

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of: *

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UNION PACIFIC EMPLOYEE *

FATALITY IN SAN ANTONIO, * Accident No.: RRD21LR016

TEXAS ON SEPTEMBER 22, 2021 *

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Interview of: ENRIQUE RIVERA, Bridge Foreman
Union Pacific Railroad

San Antonio, Texas

Friday,
September 24, 2021

APPEARANCES:

TROY LLOYD, Investigator
National Transportation Safety Board

ANDREW MOLGREN, Safety Inspector
Federal Railroad Administration

DARIUS MACK, District 5 Track Specialist
Federal Railroad Administration

DAVID LUCERO, Accident Investigation Chief
Federal Railroad Administration

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I N T E R V I E W

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2 MR. LLOYD: We are on the record with Mr. Rivera, a UP bridge
3 supervisor. Today is September 24th, '21. We're located at 1711
4 Quintana Road in San Antonio, Texas at the UP office. My name is
5 Troy Lloyd with the National Transportation Safety Board.

6 Today is September 24th, 2021. We are conducting an
7 interview with Mr. Rivera who is a bridge foreman with the Union
8 Pacific Railroad. We're interviewing Mr. Rivera in connection
9 with the accident that occurred on September 22nd, 2021, where a
10 WT Byler equipment operator was fatally injured when he was
11 transporting a load of steel walking plates with a tie crane. The
12 steel tie -- walking plates had to be removed before the process
13 of changing the bridge timbers on an open deck bridge. The
14 accident occurred in Castroville, Texas, on UP's Del Rio
15 Subdivision.

16 The NTSB accident reference number is RRD21LR016. The
17 purpose of this investigation is to increase safety, not to assume
18 fault, blame, or liability. NTSB cannot guarantee any
19 confidentiality or immunity from legal or certificate actions.
20 Like I said this morning, our transcripts will go into a public
21 docket like I told you guys this morning during the opening
22 sessions that we had.

23 Is there anybody you want to have in here to sit with you or
24 anything?

25 MR. RIVERA: I mean, you kicked everybody else out that -- I

1 (indiscernible) --

2 MR. LLOYD: You understand --

3 MR. RIVERA: I mean, the only guy left -- I think my director
4 left. The only guy here is my manager.

5 MR. LLOYD: And I guess your manager -- you didn't have union
6 representation or anything do you?

7 MR. RIVERA: Not this short of notice. No, we don't.

8 MR. LLOYD: All right. Okay.

9 MR. RIVERA: I mean --

10 MR. LLOYD: Before we start the interview, just everybody
11 speak clearly. Before you ask a question, state your name, who
12 you're with. I'll go ahead and start with myself.

13 My name is Troy Lloyd. And the spelling of my last name is
14 L-l-o-y-d. I'm with the National Transportation Safety Board and
15 I'm the investigator in charge of this accident.

16 MR. MOLGREN: Andrew Molgren, M-o-l-g-r-e-n. Safety
17 inspector with the Federal Railroad Administration out of San
18 Antonio, Texas, District 5.

19 MR. MACK: Darius Mack, M-a-c-k. Federal Railroad
20 Administration, track specialist, District 5.

21 MR. LUCERO: David Lucero, accident investigation chief for
22 the Hazardous Material Division.

23 MR. RIVERA: My turn? Enrique Rivera. Last name R-i-v-e-r-
24 a. New construction bridge supervisor.

25 MR. LLOYD: So let's get started.

1 INTERVIEW OF ENRIQUE RIVERA

2 BY MR. LLOYD:

3 Q. Now, Mr. Rivera, tell me about your history working with UP.
4 How did you get started? What year did you get hired? How much
5 seniority you got? How did you work your way up from the day --

6 A. I mean --

7 Q. -- you got hired to being supervisor of the bridge
8 (indiscernible)?9 A. I'm not going to be ugly, but I mean, what is -- I understand
10 you got a job. But what does it have to do with the incident?

11 I'm just curious. I mean, I get it.

12 MR. LUCERO: We're painting a picture.

13 MR. RIVERA: I mean, but my years of experience doesn't --

14 MR. LLOYD: I know that.

15 MR. RIVERA: I mean, it's irrelevant to me, honestly. I just
16 -- I'm being honest with you.17 MR. MOLGREN: Andrew Molgren. I can assure you it's not
18 irrelevant to us. We wouldn't be asking the question.

19 BY MR. LLOYD:

20 Q. Yeah. I'm just trying to get your work history. That's all
21 we're trying to do.22 A. I've got 13 years' experience with the railroad. I believe I
23 stated that in the statement I gave you yesterday. I'm trying to
24 think of when I got hired now. I'm kind of -- a little nervous
25 here, guys. I got hired in August, sometime in August, the month

1 of August. I moved up. I started off as a trackman. Worked
2 there for a little bit. Bumped in -- I mean, bidded on a bridge
3 carpenter. Then from there, just worked my way up to bridge
4 foreman and then eventually took the bridge supervisor job. Or
5 applied for a bridge supervisor job, went through the whole
6 interview process, and I was a lucky duck.

7 Q. So what you just told me, you got 13 years' experience,
8 you've -- you went from here to here in 13 years.

9 A. Yes, sir.

10 Q. That's quite an accomplishment. That's why I like to get
11 that out. It sort of breaks the ice. It tells us -- it tells me
12 a little bit about you. So you've got all this experience.
13 You've been that bridge foreman. You've gotten that track out of
14 service. You've done them job safety briefings. So that's what I
15 want to hear.

16 A. Okay.

17 Q. You have that experience. You know that if you see
18 something, if you see something bad, you would have comment on it.
19 You would have told them, hey, good job. If you see something
20 unsafe, you would tell them, hey, stop. Right? That's what that
21 experience comes with. There's things that you've seen through
22 the years. And you've tested that knowledge to put you where
23 you're at. So good for you, man.

24 So tell me -- the day of the accident, what was -- what would
25 be your job -- what was your job that day with this bridge

1 replacement project?

