or the five of you working --

23 A. Yes.

24 Q. -- those days? Was that work mandatory or mandated by
25 your supervisor, or is that something that they had asked for

1 volunteers to do the work?

2 A. They just asked for volunteers.

3 Q. Did they ask for volunteers for all 3 days?

4 A. Yes.

5 Q. Did you speak directly with a supervisor or was it
6 communicated just through the foreman to you?

7 A. Just the foreman.

8 Q. Okay. So when you got on the front-end loader the day
9 of the incident and did your walk-around, is there any sort of a
10 maintenance logbook on the machine?

11 A. Yes.

12 Q. What's contained in that?

13 A. Just operating procedures for the machine and daily log,
14 fuel, hydraulic and all that stuff.

15 Q. Okay. Since you're not the typical operator of the
16 machine, how would you know if the normal operator during the week
17 had identified an issue prior to you jumping in the machine that
18 day?

19 A. You would have to look at the logbook.

20 Q. Okay. Is that something you did that morning?

21 A. No, I did not.

22 Q. How familiar would you say you are with that particular
23 front-end loader?

24 A. I've been assigned to one before, not that same style
25 because that's a new one. I believe it's a 966M. I've operated

1 an older version of that same loader.

2 Q. Can you describe for us a little bit of the differences
3 between some of the various loaders? You mentioned this was a
4 966M.

5 A. It depends on what they order. This one has all -- had
6 all joystick controls. It didn't have, doesn't have a steering
7 wheel.

8 Q. Do the front-end loaders, the various models, have
9 different load capacities?

10 A. Yeah.

11 Q. Do you know what the load capacity of this particular
12 machine was as it was configured?

13 A. Not exactly, no.

14 Q. Do you know what the weight of the panels were that you
15 were picking up that day?

16 A. No.

17 Q. So the morning of the incident, you stated that you
18 initially had the briefing at the hotel. Was there any discussion
19 as far as what type of protection may be required or --

20 A. Yes. We --

21 Q. -- very much information on the location of the track
22 work where the panels were?

23 A. Yeah. We discussed setting up derails for that track
24 siding.

25 Q. Was there any discussion you had that day pertaining to

1 proximity of any sort of adjacent tracks or the main tracks in the
2 area?

3 A. Phil and I had discussed the other main track, and from
4 what I know of the rule of adjacent tracks, we were not on track
5 equipment and we were not going to foul any other mains. We were
6 on the field side.

7 Q. Okay. During the work of unchaining the panels, when
8 you first arrived to those flat cars, were guys on both sides of
9 the cars unchaining?

10 A. We started on the field side and worked around to the
11 other side.

12 Q. Did you have any form of protection established on the
13 main track when you were unchaining the panels?

14 A. No, because we believed -- Phil and I had discussed that
15 that main track was more than 4 feet away. We were not within 4
16 foot of fouling that track.

17 Q. Do you know what the track centers were in that area?

18 A. No, I don't.

19 Q. Okay. Was there discussion about any potential or any
20 need for positive protection on the main track for the work of
21 unloading?

22 A. No.

23 Q. Did it surprise you when one of the other gentlemen out
24 there with you, I believe you said it was Phil, called up "hot
25 rail" on the radio?

1 A. Did it surprise me? No.

2 Q. Did you guys discuss what the speed of the main track
3 was through that area?

4 A. No.

5 MR. JULIK: All right. I don't have any further
6 questions at this point.

7 MR. HIPSKIND: Thank you, Mr. Julik.

8 John, do you want to ask some questions?

9 Are you still good to go, David?

10 MR. WILLIAM DAVID JOHNSON: Yeah.

11 BY MR. PALACIOS:

12 Q. I just got a few. David, you guys had a job briefing
13 first thing in the morning?

14 A. Yes.

15 Q. And then that was in -- at the hotel, right?

16 A. Yes.

17 Q. Okay. And then you moved over to the panel site?

18 A. Yes.

19 Q. At panel site were you discussing -- you had another
20 briefing there?

21 A. Yes.

22 Q. And that was the last briefing until after the incident,
23 or that was the only two briefings you had during the day that --

24 A. Yes.

25 Q. Okay.

1 A. We had two briefings.

2 Q. And you said that he was -- the foreman was gathering up
3 people to work for the weekend, and you five volunteered to
4 work --

5 A. Yeah. They --

6 Q. -- Saturday, Sunday and also Monday?

7 A. They asked who's staying the weekend, and the five of us
8 raised our hands.

9 Q. And that came from the foreman himself. Okay.

10 A. Yeah.

11 MR. PALACIOS: No further questions.

12 MR. HIPSKIND: Okay. Thanks, John.

13 Steve, would you care to ask some questions?

14 DR. JENNER: Sure. Thank you.

15 BY DR. JENNER:

16 Q. How are you doing with -- would you like a break at this
17 time?

18 A. I'm okay.

19 Q. Okay. I'm going to bounce around a bit just for follow-
20 up questions, and then I'll change pace a little and just ask
21 about your background and training and things like that.

22 Earlier you said you've done this type of operation, the
23 offloading, before in a different yard but used elevators?

24 A. Excavators.

25 Q. Excavators. I'm sorry. How often have you done that

1 before using excavators?

2 A. We did that, I believe it was 2 weeks ago. We
3 offloaded -- I can't -- it was like 46 panels, something like
4 that.

5 Q. Okay. And prior to that, I mean, have you done it, you
6 know, 1 time, 5 times, 20 times, if you can estimate, using
7 excavators?

8 A. Not very often. When I worked on the construction gang
9 last year, contractors were the ones that usually offloaded the
10 cars for us, or they were trucked in from other places.

11 Q. How did that go for you using the excavator? Were there
12 any issues or --

13 A. No, none at all.

14 Q. When you started to -- when you got in the equipment,
15 the loader, I think you said you believed that everyone else was
16 off the panels. Did you come to believe that someone was still on
17 the panels? At this time, at this moment, do you believe there's
18 someone that was still up on the panels?

