

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of:

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COLLISION OF AMTRAK TRAIN 280  
WITH MAINTENANCE-OF-WAY EMPLOYEE  
ON OCTOBER 29, 2014 IN  
COLUMBIA COUNTY, NEW YORK

Docket No.: DCA-15-FR-003

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Interview of: JAMES NOVAK, JR.

Rensselaer, New York

Thursday,  
October 30, 2014

The above-captioned matter convened, pursuant to notice.

BEFORE: RICHARD HIPSKIND  
Investigator-in-Charge

## APPEARANCES:

RICHARD HIPSKIND, Investigator-in-Charge  
Railroad Accident Investigator  
National Transportation Safety Board

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

TOM HEBERT, Safety Task Force  
Brotherhood of Locomotive Engineers and Trainmen (BLET)

JIM FINNEGAN, Grand Lodge Representative  
Brotherhood of Railroad Signalmen

MATTHEW PORTO, Director of Safety  
Amtrak

WILLIAM COLLINS, Signal and Train Control Inspector  
Inspector-in-Charge  
Federal Railroad Administration (FRA)

PAUL HRASKA, Operating Practices Inspector  
Federal Railroad Administration

ROBERT WINSTEL, Signal and Train Control Specialist  
Federal Railroad Administration

DAN TOTH, Operating Practices Inspector  
New York State Department of Transportation

GEORGE GERNON, Investigator  
Amtrak Police Department

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1 I N T E R V I E W

2 MR. HIPSKIND: Again, good afternoon, gentlemen. My  
3 name is Richard Hipskind, and I am the investigator-in-charge for  
4 NTSB for this accident.

5 We are here today on October 30th, 2014 at the Albany  
6 Amtrak Station in Rensselaer, New York, to conduct an interview  
7 with Mr. James Novak, who works for the National Railroad  
8 Passenger Corporation for Amtrak. This interview is in  
9 conjunction with NTSB's investigation of a collision of Amtrak  
10 train 280 with an Amtrak employee on Amtrak's Hudson line near  
11 milepost 100.9 in Claremont, New York, Columbia County, on October  
12 29th, 2014. The NTSB Accident Reference Number is DCA-15-FR-003.

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

18 Again, my name is Richard Hipskind. The spelling of my  
19 last name is H-i-p-s-k-i-n-d. I am a railroad accident  
20 investigator and investigator-in-charge for the NTSB on this  
21 accident.

22 DR. JENNER: Stephen Jenner, S-t-e-p-h-e-n, J-e-n-n-e-r,  
23 with the NTSB. I'm a human performance investigator.

24 MR. TOTH: Dan Toth, T-o-t-h, New York State Department  
25 of Transportation, Operating Practices Inspector.

1           MR. FINNEGAN: Jim Finnegan, F-i-n-n-e-g-a-n, Grand  
2 Lodge Representative, Brother of Railroad Signalmen.

3           MR. COLLINS: William Collins, C-o-l-l-i-n-s, Federal  
4 Railroad Administration, Signal and Train Control Inspector, and  
5 employee in charge of the investigation.

6           MR. GERNON: George Gernon, G-e-r-n-o-n. I'm an  
7 investigator with the Amtrak Police Department.

8           MR. WINSTEL: Robert Winstel, W-i-n-s-t-e-l, Signal and  
9 Train Control Safety Specialist, Federal Railroad Administration.

10          MR. HRASKA: Paul Hraska, H-r-a-s-k-a, Operating  
11 Practice Safety Inspector, Federal Railroad Administration.

12          MR. PORTO: Matthew Porto, P-o-r-t-o, Amtrak, Director  
13 of Safety.

14          MR. HEBERT: Tom Hebert, H-e-b-e-r-t, BLET Safety Task  
15 Force.

16          MR. HIPSKIND: And Mr. Novak, would you please introduce  
17 yourself as well?

18          MR. NOVAK: James Novak, Jr., N-o-v-a-k, Amtrak signal  
19 construction foreman.

20          MR. HIPSKIND: Okay. And do you mind if we are on a  
21 first-name basis in this interview?

22          MR. NOVAK: That's fine.

23          MR. HIPSKIND: Okay, James, do we have your permission  
24 to record our discussion, our interview with you today?

25          MR. NOVAK: Yes, you do.

1           MR. HIPSKIND: Thank you. And do you wish to have a  
2 representative with you at this interview?

3           MR. NOVAK: I do.

4           MR. HIPSKIND: The representative, would you please  
5 introduce yourself?

6           MR. INGERSOLL: Dave Ingersoll, I-n-g-e-r-s-o-l-l,  
7 general chairman, Amtrak Eastern General Committee, Brotherhood of  
8 Railroad Signal.

9           MR. HIPSKIND: All right. Thank you, Dave.  
10 Let's proceed.

11                                   INTERVIEW OF JAMES NOVAK

12           BY MR. HIPSKIND:

13           Q. James, kind of give us a synopsis of when you hired out  
14 and some of the positions that you've held, and kind of take us  
15 from your hire data, as best you remember it, up to your current  
16 position?

17           A. I was hired on CSX in 2005, October, as a signal trainee  
18 and went through our appropriate classes at CSX to become a signal  
19 maintainer. And I was a signal maintainer for about eight years  
20 with CSX. And then Amtrak took over the Hudson line here, and we  
21 all came over as Amtrak employees, grandfathered in under our time  
22 with CSX, but transferred over as signal maintainer also. Shortly  
23 after that, I tested for electronics technician and got rated to  
24 that job, and then -- and that was in -- I think it was in March  
25 2011, or 2012. And then December 2012 tested for foreman and got

1 foreman's rates, and I've been a foreman since then.

2 Q. Okay. And so you've been a foreman out there for what,  
3 a year, couple years?

4 A. A year and -- well, it'd still be less than a year.

5 Q. Okay. Now, don't take this the wrong way. Do you feel  
6 comfortable doing what you're doing?

7 A. I didn't at first, but I am comfortable with it now.

8 Q. Okay. So like a lot of other people, you've kind of  
9 grown into --

10 A. Yeah.

11 Q. All right. So I want to talk about several topics. I  
12 want to talk about training, and I want to talk about your  
13 understanding of how you go through a job briefing, how you  
14 understand the protection that's out there and things like that.  
15 But let's go right to the quick of it. On the day of the accident  
16 and a few days prior -- you are familiar with the deceased --

17 A. Yes.

18 Q. Okay. And I just want you to kind of give me an  
19 understanding how did you interface with her? I mean, when did  
20 you talk to her, was it in the morning, throughout the day, those  
21 kinds of things, and then tell me about why you would be with her,  
22 talking with her, and then kind of tell me how she fit in the  
23 overall framework of what was going on out there. I know that was  
24 a lot, but you've been shaking your head, so I think you kind of  
25 know what --

1           A.    I think I got it all.

2           Q.    -- I'm after here.

3           A.    Yeah.  Over the past few days, you know, I mean, it's  
4   been the same thing, really, for the past two months that we've  
5   been out here with this construction gang.  I come in in the  
6   morning with her.  I brief her and the train crew because she  
7   brings the train crew over to the train in the morning.

8                   UNIDENTIFIED SPEAKER:  Could you -- I'm sorry.  I can't,  
9   I can't understand what you're saying.  Can you say that again,  
10  please?

11                   MR. NOVAK:  I said when I come in in the morning, you  
12  know, we go over a quick briefing with the train crew and her.  
13  She brings the train crew over there.  I mean, she's really just  
14  listening, and the train crew know what they got to do for the  
15  day.  She knows already that she's got to bring them over to the  
16  train.  And then after that, she brings the train crew over.  Me  
17  and my men head down to the worksite where we do a job briefing  
18  with all the contractors and my men all together, where Nicki  
19  usually shows up after that, because she was with the train crew.

20                   Once she arrives, we go over the job briefing with her,  
21  and I assign her the job for the day, you know, whatever she's  
22  going to do.  Sometimes it's on the train.  Sometimes it's being,  
23  you know, just watching somebody operating a backhoe, make sure  
24  they clear up when I give back foul time or whoever has foul time,  
25  or sometimes they're in charge of getting the foul time.  I always



1 get the track out of service.

2 BY MR. HIPSKIND:

3 Q. So fair to say that all of you, including her, are  
4 together at some location --

5 A. Yeah.

6 Q. -- at the beginning of the day?

7 A. Yeah.

8 Q. And that's generally about what time of day?

9 A. Six in the morning.

10 Q. Six in the morning?

11 A. Yeah.

12 Q. Okay. And tell me about what are some of the things  
13 that you -- are you the guy who addresses the broader group that's  
14 assembled there?

15 A. Yes.

16 Q. Okay. Tell me some of the things that you talk to them  
17 about, and kind of give me an idea of how many people there are at  
18 this thing. And then start to paint in the broader picture of  
19 milepost limits and some of the activity that's going on out  
20 there?

21 A. Okay. First off, there's generally close to 25 people  
22 in the workgroup at, you know, any given day. It's usually that  
23 amount. Sometimes it's a couple less. Sometimes it's a couple  
24 more. But you know, we start our job briefing, and we'll go over  
25 all the risks of the, you know, that are out there, slips, trips

1 and falls, the -- keep them clear of the equipment, and things  
2 like that, just things to watch out for. I mean, not everything  
3 that we talk about is written on the job briefing form, but their  
4 mentioned, you know? All the important things are mentioned in  
5 the job briefing. And we pretty much go from there. I mean, I --

6 Q. Okay. In and around this timeframe, and let's just talk  
7 about Monday, Tuesday, Wednesday.

8 A. Okay.

9 Q. James, let's kind of go over what are all the things  
10 that are going on out there? And if you can recall, just any --  
11 even if you don't remember the exact milepost limits, just kind of  
12 let me know, you know, how many people --

13 A. Yeah, I don't (indiscernible) --

14 Q. That's a lot of people. It sounds like there's a lot  
15 going on. Just kind of --

16 A. Now, these --

17 Q. -- describe it a little bit more.

18 A. -- past couple days, we have a bridge crew working on  
19 the bridge around milepost 96. I'm not exactly sure on that off  
20 the top of my head right now, but a bridge crew out there. About  
21 four or five guys go out there. I send a guy with them. I have a  
22 group of guys with the train, the work train, and that, and you  
23 know, they usually work on putting some hand holes in or splicing  
24 some cables together or putting split steel or culverts, something  
25 like that. And they may have one or two workers doing that. And

1 I have a guy with each of those, because usually it's just a  
2 confined space. And I keep a lot of my men with the train because  
3 we have backhoes following it, and we have the Gradall behind it,  
4 and we want to make sure they're protected also.