2 A. I mean, I'm the supervisor. I tell the guys what I want
3 done. They're foremans. You know, they carry out the task. That
4 day was -- it was a shitty day, to be honest with you. Of course,
5 what happened was jacked up. But I mean, like I stated before, I
6 wasn't there. I was tending to other -- I call them fire. I was
7 putting out fires, if that makes sense. Like, something arises,
8 squash it. Something else comes up, squash it. So that's -- that
9 was where I was throughout the day. I never went to the location.
10 And if I did, it was briefly. Hey, Seth, do this, or whatever --
11 whoever -- this is what we're doing. Or not this is what we're
12 doing. Do this, do that, gone.

13 And the reason I say I wasn't there is we had some equipment
14 stolen. I was dealing with special agents, trying to get --
15 dealing with Victor, trying to get -- what do they call -- BIN
16 numbers. You know, I was doing supervisor duties, trying to get
17 -- recover our equipment. One of our equipment was recovered. I
18 don't know if this is -- but the equipment was recovered. I was
19 dealing with the special agent on trying to get the equipment back
20 from the sheriff's office. They impounded it because -- that's a
21 whole other story. You know, it doesn't matter what -- that's
22 basically how my day was going.

23 So material didn't show up. (Indiscernible) hey, where is
24 the material, why is the material not here, we -- you know, just
25 doing my duties. I had to sit up on top of the hill because

1 there's no service obviously. I was there yesterday, the service
2 -- or today, the service sucks. But that's basically how my day
3 went. And then obviously, this incident happened and --

4 Q. So were you there -- what time did you arrive at the job site
5 that morning?

6 A. I didn't -- when I initially went to the job site or when I
7 finally --

8 Q. You first -- in the morning. When did you originally --

9 A. I went to the containers around 6:45 in the morning. Walked
10 in, spoke with the guys. A bunch -- again, I put out fires. One
11 of the guys said, hey, we don't have ice. When there's ice
12 (indiscernible) here, we're having to pay out of our pocket, da,
13 da, da. I said, okay, let Seth, which we know was coming -- let
14 Seth bump. Once I get all that handled, I will roll into my next
15 task which is getting you guy's ice.

16 Sure enough, Seth walks in. Says I'm here to bump
17 Travis Davis (ph.). Cool. I need your employee IDs. Walked to
18 my truck. You know, and I got on our system and entered in the
19 bump, Seth's (indiscernible) bumps. Travis Davis is 0700. Put
20 all the information in there. They were doing their job roofing.
21 So I didn't -- I didn't attend it because I was trying to handle
22 this other business because, I mean, it's unprofessional if you
23 don't put it in and the guy is not going to get paid. Then that's
24 a whole other match. Right? So put the job -- put the bid in.

25 At that time -- by the time they come back -- by the time I

1 was done, they were out. And I told them, there's a Valero up the
2 street. Let's go see if we can go in there. I went in there.
3 The lady is like, I don't deal with rubber. You guys are a bunch
4 of crooks, da, da, and da. I said, thank you, ma'am. Went up the
5 street to another store. I walked in there. I said, I need 30
6 bags of ice but they got to stay on site because, obviously, we
7 (indiscernible).

8 She's like, sure. We appreciate any business. Mom and pop
9 shop. Swiped my card. I had Rudy, the employee with me. I said,
10 Rudy, get however many ice bags you need. Ma'am, we got -- I
11 believe it was four or five, I can't remember. I believe it was
12 four bags we got, ma'am. Took Rudy back to the gang. We show up
13 to the gang. The gang is like, hey, we left the socket in the
14 container. I said, you know what, guys, I'll go get it. That
15 way, you know, you guys can continue with your task. Another
16 little fire. I'm going to go put this out.

17 Ran to the container. Picked up the sockets. Brought the
18 sockets to him. By that time, my other foreman was calling me
19 saying, hey, I lost service. I was trying to talk to the
20 dispatcher. Can you communicate with him, see what our curfew is
21 going to look like, how many trains we got. Sure, let me get
22 somewhere where I can go. Got up there. Handled that problem.
23 He calls me back and says, hey -- he's Hispanic. He says, hey
24 [untranslated], we don't have clips. Which fastens the rail to
25 the ties. I said, okay. Call Victor. Victor -- I said, Victor,

1 we ain't got clips. All this material was delivered. Between me
2 and Victor, we handled the deliveries like the unloading of the
3 material, staging, blah, blah, blah.

4 Victor says, well, let's call the company. So I said, okay.
5 So we called the company. I'm handling that. Seth is calling me
6 or texting me. No, Seth called me. I'm handling this. I send
7 this call to voicemail. But I think there's automatic text, can I
8 call you later. He says, sure or something. I don't remember.

9 I handle that situation. Then I drive down back to Seth. I
10 said, what's up. He said, hey, man. The radio reception down
11 here sucks. I cannot hear the trains. I can't hear the
12 dispatchers. I said, okay, I'm sitting on top of the hill, I will
13 help you clear the trains. I will communicate with you.

14 Train is coming -- hey, Seth, the train is coming, we need to
15 clear up. We'll clear up. I'll clear the train. Hey, Seth,
16 behind this train -- you know, that was our job for 30, 40
17 minutes. Whatever you got. I'm going to talk to you, you talk to
18 the people. Because he's the only person I saw. So got his book.
19 Hightailed it back to the top of the hill to try to finish
20 killing, you know, like I said, just killing what -- the stuff I
21 had to deal with. Had a conference call. After the conference
22 call, talking to the dispatcher because he kind of plays hard
23 ball. They were there to run trains.

24 Talked to the dispatcher. Spoke with Victor a little more
25 about the stolen items. I talked to the special agent. Went and

1 visited my other gang, Joe Fuentes (ph.). The material -- I had
2 found some clips here in San Antonio. Had them on the way. I
3 told Joe, hey, we got some clips coming, bro. Don't worry. At
4 that time, the clips showed up. Handed him the clips. The
5 dispatcher is messaging me on my computer. After two trains --
6 yeah, after two trains, I'm going to give you guys three hours.
7 Cool. I turn to look at Joe. I said, hey, dispatcher just
8 messaged me; three hours you got trains.

9 Picked up the radio. Seth, two trains, three hours, plan
10 your work accordingly. That's what I told them both. I'm not
11 going to tell you what to do in three hours. I'm just telling
12 you, you're fixing to have three hours. You're the foreman,
13 you're the foreman.