19 A. According to other -- the other guys, Tyrell was still
20 up there.

21 Q. Okay. But --

22 A. Or he climbed back up there. Nobody was exactly sure
23 what happened there.

24 Q. Just to speculate, why would someone be -- why would
25 Tyrell have been up there? What else needed to be done up on top

1 of the panels?

2 A. I don't know. The chains were all off. I don't think
3 there was any reason to be up there.

4 Q. Okay. Is --

5 A. Unless it was just a better vantage point of watching
6 out.

7 Q. Watching out for what?

8 A. Hot rails.

9 Q. Is that something that he may have done in the past when
10 working for him?

11 A. I have no idea. I have never -- this is my first year
12 working with him, and I've never offloaded the panels like that
13 until that day.

14 Q. During the unloading process, I think you said it might
15 be difficult to do one at a time, one panel at a time. Did I hear
16 that right?

17 A. The top one I thought, because of the height. Because a
18 loader can only go -- the forks can only be lifted so high. I
19 thought it would be difficult to grab that top panel.

20 Q. Okay.

21 A. So I thought it would be easier to grab the second one
22 down and offload it that way.

23 Q. And you've seen that process been done?

24 A. No.

25 Q. Okay. So this was just your experience telling you what

1 might be best?

2 A. Yeah.

3 Q. With the other equipment that you used, the excavator,
4 has height been a problem using that?

5 A. No.

6 Q. Others have asked you about your familiarity with the
7 loader. What have you used the loader for? What other tasks have
8 you used it?

9 A. They move those panels. They're good machines to move
10 those panels. It is kind of awkward because if you're moving a
11 40-foot panel, you've got to have room for -- to move 40 -- you
12 got to have a 40-foot path to move it.

13 Q. Right.

14 A. They also have buckets. They move ballast for us. They
15 move dirt. I mean, they're good pieces of equipment. They're
16 very much needed on jobs like this.

17 Q. And these are things you've done?

18 A. Yes.

19 Q. Okay. Now you've discussed a little about, you know,
20 this specific loader. I guess it's a newer version of an older
21 one. First of all, how comfortable are you with the older version
22 of the loaders you've used before?

23 A. I've been comfortable with all pieces of equipment that
24 I've operated.

25 Q. And in terms of this newer version, that I think they're

1 joystick versus steering wheel thing --

2 A. Steering wheel. Yeah.

3 Q. -- is that difference an issue at all?

4 A. No. It takes a few minutes to get used to, but almost
5 everybody I've talked to that's ran one, they prefer a joystick
6 over a steering wheel. It's a lot easier to maneuver.

7 Q. And the joystick is with the older versions?

8 A. No, that's newer.

9 Q. Newer. Okay. Now when you get exposed to a new piece
10 of equipment, what is sort of the process for you getting familiar
11 with it? Is there written material you have to go through? Is it
12 OJT?

13 A. That's one of the issues I have with BNSF. Somebody can
14 get awarded a piece of equipment without ever having any
15 experience on one. I've seen guys get on backhoes that have never
16 ran one, and it's frustrating. I don't know why they -- and how
17 that happens is that person may be qualified to run a ballast
18 regulator, and I'm not sure, but I believe that same rate for a
19 ballast regulator, they can also -- are qualified to run a
20 backhoe. Well, those are two totally different pieces of
21 equipment. And I don't think that should ever be allowed. Each
22 equipment is completely different from another and there should be
23 training on these equipment.

24 I mean, if a new guy shows up on our jobsite and hasn't
25 ran an -- we were supposed to get a new excavator operator. I'm

1 not sure if he's here or not. And nobody knows if he's ever ran
2 one. And if he never has, then I was going to show him, you know,
3 give him my version of how to do things. But I would still think
4 that more training would be needed.

5 Q. Okay. Well, with that in mind, you're approaching a new
6 task on this day with the newer version of the equipment, doing a
7 task you hadn't done before. Did you have any reservations going
8 into this? Did you have concerns?

9 A. Just picking that top panel by itself because of the
10 height and how difficult it would be to get the forks in there
11 properly. And I thought if I come down one panel, it would be a
12 lot easier.

13 Q. If you had reservations about approaching this job with
14 this equipment, something new, is this something you could
15 verbalize to a foreman, to a supervisor, if you wanted --

16 A. We have empowerment. We can -- if we feel something's
17 not right, we can say something.

18 Q. Have you done that before?

19 A. Oh, yeah. There's been times I get very verbal, yeah.

20 Q. Okay. Can you just --

21 A. When it comes to safety.

22 Q. Can you reflect on some of those times? What was the
23 circumstances?

24 A. With an excavator, holding a track panel up in the air,
25 you know, to get it lined up to cut to size, to cut to fit. I

1 always -- I make sure nobody gets underneath the panel. I mean,
2 we have the -- we say that in the job briefings: Do not get
3 underneath any suspended material because chains can break. And
4 they have broken on me in the past. So I don't hesitate. I'll
5 yell at somebody, you know, get away, if they're too close to
6 something.

7 Q. Okay. I guess just reflecting on this, if you saw what
8 you had to do with this piece of equipment, if you were concerned
9 on this day, you felt you had the power to speak up if you had
10 enough concern so that --

11 A. Oh, yeah. If I didn't feel right, comfortable doing
12 what I'm doing, yeah. I would have said something and asked if
13 there's a different way of doing it.

14 Q. How well did you know the five people you -- the five of
15 you together, how well did you know the other people that you
16 worked with?

17 A. This is the first time this year. We started in
18 February, I believe, is when I first met everybody, those five or
19 the other four.

20 Q. So it's been a few months. How did you guys work
21 together?

22 A. Good. There's been no rifts between us or anything like
23 that.

24 Q. Okay.

25 A. Guys have their good days and have their bad and -- but

1 there's been -- far as I know, everything's been working pretty
2 well.

3 Q. Okay. And in terms of people knowing and following
4 procedures and the -- and which equipment to use and when to
5 protect the track and all the other railroad, the railroad rules,
6 the people are pretty up on that?