5 Q. Okay. Double track, main system?

6 A. Yes.

7 Q. And I want to guess about something. You tell me how  
8 close I am to this. When you set up -- do you normally set up,  
9 like, an out-of-service track area or are you working under track  
10 and time, or do you use a Form D? Tell me --

11 A. I use a Form D to get the track out of service. The  
12 milepost limits are usually between -- where we were working this  
13 week, between CP-94 and CP-103.

14 Q. So --

15 A. Previous to Wednesday, we were working on track 1, out  
16 of service, and the day of the incident, we had track 2 out of  
17 service.

18 Q. Okay. Two things that I want to be sure about. When  
19 you say, like, 103 to 94, I should understand that's, like, nine  
20 miles, right?

21 A. Yeah.

22 Q. And there's a lot of work that anybody could do in nine  
23 miles?

24 A. I try to keep them contained to some point.

25 Q. Okay. But the point is, and you generally get this out-

1 of-service track, like, all day long or --

2 A. Yeah, all day long.

3 Q. Well, give me some time limits?

4 A. From 7 in the morning till 5, 6 at night.

5 Q. Okay. And to have the track out of service, I'm going  
6 to -- you tell me if I'm wrong, but you have to go through some  
7 communication with the dispatcher, and you set that up ahead of  
8 time?

9 A. Yes. Yup. We put blocks on at CPs. Not anything  
10 physical, but blocks so he can't clear signal into us, and we have  
11 exclusive occupancy of that track. We can do whatever we want on  
12 that track once I have it in my name.

13 Q. Okay. Well, here's where I'm going with all this. Is  
14 this simply a matter of, hey, guys, we got eight or nine miles of  
15 this track out of service. We can come in here and work all day  
16 long and be productive and do whatever we need to do. Is that  
17 part of it?

18 A. It is part -- I mean, that's the whole reason for it.

19 Q. Okay. So there's a production, we can go out here and  
20 do what we need to do --

21 A. Right.

22 Q. -- with a long maintenance window?

23 A. Right, with an exception to when they're using  
24 equipment, you know, we need to get foul time on the adjacent  
25 track.

1 Q. Okay.

2 A. Which equipment doesn't work -- men can work because it  
3 has to be out of service. The train can move because it has to be  
4 out of service. But you know, equipment, if it needs to be, you  
5 know, to some places where there's rocks, you can't have the  
6 backhoe off the tracks. It has to be in the gauge of the tracks,  
7 so then that would need foul time for them to work on the adjacent  
8 track.

9 Q. Okay. And the reason that you do that is because the  
10 other track is live?

11 A. Roger.

12 Q. And the trains are moving? You tell me.

13 A. Yeah. You need foul time to stop train -- it's like  
14 out-of-service. No trains are supposed to run in that block.  
15 It'd be the same limits, from CP-103 to CP-94, or they can give  
16 you, which I don't like to do, just my personal preference, but  
17 they can give you from milepost to milepost, but I generally don't  
18 do that. I like doing CP to CP.

19 Q. Well, tell me. There's a reason why you do that. So  
20 tell me.

21 A. I don't know how it works. I don't know how they -- if  
22 they could send a train up to that milepost, you know what I mean?  
23 I mean, I'm just not clear on how it works. So I'd rather -- I  
24 know they're blocking at the CP and they're blocking at the other  
25 CP. They're not going to let a train in that area. I just like

1 it better.

2 Q. So let me decode some of that.

3 A. Okay.

4 Q. You want it from CP to CP --

5 A. Right.

6 Q. -- because you know the dispatcher can display a signal  
7 there?

8 A. Right.

9 Q. Right?

10 A. That's correct.

11 Q. You have more faith in train crew seeing a signal than  
12 maybe --

13 A. Stopping at a milepost.

14 Q. Okay. All right.

15 A. If that's even how that works. They may block anyway.  
16 I don't know.

17 Q. Okay.

18 A. But I just don't like the way it sounds.

19 Q. But when the trains do operate on the track that's in  
20 service and they're coming by you, what kind of speeds do you  
21 think they're going?

22 A. Ninety.

23 Q. Ninety? Okay. Is that for in the area that we've  
24 described that you're working like the --

25 A. Yes.

1 Q. -- 104 to -- or 94 to 103?

2 A. Yeah, 90, 95 miles an hour, top speed. Specifically in  
3 that area, I don't -- can't remember off the top of my head what  
4 it is, but --

5 Q. Okay. Okay. Here's the other thing I want to know.  
6 We've talked about this set of mileposts, and it pertains to the  
7 incident that we're out here to investigate. But you mention this  
8 work has been going on for a couple of months, right?

9 A. Yeah.

10 Q. And here's what I want to know. I'm guessing that your  
11 work moves up and down the line, right?

12 A. Yeah, it does.

13 Q. But the point is, whenever you guys squat down, do you  
14 take similar big chunks of the railroad out of service like what  
15 you're describing like the 94 to 103?

16 A. Yeah, sometimes even bigger. Like when we're working  
17 through a CP area, I need the out-of-service between -- the CP in  
18 the center would need to be included, so I'd need from, say, CP-89  
19 to CP-103 so they can work in the interlocking at CP-94.

20 Q. Okay. So give me an idea how much of a track are we  
21 talking about taking out of service there?

22 A. That's about 15 miles.

23 Q. Fifteen miles, okay. All right. And tell me a little  
24 bit, do you ever end up using a Form D, as in David?

25 A. Yeah, yeah, that's what I use to get the track out of

1 service --

2 Q. Okay.

3 A. -- always, every -- whenever I say out of service, I'm  
4 using a Form D.

5 Q. Okay. Is your understanding of a Form D, as in David,  
6 that that's something that goes out to the train crews?

7 A. No. It's something that the --

8 Q. It's just between you and the dispatcher?

9 A. Me and the dispatcher.

10 Q. Okay. And what's your understanding of what a Form D  
11 does for you?

12 A. It --

13 Q. What's your protection?

14 A. -- gives me exclusive occupancy of the track, and the  
15 dispatcher puts blocks however they block up the system, but you  
16 can't clear a signal into me whatever my limits are. Whether it's  
17 between CP-103 and CP-94 or CP-103 to CP-89, he can't clear  
18 signals into my work area between those (indiscernible).

19 Q. Okay. Well, here's something that we've been wondering.  
20 That's a lot of mileage --

21 A. Um-hum.

22 Q. -- trackage, eight, nine miles, sometimes it's 15,  
23 whatever. How do you determine where you're going to be? And  
24 tell me a little bit -- we talked about that there can be 20, 25  
25 people working out there, and so how do you look after all that?



1           A.    I try to be where the train is or where something bad  
2 could happen, mostly the train because it's plowing to the ground,  
3 and they could hit something that wasn't marked or, you know,  
4 whatever the case is, pull a rock up, tear away the shoulder from  
5 the rail. I mean, I want to be there to see that to know that  
6 it's an issue and it's something that we need to address before I  
7 give the track back. So I mostly say with the train when it's  
8 working. I try to sneak away and check on the other areas of  
9 work. Doesn't always happen, but that's what I try to do. That's  
10 my goal for the day is to be with the train.

11           Q.    Okay. What kind of communications do you have available  
12 to you in your assigned position as employee-in-charge?

13           A.    We all have working radios. We communicate with  
14 handhelds and truck radios. I try to send the furthest people  
15 away with a truck so that if the handheld can't reach, they have  
16 the truck as a backup.

17           Q.    Okay. How has that worked out for you over the last  
18 couple of months?

19           A.    Pretty good. When they're working on the bridge, not so  
20 good, because I can't have a truck out there. They have to have a  
21 handheld. And I did have an incident where I needed to give back  
22 the foul time, and it took me ten minutes to get a hold of the guy  
23 because I had to keep driving closer to get in contact with him  
24 over the radio to get -- to let him know that I needed to get foul  
25 back and I needed everybody to be clear.

1 Q. Okay. But between you and the dispatcher, you don't  
2 give the track back on your Form D till you've talked to  
3 everybody, is that right?

4 A. That's correct.

5 Q. Fair to say?

6 A. Form D or foul time. We're mostly talking foul time is  
7 what happens.

8 Q. Okay. All right. So a lot of work, big chunks of the  
9 track out of service, a lot of people doing things where the track  
10 is out of service because they can work all day. Is that --

11 A. That's correct.

12 Q. Am I getting it now or what?

13 A. Yup.

14 Q. Okay. All right. Let's talk a little bit about so  
15 within these broad milepost limits, we've talked about a lot of  
16 people working out there. Tell me a little bit more about the  
17 deceased and what -- I know you said sometimes she's with the  
18 train crew, sometimes she's doing -- I don't think the proper term  
19 is flagging, but she looks after, like, little spot things,  
20 whether it's a backhoe or -- tell me a little bit more about that,  
21 what she might be doing?

22 A. I mean, there's no rhyme or reason to any of the  
23 determination of what she's doing for the day. It's just she gets  
24 there. If there's something that nobody else wanted -- she's  
25 usually the last one there, but I try to keep her with the truck

1 -- I'm veering off. I'm sorry.

2 Q. No, go ahead. Take your time.

3 A. I forgot what the question was.

4 Q. Well, we were talking about the deceased and the  
5 different assignments that she may take on. I want to get a  
6 little bit better understanding of things that she was tasked to  
7 do --

8 A. Right.

9 Q. And so tell me a little bit more about that.

10 A. Yeah, it depends on, well, I guess what's left to do  
11 sometimes and where she needs to be. But you know, if I have  
12 backhoes or, you know, multiple backhoes out there working in  
13 different locations doing hand holes, she would have to be there  
14 next to the backhoe with a hand hole, or if she has a truck, with  
15 the truck, to keep in contact with me getting foul time so I can  
16 let her know when I'm clearing up foul, or you know, getting foul  
17 so that she can let them go back to work. Other times, she's on  
18 the train just watching. I mean, all I want her to do is just  
19 watch, make sure if they hit something that they tell me so I know  
20 that I have to look at something. And you know, that's pretty  
21 much -- I mean, if it's not equipment, it's a couple men working  
22 somewhere, and you know, you're with the men, letting them know  
23 when we have foul and when we don't have foul.

24 Q. Okay. Well, we all kind of know where she was the day  
25 of the incident, and she was looking after, or providing foul time

1 for somebody that was doing something with the cables?