14 Went back to where I had been sitting, the crossing -- all
15 this shit took place. I'm sitting there in my truck. Call Seth.
16 I said, Seth, we need to put out a slow order. When we get these
17 three hours, I need you to come up here with me. He says, okay.
18 He comes -- and I said, but make sure you bring the staff. Make
19 sure you bring your limits. Because like I said, I was bouncing.
20 I didn't want to go in there and fudge it up and have the FRA on
21 my ass because I put the wrong slow order, I did something stupid.
22 So I said, you're responsible for that. You get that and tell the
23 other foreman the same thing. Get me your limits. I'll help you
24 guys out. There's no phone service.

25 Seth drives up. He gets out. Me and him are talking. Train

1 goes by. Since I was going to go put up the boards by myself
2 without protection, I went ahead and said, I'm going to get
3 tracking time. I'm going to protect myself on the main while I'm
4 putting up their slower boards. So made a phone call back to
5 Victor. Said, Victor, hey, I'm putting in a slow order. They've
6 changed our systems. I mean, they change it often. But the
7 system -- the way we enter slow orders, you enter them through a
8 computer. I said, hey, is this the proper drop down. He said, it
9 sounds like it is. I said, okay.

10 Also, these are limits because it's a rule -- or not a rule.
11 It's just -- it's common courtesy. If you're in somebody's
12 backyard, you're going to put a slow order out. It's common
13 courtesy to let him know. That way when he -- you know, when that
14 manager of that area has a conference call in the morning, they're
15 like, hey, bro, what is this. Right? I know I'm kind of bouncing
16 everywhere.

17 So I told Victor, we're going to put out two slow orders.
18 One is for 2-40-37 and the other one is for 2-45-60, I believe is
19 the (indiscernible). I said, that's what I'm going to do. We're
20 going to split the -- we're going to make the speeds split 25/30.
21 That's what we're putting out. He said, okay, sounds about right.

22 Typed it in the computer. Service was -- generally was
23 crappy. I guess you're recording so I can't -- I don't want to
24 cuss as much. But it was crappy.

25 Called the dispatcher. I said, dispatcher, I submitted a

1 slow order. And by the time it was back on the computer, I
2 acknowledged it. Then me and Seth put the flags on the west end
3 first. The yellow board -- we put the yellow board up. We came
4 back to the track. At that time, the guys were working. I
5 climbed up the stairs that are there. Carried the green board to
6 the other end of the bridge, knocked it in. Traversed the bridge
7 back across, knocked the other green board in. Went down the
8 stairs, got in my truck, went and set the other yellow board.

9 Then I brought Seth back to his truck. I said, okay, I got
10 to go do Joe's now. About this time, it was probably 2:00, 2:20
11 or somewhere in there. So I know (indiscernible) times but this I
12 do remember because I said, we have the track until 3. I have to
13 get that slow order out before we open it up for trains.

14 So I looked. I said, Seth, I got to go. He goes -- you
15 know, he gets in his truck, goes, and does his thing. I go over
16 to Mr. Fuentes. He's installing ties or -- yeah, yeah. He was
17 installing ties at the time. Didn't want to bother him. You
18 know, I could see from the distance -- I looked. I could see they
19 were working. Called him on the radio and said, hey, can you give
20 me the limits. He said, stand by.

21 So I stand there and fiddle farted around, you know, in my
22 truck. I don't remember what I was doing. Oh, I know what I was
23 doing. I was looking for service because I said, I'm sitting
24 here. I can just punch it in. That way you ain't got to travel
25 five miles to the hill, get service again, do the process, then

1 come back and have to help him.

2 Then at that time, I said, you know what, I'm going to get
3 out. I'm going to walk down the side of the track away from the
4 work where I can still visually see it, and do my supervisor duty,
5 which is make sure, you know, process is running correctly. So
6 I'm watching on the side. He's -- me and him make eye contact.
7 He moves the machine out of the way. He walks up to me and he
8 says, these are -- I believe these are my limits. I wrote them on
9 my hand like everybody does that don't have paper. Wrote it down.

10 I said, okay, I'm going to go back to the hill. I said, the
11 curfew is almost up. Three o'clock is when -- we need to be in
12 the clear by 3. Said I'm going to go back. I'm going to go let
13 Seth know, hey, don't forget 3:00, we need to be off the track.

14 This next part sucks. So I leave his location. As I'm
15 driving up, I observe the piece of equipment. I couldn't really
16 see it. I knew what it was because, you know, it's a yellow
17 tractor. I know what it is. So I was -- in my head, I'm
18 thinking, okay, they're clearing up. So I go on and pull up to
19 the container. As I pull up to the container, Seth and the gang
20 are coming up to the container.

21 They get off. I mean, if I don't have to repeat all -- I
22 don't really feel like -- because it's there. But I'm going to
23 just give a short part. I tell Seth, hey Vargas is stopped. Do
24 you know what's up. He says no. I said, okay. Pick up the
25 radio. I probably called him four or five times. Vargas --

1 hello, Vargas, hello, Vargas. He's not answering.

2 He doesn't answer and I look at Seth because he's standing
3 right next to me. I said, go, see. You know, maybe he's out
4 taking a piss. I'm not sure. So he goes to -- he walks to the
5 tracks, turns around, he runs back to me. And that's when he
6 notifies me that it looks like the grating inside the track
7 (indiscernible). I mean, do you need me to repeat it or -- I can
8 -- you're shaking your head yes? Okay.

9 Sorry. When he says that, I say a couple of curse words.
10 Stick my truck in drive. The switch I walked by. I drove up. I
11 was going to try to drive as close as I could. I got stuck.
12 (Indiscernible) they love them. Stuck. Throw it in park. Jump
13 -- open the door and I take off running right to him. I ran all
14 the way down there. Me and Travis, you know, me, Travis and D.J.
15 were running. We get there. We see the grating is in the
16 machine. I look around and I yell Vargas because I couldn't see
17 him. Didn't see him. And then I see the tracks were still.
18 (Indiscernible).

19 So then I took -- I look at Travis. And we need to shut the
20 machine off. He goes to the -- so if you're the operator, it
21 would be your right-hand side. I go to the left-hand side. I see
22 the individual pinned in there. Travis is opening the doors
23 trying to find -- we call it a kill switch. It deenergizes the
24 machine. You turn it, it dies. He mumbles something. I don't --
25 I think he -- well, I don't think. He just mumbles something.