7 A. Yes.

8 Q. Okay.

9 A. That adjacent track rule is -- it needs to be more
10 defined, I believe.

11 Q. If you can just elaborate on that?

12 A. I've heard other people that they're not sure of what
13 the exact rule means, because they have changed it. Because I
14 went through those first -- a year ago, I went through the first
15 class of this new rule. And then I went through it again when I
16 went to another headquarter job. So I had a clear understanding
17 of that potential to foul.

18 Well, then after I think it was the end of the year last
19 year, I went back -- after I got off the construction gang, I went
20 back to work in Kansas City, and there was another situation where
21 I thought there was a potential to foul. But my foreman told me
22 that they changed that, that no longer is the -- and that only
23 applies to on-track equipment. So we looked up the rule, and he
24 was right. It no longer states the potential to foul, and I don't
25 know if -- I think a lot of people need to be retrained on that

1 rule again.

2 Q. So you --

3 A. To make it understandable.

4 Q. You found other people who had questions who don't --

5 A. You hear people talk about it and they're not too sure
6 about it.

7 Q. You mentioned that you were not the typical operator of
8 this front loader. Who is?

9 A. His name is Ben. I'm not --

10 Q. And he wasn't obviously part of the people working that
11 day?

12 A. No. He went home for the weekend.

13 Q. Okay. So if he were there, would he have been the one
14 to use the equipment instead of you?

15 A. Yes.

16 Q. Okay. Monday was a holiday. I assume there was
17 incentive for -- extra incentive for people to work, for you to
18 work that day? So overtime and then some?

19 A. I believe it's double time and a half.

20 Q. Okay. What's the case with working -- is weekends
21 incentive in terms of any type of overtime or just holidays? So
22 if you work Saturday or Sunday, is that --

23 A. Yeah, that's all overtime.

24 Q. Okay. Now changing pace, but I won't ask you right now
25 because I think people may have follow-up questions, but as I

1 mentioned earlier, I'd like to ask you a little bit about your
2 background and your -- the days that you work and the hours and
3 your overall health and things like that, if that's okay.

4 A. Um-hum.

5 Q. Great. Thank you for your questions.

6 MR. HIPSKIND: Okay. Thanks, Steve.

7 Mr. Dale Johnson, who works for FRA, do you have any
8 questions at this time?

9 MR. DALE JOHNSON: I have none at this time.

10 MR. HIPSKIND: Okay. Dave, you want to take a break?

11 MR. WILLIAM DAVID JOHNSON: Sure, if everybody would
12 like to.

13 MR. HIPSKIND: I would like to. So you're in control,
14 and we'll take a break for a little bit and be right back.

15 (Off the record.)

16 (On the record.)

17 MR. HIPSKIND: This is Dick Hipskind, the IIC. We're
18 back on the record, back from our break.

19 BY MR. HIPSKIND:

20 Q. David, I want to ask you just a few follow-up questions.
21 I understand, at least listening to all this, you guys did do a
22 job briefing in the morning and you did talk about both tasks; is
23 that correct so far?

24 A. Yes.

25 Q. Did anybody raise any objection to the plan as was laid

1 out in the job briefing?

2 A. No.

3 Q. Have you ever had an occasion to be at a job briefing
4 where somebody presented a challenge or asked a question?

5 A. Yes.

6 Q. And that happens maybe on a regular basis, or how should
7 I understand that?

8 A. No. It's not a regular thing, but it does happen.

9 Q. Okay. And you guys don't sign a piece of paper,
10 acknowledge the thing? You used to do that, but you don't do that
11 now, right, in regard to a job briefing?

12 A. We have not done that. I'm not sure if we're required
13 to or not.

14 Q. Okay. I'm curious. Have you ever been a foreman?

15 A. No.

16 Q. Have you ever conducted a job briefing?

17 A. No.

18 Q. Okay. The way it was laid out for that day, everything
19 sounded good to you?

20 A. Yes.

21 Q. Okay. And in the course of moving from the panel thing
22 over -- I mean, putting the panel together out in that field and
23 then coming over to unloading the panels, did you have a re-job
24 briefing or change in that, or how should I understand that?

25 A. We had a -- it was a small briefing at the switch before

1 we headed over there.

2 Q. Okay. And what was said? Did you talk about who was
3 going to do what or, I mean, help me --

4 A. We discussed our track protection, and Tyrell was going
5 to put up derails, Tyrell and Jesse.

6 Q. For that pocket track?

7 A. Yes.

8 Q. Okay. Do you know if they locked or spiked the switches
9 leading into that track?

10 A. I believe a lock was put on that switch with a tag.

11 Q. Okay.

12 A. Out-of-service tag.

13 Q. And talking about the piece of equipment, I want to get
14 back to your description on the very early part of this interview.
15 It's my understanding that your assessment of the thing that may
16 have gone wrong is the fit of the front of the loader where the
17 forks are attached and how they mesh with the tie spacing of the
18 track panels. How close did I get to understanding your
19 assessment?

20 A. The forks fit good in between the track ties to lift the
21 panel.

22 Q. Okay.

23 A. I think the issue was, is how high they were stacked. I
24 believe that maybe if one less panel was stacked, and they only
25 went six high instead of seven, it would have been no issue at all

1 for an operator to pick up a panel off the top.

2 Q. Tell me why. Tell me the improvement there. As an
3 operator, it would help you because --

4 A. Because the loader can only -- the forks on the loader
5 can only go so high. And another thing that would probably help
6 is the forks maybe should have maybe a foot longer on the forks
7 to -- it would improve the --

8 Q. The reach?

9 A. -- reach on getting, picking the panel up.

10 Q. Let's decode this. So we're talking about things that
11 we put on equipment, and you may be suggesting -- I don't want to
12 put words in your mouth, but a specialized set of forks for track
13 panel unloading?

14 A. I don't know if it would be specialized. I don't know
15 if they make -- well, I know they make longer ones. I've seen
16 contractors, the forks on their loaders are longer than ours. And
17 I would think it would benefit us if we had longer ones also.

