

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of: *

MTA EMPLOYEE FATALLY STRUCK BY *
SUBWAY TRAIN IN MANHATTAN, *
NEW YORK ON NOVEMBER 29, 2023 *

Accident No.: RRD24FR003

* * * * *

Interview of: AVERY NELSON, MS-1 Maintenance Supervisor
Metropolitan Transit Authority

New York, New York

Friday,
December 1, 2023

APPEARANCES:

TODD KRAHOLIK, Investigator
National Transportation Safety Board

PHILLIP HERBERT, Investigator
Federal Transit Administration

JONATHAN FAZIO, Senior Director of Safety
Metropolitan Transit Authority

BOB GHANDI, Chief Safety Officer
Metropolitan Transit Authority

ZACH ZAGATA, Investigator and Branch Chief
National Transportation Safety Board

CHRIS CASH, Field Representative
Subway Surface Supervisors Association

SHANE RICHARDSON, Investigator
National Transportation Safety Board

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I N T E R V I E W

1
2 MR. KRAHOLIK: My name's Todd Kraholik, I am with the NTSB,
3 track group chairman for this accident. We are here today,
4 December 1st, 2023, at the MTA office to conduct an interview with
5 Avery Nelson, who works for New York City Transit. This interview
6 is in conjunction with NTSB's investigation of the accident in
7 Manhattan where a flagger was struck and fatally injured while
8 flagging near 34th Street and 6th Avenue. The NTSB Accident
9 Reference Number is RRD24FR003. The purpose of this investigation
10 is to increase safety, not to assign fault, blame, or liability.

11 Before we begin our interview and questions, we're going to
12 go around the table and introduce ourselves. We'll spell our last
13 names, who we're representing, and your title. Make sure you
14 speak clearly so we can get an accurate recording. I'll start off
15 and then we'll go around to the left. Again, my name is Todd
16 Kraholik. My last name is spelled K R A H O L I K, I am the NTSB
17 track group chairman.

18 MR. HERBERT: My name is Phillip Herbert, H E R B E R T. I'm
19 an accident investigator with the Federal Transit Administration.

20 MR. FAZIO: My name is Jonathan Fazio, F A Z I O. I'm the
21 senior director of safety for MTA headquarters. I'm here as an
22 observer today.

23 MR. GANDHI: Bob Gandhi, G H A N D H I, chief safety officer
24 of department of subways, also an observer.

25 MR. ZAGATA: Zach Zagata, Z A G A T A, NTSB branch chief.

1 MR. CASH: Chris Cash, C A S H, SSSA field representative.

2 MR. NELSON: Avery Nelson, N E L S O N, MS-1 at New York City
3 Transit track department.

4 MR. RICHARDSON: Shane Richardson, R I C H A R D S O N, I'm
5 with the operations group for NTSB.

6 MR. KRAHOLIK: All right, thank you.

7 And Mr. Nelson, we have your permission to record this?

8 MR. NELSON: Yes.

9 MR. KRAHOLIK: You understand that the transcript will be
10 part of the public docket and as such, we cannot guarantee any
11 confidentiality?

12 MR. NELSON: Okay.

13 MR. KRAHOLIK: And as we discussed, you have Mr. Cash
14 representing you today, is that correct?

15 MR. NELSON: That's correct.

16 MR. KRAHOLIK: Okay.

17 Again, when we speak, let's speak clearly and I'll start.

18 INTERVIEW OF AVERY NELSON

19 BY MR. KRAHOLIK:

20 Q. So, Mr. Nelson, can you please describe your duties and
21 titles from when you got hired until now? Just your titles and
22 what you did?

23 A. I started as a track worker in 2007 and it was required of us
24 to, you know, maintain maintenance of the tracks and six years
25 ago, I was promoted to MS-1, maintenance supervisor. I worked in

1 maintenance for about three years and I went to track cleaning for
2 about three years. So, I've been doing that for six years. My
3 duties is to assign the work, make sure my men are safe, and make
4 sure my work is completed, to keep proper records. Things of that
5 nature.

6 Q. Okay, so when you say you're head of cleaning, so the task
7 you were doing that night was track cleaning, that's all you do is
8 the cleaning of the tracks now?

9 A. Cleaning of the tracks, yes, sir.

10 Q. Okay, I didn't realize that was its own little thing. Got
11 you. Can you walk me through your day just from the start of your
12 shift, up until the flagging --

13 A. Incident, okay.

14 Q. Yeah.

15 A. I came to work at 10:00, I swipe in, I see who's in the day.
16 So, the guys who are coming in, they're signing in. I read them
17 the rule of the day and I call to see what task I'm going to be
18 assigned with. I get my flagging ID and then I have to, you know,
19 gather my tools and call -- like, if they assign me more men, I'll
20 call them, tell them what to bring, and where to meet me at, and
21 then we go to the job site. It happened to be 34th Street that
22 time and Mr. Joseph was supposed to flag. So, I -- do you want me
23 to keep going? Do you want me -- through the whole thing, right?