1 Like I can't get it shut off. He climbs up the side. Goes inside
2 the machine and turns the key off.

3 At that time, Vargas starts talking to us. Get this off me,
4 get this off me. Instinct is to help the man. I try to pick up
5 the grating. It's too heavy. So I realize I can't pick it up. I
6 had my cell phone in my pocket luckily. I grab my phone, I call
7 Seth. I said, Seth, you need to get 911. As I'm in mid-sentence,
8 it cuts out. So I take off running back to where the guys are,
9 which is at the end of the crossing. I run all the way back and
10 I'm hollering, call 911, call 911. He says, I did.

11 Then the other part of me kicks in which is the supervisor
12 (indiscernible). I'm like, okay, call 911, notify the dispatcher.
13 Let dispatch know we have an incident so he can start notifying
14 the proper channels (indiscernible) which we had tracking time.
15 But, you know, start the process.

16 As Seth is doing this, I -- from running some distance, I'm
17 not sure how far the distance is, 200 yards. I mean, you all
18 measured it so I'm not -- so I look at the guys. I said, Seth is
19 (indiscernible). When he gets here, it's going to be 10 times
20 faster to get him there versus them trying to carry all their crap
21 and waddle however far it is. Because -- so while we're trying to
22 set on the truck, I turn back and Travis is still trying to take
23 the thing of this man. I think -- I believe he took his belt off,
24 try to like -- he was trying. D.J. was trying. We get the truck
25 set on. I back him up. I stop him. I said, okay, somebody needs

1 to wait here for when EMS gets here to make sure we get down
2 there.

3 And I had -- like I said, supervisor mode kind of kicked in.
4 I told an employee, you stand at the crossing, you flag that
5 crossing because, you know, gates are coming down, they're going
6 up because the shunts are on. You protect the crossing. You
7 protect the public. You protect us. Said Seth, can you drive the
8 vehicle. Yes. Okay. I didn't talk really much to the other
9 employee. I turn around, Seth is -- I mean -- Seth -- Travis is
10 about halfway up -- or he's halfway up or something. He walks by
11 and he says, I can't unsee what I seen. It's bad. Don't go back
12 down there. And I said, I can't. I have to go down there. D.J.
13 is still down there. He's left alone. I don't know what state
14 the individual -- I don't know what state Vargas is in either.

15 So at that time, I run back down there to D.J. When I get
16 down there, you can hear like a gargling sound coming out of the
17 machine. You know, like just -- I don't know what -- how to
18 explain it. D.J. is breaking down. He's like -- he's just not in
19 the best shape. I had concern for D.J. also because D.J. is a
20 military vet. He's been overseas, you know. I knew he was taking
21 it hard because them guys over there see a lot of stuff.

22 Wrapped my arm around him. I said, D.J., we need to go to
23 the crossing. We walk off to the crossing. When we get there,
24 fire department is rolling up. Tell him to get your shit, get in
25 the truck. And it's just the fire -- well, fire, EMS, whatever.

1 But it's two guys. They get their stuff. Seth went back there.
2 Seth -- me and Seth go back there. The firefighter walks around
3 and he said what's the individual's name. I said, his name is
4 Vargas. He starts trying to talk to him. He said -- he starts
5 trying to talk to him. We unloaded the truck.

6 And then, you can hear the sirens coming, obviously. So I
7 instruct Seth and myself to go back to the crossing. He --
8 there's professional help there now. I mean, at least I figured
9 that's their forte, obviously. So me and Seth go back to the
10 crossing. By the time we get there, ambulance is showing up.
11 They start towing them. Then we load them up. We take them back
12 over there. I can see it's eating Seth up. I tell Seth, go to
13 the crossing. He goes to the crossing. I go with him. I get him
14 out of the truck and I said, you are no longer going back down
15 there. It is an EMS, fire's hands. There is nothing we can do.
16 That is their -- in their hands.

17 So (indiscernible) I know I'm not skipping around. But in
18 the process of getting EMS, getting fire, getting the high rail
19 set on. I called -- like I said, supervisor mode kicks in. I
20 call my manager, Victor Munoz. I called WT Byler's
21 superintendent, Bubba Campbell. I called Vance Alcorta. I called
22 Tommy Fulkerson (ph.). I called all WT Byler that I could.
23 There's been an accident, get here. I wasn't specific. You know,
24 like I said, when it took place, it was in between my running back
25 and forth. I don't really know. Amongst all the other phone

1 calls, I had (indiscernible) calling me.

2 Director of transportation was calling which was Tom Blevins.
3 I don't know what those other fellows name's are. Risk
4 management, I guess. Their boss was calling me. I need pins, I
5 need -- we need locations. So as I'm trying to tend to the
6 gentleman -- or not tend. But I guess while I'm trying to get him
7 the resources that he needs, I'm also tending to what we need to
8 tend to.

9 After that, I make a trip down there to check on the
10 individual. And the guys are like, he's gone, man. I said, okay.
11 So EMS is like, we need a truck. So bring the truck back. They
12 load up their stuff. Take them back up. They unload. They hand
13 me -- well, they handed the firefighter a back board and a bag.
14 He's like, I got to go back. Take him back.

15 That time I parked the truck and I walked off. I needed a
16 breather. I walked about a minute away between the incident
17 (indiscernible) and just answered the phone. After that, the fire
18 department went to work cutting the grating off, doing what they
19 had to do to, I guess, extricate him out of there.

20 Time goes by. I don't have the exact times. And from there,
21 it kind of gets blurred because I'm just doing whatever back and
22 forth. Somewhere in there, the firefighter, one of them comes up
23 to me and says, hey, we're going to have to bring him up here. I
24 said, I get it. Before you do, I want to clear out the area. I
25 don't want none of these guys to see (indiscernible). I -- it's

1 just -- no. So I gather them all together. I said, look, guys,
2 obviously, there's going to be people coming in tomorrow. Show up
3 at 8 a.m. at the container. That was it. They left.