18 Q. Okay. And then when you're operating the forks at a
19 height, should I understand that the assembly that elevates the
20 forks, that it has a forward tilt and a backward tilt function to
21 it?

22 A. Yes.

23 Q. Okay. Did you have any --

24 A. That's the difficult part when -- with the height issue,
25 is you can't see where your forks actually are. You almost kind

1 of have to feel to see if you have the load on the end of your
2 forks. The rail that's furthest away from you, you almost have to
3 feel if they're on the end of the forks.

4 Q. And this is a function, for those that haven't seen the
5 equipment and haven't operated a piece of equipment like this,
6 you're in the cab and you're at a much lower level than when the
7 forks are elevated at a higher --

8 A. No. I almost am at eye level.

9 Q. Pardon?

10 A. I would say I'm at eye level with the height of the
11 panels when I'm sitting in the loader. But when you lift up the
12 forks, they're right in front of you and you have to crouch down
13 to see underneath to get the forks into place.

14 Q. Okay. So it's a visibility issue?

15 A. Yeah.

16 Q. And if there are less panels on there and the fork
17 assembly is lower, less visible obstruction or --

18 A. With one panel less, I would think it's still a
19 visibility issue, because I went down one panel. It was still a
20 visibility issue.

21 Q. Okay. Longer forks would make all that feel and grab --

22 A. It would make it easier, yes.

23 Q. Okay. Throughout the day, earlier in the day or when
24 you're moved over to the pocket track and you're beginning to do
25 the unloading, did you and Tyrell ever have a radio communication

1 on channel 50?

2 A. I had -- prior to, he gave me instructions on how to get
3 there over the radio.

4 Q. But you don't know what radio he was using?

5 A. He was in his truck at that time.

6 Q. Likely his truck radio?

7 A. Yes.

8 Q. Okay. In the 3 months that you had been working with
9 him, do you know if he had experienced any issues with his
10 handheld, portable type radio?

11 A. The only issue sometimes is distance if -- on the
12 handheld, they don't reach as far as a radio inside equipment.
13 They're a little bit stronger.

14 Q. Okay. That's understandable, right?

15 A. Sometimes you have to hold your handheld up in the air
16 to get a good signal. That's --

17 Q. Okay. The short job --

18 A. -- that's a distance.

19 Q. Okay. The short job briefing in the field after you've
20 completed assembling the switch panels, did Tyrell specifically
21 identify himself as in the role of a watchman/lookout and that he
22 would position himself on top of the panels to facilitate that
23 function?

24 A. No.

25 Q. Okay. Did anybody in the group ask about the need or

1 whether you were going to provide watchman/lookouts or anything
2 like that?

3 A. We did not feel that we needed -- our track was locked
4 out and we were -- no potential to foul. We were not going to
5 foul the other main because we were working off the field side.

6 Q. Okay. I got it.

7 A. I don't think anybody thought that we needed a lookout.

8 Q. Let's talk in a broader historical context. And my
9 understanding is that for the four other people you were with that
10 day, you had worked with them approximately 3 or 4 months?

11 A. Um-hum.

12 Q. Did you say yes?

13 A. Yes.

14 Q. Okay. And that's speaking to just this year's year-to-
15 date production and the gang you're assigned to, correct?

16 A. Yes.

17 Q. Had you worked with any of those people in the past,
18 though?

19 A. Those four, no.

20 Q. Okay. And Steve's already talked to you about how well
21 you guys got along in this thing and that thing. But I'm going to
22 open it up a little bit different. In all those days that you've
23 worked with Tyrell and doing various tasks, various locations, did
24 he consistently hold a job briefing?

25 A. Not every time. We discussed what needed to be done,

1 but -- and if anybody was unclear, nobody had any hesitations to
2 ask what we were doing.

3 Q. Okay. Were you comfortable with his leadership and the
4 content of his job briefings when he held them?

5 A. Yeah. He was very knowledgeable. He knew what he was
6 doing and he -- I thought he was a good foreman.

7 Q. Okay. I know I've jumped around, but getting to the
8 moment that the accident is unfolding, I thought what I understood
9 you to say is you didn't think he was up there; you didn't know he
10 was up there on any of the stacks of the --

11 A. I did not realize he was still up there. I don't recall
12 seeing him up there. I thought I saw everybody on the ground and
13 that's -- when the accident happened, I thought that's where he
14 was, on the ground, that he just couldn't move quick enough.

15 Q. Okay. Understood. Understood. The logbook, let's talk
16 about the logbook for just a second or two here. I understand it
17 wasn't your regularly assigned machine. I understand it was
18 assigned to somebody else. But when Tom asked you earlier did you
19 check the logbook, I'm going to ask it a little bit different.
20 Was the logbook there available?

21 A. Yes. It's behind the seat.

22 Q. And that's the pattern, practice, procedure with the
23 logbooks; they stay with the equipment? They don't go with the
24 operator; they stay in the equipment?

25 A. Yes.

1 Q. Okay. Have you reviewed the logbook since or anything
2 like that?

3 A. Since the accident?

4 Q. Yeah.

5 A. I have not been out there.

6 Q. Okay.

7 A. Since the accident.

8 MR. HIPSKIND: That's all I have for right now.

9 Tom, FRA? Tom, do you want to go next?

10 MR. JULIK: Yes, I can do that.

11 BY MR. JULIK:

12 Q. Just prior to the incident, so we've got two flat cars
13 each with two stacks of panels on it. If we look at the panels or
14 the different stacks in an east-to-west ordering, let's say the
15 furthest east panel is A, and it goes B, C, D to the furthest
16 west, which panel or which stack of panels were you lifting off
17 of?

18 A. A.

19 Q. So you were lifting off the furthest east panel closest
20 to -- or for the stack closest to the gondolas?

21 A. Yes.

22 Q. Do you know where the other three employees were when
23 you started to make that move? You first stated that you weren't
24 aware that Tyrell was up on top of the panels. Do you know where
25 the other individuals were?