24 Q. Yep, we don't need to talk about seeing him.

25 A. Okay.

1 Q. Just up until --

2 A. Yeah.

3 Q. Yep.

4 A. So, Mr. Joseph -- so, everybody meets at the job site, it's
5 12:00. Mr. Joseph -- I get to the job site, I call on my flagging
6 lights, I get there about 11:48, a little early, call on my
7 flagging lights. The guys are arriving, I wait for Mr. Joseph, I
8 give those guys the rule of the day, I tell them exactly what
9 we're going to be doing. We're supposed to work 34th Street,
10 Delancy (ph.), and possibly another station, it just escapes me at
11 this moment. But we're starting at 34th Street on B2 track.

12 So, I talk to Mr. Joseph, I tell him -- you know, in our
13 phones, we have -- at some point in time, the transit created a
14 list of where all of the flagging -- like, a pre-determined list;
15 they put up placards and everything. So, it's specifically, like,
16 for track cleaning because we do the stations frequently, so they
17 put up a list where all of the yellows go and all the flagging
18 lights go on the track. So, I needed Mr. Joseph -- again, the
19 rule of the day, have him sign the safety checklist, and I
20 explained to him where the flags are going to go.

21 So, we walked to the end of the station, he's fit for duty,
22 he seems fine to me. I give him the flagging lights and I take a
23 set of flagging lights. But since I had been there early and
24 called my lights, I'm looking around at the track, I noticed that
25 this side is dark and I noticed that there's banks of lights

1 strung up. So, I'm like okay, we're going to start -- we're going
2 to go out, I have -- I'm going to set up B4, he's going to set up
3 B2, and we're going to meet, like, when I go out so I can hit the
4 lights on and talk to him again.

5 So, I go out to B4, he goes out on B2, and there's -- I knew
6 they were there. There's these areas where you can look across
7 the track and see each other. So, I look across to see him and
8 I'm explaining to him again, you're going to clear up here on the
9 bench wall, you know, and do you remember -- I had given the
10 numbers and I'm like do you remember the numbers you're supposed
11 to have? He said yes, he remembered and he said it back to me.

12 So, I had forgot to hit the lights on, so I double back real
13 quick, hit the lights on, I meet him at the next spot and we talk
14 again; everything's good and I proceed to walk out before he walks
15 out B2. Then I come -- and then I put my lights out, I come back,
16 and on the way back, Joe you good? He said he's good. I go back
17 up to the platform and my guy says I'm getting up, my guys are --
18 the red's going down and they're starting to work the track. So,
19 I come out, I see them, they're working, and I don't know how many
20 minutes -- I couldn't tell you how long it goes by, but we're
21 getting -- we're going down the track and Joseph -- Mr. Joseph is
22 blowing his whistle that a train is approaching.

23 So, I tell my guys to clear up. So, they begin to clear up
24 and -- they begin to clear up and I give Joe the proceed. I see
25 him acknowledge me and my guys are cleared up, so the train starts

1 to pull in. As the train is pulling in -- like, there's -- we're
2 creating bags of garbage that they throw on a platform and I'm
3 looking at the bags, I'm like okay, I'm going to make sure this
4 bag is secure, I'm going to make sure my guys are good too. So, I
5 just pull back a bag -- I'm walking over to a bag to pull back a
6 bag and the train is approaching us now; they're getting to where
7 my guys are. There goes the brakes and the emergency.

8 So, I'm very close to her, so I just say hey, why'd you go
9 brakes and emergency, she's like I don't know. She gets on the
10 phone -- she gets on her mic and she hits RCC. They say to
11 investigate, so me and her -- she comes out the cab and we go and
12 we investigate. The first car looks good, nothing, second car,
13 and we finally get to where she says she sees him and she screams.
14 I see him and I start to call his name like Joe, Joseph, and I
15 don't know, I got -- I was very nauseous at that point.

16 MR. KRAHOLIK: I'm good unless you want to keep going? We're
17 good.

18 UNIDENTIFIED SPEAKER: We're good with all that detail.

19 MR. NELSON: Okay.

20 MR. KRAHOLIK: You good with that?

21 MR. NELSON: Uh huh.

22 BY MR. KRAHOLIK:

23 Q. Are you good to keep going?

24 A. Yeah.

25 Q. So, when you said you call on the flagging lights, I'm sorry,

1 what does that mean? I don't know what that means?