4 I stayed there. The body was -- the -- when they finally got
5 the grating up, like I said, I didn't want to be down there. But
6 my luck, I had to go down there because nobody can operate a high
7 rail vehicle. And it's not their job, so I go down there. I tell
8 the firefighter, let's load up all your equipment into my truck, I
9 take you to the crossing, we'll unload all your equipment. We'll
10 clean the back of the truck out. We'll go get the body.

11 We (indiscernible) back there. Of course, just about
12 everybody left by then -- by the time the job was done -- or they
13 were done cutting him out. Damn near every firefighter left but
14 two or three. The guy says, I hate to do this to you all; we need
15 help. Fine. I'm here. By the time I got back, they already had
16 had him out of the machine and just laying on the back. He wasn't
17 covered up, none of that. He's just laying there.

18 We get over there. The -- one of the firefighters says this
19 is how we're going to do it. I need two guys -- or I need some
20 guys over here, I need some guys over here, I need some guys over
21 here. On the count of three, one, two, three, we're going to
22 lift, turn him, we'll go in headfirst into the vehicle, we're
23 sliding him on.

24 Pick up Mr. Vargas, put him in the vehicle. (Indiscernible)
25 crossing. Coroner is there already. Coroner was there already.

1 I had brought my other foreman in. He had nothing to do with
2 anything. He was the foreman working on the other side. I called
3 him in. I said, look, man, this is really hectic right now. I
4 have -- I am doing 100 other things. I do have tracking time but
5 I need you here to cover my ass in case I need to get more time.
6 I don't want to screw something up because I'm not like -- I'm
7 going 100 miles an hour. I need a back-up.

8 So he stayed there and (indiscernible) also showed up and I
9 told him the same thing. I said, hey, man, I need you to handle
10 track, whatever. I just -- I'm too busy doing my thing. I guess
11 you could say my thing. I'm down there. This was before I had
12 come back down to bring the body up. I had already spoken with
13 those two gentlemen.

14 So we get to the crossing. The coroner is there. We had to
15 unload him again. Or we have to unload him off the vehicle. The
16 coroner walks up. Unzips the bag. And says, I want his head over
17 here. I want his feet over here.

18 We put -- we pull him out of the truck, put him in a body
19 bag. They zip it up. Load him up. After that, after he's loaded
20 up, and in the vehicle, everybody is handling -- you know,
21 somebody is doing something there because they're there for a
22 reason. I can't remember his name. Jeff Ivey (ph.) maybe. He's
23 the guy with the slicked hair back.

24 UNIDENTIFIED SPEAKER: The terminal superintendent?

25 MR. RIVERA: There you go.

1 BY MR. LLOYD:

2 Q. Oh, Jeff Everett.

3 A. Yes, sir. Jeff Everett?

4 Q. Yeah.

5 A. Okay. He says, Mr. Rivera, what is your plans to get this
6 machine off the track. And I say, I got a machine five miles up
7 the road. I can bring it over here and we can attempt to pull it.
8 I don't know what condition that machine is in.

9 When all this is taking place, Byler is down there. Bill --
10 I don't know his name -- Bill something is down there. The other
11 emergency response guy, I guess you could call him. Whatever he
12 is. And UP police. They're all doing their thing down there.

13 So I tell him, I can have -- high rail that machine up here.
14 And he says, let's do it. We need -- I mean, we got to remove
15 this off the rail. So I said, okay. I look at my foreman. I
16 said, I need you to get tracking time, bring the machine. Okay.
17 His operator was there, too. I said, I need you to bring the
18 machine up here.

19 They go get the machine. While they're bringing the machine,
20 I'm setting the high rail off so the machine can go by because I'm
21 blocking. The machine shows up. I talk to the operator. I said,
22 do you have slings to pull this machine out because obviously, you
23 can't just -- you know, it's -- you got to -- so I said, do you
24 have chains. He said, yes, there's one in the back of my truck.
25 I go to his truck. I grab his chain sling. Hand it to him. He

1 high rails by. He goes down there. When he goes down there, like
2 I said, I think the name is -- his name is Bill, the investigator
3 or whatever for the railroad.

4 Obviously, all that evidence is there. All the grating is
5 still down there. So the operator grabs it and brings it up here.
6 There's an old car door there from a train car laying there.
7 During everything else, calling Bill, I'm telling him we have to
8 -- I have to preserve this evidence as best I can. I can't --
9 like I can't just throw it on the ground and be like there it is.
10 So when I seen the car door, I said this is perfect. It's out of
11 the grass, you know, obviously.

12 The operator high rails down there to Bill. I set the high
13 rail back on. I set the high rail back on. The Byler
14 superintendent, Bubba Campbell -- I think he's a supervisor --
15 Vince Alcorta and the mechanic -- I tell the mechanic -- the Byler
16 mechanic shows up because, you know, they don't know what shape
17 their machine is in. And I tell them, hey -- excuse me -- the
18 operator had finished bringing out the grating, set it where I had
19 told him on the door. He high rails down there. I high rail him
20 back in there. They get off. They're doing their -- I'm
21 basically just standing there because still trying to process
22 everything.

23 They get on the machine. They turn it on. It cranks up.
24 They were trying to get it in drive. It won't -- I mean, there's
25 -- I don't know if you saw it or not. There's no -- there's

1 nothing in the front. And those machines operator off of foot
2 pedal.

3 Their mechanic is doing his thing. The other operators are
4 trying to tell him, hey, you know, there's an emergency brake
5 here. You have to release it so it lets the brakes off the high
6 rail. They were spit-balling ideas. Hey, what if we do this,
7 what if we do that to get the machine to roll.

8 The -- this machine didn't move. They -- he put a chain --
9 it's got a little hook on the front. They put a chain on the
10 hook. The other operator put the chain in, tries to pull and it
11 didn't move. So they say -- they look at their mechanics. Say,
12 can we take the hydraulic lines off. I said, yeah, we can take
13 the hydraulic lines off. High rail it to the crossing.

14 By the time he gets all his tools, what he needs, I hear on
15 the radio, we're moving it. So I never went back down there. I
16 walked to the switch where my foreman was. I said, they're
17 bringing equipment. Line the switch into the siding. So he opens
18 the switch, throws it, which the EMTM (ph.), Coby Burns (ph.) had
19 tracking time in the siding. We pulled -- they get the machine
20 into the siding. They set it off. Or they get it off.