1 A. I saw Roe on the ground. Phil was in his loader. And I
2 saw Jesse on the other side of the -- of Phil's loader.

3 Q. So how far was Roe in relation to where you were?

4 A. He was in between us. I think he was walking back to
5 the van because he -- I believe he probably figured he was going
6 to just get out of the way. He didn't need to be there after
7 that. You know, unchaining everything was done, so his job was
8 done by that time.

9 Q. And where was the van? Was that further to the west, or
10 is he walking to east behind you?

11 A. To the east to -- I believe he would've had -- he was
12 going to walk behind me. Or he already had. I'm not sure where
13 he was at the time of the accident.

14 Q. Okay. You had mentioned that when you make a pick and
15 grab these 40-foot-long panels, that it can be kind of unwieldy
16 and that you need a very wide path for your move. When making a
17 maneuver like that, how do you typically communicate with the
18 individuals that are on the ground to ensure that they do not get
19 in your path of movement?

20 A. I keep a very close eye out on where I'm going. I have
21 mirrors. I look behind me, and those loaders are equipped with
22 rear cameras. And they're pretty decent cameras; you can see very
23 well with them.

24 Q. So principally it is a visual confirmation on your part.
25 There is generally not verbal communication between you and the

1 others?

2 A. No. Everybody understands that once the chains were
3 done, their job was done, so they get out of the way.

4 Q. I'm going to shift gears a little bit here. How often
5 are you typically trained on the safety and operating rules of
6 BNSF?

7 A. We have book of rules training once a year.

8 Q. Do you recall when your previous training was?

9 A. At early startup, we had training then for this
10 construction gang.

11 Q. So that would have been around the February time frame
12 of this current year?

13 A. Yeah.

14 Q. Do you recall there being any discussion during that
15 rules training regarding to any rules mentioning the potential to
16 foul an adjacent track or potential to foul any track?

17 A. At that particular training, no, I don't remember.

18 Q. Do you recall what was covered in the training?

19 A. There was a lot going on that week. I don't recall.

20 Q. It was multiple-day training, though? It was -- is that
21 correct?

22 A. Yeah, and there was other classes we had to go through.
23 I mean, it was -- it's a weeklong thing we go through.

24 Q. Okay. And you said your construction gang consisted of
25 roughly 27 people, correct?

1 A. I believe like 25, 26 around.

2 Q. Okay. So when the gang is that large, how much time
3 have you spent working directly with the other four individuals
4 that you were working with the day of the incident?

5 A. Since February. They were also -- well, Jesse wasn't
6 there at the beginning. So Jesse, he got here, he's actually --
7 works on the welding crew and he was helping us out.

8 Q. So you were pretty --

9 A. Jesse, I worked with him for like however many weeks
10 he's been here, a couple weeks. But everybody else since we
11 started up.

12 Q. Okay. I guess the question I'm driving at is with a
13 gang that's that large, do you work routinely with a bunch of --
14 with everybody in the group, or is it quite often segmented where
15 you've got a portion of the gang working in one area, and you work
16 in another location with a number of other folks?

17 A. Sometimes we do that. We do split up in smaller groups
18 to accomplish more than one task during the day.

19 MR. JULIK: Okay. All right. That's all I've got for
20 questions here.

21 MR. HIPSKIND: Thanks, Tom.

22 George?

23 BY MR. LOVELAND:

24 Q. Just a couple questions. One of them you've already
25 brought up on your own. I appreciate that, but I might touch on

1 it again in a second. But just to touch on what Tom was saying
2 here about your -- you talked about your week of training in the
3 gang startup. Was that a week of book of rules training?

4 A. No. We did have book of rules. It was -- I believe it
5 was just 1 day.

6 Q. Just 1 day?

7 A. The entire day.

8 Q. So it was a week of training but not over the rules'
9 stuff; the book of rules was 1 day?

10 A. Yeah. And health screening and all of that, all the --
11 I can't remember exactly what.

12 Q. I understand. And you said that if the forks were
13 longer, you know, in your opinion, of course, looking back, if the
14 forks were longer, would the situation have even happened?

15 A. I don't believe so.

16 Q. And you said you have seen these forks before, but we
17 just don't have them?

18 A. Yes.

19 Q. You said something that I'm just not sure if you just
20 didn't understand or whatever, but they talked about -- I think
21 Dr. Jenner there talked about, Steve talked about overtime on a
22 Monday, and you said it was double time and a half?

23 A. I believe.

24 Q. That's --

25 A. I haven't worked too many holidays.

1 Q. Basically, just for clarification, you work on a
2 holiday, it's overtime plus you get your holiday pay.

3 A. Um-hum.

4 Q. So if you work 10 hours, you get 10 hours of overtime
5 and your 8 hours of holiday pay. That's how that works.

6 A. Yeah.

7 Q. It's kind of misleading to say double time and a half --

8 A. Yeah. You're --

9 Q. -- because you don't get paid that for all the hours you
10 work.

11 A. Yeah. I don't work too many holidays, so sometimes I
12 don't --

13 Q. I understand. It's not something we typically do.

14 A. I wish I didn't work that holiday.

15 Q. Yeah. Steve, Dr. Jenner, talked about training aspect
16 of things, and you touched on training quite a bit there. And I
17 know that the railroad has specific training like at Johnson
18 County Community College for cranes.

19 A. Tampers and stuff like that, which I think is
20 outstanding, but --

21 Q. Every other piece of equipment --

22 A. No.

23 Q. -- what's the training? Is it just get on and go?

24 A. Get on and go. Learn yourself.

25 Q. Okay. That's all I had. Thank you very much.

1 MR. HIPSKIND: Thanks, George.

2 Jim, did you have anything in your follow-up?

3 MR. SOUTHWORTH: No. You covered the logbook. I'll go
4 ahead and get them and take a look.

5 MR. HIPSKIND: Okay. John, anything?

6 MR. PALACIOS: Yeah.

7 BY MR. PALACIOS:

8 Q. I just got one other question. On your job briefing
9 that you guys had -- let's go with the one in the morning, did you
10 guys talk about -- you stated you talked about the tasks that you
11 were going to do?