2 A. Yeah, splicing cable.

3 Q. Okay. Had she done that kind of work before?

4 A. Yes, she has. I've sent her by herself a couple times.  
5 We're working on a crossing up at Ice House Road in Stuyvesant,  
6 and they've had to do some work up there, the contractors, just a  
7 couple guys doing some wiring, stripping cable back, stuff like  
8 that, getting it ready for us to wire up when it was time. And  
9 she was up there providing foul time for those guys whenever, you  
10 know, whenever they need, whatever kind of protection. Whether it  
11 be watchman or foul time, she was there to protect them.

12 Q. Okay.

13 A. She's had experience with it.

14 Q. Okay. Let's circle back to the communications piece  
15 again. What kind of communications do you think she had? I mean,  
16 how do you and her talk? I guess it's mostly on the radio, so --

17 A. Yeah, over radio 90 percent of the time unless, in that  
18 situation, where she's, you know, real far away, we'd have to  
19 contact over the phone. But she already knows what her job is.  
20 She has to get foul time for those men, and they have their -- I  
21 mean, basically, she's the employee-in-charge when it's something  
22 like that. She does the job briefing with them. She gets the  
23 foul time. It's really kind of separate from me other than me  
24 telling her that that's what she has to do for the day.

25 Q. Okay. Did you talk to her that morning?

1 A. Yes.

2 Q. Well, what say you? I mean, how did she come across to  
3 you? The same person as every other day or --

4 A. Yeah, she seemed fine, normal attitude, ready to get to  
5 it. I mean, she -- I had told her, you know, what we needed to  
6 do, and she said that she might not be -- you know, I told her go  
7 up there and you'll have to get foul time for the guy, because  
8 he's going to be splicing the cable. She said, well, we might not  
9 be -- we might be far enough away to where he doesn't have to get  
10 foul. And I'm like, you might not be, but you know, get the foul  
11 anyway. We'll use it down here if, you know, if we need to, we  
12 know that we have it, but you're with him, so you can get it while  
13 you're with him and --

14 Q. Okay. Let's take a for instance. If you were there  
15 where she worked that day and getting foul time, tell me how that  
16 process works? What would you expect to see her do, and what  
17 would she hear, who would she talk to? Tell me a little bit more  
18 about that.

19 A. If I was there?

20 Q. Well, I mean, but there observing her doing this --

21 A. Observing her --

22 Q. She would end up doing this, or just tell me just about  
23 the foul time procedure.

24 A. Once they got to the work area, I would imagine that  
25 that's when she requested foul time, which I heard her request

1 foul time on the radio, you know, and you --

2 Q. With the dispatcher?

3 A. With the dispatcher, yeah.

4 Q. Okay.

5 A. I'm sorry. Request foul time from the dispatcher, and  
6 depending on the traffic, he would get -- you know, he would  
7 either give it to you or he'd refuse at the time. But she got it  
8 pretty much right away. And from that point, once she had the  
9 foul time, you know, he could go to work on splicing the cable  
10 until release foul time. The only thing that I think was wrong  
11 also is it sounds like he was still working after she gave back  
12 the foul time. I don't think that he should have been in that  
13 situation.

14 Q. Well, what would you have done?

15 A. I would have cleared him up and have him come back to  
16 the truck and sit in the truck, wait till we get foul time again.

17 Q. But the foul time is contingent on somebody's got to  
18 reach out to the dispatcher --

19 A. Right.

20 Q. And he's got to go along with it. And the point being  
21 if he needs that track or he's got train movements to go, his  
22 answer to that request is going to be no?

23 A. No, right.

24 Q. Okay. All right. If I work a certain distance away  
25 from the main track, am I okay to work without foul time? Or how

1 should I understand that?

2 A. Contractors are supposed to have some form of protection  
3 if they're within 15 feet.

4 Q. Fifteen?

5 A. And that doesn't have to be foul time. It can be  
6 watchman.

7 Q. Okay.

8 A. But they're supposed to have some kind of protection  
9 within 15 feet.

10 Q. And these are all -- some of the stuff you're telling  
11 me, you know this, and this is how you work because of your  
12 training?

13 A. Yeah.

14 Q. All right. Let's talk about your training for a little  
15 bit, okay? Why don't you tell me over the years what kind of  
16 training you've had and the frequency, and things like that.

17 A. With CSX and also here are operating rules, whether it  
18 be NORAC or the operating rules for CSX. They were done on a  
19 yearly basis. Again, (indiscernible) called CSX, but basically,  
20 you know, same thing. Yearly, pretty much yearly tests for  
21 everything, RWP, physical characteristics and operating rules,  
22 whatever they may be.

23 Q. And these are -- this is annual training? Is there a  
24 test associated with it?

25 A. Yes, there is.

1 Q. Okay. This is a condition of employment and to maintain  
2 your qualification as foreman, is that right?

3 A. That's correct, to maintain your position, period, in  
4 the signal department as a maintainer.

5 Q. Okay. All right. You good with all that?

6 A. Um-hum.

7 Q. Yes?

8 A. Yes.

9 Q. Okay.

10 A. Sorry.

11 Q. Sometimes that um-hum, we don't know whether that's  
12 okay. All right. So fair to say that for the last couple of  
13 months a lot of things have been going on out there?

14 A. Oh, yeah. We've been very busy.

15 Q. And between what two major cities, or are we talking all  
16 the way up to Albany or are we talking down --

17 A. No, we've --

18 Q. -- in the middle of the line or --

19 A. We started down in Poughkeepsie, and now we're up to  
20 just about Germantown. So we've covered 25 to almost 30 miles.

21 Q. Okay. The other thing, James, is there a progressive  
22 nature of how you're going? And is that a function of the fact  
23 that you're plowing and laying cable?

24 A. Yes.

25 Q. So you're not going to pick up and jump around?



1 A. Right.

2 Q. It's --

3 A. Well, they do have plans for that, I guess -- I heard.  
4 Nothing official, but from the contractors, they said that we  
5 would jump around from CP-114 to CP-124 because they have the  
6 track out of service up there, or whatever. I didn't hear  
7 anything official on that. But yeah, we move progressively. We  
8 generally pre-rip an area, one mile or two miles, in a day, and  
9 then the next couple of days, we're laying a cable in the same  
10 area that we just pre-ripped, and we continue on from there. We  
11 get the cable on what we pre-ripped. Then we start the presses  
12 again, pre-rip, and --

13 Q. Let's talk about pre-rip for a second just to -- so  
14 people get a picture of it. An on-track -- it's a train?

15 A. Yeah.

16 Q. And it has a device where it can reach out --

17 A. Yeah.

18 Q. -- and it puts a plow deep in the ground and cuts a  
19 trench, right?

20 A. That's correct.

21 Q. Something of that nature?

22 A. Yeah.

23 Q. So some days, you pre-rip, you're making that trench  
24 available, and then other days, you go back and you lay the cable  
25 down in the trench?

1 A. That's correct.

2 Q. Right?

3 A. Yup.

4 Q. Okay. And the work where she was at that day, was that  
5 a function of they had to go around something, so he's back there  
6 doing kind of a splice where they laid, had to cut it, stop,  
7 picked up on the other side of whatever the obstruction was, and  
8 laid again?

9 A. Kind of like that. We were doing our pre-rip on the  
10 track on one side, and we came across a big rock cut, and the plow  
11 couldn't get in the ground deep enough for the cable to go in  
12 there. And we had a couple options, but we chose to bore under  
13 the tracks and go to the other side and run the cable on the other  
14 side, on the track 2 side, for that area, which we skipped when we  
15 were doing our initial go-through because we're on track 1, so we  
16 stayed on track 1 and got everything done that we needed doing  
17 track 1 up to about CP-103. And then we had to go back and do the  
18 track 2 side, which we started that morning pre-ripping.

19 Q. So that tub where that guy was working on the day of the  
20 incident --

21 A. Yeah, that wasn't involved with -- I mean, it's part of  
22 the job, you know? That cable was laid in --

23 Q. Okay.

24 A. -- they dug that out, and they needed to do work there,  
25 but it wasn't part of the train deal for the day.

1 Q. Okay. All right. All right. So is the big challenge  
2 for you is when you have these greater distances and kind of being  
3 able to reach out and communicate with people, right?

4 A. It's a challenge sometimes with the radios.

5 Q. Okay. And the other thought when I was listening to you  
6 is am I right in thinking that you're monitoring a lot of radio  
7 activity throughout the day?

8 A. Yes.

9 Q. And that's --

10 A. If I'm holding the foul time, I'm monitoring everything  
11 that's on the radio throughout the day.

12 Q. So when you hear a lot of this radio stuff, that's  
13 meaningful to you in how work is progressing and where people are  
14 at?

15 A. Where people are, where trains are, everything to do  
16 with the day, you know? In contact with the dispatcher, what the  
17 dispatcher is telling other people. I like to have all the  
18 information that I can.

19 Q. All right. Are people reaching out to you throughout  
20 the day?

21 A. Yes, they do, you know, whether they have questions -- I  
22 mean, sometimes people, you know, forget and get confused, and  
23 they want to make sure that we still have time because they  
24 haven't heard anything in a long time. They'll contact me to make  
25 sure we still have foul time, things like that.

1 Q. So kind of updates?

2 A. Yeah.

3 Q. Are we all on the same page? Is everything like what we  
4 talked about earlier --

5 A. Right.

6 Q. That kind of --

7 A. Yup.

8 Q. Okay. All right. Let's go back to the job briefing. I  
9 know we're jumping around a little bit.

10 A. That's okay.

11 Q. Job briefing with that many people, that can be a  
12 challenge, too?

13 A. It can be. We do a very good job of keeping --  
14 obviously, you can tell I'm not that loud of a person. So we shut  
15 everything down that's around so that I can get through to  
16 everybody. I try to make eye contact with everybody and make sure  
17 everybody is paying attention. Whether they are or not, I mean,  
18 you could still fake it, I guess, but it is a challenge to know --  
19 I mean, you don't know if you got through to everybody. You ask  
20 the question at the end, anybody have any questions or concerns,  
21 and I haven't any questions or concerns.

22 Q. For a lot of job briefings, right?

23 A. For a lot of job briefings.

24 Q. Okay. All right. I want to leave it there with what  
25 you and I have talked about, and I want to invite some of the

1 other investigators who have been listening to us just to kind of  
2 see if we've missed something, okay?

3 A. Okay.

4 Q. But you're doing fine. Thanks for what we've talked  
5 about thus far.

6 Dr. Jenner?

7 DR. JENNER: Thank you.

8 BY DR. JENNER:

9 Q. You're doing great. Do you need a break or anything?

10 A. I'm okay.

11 Q. I just need to bounce around for a few clarifying  
12 questions. How long have you been out working, you know, this  
13 territory?