21 And then, at that time, I asked the EMTM -- because when
22 stuff like that happens, they need to inspect their track, make
23 sure it's safe for -- you know what I'm talking about. So I said,
24 are you good to go. He says, I'm good to go. Cool. I -- my
25 truck is parked a little ways. I go get in my truck. Turn on my

1 MiFi. Turn on my laptop, open it up. I don't know. So I mean --

2 BY MR. MOLGREN:

3 Q. So Mr. Rivera, when did the work start on that bridge, on
4 that particular bridge? When did that gang actually --

5 A. Tuesday.

6 Q. -- begin their work?

7 A. Tuesday.

8 Q. Tuesday was the first day that they had ever been at that
9 specific bridge?

10 A. Well, yeah. That they've been there. Yes, sir.

11 Q. Do you know where they were before that? I guess, were
12 they --

13 A. Yeah.

14 Q. -- working for you before that?

15 A. Yes, yes. This gang has been assigned to me throughout the
16 year.

17 MR. LLOYD: And we're saying Tuesday? Work began on that
18 bridge Tuesday?

19 UNIDENTIFIED SPEAKER: Tuesday.

20 MR. MOLGREN: According to Mr. Rivera. Tuesday.

21 MR. RIVERA: And the reason I say that is the prior week I
22 was in California doing something else up there, for UP. But I
23 was in California. They moved -- I guess -- I could say they did
24 move their equipment over there the week prior. But to my
25 knowledge, nobody had gone up to the bridge. You know what I

1 mean? Like --

2 UNIDENTIFIED SPEAKER: Right.

3 MR. RIVERA: They brought their equipment and stuff. But to
4 my knowledge, nobody had been up there.

5 BY MR. MOLGREN:

6 Q. So how -- I mean, I guess, how long this year has this
7 particular gang been working for you?

8 A. Since January. I mean --

9 Q. Since January?

10 A. If you're asking this year?

11 Q. Yeah.

12 A. Been since January.

13 Q. How many other bridges have you done where you did the same
14 type of work? Where you had to go in and remove all the walkways.
15 Roughly. I don't expect you to know the exact how many --

16 A. Right.

17 Q. -- number of bridges --

18 A. Because we've done quite a bit of bridges this year. I'm
19 going to say four. Four or five.

20 Q. Four or five other bridges where you did basically the
21 same --

22 A. Yes, sir.

23 MR. LLOYD: With WT Byler or --

24 MR. MOLGREN: Yeah. Was WT Byler --

25 MR. RIVERA: Yes. With WT -- yes, sir.

1 MR. LLOYD: So four that you've worked with WT Byler?

2 MR. RIVERA: Yes, sir.

3 BY MR. MOLGREN:

4 Q. How many other gangs do you have that roll up to you that you
5 supervise?

6 A. Well, I just recently inherited another gang, which is the
7 other gang that's here because --

8 Q. Is that the one you referenced when you said Joe Fuentes?

9 A. Yes, sir. He's my --

10 Q. He's the foreman --

11 A. -- other gang.

12 Q. -- on the other gang?

13 A. Yes, sir.

14 Q. Those are the only two gangs that roll up to you?

15 A. Yes, sir.

16 Q. About how many -- I'm assuming that Mr. Fuentes does the same
17 thing.

18 A. Yes, sir. As far as like the same type of work?

19 Q. Correct.

20 A. Yes, sir. We're new construction so we rebuild bridges.

21 Q. How much time have you -- had you -- would you say you spend
22 with the gang that was out there with the -- that had the incident
23 Wednesday?

24 A. Not a whole lot of time. Like I said, I was putting out
25 fires. I was --

- 1 Q. Right. But throughout the year, how many --
- 2 A. Oh, throughout the year?
- 3 Q. How much time do you spend with them in a given week or a
- 4 given month?
- 5 A. I can't put an hour on it. I mean, I've been with them a
- 6 lot.
- 7 Q. Do you travel with them?
- 8 A. Yes, sir. Not necessarily with them, but yeah, wherever they
- 9 go, I'm the supervisor there.
- 10 Q. So it's not uncommon for you to see them every day?
- 11 A. No, it's not. I think that answered your question. Right?
- 12 Q. Yeah, that does.
- 13 A. Okay, sorry.
- 14 Q. What about Mr. Fuentes' gang? The same --
- 15 A. I just inherited him. I say inherited. They've always been
- 16 a gang of ours. But they're in my -- so the way -- yeah, they're
- 17 in my area, I guess you could say.
- 18 Q. When did they get assigned to you? Roughly. I don't need an
- 19 exact date.
- 20 A. Last month maybe.
- 21 Q. About a month ago?
- 22 A. Yes, sir.
- 23 Q. You stated earlier that you showed up to the (indiscernible)
- 24 about 6:45 in the morning.
- 25 A. Yes, sir.

1 Q. That was before they had their job briefing.

2 A. That was before -- yeah, that was before roll call. Or --
3 yeah, before the start of the day. Yes, sir.

4 Q. What did you notice about who all was present at that job
5 briefing that morning?

6 A. As far as?

7 Q. Who all was there?

8 A. I noticed they were all there. All the men.

9 Q. All of the UP employees?

10 A. Yeah. All the UP employees. Yes, sir.

11 Q. Where were the Byler employees?

12 A. I'm not aware where they were at.

13 Q. Is -- was that common? Is that how it typically -- a typical
14 job briefing took place in the mornings with that gang? That it
15 was only the UP employees and Byler was not there?

16 A. No, sir. It depends. It varies --

17 Q. Okay, what did it depend --

18 A. The situation. The situation. The situation. I don't know
19 what their prior arrangements were to the job briefing.

20 Q. So what about that particular day on Wednesday? Why wasn't
21 Byler present?

22 A. I don't know. The previous day I wasn't -- I was there but I
23 wasn't with -- I wasn't there when the day was ended. I don't
24 know what was said to Byler guys. Like, you know what I mean? I
25 don't know what was said, where to meet, what not to meet.

1 Because I was dealing with a theft of something, of UP property.

2 Q. So what about for the rest of the year, since January?

3 A. We typically tell them, hey, I need you here 8:00, 7:00,
4 whatever the start time is. Because our start times vary due to
5 curfews. So I -- I mean, that's --

6 Q. Is it uncommon for the Byler employees to not be at the
7 initial job briefing with all the UP employees or is that the
8 norm?