12 A. Yes.

13 Q. What was the talk about safety, as far as exposures and
14 risk, that was going to be encountered that day, protection? Was
15 that discussed in the morning?

16 A. Yeah. We discussed protection and basic exposures.

17 Q. Like --

18 A. It wasn't an extensive briefing, I mean, but -- because
19 we have all worked together and we --

20 Q. As far as exposures, which ones did you cover?

21 A. The five basics: the walking about travel, pinch
22 points, ascending and descending, line --

23 Q. Who covered those? Tyrell?

24 MR. HIPSKIND: Dave, if you need a break, take a break.

25 MR. WILLIAM DAVID JOHNSON: Do you have any water?

1 MR. HIPSKIND: The short answer is no. I apologize.

2 UNIDENTIFIED SPEAKER: Do we have a request?

3 UNIDENTIFIED SPEAKER: Do you want me to go get you
4 some?

5 MR. WILLIAM DAVID JOHNSON: No. It's okay. It's okay.
6 What was your question again?

7 BY MR. PALACIOS:

8 Q. Just give me what was discussed as far as some of the
9 risks that you guys were going to encounter that day, some of the
10 exposures. What did Tyrell tell you?

11 A. He just gave us a rundown on what we needed to do and
12 what protection we were going to use. And we all discussed our
13 exposures. A lot of people have different ways of giving
14 briefings and they -- some foremans may cover everything, you
15 know, and some foremans let other guys go over the five exposures,
16 and that's the way that was done.

17 Q. Okay. He let you guys cover them, then?

18 A. Yeah.

19 Q. Okay. All right. That's all I got.

20 MR. HIPSKIND: Thanks, John.

21 Dr. Jenner.

22 BY DR. JENNER:

23 Q. I'm not sure if we had asked you about the weather on
24 the day of the accident. Can you describe the conditions?

25 A. I did bring it up. It was cloudy. I made the comment

1 that the buildings were -- tops of the buildings were covered in
2 clouds. It was wet. Everything was wet. The switch was in a
3 puddle, good-size puddle. All the ties were damp. I remember the
4 chains, when we were taking off the chains, the handles, the way
5 they're designed, they can hold puddles of water. And every time
6 you ratchet the chains off, gloves would get wet. So everything
7 was damp.

8 Q. Right. Now that you mention it, I do recall your
9 descriptions. But my question is did that affect -- besides what
10 you were describing, it being messy and wet, did -- was that a
11 consideration about moving ahead and doing what needed to be done
12 that day?

13 A. No. Just if it was raining, yeah, that would be a way
14 different consideration. But it was just humid and damp.

15 Q. So it had rained earlier and now it had stopped raining?

16 A. I think it rained earlier that night. I'm not sure. Or
17 the previous day, yes. It rained Sunday almost all day.

18 Q. Changing directions here, wanted to get some information
19 about your on-duty schedule and your off-duty activities. So if
20 you could -- this was Monday. If you could take us back to
21 Friday, and if you worked that day, or if you had that day off,
22 can you -- do you recall that you were on duty that day?

23 A. Yeah. We worked Friday.

24 Q. What times did you work Friday?

25 A. What time did we get there? Sometimes our start times

1 vary depending on workload and windows. I believe nothing was
2 really going on that day. I believe start time was 7:00.

3 Q. 7:00 in the morning?

4 A. Yeah.

5 Q. Okay. And do you recall when you went off duty Friday?

6 A. I believe that was the day my wife was traveling up
7 here, and she got a flat tire. I think we worked until
8 approximately 5:00 because I remember thinking I was going to
9 leave earlier if she was going to be there before I got there. I
10 was going to try to get to the hotel, so -- when she got there.

11 Q. Okay. So about 5:00, then you drove to the hotel?

12 A. Yeah. We have a van that takes us to the hotel.

13 Q. How far away is the hotel?

14 A. Mile and a half.

15 Q. Oh, it's right there?

16 A. Two miles. Yeah.

17 Q. All right. And just in general that evening, so you get
18 home a little after 5:00, you eat dinner, you just relax?

19 A. I was in the room. Yeah, we went -- yeah, we had -- my
20 wife and I had dinner at the restaurant at the hotel because we
21 were too tired to go out and eat, so --

22 Q. Okay. And what time do you recall, like, going to bed,
23 falling asleep that evening?

24 A. I'm usually in bed by 10:00.

25 Q. You fall asleep soon after that?

1 A. Oh, yeah. I don't have any problems sleeping.

2 Q. Okay. So now it's Saturday. Were you working? Did you
3 work Saturday?

4 A. Yes.

5 Q. Okay. So you slept through the night, and do you
6 remember what time you got up?

7 A. Start time was -- I think we started at 8:00 because we
8 usually -- we relax on the weekends. We're not in a hurry. Just
9 a handful of us. We're doing extra work to help to keep the gang
10 in, you know, on schedule, so --

11 Q. Okay. Do you know what time you woke up approximately
12 Saturday morning?

13 A. Oh, I usually wake up about an hour to 45 minutes before
14 we meet up.

15 Q. So Saturday, you started at 8:00 a.m., and how long did
16 you work until?

17 A. I'm trying to remember what we did on Saturday. What
18 date was that?

19 MR. HIPSKIND: The 23rd.

20 MR. WILLIAM DAVID JOHNSON: Usually tell what I've done
21 that day by conversations with the wife. Yeah, we got off --
22 because I sent the wife a text letting her know I was heading back
23 to the hotel. It was approximately 2:30.