14 A. Oh, I've had this -- my whole career, nine years.

15 Q. Okay.

16 A. Very familiar with it.

17 Q. Has it gone through changes in the last few years or --

18 A. Where I am, it's the same. I'm not too familiar with  
19 this area up here in the station and north of here. I haven't  
20 worked it. But down south where we're working now, I know it like  
21 the back of my hand.

22 Q. I see. I understand that track 1 was out of service for  
23 a number of days --

24 A. Previous days, yeah.

25 Q. And up until the day of the accident, then it became

1 track 2 out of service? So how many -- if you can recall, how  
2 many days out of service was track 1?

3 A. I would say -- I would go with ten days. Well,  
4 honestly, I mean, the whole time that we've had the plow train out  
5 there, because it's been on track 1 -- we did have another time  
6 when where we had to go to track 2, same deal, we hit a rock cut  
7 and we had to go around it, so we went back and did our work on  
8 track 2 out of service, but just for one day.

9 Q. And what day was that?

10 A. Oh, that was way before.

11 Q. Okay.

12 A. I can't remember. I'm sorry.

13 Q. That's not a problem. So this day of the accident was  
14 the first day that --

15 A. Yeah, in a while.

16 Q. -- you flip-flopped --

17 A. In at least two weeks, three weeks.

18 Q. Yeah. So more than ten days, then?

19 A. Yeah, I'd say at least three weeks.

20 Q. Okay.

21 A. We've been on track 1, maybe not in that same area. We  
22 were probably south of 94 for some of that, but track 1 is our  
23 norm.

24 Q. And what caused that switch to occur?

25 A. The plow train couldn't get through a rocky area with

1 the plow, so they decided to switch to the other side, on the  
2 other track, and plow on the outside of track 2 instead of their  
3 normal plow on the outside of track 1.

4 Q. Is part of the briefing to identify where the plow train  
5 is that day?

6 A. Yeah, yeah, yup.

7 Q. Okay.

8 A. We go over all of that.

9 Q. Do you remember discussing that day the plow train is  
10 here?

11 A. Yeah, the plow train will be on track 2 working south of  
12 Tivoli crossing, up to the crossing, yeah. We went over all that.

13 Q. And where was it that day? I'm sorry.

14 A. It was south of Tivoli Crossing, mile post 98.9.

15 Q. 98.9?

16 A. Yeah.

17 Q. Okay. Now, anything unusual? I understand the weather,  
18 there may have been some on and off rain?

19 A. There was some on and off rain.

20 Q. How does that change how you do your debriefing or  
21 anything, your safety briefing?

22 A. Only it makes my paper wet. But it doesn't change any,  
23 doesn't change how I do things. We go over it, and we'll make  
24 everybody aware that it's going to be wet, and you know, it's  
25 another hazard with slips, trips and falls. That's it.

1 Q. Was there any point of up until the time of the accident  
2 that the weather was pretty bad?

3 A. No, there wasn't anything more than, I mean, a light  
4 rain, maybe moderate rain.

5 Q. Okay.

6 A. But nothing, not windy, not, you know, just a little  
7 rain.

8 Q. Okay. Does that affect any type of operations?

9 A. I don't think so.

10 Q. Okay. Getting to when the accident occurred, we had  
11 interviewed the train crew, and we understand that she was walking  
12 between the tracks. Any idea why she was walking between the  
13 tracks?

14 A. It's the part I can't wrap my, can't wrap my head  
15 around.

16 Q. Okay. Is there -- can you think --

17 UNIDENTIFIED SPEAKER: I'm sorry. I couldn't hear your  
18 answer, James.

19 MR. NOVAK: I just said that's the part I can't wrap my  
20 head around. I have no idea why she was there. She -- I can't  
21 remember if it has been brought up, but she was getting the foul  
22 time that day on track 1. She knew the protection. That was her  
23 purpose there was to protect the guy working on track 1. So I  
24 have no idea why she was there.

25 BY DR. JENNER:



1 Q. I understand your answer there. But is there any reason  
2 -- let's just say that track was out of service, and there was no  
3 train approaching. Is there any reason for her to walk from point  
4 A to point B?

5 A. I wouldn't see any reason for her to. I mean, if it was  
6 me up there, I'd have been near the truck listening to the radio.

7 Q. If that was you doing her role that day?

8 A. Yeah, if I was where she was that day, I would have been  
9 near the truck making sure I could hear the radio. I don't know  
10 if she had a radio handheld on her. I don't know.

11 Q. Okay.

12 A. But if she had one, then maybe she was walking around  
13 just to walk around and not, you know, be sitting around.

14 Q. Is there any dead spots in that area where you have --

15 A. Not in that area. We were close enough. Two miles is  
16 close enough for us to hear each other pretty good. Once we get  
17 to the four-mile range is when we start having a little bit of  
18 trouble.

19 Q. Okay. Is it possible there's some noise that's going on  
20 in one particular area, so you walk over where it's a little  
21 quieter?

22 A. Not for her, not with a guy doing splicing.

23 Q. Okay. So your interactions that day with her were just  
24 characterized as normal, routine?

25 A. Yeah. We had a little conversation the night before.

1 She wanted to leave early, but she didn't tell me that until I had  
2 already sent her to a job, but other than that, nothing. She  
3 wanted -- you know, I sent somebody else to replace her. I was  
4 just a little aggravated that I didn't know, you know? And I told  
5 her that I need to know when she needs to leave so I can plan  
6 around that, but that's it. It was nothing --

7 Q. Okay. That wasn't an issue that day?

8 A. Right, right.

9 Q. Are you in a position that you have to evaluate, do a  
10 performance appraisal of sorts?

11 A. No, but I will tell you that before I had these guys go  
12 out here and get foul time, that I made sure they did it with me a  
13 few times before they went out on their own. And I felt very  
14 comfortable with everybody doing what they need to do.

15 Q. Okay. And including her?

16 A. Including her.

17 Q. Now, my understanding is that there are new hires in the  
18 last couple years. How does that affect how you approach your  
19 job?

20 A. It's what they give me. It's what I got to do in my  
21 job. I have to make it work. I have asked previously to have a  
22 maintainer, somebody a little more experienced in there, but we  
23 don't have the manpower for it. And I don't know if it would have  
24 made a difference in this situation, but you know, I was  
25 comfortable with her doing what she was doing.

1 Q. Okay.

2 A. I probably trust her the most out of the guys that I  
3 have.

4 Q. I see. Now, for a newer-type employee, what -- where  
5 are they lacking in experience? How does that show up?

6 A. Signal skills really, you know, just knowing what's  
7 going on and how the crossing marks, how the signal system works.  
8 They definitely don't have much idea about that. As far as what  
9 we're doing out there, I mean, I have a good group of guys. Like  
10 I said, I've made sure that they demonstrated their skills of  
11 getting foul time. I mean, I'm not going to let them get a Form  
12 D. I think that's a little too much responsibility, but you know,  
13 I've seen them, watched them get foul time numerous times, all of  
14 them, and I trust -- it's going to be a little harder to do now,  
15 but I had faith in them.

16 Q. Um-hum. Thank you. That's all the questions I have  
17 now.

18 MR. HIPSKIND: Dan?

19 DR. JENNER: Need a break at all?

20 MR. NOVAK: I'm okay.

21 DR. JENNER: Okay.

22 BY MR. TOTH:

23 Q. Dan Toth. I got a couple questions for you. The work  
24 that you've been doing, you've never -- you're always doing a line  
25 4 track out of service --

1 A. Yeah, one track --

2 Q. Doing a line 5 at all?

3 A. No, always one track, line 4.

4 Q. And you just said when you were talking to Steve that  
5 she -- you said the other employees you wouldn't trust them taking  
6 a Form D?

7 A. No, no, I -- well, no, I wouldn't let any of them take a  
8 Form D.

9 Q. So they're only --

10 A. It' just not my, not my style. They have. Some of them  
11 have.

12 Q. Okay. All right.

13 A. But I wouldn't let them do that in my place, you know?  
14 I'm their -- I'm the foreman. I will get the Form D because  
15 there's a little more responsibility that goes with that than  
16 getting foul time and just making sure everybody is clear.

17 Q. Sure, sure. And they've never used anything else but  
18 foul time for the cable project?

19 A. Right, foul time --

20 Q. They never used a line 5 or --

21 A. No, no. I could get my out of service, and you know, I  
22 usually get the foul time. It just depends on the situation. She  
23 was going to be up there. I wanted to make sure she had good  
24 communication with me because, like I said, in the past, you know,  
25 sometimes there's radio issues. She was getting it, and she had

1 the guy that was going to be close to fouling the track. I let  
2 her get the foul time because, in my mind, that's safer, because  
3 she has the only person that's going to be in danger for the time  
4 being. That's just --

5 Q. Okay. I have no more questions.

6 MR. HIPSKIND: Thanks, Dan.

7 Jim?

8 BY MR. FINNEGAN:

9 Q. Yeah, Jim Finnegan. I got a couple questions. You said  
10 you have about 25 people. I'm assuming a number of those are  
11 contractors?

12 A. Yeah, yeah.

13 Q. So how many signal people --

14 A. It's probably about --

15 Q. -- do you have?

16 A. I have four under me. That day we had another one that  
17 they sent down with me and a trackman.

18 Q. And a trackman, somebody from the maintenance of way  
19 department?

20 A. Yeah.

21 Q. Okay.

22 A. Just bodies to make sure that I have somebody with each  
23 worker.

24 Q. Sure. The signal people that you had with you, were  
25 they all in the helper class?

1 A. Yeah, they're all helpers.

2 Q. And so they're all relatively inexperienced?

3 A. Yup.

4 Q. What was the average time on?

5 A. They're all the same time, about a year --

6 Q. About a year?

7 A. Year and a month.

8 Q. Okay. I don't have any more questions.

9 MR. HIPSKIND: Bill?

10 BY MR. COLLINS:

11 Q. Yes, yeah, Bill Collins. I met Nicki, and I thought she  
12 was probably the most mature and squared away, you know,  
13 responsible people that you'd hired on. And she's probably the  
14 last person I would think that we would have in a situation like  
15 this. So she has two -- set of twins and her husband is disabled,  
16 is that correct?