9 A. That is not the norm. It is -- it's not common. If that
10 answers your question.

11 Q. And you don't know why --

12 A. No, sir.

13 Q. -- they weren't present that morning?

14 A. No, sir.

15 Q. Did you reach out to anyone and ask why --

16 A. No, sir.

17 Q. -- Byler wasn't there?

18 A. No, sir. I was -- like I said, I was doing the bump. And I
19 had stepped away to my truck which was not parked right at the
20 (indiscernible) where everybody was at.

21 Q. What time would you say you arrived at the actual job site
22 where the bridge was and the work was being performed?

23 A. Oh, geez. 8:20, 8:30, after I got the bags of ice.

24 Q. Did you observe any of the Byler employees --

25 A. They were --

1 Q. -- fouling the track?

2 A. No, not fouling the track, but they were on site.

3 Q. They were on site working?

4 A. Yes, sir. Well, they were on site. They were not working.
5 Everybody was around the tailgate looking for the tools needed for
6 the day. That's why I stated I had to go get them a socket
7 because they didn't -- they did not have the socket that was
8 needed.

9 Q. So Mr. Fuentes' gang -- I'm just curious. They performed the
10 same work processes and work functions throughout the year as this
11 other gang --

12 A. Yes, sir.

13 Q. -- removing the walkways and everything that's entailed in
14 that.

15 A. Yes, sir.

16 Q. Have you -- had you noticed any difference between
17 established work practices between those two gangs in terms of how
18 they would remove that? Specifically, the walkway planks.

19 A. No, sir. I haven't. To be honest, I wasn't at either
20 location when the walkway had been removed. So I don't know what
21 practices were used at --

22 Q. So in the last year, did you ever observe Mr. Fuentes' gang
23 removing walkway planks?

24 A. No. Because I just inherited them in August. That specific
25 gang.

- 1 Q. So at no point in the last month, you never --
- 2 A. No, sir.
- 3 Q. And the other gang in the last year, had you noticed how they
- 4 were removing those walkway planks?
- 5 A. Yes, sir. The other gang? Yeah. I've been in some job
- 6 sites where they have removed them.
- 7 Q. Was it ever discussed in any of the job safety briefings or
- 8 safety meetings in terms of how -- what the possible approved
- 9 process might be for --
- 10 A. No, sir.
- 11 Q. -- the rigging and handling of those and --
- 12 A. No, sir. Not that I'm aware of. No.
- 13 Q. Have you been around other -- I mean, you stated earlier
- 14 you've got 13 years' experience. You know, have you seen other
- 15 methods used to remove those walkway planks other than a tie
- 16 inserter?
- 17 A. Sure. I mean, yeah, there's other methods.
- 18 Q. What are some of those other methods?
- 19 A. I mean, it just -- it depends. Let me answer it that way.
- 20 Q. What does it depend on?
- 21 A. What equipment is available to you. I mean, you get what I'm
- 22 coming at?
- 23 Q. Um-hum.
- 24 A. It --
- 25 Q. Sure.

1 A. Whatever equipment is available is how -- I can't answer if
2 -- I can't answer that because I'm not aware of what equipment has
3 been at other jobs if that helps. I mean, that's --

4 Q. So do you know what kind of job briefing took place between
5 the Byler contractors and the UP employees on Wednesday, the day
6 of the accident?

7 A. No, sir. No, sir.

8 Q. Did you ask anybody on the crew --

9 A. No, sir.

10 Q. -- what kind of job briefing took place?

11 A. No, sir. I wasn't there long enough to really speak with
12 anybody other than Seth or -- you know what I mean? I wasn't
13 there long enough. (Indiscernible). No, sir.

14 Q. What are your expectations about job briefings for your
15 employees?

16 A. One is to take place every morning.

17 Q. Do your employees understand that?

18 A. Yes, sir. That one is to be taken every morning. And then I
19 call them verbal. They're rolling job briefings. The day
20 progresses. Things change. Re-brief.

21 Q. But there has to be an initial job briefing.

22 A. Yes, sir.

23 Q. And your employees understand that your expectation is that
24 all the employees participate in that initial job safety briefing?

25 A. Yes, sir.

1 Q. Do you know if Mr. Vargas was present during the -- during
2 any job safety briefing that morning?

3 A. No, sir.

4 Q. You don't know?

5 A. No, I don't know.

6 Q. Well, I can tell you through testimony that we've received
7 throughout this process that Mr. Vargas was not at the job safety
8 briefing in the morning.

9 A. Okay.

10 Q. Do you know what would have possibly prevented him from being
11 at the job safety briefing?

12 A. No, sir.

13 MR. MOLGREN: I don't have any further questions.

14 MR. RIVERA: I mean -- okay. I don't -- I mean --

15 MR. LLOYD: Chief?

16 MR. LUCERO: All good.

17 BY MR. LLOYD:

18 Q. And Andrew was hitting on some topics.

19 A. No, I --

20 Q. Yeah, yeah. No. So it's -- let me put it differently. It's
21 -- so you've seen these bridge, these ballast (indiscernible)
22 bridges, these same tiles, where you had the same (indiscernible)
23 where you had to take up the planks and do that. So have you ever
24 seen a tie crane used before to accomplish that task?