24 BY DR. JENNER:

25 Q. And the rest of the afternoon and evening?

1 A. I don't know. Just ate dinner with my wife and my
2 daughter. That day they went to a dog park and stuff.

3 Q. So in bed maybe 10:00 again that night?

4 A. Oh, yeah.

5 Q. Okay. And you worked Sunday?

6 A. Yeah. That day was raining all day.

7 Q. Right. Did you recall your hours that Sunday?

8 A. We cut it short. I believe we were done by noon.

9 Q. So 8 a.m. to noon about?

10 A. Yeah.

11 Q. You cut it short because of weather?

12 A. Because of rain.

13 Q. Okay. So the rest of that afternoon off and similar
14 type of to bed at 10 and --

15 A. Yeah. Wife and I, we took the kid to the Mall of
16 America.

17 Q. So Monday morning, your shift started early?

18 A. 8 a.m.

19 Q. Oh, another 8 a.m.?

20 A. Yeah, because it was just us five again.

21 Q. Okay. Great. Thanks for working through that.

22 I was just going to ask you just some questions about
23 your overall health. I see you're not wearing any glasses. Do
24 you wear contacts?

25 A. No.

1 Q. Do you have a physical, a company physical, where you
2 get your vision and hearing checked?

3 A. Yes. I have to. I'm required. I have a CDL.

4 Q. Do you recall when that last physical was?

5 A. March 2nd, 2015.

6 Q. Did everything check out, normal hearing and vision?

7 A. Yeah.

8 Q. Okay.

9 A. And we also did our yearly hearing test at startup, and
10 that was another thing we did. We went through health screening
11 and hearing tests.

12 Q. And startup was February of 2015?

13 A. Yes.

14 Q. In terms of other health, any chronic conditions? Are
15 you taking medications, over-the-counter prescriptions, anything?

16 A. No.

17 Q. Okay. How do you sleep, your quality of sleep?

18 A. Before this all happened, very good.

19 Q. Okay. Understood. Never been diagnosed with a sleep
20 condition, insomnia or sleep apnea?

21 A. (No audible response.)

22 Q. Okay. How did you feel on the day of the accident in
23 terms of alertness level? How did you feel?

24 A. Very alert, very -- not tired at all. We got off early
25 the previous day, had a good day out at the Mall of America and

1 got home early, got to the room early.

2 Q. Okay. Great. Thank you for working through that.

3 That's all the questions I have.

4 MR. HIPSKIND: Thanks, Steve.

5 Tom, did you want to quickly go through your fast thing?

6 MR. JULIK: Yes. I'll do that here.

7 BY MR. JULIK:

8 Q. Dr. Jenner was able to derive the vast majority of it
9 here. There was just a couple quick questions here to round it
10 out. What would you say your typical sleep duration is? On a
11 weekly basis it looks like, from the information you have here,
12 it's about 8 or 9 hours. Is that pretty typical?

13 A. Seven to 8.

14 Q. Seven to 8. Okay. And how would you rate the sleep
15 that you had the night prior to the incident?

16 A. Very good.

17 Q. Very good. Do you routinely take naps?

18 A. No.

19 Q. Did you take any naps the week prior to the incident?

20 A. No.

21 Q. Okay. And I believe that's all that I have here for
22 questions here.

23 MR. HIPSKIND: Thanks, Tom.

24 Anybody else with anything? George, quickly?

25 BY MR. LOVELAND:

1 Q. Just one question, David, just real quick. You talk
2 about your job briefings, the job briefings you had. Is that a
3 typical job briefing you guys would have? Was it out of the
4 ordinary?

5 A. It is out of the ordinary because it was just a weekend.
6 But during the week, they're more extensive because there's more
7 of us there.

8 Q. Is this the first time you've worked a weekend?

9 A. No.

10 Q. For typical weekend work, was this a typical briefing?

11 A. Yeah.

12 Q. Okay.

13 MR. HIPSKIND: Thanks, George.

14 Now David, your representative has been very patiently
15 waiting, and I would like to invite his comment or an opportunity
16 for some clarification, if needed.

17 MR. MOZINSKI: Okay. And --

18 MR. HIPSKIND: And please identify yourself.

19 MR. MOZINSKI: This is representative John Mozinski. I
20 just wanted -- listening to this whole stuff, I don't believe we
21 did a very good job of representing what the RSG gang is. The RSG
22 gang, which David's currently on, a Regional System Gang, that
23 travels across District 100 through 900 on the entire BNSF system.
24 So that could be all the way out to California, all the way down
25 to Louisiana, all the way up north. This is what they do. They

1 travel to multiple locations.

2 There's a schedule put out in November of the previous
3 year and we review it along with the company, see if there's any
4 changes. And they have a schedule that they're supposed to stick
5 by. That can be in multiple states, multiple locations. I
6 believe they've already been in three or four different states, as
7 it stands. So I just wanted to clarify that.

8 MR. HIPSKIND: Okay. That's helpful.

9 MR. MOZINSKI: Okay. And then the other thing I wanted
10 to clarify is this adjacent track rule that has been a big topic.
11 As you are aware, BMWED, the railroads, and the FRA reached a
12 consensus in 2006 on a set of simply, easily understood
13 improvements for adjacent track protection under 49 CFR 214,
14 Roadway Worker Protection. Unfortunately, less than one page of
15 consensus-based rule text reached in 2006 through the Rail Safety
16 Advisory Committee have been morphed by the FRA into one of the
17 most convoluted and difficult to read regulations in the Code of
18 Federal Regulations.

19 On July 17th, 2008, FRA published a notice of proposed
20 rulemaking, an NPRM, for adjacent track protection which severely
21 deviated from the 2000 consensus agreement. BMWED, jointly with
22 BRS, filed extensive joint comments on the -- to the docket in
23 opposition of the proposed rule due to the deviation from the
24 consensus and the unintended, unknown safety consequences of
25 the --

1 MR. HIPSKIND: Let me interrupt you here for a minute.

2 MR. MOZINSKI: Okay.

3 MR. HIPSKIND: Is this a long read that you prepared, or
4 I thought you had a comment about what this investigation needed
5 to do in addition to --

6 MR. MOZINSKI: It's not a long read. It's just to raise
7 some things, too. I guess it is somewhat from listening to this
8 and trying to explain it.