17 A. As far as I know, he is disabled in some way. I'm not  
18 sure.

19 Q. Okay.

20 A. I know she's mentioned him doing some work here and  
21 there. I don't know if they were just odd jobs helping somebody  
22 out, but she's --

23 Q. So she wanted to leave early the day before or that day?

24 A. The day before, yeah.

25 Q. The day before, okay. Do you have any idea in the past,

1 recent past or distant past, where she would have had any kind of  
2 issues that would have made her preoccupied so that she's a little  
3 bit more focused on -- I mean, she's not as focused as she should  
4 be on the job and why she would be, basically, taking a mental  
5 vacation in a gauge like that?

6 A. No. She's -- she always had some kind of drama going  
7 on, but I mean, it was nonstop since she hired on, you know what I  
8 mean? There's always something she's complaining about at home or  
9 something, but I wouldn't take any of it as --

10 Q. A major distraction?

11 A. Right, yeah. Just the normal -- and she liked to talk,  
12 really. She liked to talk and she liked to complain. And I  
13 sympathize with that, because I like to complain, too.

14 Q. But I mean, seriously, generally, when something like  
15 this happens, in my experience, is there's something going in the  
16 person's life that makes them take a mental vacation like that.  
17 They talk -- it can be really a positive thing like a wedding or  
18 birthdays or something --

19 A. Yeah.

20 Q. Doesn't have to be negative. So that was one of my  
21 concerns, if there was anything you could think of that would  
22 have --

23 A. Nothing. I think she's had every event that she could  
24 have. She recently had a wedding, but that was over with already.  
25 Her sister got married, I believe. Nothing that comes to mind.

1 She hasn't -- she seemed pretty with it to me.

2 Q. She got foul time earlier in the day from 94 to 103 and  
3 on her track. Was that for the express purpose of the splicer?

4 A. Yes.

5 Q. I mean, do you know?

6 A. Yup.

7 Q. So she had -- she always followed your example and got  
8 CP to CP?

9 A. Yup.

10 Q. Okay.

11 A. I mean, it was under -- her protection was for all of  
12 us. I just wasn't using it at the particular time. She needed it  
13 for the splicer. She had to have it.

14 Q. But if you wanted to cross a backhoe over the track or  
15 whatever --

16 A. I would contact her, let her know, make sure she had --

17 Q. She had obtained that --

18 A. -- foul time. I would make sure she still had --  
19 because we were still in the same working limits.

20 Q. Okay.

21 A. I mean, the way that it works, she gets the foul time,  
22 she contacts us, we confirm that we know that she has foul time,  
23 CP to CP, wherever we are, and until we hear from her again or we  
24 hear the dispatcher calling her -- you know, most times she's  
25 going to want her to clear out, you know, and we clear up, and we



1 report to her that we're all clear of the tracks between CP-94 and  
2 CP-103, whatever, and that she give the track back.

3 Q. Okay. So she gave the track back at 10:15, and she was  
4 back -- she was in the gauge, like, at quarter of 10, or quarter  
5 of 11, and we're trying to find out if she was actually thinking  
6 about getting foul time again. Was there something coming up  
7 where you were going to -- did anybody request foul time, her to  
8 get foul time?

9 A. Nobody did. I mean, I didn't hear her call, and I can't  
10 remember her conversation with the dispatcher. He might have said  
11 we had two to get by, and something like that, and you know,  
12 that's normally the case. He'll let us know if he has just one  
13 train to get by or he has two trains to get by. He'll let us  
14 know, and we'll wait for those trains to get by, and then we'll --  
15 if he doesn't get back to us when we think that he should have,  
16 we'll give him a call and request time again.

17 Q. When the plow train is plowing, if you can't go up track  
18 1 and you need to go up track 2, was there ever consideration  
19 because of the widetrack centers there north of Tivoli where they  
20 would have plowed along track 1 and just on the west side of it  
21 rather than go all the way over to track two, for example?

22 A. Well, right in that area is not wide, where the train  
23 was plowing.

24 Q. Okay.

25 A. Where Nicki was, it was wide gauge.

1 Q. Right, right.

2 A. And --

3 Q. So that wasn't feasible that --

4 A. No. And --

5 Q. Just --

6 A. Yeah.

7 Q. Okay. So she got foul time for everybody, if necessary,  
8 okay --

9 A. Right.

10 Q. But that was only foul time? You always got the out of  
11 service?

12 A. I always got the out of service.

13 Q. Okay. So she would not get a foul time once a splicer  
14 was over and clear of the track and down in the box, the pull box,  
15 or whatever, she didn't need foul time for that?

16 A. Right.

17 Q. He was in the clear. There was no reason for her to get  
18 foul time for him? The only additional foul time would have been  
19 by a request from you?

20 A. Right. Well, no, no. I think -- she -- like I said  
21 previously, I think -- I don't think that -- I think she needed it  
22 for him to do the work that he was doing. I think it was kind of  
23 close. I would have been uncomfortable with her having him clear  
24 up when we didn't have foul time, you know what I mean, and him  
25 only working when we had foul time in that splice box.

1 Q. But in fact, he was working without foul time and --

2 A. I don't --

3 Q. I mean, he was very, very, very clear of the track.

4 A. Yeah.

5 Q. He was a good six feet from the near rail at least.

6 A. Yeah.

7 Q. And way down low.

8 MR. HIPSKIND: Hold on, guys. This is Dick Hipkind.

9 MR. COLLINS: Okay.

10 MR. HIPSKIND: We got to watch a little bit of some  
11 speculation we're engaging in.

12 MR. COLLINS: Okay.

13 MR. HIPSKIND: And I would -- the reason I've  
14 interrupted is we do not know what he was doing or not doing, and  
15 we can discuss that with him tomorrow, okay?

16 MR. COLLINS: Very good. I have no further questions --

17 MR. HIPSKIND: But if he -- but if James wasn't there,  
18 let's don't press him on that point that we're going to find out  
19 by other means, okay?

20 BY MR. COLLINS:

21 Q. Well, I have one other question. And what's the state  
22 -- the pull box is a standard distance from the track structure?

23 A. Yeah, they're generally 11, 12 feet away from the  
24 tracks.

25 Q. Okay. Thank you very much.

1 MR. HIPSKIND: Thanks, Bill.

2 BY MR. GERNON:

3 Q. George Gernon. I just got one or two questions. You  
4 say in the morning that she would take the train, the crew to the  
5 train, and then she would meet up with you, and you would do a  
6 safety briefing with her?

7 A. Right.

8 Q. Separate from the rest of the group?

9 A. Yes.

10 Q. Okay. That morning, did you do that with her?

11 A. I had -- I was in conversation with one of the  
12 contractors. I had one of my men go over the job briefing with  
13 her, and then I briefed with her after that on what was needed to  
14 be done and the protection that we had just to make sure  
15 everything was understood.

16 Q. Okay. Who was the gentleman that you had --

17 A. That was Dan Sweeny.

18 Q. Dan Sweeny?

19 A. Yeah.

20 Q. Okay. And what does he do?

21 A. He's a helper also.

22 Q. He's a helper also?

23 A. Yeah.

24 Q. Okay. I don't have any other questions.

25 MR. HIPSKIND: Thanks, George.

1           Bob?

2           BY MR. WINSTEL:

3           Q.    Bob Winstel. I have one question. Do you know when a  
4 train is approaching the out-of-service, because you said that the  
5 track -- the trains come by you at track speed? Do you know in  
6 advance where they are and prior to them coming by track speed?

7           A.    In a sense I do, because we get foul pretty much all  
8 day, whenever we have an open opportunity to get foul, we get it,  
9 so when we have to clear it up, we know something is coming.

10          Q.    Okay. So how -- next question is how do you know if the  
11 roadway workgroup is there that everybody is in the clear of the  
12 adjacent track --

13          A.    Oh, before we clear up the foul, we get in contact with  
14 everybody that's out there and make sure everybody is in the  
15 clear.

16          Q.    Okay. And I have one other question. Is there any  
17 other form of track protection on the adjacent track available to  
18 you for use?

19          A.    The only other thing that we have is watchman, and I  
20 would never use that in the situation that we're in down there.

21          Q.    Okay. Thank you.

22          BY MR. HRASKA:

23          Q.    This is Paul Hraska. I just have one question about  
24 tracks out of service, when you take a track out of service. How  
25 often when you take a track out of service will you have more than

1 one workgroup or -- in, you know, in different locations on one  
2 out-of-service track? Do you do it often?

3 A. It's on a daily basis, pretty much. Usually, there's,  
4 like, three workgroups out there.

5 Q. Okay.

6 A. The plow train, somebody is somewhere setting a box, or  
7 something, and somebody is -- and now we're working on bridges,  
8 but you know, there'd be two people setting boxes if it wasn't for  
9 the bridge.

10 Q. Okay. All right. That's all I have. Thank you.

11 MR. HIPSKIND: Thanks, Paul.

12 Matt?

13 MR. PORTO: No questions.

14 MR. HEBERT: No questions, Dick.

15 MR. HIPSKIND: I think the only reason you didn't ask  
16 questions is you're losing your voice.

17 MR. PORTO: It's getting bad.

18 MR. HIPSKIND: Okay. Tom?

19 MR. HEBERT: I'm all set.

20 MR. HIPSKIND: All right. Dave, before I hand it over  
21 to you, let me try and clear up some things, okay?

22 BY MR. HIPSKIND:

23 Q. James, we had a little bit of discussion about the  
24 standard distance of where these tubs are and where that splicer  
25 may have been working that day. We don't know whether he was

1 working or not working, but something you and I talked about  
2 earlier, you have a 15-foot rule, right?

3 A. Contractors can't come within 15-feet without a CNS  
4 employee there. For our protection, I believe it's the same as  
5 ours. They cannot work closer than four feet to the nearest rail,  
6 our same fouling procedures. But --

7 Q. All right. Now you just confused me.

8 A. I confused myself --

9 Q. Okay. Because we're using two numbers there, four-foot  
10 and 15 --

11 A. Four-foot is our foul limit. We can't come in within  
12 four feet of the nearest rail ever without any protection.

13 Q. Well, then, what's the 15-foot? Why did we talk about  
14 that?

15 A. The contractors aren't supposed to be closer than 15-  
16 foot to the rail without somebody there watching them.

17 Q. With foul time?

18 A. I don't think with foul time. I think just --

19 Q. Watching them?

20 A. Watching them.

21 Q. Okay. Well, that's a little nuance that we needed to  
22 unpack.

23 A. Yeah.

24 Q. And I'm glad we talked about that. Do you have any  
25 means -- let's take -- and I'm not saying this has happened out

1 there, but I want to know if we use the term close call, you know,  
2 like something happened, and maybe a train got close to something,  
3 and so we would characterize maybe whatever happened out there,  
4 oh, that was a close call, you know? Do you have a means to  
5 report that or document that, or is that even something that -- am  
6 I talking to you about something that's just not on the table?