25 A. Yes.

- 1 Q. So you've seen --
- 2 A. Yeah. I mean -- yes, sir. I've seen --
- 3 Q. So you've seen that same particular process done that was
4 being done Wednesday with a tie crane picking this stuff up and
5 moving them?
- 6 A. Operators use different methods. I mean if that answers your
7 question.
- 8 Q. Well, I'm just talking that particular piece of equipment.
- 9 A. Well, that's what I'm saying. I've worked with different
10 operators before. So --
- 11 Q. Yeah, that you -- that did the same way with a tie crane?
- 12 A. They -- like I said, operators use different methods.
13 There's -- you know what I mean? They have -- they use different
14 methods. Like I said, I can't specify how he was doing it.
- 15 Q. Yeah.
- 16 A. Or how he was carrying them because --
- 17 Q. No, I'm just talking with the --
- 18 A. I don't --
- 19 Q. Yeah, with the piece of equipment he was using.
- 20 A. Right. That's what I'm saying. I can't answer because I
21 wasn't there so I can't say he grabbed it; he used a chain.
- 22 Q. Right. Well, yeah, no, I'm not getting at -- have you seen a
23 tie crane being used on another --
- 24 A. Yes. Oh, yes. To move --
- 25 Q. That's what I'm --

1 A. Yes, sir.

2 Q. So have you seen a tie crane used on other projects before to
3 move these planks?

4 A. Yes, sir.

5 Q. Okay, okay. What does UP -- if this was a UP bridge group
6 and not a contractor, what would UP use? Would UP use a tie crane
7 like that? Do they have something that's -- to move these --

8 A. I am aware we have some. But I've never been around them. I
9 cannot -- you know what I'm saying?

10 Q. So how -- would UP use that piece of equipment the same way?

11 A. I can't -- like I said, I've never been around that type of
12 equipment other than the contractors. I mean, I know it's not a
13 direct answer but I --

14 Q. Yeah, yeah.

15 A. -- just can't --

16 Q. I'm just saying, I didn't know if that was a UP norm.

17 A. Right, right.

18 Q. If it's a UP -- normal piece of equipment. That's what we
19 use on all --

20 A. Right. No.

21 Q. -- bridge project stuff to move these planks.

22 A. Okay. I see what you're --

23 Q. That's what I'm saying. But --

24 A. Yes, sir. Yeah. But no, I can't answer. I've never been
25 around a piece of --

- 1 Q. So you can't answer that?
- 2 A. -- UP equipment like that.
- 3 Q. So as the UP bridge supervisor -- and I know we're getting
4 long. I'm going to get you out of here. So what kind of -- do
5 you know what a site-specific work plan is? A scope of work?
6 Familiar with the term?
- 7 A. No, sir. Can you be a little more --
- 8 Q. Yeah. So a scope of work is you bring in WT Byler. They're
9 tasked with changing the bridge ties out on this bridge, this open
10 deck bridge. Does UP, does the bridge group, do they supply WT
11 Byler with a scope of work? This is what we want done, this is
12 how we want it done.
- 13 A. Not that I'm aware of. No, sir.
- 14 Q. So they don't give them -- they just --
- 15 A. Like, you're saying like a piece of paper, like here you go?
- 16 Q. Like, here's --
- 17 A. Here's a written --
- 18 Q. Here's our scope of work. We want to replace these 198 --
- 19 A. Not that I'm aware of.
- 20 Q. -- ties.
- 21 A. Yes, sir. No, not that I'm aware of. No.
- 22 Q. You're going to utilize these safety methods, you're going to
23 do this, you're going to do that.
- 24 A. Right. I see what's your saying.
- 25 Q. Yeah.

1 A. No, sir. Not that I'm aware of.

2 Q. So they're just usually -- I don't want to say -- but do they
3 show up and it's WT Byler's decision on how that work gets done?

4 A. From my experience -- I'm not the operator. It's not my
5 machine. I don't -- I'm not going to tell you, hey, go pick that
6 up, and expect you to go over there. Tip over. You see what I'm
7 saying. It's --

8 Q. Yeah. I'm just saying was there -- is there some kind of
9 working -- work processes that UP provides?

10 A. Not that -- no, sir. Not that I'm aware of.

11 Q. Like a scope of work. This is our safety rules. This is
12 what --

13 A. I mean, they do --

14 Q. This is what you shall comply with because this is our
15 railroad.

16 A. Right.

17 Q. You know that kind of --

18 A. Right. Not that I'm aware of. I mean, not something I can
19 answer. Sorry about that.

20 MR. LLOYD: No, it's -- it's why we're here to ask these
21 questions.

22 MR. MOLGREN: Andrew Molgren, FRA here. Do you know if Mr.
23 Vargas had been trained on that particular piece of equipment?

24 MR. RIVERA: No, sir. I do not.

25 MR. MOLGREN: Whose responsibility would it be to ensure that

1 he received the proper training before running that piece of
2 equipment?

3 MR. RIVERA: I mean, WT Byler's. If that answers your
4 question.

5 MR. LUCERO: Lucero. Is that the first time you've seen them
6 -- the WT Byler use that?

7 MR. RIVERA: No, sir.

8 MR. LUCERO: Because, you know, we heard this morning that
9 it's a brand new -- you know, it hasn't even been serviced yet.
10 So is it a typical piece of machinery that they would use?

11 MR. RIVERA: Yes, sir. They've -- yes, sir. It is. Does
12 that -- I mean --

13 MR. LUCERO: Yeah, that answers.

14 MR. MOLGREN: I don't have any other questions.

15 MR. LLOYD: Yeah. Darius, you have anything?

16 BY MR. MACK:

17 Q. Well, WT Byler is actually on site. Right? They have an
18 office here, too?

19 A. Right across the street.

20 Q. Right there.

21 A. I mean, back there across the parking lot. Yes, sir.

22 Q. Yeah, yeah. So are they included in any of -- any training
23 that UP does? Like, since they are railway workers, do they --

24 A. I am -- I'm not aware. I mean, I wish I had an answer but I
25 don't.

1 MR. MACK: That's all I got.

2 MR. LLOYD: Chief?

3 MR. LUCERO: I'm good.

4 MR. LLOYD: I just appreciate you being here and just talking
5 with us. We're off the record.

6 MR. LUCERO: Before anyone (indiscernible) off the record.

7 MR. LLOYD: Go ahead. You got something to ask?

8 MR. LUCERO: No, no. Off the record.

9 (Whereupon, the interview was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

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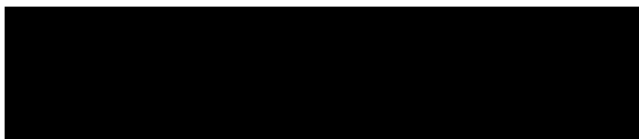
IN THE MATTER OF: UNION PACIFIC EMPLOYEE
 FATALITY IN SAN ANTONIO, TEXAS
 ON SEPTEMBER 22, 2021
 Interview of Enrique Rivera

ACCIDENT NO.: RRD21LR016

PLACE: San Antonio, Texas

DATE: September 24, 2021

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.



Katie Leach
Transcriber