9 MR. HIPSKIND: Well, can you condense your thoughts?
10 What is it that you want us to look at?

11 MR. MOZINSKI: Well, the adjacent rule needs to be
12 changed back to what it originally was, I believe, or needs to be
13 looked at, because the way -- there was a -- it was changed --
14 November 11th, 2013, there was also a proposed rule in conjunction
15 with the January 1st, 2014 proposed rule that took effect
16 July 1st, 2014. You have to read both of those regs and rules
17 together to understand it. And it's very convoluted. Right now
18 the FRA and BNSF have different stance on the rule, and it's
19 actually come to a head in meetings when the FRA have discussed
20 this, this adjacent track rule.

21 MR. HIPSKIND: We do have some plans to dig further into
22 that very issue while we're here on the scene. Okay?

23 MR. MOZINSKI: Okay.

24 MR. HIPSKIND: Would that satisfy the main thrust of
25 your concern?

1 MR. MOZINSKI: Yeah.

2 MR. HIPSKIND: I understand that what you want to see in
3 the real world may be some concrete change to get to something
4 that's more clear and back to maybe the way the wording was in a
5 previous version. Am I understanding that correctly?

6 MR. MOZINSKI: That is correct, because it used to be
7 one page. Now you have to take the two regs, put them on top of
8 them, and read them in conjunction and it's extremely difficult to
9 follow.

10 MR. HIPSKIND: So, in summation, your plea on the
11 adjacent track rule is one of simplicity?

12 MR. MOZINSKI: Correct.

13 MR. HIPSKIND: Okay.

14 MR. MOZINSKI: Right now, there's a lot of loopholes
15 that are things that you can -- work that you can actually do and
16 you shouldn't be doing it because of the "potential to foul" has
17 essentially been removed. I mean, now it's if you have the intent
18 to foul, where the intent -- nobody has the intent to foul it.
19 It's what happened in this certain situation.

20 MR. HIPSKIND: So dig deeper and get a better
21 understanding of the wording, the change of wording over time, and
22 think about what the best wording should be?

23 MR. MOZINSKI: Correct. In a concrete so people
24 understand it, because right now across the system, it's
25 completely different.

1 MR. HIPSKIND: Okay. Let me ask David for your input.

2 BY MR. HIPSKIND:

3 Q. You listened to this dialogue. What say you?

4 A. I agree. There needs to be clarification, get everybody
5 on the same page on -- nobody has the intent to foul another man.
6 There's always potential. Should there have been track and time
7 on that track? Possibly. But under the rule, we believed that we
8 did not need it at that time.

9 MR. HIPSKIND: Okay. Are we all aligned now on this
10 topic?

11 MR. MOZINSKI: Okay.

12 MR. HIPSKIND: Okay. And I'm sorry to cut you off your
13 read.

14 MR. MOZINSKI: No. I was getting --

15 MR. HIPSKIND: But I was getting nervous about how long
16 it might go on. So anything else that you want to contribute?

17 MR. MOZINSKI: There has been a lot of talk about also
18 the job briefing.

19 MR. HIPSKIND: Yes.

20 MR. MOZINSKI: And just to clarify it, or if you guys
21 could have some questions, it was actually brought up who wanted
22 to work the weekend in the main, in the main group, in front of
23 everybody, in front of the supervisor before --

24 MR. WILLIAM DAVID JOHNSON: Yes. They ask everybody on
25 it's either Thursday or Friday, and they -- at our debriefings

1 they ask who wants to stay the weekend and then they -- we all --
2 whoever wants to stay, raise their hands. And they extend our
3 rooms for the weekend and we can work.

4 MR. MOZINSKI: Yeah. It's presented to everybody in
5 the -- on the gang. So I just wanted to clear that up and --

6 MR. HIPSKIND: Okay. Anything else?

7 MR. MOZINSKI: No. That's all I have.

8 BY MR. HIPSKIND:

9 Q. All right. David, you okay to go with the closing
10 piece?

11 A. Yes.

12 Q. As we discussed before, I'm going to ask you a series of
13 some questions. You can answer yes or no or provide whatever your
14 thoughts are.

15 Prior to the beginning of the interview, did we talk
16 about the purpose of the investigation is to increase safety, not
17 to assign fault, blame or liability?

18 A. Yes.

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

22 A. Yes.

23 Q. And did we also talk about a transcript or summary of
24 the interview will go into the public docket?

25 A. Yes.

1 Q. And you understand what the public docket is; we talked
2 about all that?

3 A. Yes.

4 Q. Okay. And also, did we talk about that you, as the
5 interviewee, can have one representative of your choice?

6 A. Yes.

7 Q. Okay. I do want to ask you, you know, you've patiently
8 sat here and contributed an awful lot of knowledge and
9 understanding to us about things that we just were not aware of
10 prior to this. So is there anything that you would like to add or
11 change based on what we've already talked about?

12 A. I do think BNSF needs to set some rules on -- and
13 training, operating training, and how to load -- unload these
14 panels to keep this from happening again. I would think stacks
15 could be lowered, not as many stacked that high, use excavators.
16 If not available, contract -- get a contractor out there to
17 offload them. This should not have happened. I don't have any
18 further --

19 Q. I think we're all in agreement with your sentiments
20 there. You know that we're going to talk to your other three co-
21 workers. Is there anyone else who we should interview, in your
22 opinion?

23 A. I don't think so.

24 Q. Okay. You have my business card, and over the course of
25 the next few days, few weeks, if there's anything else that you

1 can think of or any other comments or suggestions you have, do not
2 hesitate to reach out to me.

3 MR. HIPSKIND: Gentlemen, is there anything else that
4 needs to be said right now? Okay.

5 Oh. And just for the record, John Smullen, would you
6 introduce yourself and that you were posting the --

7 MR. SMULLEN: Yes. John Smullen, S-M-U-L-L-E-N, Federal
8 Railroad Administration, operating practices safety inspector. I
9 was here posting the --

10 MR. HIPSKIND: Okay. And with that, we will close the
11 interview.

12 Thanks again, David, for everything.

13 (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 William David Johnson

DOCKET NUMBER: DCA-15-FR-011

PLACE: Minneapolis, 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.

Karen Ehatt
Transcriber