7 A. It's -- we haven't had any issues in our working -- I  
8 mean, myself personally, I've had a close call getting out of my  
9 truck at a location one time. I wasn't paying attention, and all  
10 I was doing was getting out of the truck, but it was a close  
11 distance, you know? Me getting out of the truck put me within  
12 that four feet, you know? And this was years ago. This wasn't  
13 any time recent, but you know --

14 Q. And a train came whizzing by?

15 A. And a train was coming.

16 Q. Okay. That was a special moment in your life, wasn't  
17 it?

18 A. Yes, it was.

19 Q. Okay. All right. We talked about -- you had a  
20 conversation about some of these new employees, you wouldn't want  
21 them doing signal maintainer work. And I just want to clear up,  
22 when you're talking about they're not up to speed to doing that  
23 signal maintainer stuff, are you talking about going in and  
24 looking at the wiring, performing tests, and the signal circuitry?

25 A. That's correct. And I do mean just signal work they are



1 not qualified to do at all.

2 Q. Okay. I just wanted to clear --

3 A. Without direct supervision, yeah, if I'm right there,  
4 but they can't be on their own to do anything like that.

5 Q. Okay. Another thing that we talked about in the  
6 questioning, if I understand this thing right, on the day of the  
7 incident was the first day in a long time, like, 10 days, two  
8 weeks, whatever, that the train had to move from predominantly  
9 being on one track, and went over to two tracks, right?

10 A. That's correct.

11 Q. And you and the deceased did talk about that? She was  
12 aware of that?

13 A. Yes, very aware.

14 Q. Did she acknowledge that to you?

15 A. Yes. And --

16 Q. Okay. But my question is, some of the discussion led to  
17 her getting foul time, and you guys that are over there in that  
18 big stretch of track that's out of service over on 2, under your  
19 authority, with the dispatcher --

20 A. Yeah.

21 Q. -- that sometimes you needed to be in the foul of 1  
22 track?

23 A. Correct.

24 Q. And she had, when she got foul time, she had the same  
25 milepost limits that you had on 2, right?

1 A. Yes.

2 Q. Okay. So you would contact her, and you may have  
3 people, equipment cross, or whatever you needed to do where you  
4 would have been required to have foul time. The point is, your  
5 people who came in the foul of one track didn't need to call it.  
6 You were using her time?

7 A. Correct.

8 Q. Is that a common practice?

9 A. Yes. Yeah, when we're working all in between the same  
10 limits, yes.

11 Q. Okay.

12 A. I mean, if I'm getting it and I have a workgroup up -- I  
13 mean, there's no real way to split it up, I don't think.

14 Q. On the day of the incident, did that scenario play out?

15 A. Yeah, we didn't actually use it, but she contacted us,  
16 said that she had foul time on track 1, you know. We acknowledge  
17 that she had foul time on track one. And she was doing her  
18 business up there. Like I said, we were down with the train crew.  
19 They didn't have any necessity to go onto the tracks, but we were  
20 aware that they could if they needed to. And then when she had to  
21 give it back, she contacted us on the radio. We made sure that  
22 everybody knows that there's no foul times, and nobody goes into  
23 the live track. And we let her know everybody is clear, and she  
24 can give back the foul.

25 Q. Okay. Well, let's parse this out just a little bit

1 more, because this is something that did happen. She did get foul  
2 time?

3 A. Roger.

4 Q. A couple times that day?

5 A. Um-hum.

6 Q. And you were aware of it?

7 A. Yes.

8 Q. Yes?

9 A. Yes.

10 Q. Okay. And when she went to give up her foul time, she's  
11 talking that over with the dispatcher?

12 A. She talks it over with me first.

13 Q. That's the right answer. That's where I was going with  
14 this. And when she talks to you, the point there is she's not  
15 necessarily talking to all the other groups at all the other  
16 locations. She's talking to you knowing that you are in charge  
17 and you will let her know that all the other locations are in the  
18 clear? You're shaking your head, but yes?

19 A. I mean, that's what happened that day, yes.

20 Q. Okay.

21 A. Not all the time. The person who gets the foul time  
22 will call individually the groups, have a guide with them, and  
23 they will confirm with her that they're clear, and then she can  
24 give back the foul. And I'm usually one of those people, you  
25 know, with a group, because that's how we're spread out.

1 Q. Okay. Okay. I want to go back. I think there's  
2 something in the transcript, another thing I want to clear up.  
3 You were talking with Bill about where she was at, and you were --  
4 you guys were having a conversation about whether the tracks were  
5 extended track centers, there was separation. And I think, if the  
6 transcriptionist heard this right, you may have used the term wide  
7 gauge?

8 A. Yeah.

9 Q. And I think you meant wide track centers?

10 A. Yeah.

11 Q. So that's a clarification, right?

12 A. Yeah, when did I say that?

13 Q. Well, I think earlier.

14 A. Oh.

15 Q. Trust me on that. I've been listening intently.

16 A. I -- yeah. I would --

17 Q. But if you said wide gauge where she was at --

18 A. Yeah.

19 Q. -- you weren't talking about a track condition. You  
20 meant to say --

21 A. Wide track.

22 Q. -- where the track centers were wider?

23 A. Yeah.

24 Q. Okay. All right. And you also used a phrase where you  
25 said situation down there. I'm sure you know where situation down

1 there was, but did you mean where she was working or did you mean  
2 where you were working?

3 A. I'm not sure what it's in reference to.

4 Q. Okay. That's okay.

5 A. I'm sorry.

6 Q. If you don't know, you don't know. Okay. All right.

7 MR. HIPSKIND: Dave, do you have anything that we need  
8 to clarify?

9 MR. INGERSOLL: Yes.

10 MR. HIPSKIND: Okay.

11 BY MR. INGERSOLL:

12 Q. Dave Ingersoll. It would be -- not necessarily Nicky,  
13 it was her call to get a foul, but it could have been any helper  
14 in your workgroup, right?

15 A. Yeah.

16 Q. She wasn't tasked with getting the foul --

17 A. Yeah.

18 Q. -- but they would all respond through you?

19 A. They would -- I would direct whomever, you know? Today  
20 it was Nicky, tomorrow could have been Dan, you know, the next day  
21 could have been Mike. And depending on the situation, maybe  
22 that's what we're talking about when I -- we're in the situation,  
23 but --

24 Q. Okay.

25 A. You know, it depends on how far we're spread out, who is

1 working where, the radio communication might be spotty, then I  
2 might have that person get the foul time so that they're in a  
3 better spot so they know it's clear. If they're more in danger of  
4 fouling the track than anybody else is, I'd rather have that  
5 person clear than somebody who's not going to be fouling the track  
6 anyway get the foul time. You know what I mean?

7 MR. HIPSKIND: It's a matter of --

8 MR. NOVAK: It's judgment call.

9 MR. HIPSKIND: Sometimes it's just as simple as who's  
10 got the strongest radio --

11 MR. NOVAK: Yeah.

12 MR. HIPSKIND: -- needs to be at the place that farthest  
13 away so I can be ensured of communicating?

14 MR. NOVAK: Yeah.

15 MR. HIPSKIND: I mean, is that how you, is that how --

16 MR. NOVAK: It's that simple sometimes. It's not all  
17 the time. Like I said, it's who has the most risk of fouling the  
18 track, and I want to make sure they know, you know, they're in  
19 charge of that track so they know that when they have to clear it.  
20 If they're giving the track back, they're going to make sure  
21 everybody that they have is clear.

22 MR. HIPSKIND: Okay. Sorry to interrupt there, but go  
23 ahead.

24 BY MR. INGERSOLL:

25 Q. So any helper could get a foul in your workgroup --

1           A.    Any helper can get a foul in my workgroup.  They're all  
2   qualified to do so.  And like I said, I have done training with  
3   them one-on-one.  They've gotten it with me present four times  
4   each, you know, before I've let them do it on their own.

5           Q.    And just to follow-up with Bill's question to you about  
6   plowing in the gauge or track centers, that wouldn't have been  
7   your call anyway?  Would the contractor say we got to go across --

8           A.    Right.  I think --

9           Q.    Yeah.  And then either the project manager would say we  
10  got to --

11          A.    Right.  I mean --

12          Q.    -- bore and take it up to --

13          A.    Yeah.  I mean, I'm out there.  I try to, you know, help  
14  them out whatever way I can, you know, make a suggestion or  
15  whatever, but yeah, it's not my decision on what they do, not at  
16  all.

17          Q.    Um-hum.

18               MR. HIPSKIND:  What's that?

19               MR. INGERSOLL:  That's all I have.

20               MR. HIPSKIND:  Okay.  Thanks, Dave.

21               Let me open it up to Steve again, and we'll go around,  
22  see if there's any other questions.  And I'll probably try and do  
23  a close out if we're good.

24               BY DR. JENNER:

25          Q.    Just one.  Nicky, how long had she been working for you

1 at that location?

2 A. She's been part of my gang for about two months, two or  
3 three months.

4 Q. Okay. Do you know where she was before that?

5 A. Well, she was in the maintenance at Hudson. I mean, we  
6 reported to the same office every day the whole time she's been  
7 here.

8 Q. Okay. Thank you.

9 MR. HIPSKIND: Dan, anything?

10 MR. TOTH: No questions. Dan Toth, no questions.

11 MR. HIPSKIND: Jim?

12 MR. FINNEGAN: Yeah, I have a couple questions.

13 BY MR. FINNEGAN:

14 Q. Was that the only place she was going to work that day?

15 A. Yes.

16 Q. That was the only place? The work she was going to  
17 perform there, or the contractor was going to perform, is it  
18 always -- was it all going to be in that box?

19 A. Yes.

20 Q. Was he just a splicer?

21 A. Yup, he's just a splicer.

22 Q. Why would she get foul time anytime during the day  
23 there? I mean, if you're --

24 A. If he's working on the other side -- I mean, it was her  
25 judgment call, but she was going to be -- she is the one that was



1 --

2 Q. Okay.

3 A. -- furthest away from the group, and I was more  
4 comfortable with her having the foul time.

5 Q. But theoretically, under the rules, you don't need time  
6 because it's 11 feet? You just have to have somebody with them?

7 A. Right.

8 Q. Okay. The second question I have, foul time, as you  
9 used it on Amtrak, did you have anything where you could get foul  
10 time between two mileposts when you worked for CSX?

11 A. No.

12 Q. So it seems fairly --

13 A. It didn't work that way. I mean --

14 Q. So did you use track and times? What --

15 A. We used -- I can't remember what it was EC-1?

16 UNIDENTIFIED SPEAKER: EC-1.

17 MR. NOVAK: Yeah, EC-1 is pretty much all we could get  
18 to get any kind of track work done. That or we let the dispatcher  
19 know we're working on the signal but we wouldn't be fouling the  
20 track --

21 BY MR. FINNEGAN:

22 Q. Right, right.

23 A. We could just work on a signal, or something, and he  
24 could put blocks up for that kind of work.

25 Q. Okay. I had one more question. I can't think of it

1 right now, though. My train of thought.

2 MR. FINNEGAN: Go ahead.

3 BY MR. COLLINS:

4 Q. I have one more question. Who did she work for prior to  
5 coming to work for your gang?

6 A. She worked under my father, Jim Novak, Sr., as a  
7 maintainer -- well, maintainer trainee, yeah.

8 Q. So that was the bulk of her time since she was hired out  
9 in September 2013?

10 A. Yup.

11 Q. So --

12 A. Yeah, she was helping, and she rode with my brother for  
13 a few months there, you know, working maintenance with him.

14 Q. Okay. All right. No other questions. Thanks.

15 MR. GERONON: George Gernon. I have no questions.

16 MR. WINSTEL: Bob Winstel. No additional questions.

17 MR. HRASKA: Paul Hraska. No additional questions.

18 MR. PORTO: No questions.

19 MR. HEBERT: Tom Hebert. No questions.

20 MR. HIPSKIND: Okay. Back around. Okay. Gentlemen,  
21 all the questions been asked?

22 BY MR. FINNEGAN:

23 Q. Jim Finnegan, one additional question. You said that  
24 when you were talking about out of service whenever, you equated  
25 that to Form D, is that correct?

1 A. Yes, Form D.

2 Q. Okay. And is foul time positive protection, in other  
3 words? Does it equate to the track being out of service wherever  
4 you get the limits to that foul time at, supposedly?

5 A. Essentially. The difference is, with the Form D, you  
6 know, you can have on-track equipment or, you know, train in the  
7 work area, things like that. You can put stuff on the tracks.  
8 And Form D is really -- you can foul the tracks with equipment,  
9 but you're really not supposed to have anything on the tracks with  
10 foul time, mostly protecting people.

11 Q. So foul time, you can't make the track unsafe?

12 A. Right.

13 Q. Okay.

14 A. That's correct.

15 Q. I understand. Thank you.

16 BY MR. HIPSKIND:

17 Q. Okay. And just to follow on to this discussion about  
18 foul time, do you consider foul time exclusive track occupancy?

19 A. No.

20 Q. Because you can't have anything on -- that's the  
21 contrary nature? You can't say exclusive track occupancy because  
22 you're not allowed to have anything on the track?

23 A. Right.

24 Q. Okay. Let's talk about foul time in a different way.

25 If I get foul time someplace from A to B, 94 to 103, that, to me,

1 means I've talked to the dispatcher and the dispatcher should not  
2 be sending trains in on me, right?

3 A. That is correct.

4 Q. So in that sense, foul time is like your Form D, where  
5 trains can't come in from A to B?

6 A. Yes.

7 Q. Now, here is a little bit of a concern I have. And I  
8 don't know if you -- I need to know what your intent was. When  
9 you used the word train, and I think you mentioned that -- or I  
10 thought you used the phrase I train them in how I want them to do  
11 the work. So here's the question that begs in my mind. You're  
12 not the trainer, right?

13 A. No.

14 Q. Okay. How did --

15 A. They've been --

16 Q. Trained?

17 A. -- qualified to get track time. I went the extra step  
18 to make sure they would do it the right way, and you know, make  
19 sure they did everything properly.

20 Q. Okay. Well, I don't mean to be difficult on this. But  
21 what you're really doing in that role, in that circumstance, is  
22 you're checking their performance on the application of the  
23 training they received before you got them, right?

24 A. Right.

25 Q. And if they're up to snuff, then you feel more

1 comfortable?

2 A. Yes.

3 Q. If there's something that they're doing when they're  
4 applying that training for whatever procedure, that's something  
5 for you to look at and correct?

6 A. That's correct.

7 Q. Okay. So why does that fall to you, and why doesn't  
8 that fall to a supervisor or a manager?

9 A. That's a very good question.

10 Q. Well, let's talk about it for a couple of minutes. How  
11 often do you see a supervisor or a manager come out and do  
12 efficiency tests, or whatever?

13 A. We have been in a bad shape with supervisors for a while  
14 there in Hudson.

15 Q. Well, what's bad shape mean?

16 A. We probably didn't have one for a solid six months. And  
17 then we had one that wasn't there for very long. He was there  
18 for, like, three, four months, but didn't really get his, you know  
19 --

20 Q. Okay.

21 A. -- didn't get a grasp on everything before he left. He  
22 took another job.

23 Q. Let me simplify this. In the last six, nine months,  
24 year, how often have you seen a supervisor or a manager has been  
25 out there?

1 A. Maybe six times.

2 Q. Okay. So on the average, once every couple of months?

3 A. Yeah.

4 Q. When they were out there, did they do efficiency tests?

5 A. Yes.

6 Q. Were aware that they did efficiency tests?

7 A. Probably not all the time.

8 Q. Okay.

9 A. They, you know, ask questions, what do you have for  
10 protection or (indiscernible) whatever the case may be.

11 Q. Okay.

12 A. I'm sure that was their purpose. That's what's  
13 required.

14 Q. How often do you talk or did you talk to the guy who's  
15 running the entire project? Do you know who that is?

16 A. Craig Weed.

17 Q. Okay. Craig, how often do you talk to him?

18 A. We get e-mails on a daily basis, but as far as, you  
19 know, coming to the job site, he's probably been down there -- in  
20 the past two months, he's probably been down there three times.

21 Q. Okay. All right. Are you comfortable with that?

22 A. I was very comfortable with everything that was going  
23 on. Like I said, I put my faith in those guys, and --

24 Q. Okay. All right. I know that -- this couple of things  
25 I just talked, did it generate any questions with anybody else?

1 Bill, please jump in there.

2 BY MR. COLLINS:

3 Q. Form-D, it has a number, it's a written authority, and  
4 it has to be read back correctly to the dispatcher?

5 A. Correct.

6 Q. Foul time -- and blocking devices are applied?

7 A. Yes.

8 Q. Okay. Foul time is a verbal authority. There's no  
9 number assigned. There's no documentation, is that correct?

10 A. That's correct.

11 Q. So it's strictly radio conversation between the person  
12 obtaining the foul time and the dispatcher?

13 A. Correct.

14 Q. And the dispatcher confirms and the person reads back  
15 foul time 94 to 103?

16 A. Correct.

17 Q. Granted at 10:15 on 9/25?

18 A. Yup.

19 Q. Thank you.

20 MR. COLLINS: No other questions.

21 MR. HIPSKIND: Okay. And thank you for that, Bill.

22 Now, because I know too darn many things and there's  
23 been too many conversations, Paul, I want to ask you as part of  
24 this dialogue here, did you have occasion to talk to the  
25 dispatcher immediately after the incident?

1           MR. HRASKA: For a short while.

2           MR. HIPSKIND: Okay. And did you have an occasion to  
3 observe how he -- or tell -- describe for me how he handled foul  
4 time?

5           MR. HRASKA: He didn't really talk about it that I can  
6 recall. He said that he had given foul time, but we didn't get  
7 into any of the intricacies as to how it was done (indiscernible)  
8 call.

9           MR. HIPSKIND: Did he have a certain way that he marked  
10 up his train sheet?

11          MR. HRASKA: Oh, on his foul sheet, on his foul sheet?  
12 What he does on his foul sheet is every time an employee out in  
13 the field request foul time, he's the only one who does this, he  
14 writes a little red square on the foul line on the sheet in red,  
15 and when the foul time is released, he fills it in black, which  
16 indicates to him that he gave it and he released it.

17          MR. HIPSKIND: Okay. Because we got to talking about  
18 foul time, I just wanted Paul to add that to the mix.

19          MR. HRASKA: Okay.

20          MR. HIPSKIND: Are there another question out?

21          MR. FINNEGAN: You're saying he had a foul time sheet --  
22 I guess I should ask Matt this question. Do you use a computer-  
23 automated dispatch system? What kind of system do you have? Is  
24 it -- are you still using -- I mean, where are you at on your  
25 dispatch system?



1 MR. PORTO: I can't say for 100 percent sure.

2 MR. FINNEGAN: Okay. So he's got a foul time sheet.  
3 Can he clear a signal in a foul time? What keeps him from  
4 clearing a signal? That sheet of paper doesn't.

5 MR. HIPSKIND: Well, this is Dick Hipkind. Jim, let me  
6 interject.

7 MR. FINNEGAN: Okay.

8 MR. HIPSKIND: I'm the one who kicked over the can of  
9 worms here.

10 MR. FINNEGAN: Okay.

11 MR. HIPSKIND: But I drew Paul's comments in here as  
12 clarification.

13 MR. FINNEGAN: Okay.

14 MR. HIPSKIND: If you have questions, let's have that  
15 dialogue after the interview.

16 MR. FINNEGAN: Okay.

17 MR. HIPSKIND: And part of this is I know Matt can  
18 barely talk now.

19 MR. FINNEGAN: Okay.

20 MR. HIPSKIND: So if you can table -- you okay to table  
21 that for right --

22 MR. FINNEGAN: Yes, I'm fine with that, yes.

23 MR. HIPSKIND: All right. Gentlemen, are there any  
24 other questions? Dave do you have any other clarifications?

25 BY MR. INGERSOLL:

1 Q. You as the foreman and taking a Form D, and you go to  
2 NORAC training, do you take NORAC-B?

3 A. Yes.

4 Q. Do the helpers, are they required to take NORAC-B?

5 A. They took NORAC-B.

6 Q. And it was your opinion that you felt more comfortable  
7 them only achieving a foul --

8 A. Right.

9 Q. -- and not taking an actual line 4 --

10 A. An actual out-of-service, yeah.

11 Q. And as them taking a foul, they're required to keep a  
12 foul log --

13 A. That's correct.

14 Q. -- to compare with --

15 MR. HIPSKIND: You're going to have to speak up. I'm  
16 pretty sure some of this isn't getting -- so the question he's  
17 asking you, and I would like for either one of you to explain a  
18 little bit more elaboratively, NORAC-B is a term I'm not familiar  
19 with. So try to shed some light on the conversation you're having  
20 with Dave about that. What --

21 MR. NOVAK: NORAC-B is -- we have -- there's three  
22 different steps to the NORAC testing. NORAC-C, somebody would not  
23 be able to get track time, Form D, and on the tracks. I'm not  
24 sure what they get --

25 MR. INGERSOLL: Can I --

1 MR. HIPSKIND: Sure, please, I --

2 MR. INGERSOLL: C, we -- in -- on the east  
3 (indiscernible), you take C, it's CNS employees. Out here, it's  
4 different because they require these guys, because they can put  
5 vehicles on the track and take out, you know, drive these -- drive  
6 their section, so they can -- they have to actually occupy with  
7 steel wheels, which constitutes the requirement of working outside  
8 a foul. You could put equipment on as long as it has rubber  
9 wheels, it's not going to shunt. So me as a signal maintainer,  
10 and under norm -- under Amtrak east, or whatever -- because  
11 Michigan and you guys are different than what I'm accustomed to.  
12 So I can take a foul, but I can't take a Form D unless I have  
13 NORAC-B. And I'm not really -- I think NORAC-A is for you guys,  
14 for operating, I believe, for the engineers and the --

15 UNIDENTIFIED SPEAKER: I've never -- I don't know that  
16 term. I don't think they do it that way.

17 MR. HIPSKIND: Okay. Well --

18 MR. INGERSOLL: It's broken into three different  
19 segments --

20 UNIDENTIFIED SPEAKER: Yeah, that's probably with the  
21 block training -- I'm sorry.

22 MR. INGERSOLL: -- for training.

23 MR. HIPSKIND: The transcriber is not going to know some  
24 of the people who are talking here. Let me try to simplify this.  
25 There is a NORAC-C?

1 MR. INGERSOLL: Correct.

2 MR. HIPSKIND: A NORAC-B?

3 MR. INGERSOLL: Correct.

4 MR. HIPSKIND: And a NORAC-A?

5 MR. INGERSOLL: Correct.

6 MR. HIPSKIND: And the takeaway is these are different  
7 levels through testing and qualification so that you can do more  
8 things in terms of track, track protection, track occupancy?

9 MR. INGERSOLL: Yes.

10 MR. HIPSKIND: Is that --

11 MR. INGERSOLL: And you have to display that ability  
12 through, you know, the curriculum and the tests given by --

13 MR. HIPSKIND: Training --

14 MR. INGERSOLL: -- Amtrak Operating Rules Department.

15 MR. HIPSKIND: Training and testing?

16 MR. INGERSOLL: Correct.

17 MR. HIPSKIND: Take me through the steps. And  
18 gradually, I ascend from NORAC-C?

19 MR. INGERSOLL: We call it baby NORAC-C.

20 MR. HIPSKIND: Baby, okay.

21 MR. INGERSOLL: Until --

22 MR. HIPSKIND: NORAC-B and then A?

23 MR. INGERSOLL: Yeah.

24 MR. HIPSKIND: Okay.

25 MR. INGERSOLL: BMW is normally would -- what I'm

1 accustomed to, and I just wanted to verify it because I wasn't  
2 sure that these guys took B.

3 BY MR. INGERSOLL:

4 Q. All?

5 A. Yeah, they all -- we all take B. I mean, we're all able  
6 to get foul time. We're all able to get track out of service.

7 MR. HIPSKIND: All the guys that are working for you?

8 MR. NOVAK: Yeah.

9 MR. INGERSOLL: So can I just --

10 MR. HIPSKIND: Yes. Okay. Now that we've got all that  
11 settled, please continue.

12 BY MR. INGERSOLL:

13 Q. So are you aware, and I don't know this, when they took  
14 their NORAC just as new-hires, do they take NORAC-B right from the  
15 get-go?

16 A. I think they were set up for that. That's what -- I  
17 mean, that's not what I wanted, but that's what the upper  
18 management wanted, and that's what they got.

19 MR. HIPSKIND: Okay. And gentlemen, so you know, we're  
20 going to talk to an individual who's going to lay all that out for  
21 us, okay?

22 MR. INGERSOLL: Um-hum.

23 MR. HIPSKIND: All right. Any other questions?

24 (No response.)

25 MR. HIPSKIND: James, do you have any questions for me?

1 MR. NOVAK: I do not.

2 MR. HIPSKIND: One of the things I've talked about --

3 MR. COLLINS: Do you mind?

4 MR. HIPSKIND: Oh, sorry, Bill. I didn't see your hand  
5 up down there. Go ahead.

6 MR. COLLINS: I just thought of it afterwards.

7 BY MR. COLLINS:

8 Q. This is Bill Collins. Is there anything you can think  
9 of that would have made things differently as far as training or  
10 additional protections on the track?

11 A. I think that there needs to be more in-the-field  
12 training. I didn't feel that just because this happened. I've  
13 felt that for a while that, you know, learning, trying to get a  
14 real grasp of what we need to do out here, as far as RWP or the  
15 rules, there needs to be more out in the field, this is how this  
16 works, this is how you do this, this is why that's like this, or  
17 whatever, you know? Not everybody understands it coming from the  
18 book.

19 Q. What about, like, additional whistle boards, or  
20 something of that nature, or some kind of additional protection?

21 A. Maybe -- yeah, at CSX, we had Rule 89, where somebody --  
22 the train would have to stop at stop boards and you know, get  
23 permission into the work area, you know, from an employee in  
24 charge and go through. I mean, that's an option. I don't know  
25 how they want to -- if they want to try to work -- I don't know

1 what it is here at Amtrak. I know it's an option --

2 Q. I mean, primarily, for a in-service track adjacent to an  
3 out-of-service track, whether they would run at reduced speeds or  
4 some other potential additional safety features that would protect  
5 people that are working adjacent to the out-of-service tracks?

6 A. In hindsight, that does seem like a good option.

7 MR. COLLINS: No further questions.

8 MR. HIPSKIND: Well, Jim, do you have something? Go  
9 ahead.

10 MR. FINNEGAN: Yeah, I do have one question. It made me  
11 think of it.

12 BY MR. FINNEGAN:

13 Q. You're the first person we've talked to today that's had  
14 experience with CSX and Amtrak. When you hired on as CSX  
15 assistant signalman and --

16 A. At CSX, yes, hired on as an assistant signalman.

17 Q. Did you get track and time or foul time when you were an  
18 assistant signalman?

19 A. Not until I bid a maintainers jobs.

20 Q. So you were at a higher classification before you  
21 started getting time?

22 A. Yeah.

23 Q. Okay. That's all the questions I had.

24 MR. HIPSKIND: Okay. And I --

25 MR. NOVAK: And that's just far as I remember.

1 MR. FINNEGAN: That's fine.

2 MR. NOVAK: Honestly, I don't remember, but you know, I  
3 was an assistant for a while, and I don't remember ever getting a  
4 -- you know all we had was EC-1, and I don't remember getting one  
5 for quite a while.

6 MR. FINNEGAN: I understand.

7 BY MR. HIPSKIND:

8 Q. Okay. You've done a lot of different work in a lot of  
9 different places with a lot of people, fair to say?

10 A. Fair to say.

11 Q. And isn't the -- and you have tools, you have training  
12 and you have tools at your disposal about how you go about your  
13 protection, right?

14 A. Right.

15 Q. You got Form D?

16 A. Yup.

17 Q. You can get track and time. You can get foul time. And  
18 you choose these various tools and put them in a mix to manage  
19 what you're doing out there whether it's a short, on-the-spot  
20 location or it's a broader location. Have we understood this  
21 thing correctly?

22 A. That's correct.

23 Q. Okay. And a lot of what you're doing there, you're  
24 really managing risk, right?

25 A. Pretty much.



1 Q. And trying to put all thing possible that could happen,  
2 and train equipment strikes, that's bad news, right?

3 A. Very bad.

4 Q. And so you're trying to control that and manage that  
5 risk, right, recognize it?

6 A. That's correct.

7 Q. Okay. Here's my question, and I'll try and make this my  
8 last one. In your training, your formal training, not on-the-job  
9 training, formal training, are you allowed, are you encouraged,  
10 can you call the dispatcher and say I want those next three Amtrak  
11 trains to run 40-mile-an-hour, 50-mile-an-hour, 60-mile-an-hour?

12 A. I don't believe I can make that call on the spot. Could  
13 I set it up for the next day? I do believe that's possible.

14 Q. Okay. Have you ever approached mitigating your risk in  
15 that manner?

16 A. I haven't.

17 Q. Okay. All right. That's all the questions I have.

18 A. To be honest, it's not an option that ever come to mind.  
19 I'm glad it was brought up here.

20 Q. Okay. All right. That was my intent. You have my  
21 card. And I know Bill kind of broached the subject with you about  
22 things that could provide a positive change. I want you to  
23 continue to think about that in earnest. And if you have  
24 something to convey to us, maybe it's not today. You know a lot  
25 of the people around here, around the table, and I want you to

1 feel free to call me or any of the guys around here if you've got  
2 something you want to convey to us because we're always looking  
3 for new ideas, things that can -- that are genuine safety  
4 improvements that kind of reduce or manage the risk the best  
5 that's possible out there for the workers out there engaged in all  
6 these different things they do. So I hold that open to you.

7           The other thing is you're the last guy we're going to  
8 interview today, so I want to thank you for your patience and  
9 hanging in here with us. It's getting late, and I know it's been  
10 a long day for you. But part of this, we know that you wanted to  
11 be off, so we appreciate the fact that you stayed late with us,  
12 and we got this done.

13           A. I appreciate you letting me get it done today.

14           Q. Okay.

15           MR. HIPSKIND: So gentlemen, anything else?

16           UNIDENTIFIED SPEAKER: No.

17           MR. FINNEGAN: Thanks very much.

18           MR. NOVAK: Thank you, guys.

19           MR. HIPSKIND: Okay. You did a great job. And with  
20 that, we will close the interview. Thanks again, James. Great  
21 job.

22           (Whereupon, the interview was concluded.)

23

24

25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:                   COLLISION OF AMTRAK TRAIN 280  
  WITH MAINTENANCE-OF-WAY EMPLOYEE  
  ON OCTOBER 29, 2014 IN  
  COLUMBIA COUNTY, NEW YORK  
  Interview of James Novak, Jr.

DOCKET NUMBER:                   DCA-15-FR-003

PLACE:                                Rensselaer, New York

DATE:                                 October 30, 2014

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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Danielle S. VanRiper  
Transcriber