2 A. Okay, well every night before you go out to the job site,
3 they generate a flagging request ID and this is basically telling
4 what tracks you're going to be working on -- it tells, you know,
5 control what tracks you're going to be working on. You're
6 requesting to be on those tracks. So, you're just basically
7 giving them the information that you're going to be working in
8 these areas.

9 Q. So, when -- and again, I just don't know.

10 A. Please.

11 Q. But -- so, when you come to work, you don't know exactly
12 where you're working for that night, or you --

13 A. Well, I do because I usually call ahead and be like hey, what
14 I'm working?

15 Q. Okay.

16 A. I like to get my mind sort of situated on what I'm going to
17 be doing. Like, I've been doing this for a while, so I don't
18 know, like, you know -- I'll have an idea of, you know, what I'm
19 going to need in terms of flagging when I get out there.

20 Q. And is there -- I'm assuming something gets put out on
21 bulletins for the train crew that they know that you guys are
22 going to be out there? Is that true or is that --

23 A. I mean, there's announcements every so often to be aware that
24 there's going to be personnel working on a roadbed.

25 Q. Announcements by?

- 1 A. Announcements in the train -- like on the radio.
- 2 Q. Okay.
- 3 A. Like, you'll hear announcements every so often that -- you
4 know, to be advised that there's people working on the roadbed.
5 That's --
- 6 Q. And you don't know -- you may know you're going to work at
7 34th and 6th Street, but you don't know exactly what track you're
8 going to be on until you find out where they want you?
- 9 A. No, I was going to be on all four tracks.
- 10 Q. Oh, okay, you were going to be on all four? Okay, got you.
- 11 A. Yes.
- 12 Q. So, you clean the whole area when you go do one?
- 13 A. Yeah, station.
- 14 Q. Got you.
- 15 A. Yeah.
- 16 Q. Okay, and you said you -- when she stopped really close to
17 you and you talked to her, how did -- did you talk to her by radio
18 or by --
- 19 A. No, just right there. She was right there.
- 20 Q. She opened the door or something?
- 21 A. She -- I came over to her window and she dropped her window
22 down.
- 23 Q. Okay, when you gave the proceed signal to the flagger, how do
24 you do that to him?
- 25 A. Yes.

- 1 Q. How do you tell him everybody's clear?
- 2 A. I just wave my -- like --
- 3 Q. Your white light?
- 4 A. Yeah, my flashlight.
- 5 Q. Okay.
- 6 A. I wave my flashlight up and down that it's clear and I may
7 occasionally -- I don't know if I did that time, but, you know,
8 you basically be like, you know, let him go or something of that
9 nature.
- 10 Q. Okay, we went out there last night. So, the station has,
11 like, a dip right on the track too?
- 12 A. Yes.
- 13 Q. Where were -- were you on the platform or were you in the --
- 14 A. I'm on the platform, I'm not far enough -- what you would
15 do -- I see what you're saying -- I believe I know where you're
16 going. I don't really want to speculate too much. But at some
17 point, you're going to need a spotter there if that's what you're
18 trying to get at.
- 19 Q. Okay, so the spotter would be in between you and the flagger?
- 20 A. Yes.
- 21 Q. So, everybody can communicate back and forth?
- 22 A. Exactly, yes.
- 23 Q. Okay, but at this time, you didn't need him because you were
24 close enough to -- got you, okay.
- 25 A. Yes.

1 Q. Have you worked with Mr. Joseph before, is that --

2 A. Yes.

3 Q. Okay, so it's not a -- it wasn't a first time thing?

4 A. No.

5 Q. And did you see him give the red stop signal to the train?

6 A. Yes.

7 Q. Did you see where he went after that? Did you see where he
8 went?

9 A. In my eyes, I believed him to be clear, you know. I could
10 see his flashlight clear; I could see -- I believed him to be
11 clear. You know, I didn't see when he gave her the proceed
12 because at that point, customers are coming, you know, meaning
13 there's stuff in between. There's different variables, you know
14 what I'm saying of -- because I'm not focused on him anymore, I'm
15 more focused on my guys because I gave them the proceed already.
16 I'm more focused on my guys making sure they're clear, making sure
17 there's nothing, you know, that would trip the training, you know
18 what I'm saying?

19 Q. Right.

20 A. So, I'm more focused on that at that point. Then, you know,
21 you have customers -- come on, it's 34th Street.

22 Q. Right, yeah, it was pretty busy when we were there last
23 night.

24 A. Yeah.

25 MR. KRAHOLIK: I'm good for now. We're going to go around.

1 BY MR. HERBERT:

2 Q. Phil Herbert, FTA. I'm just going to go back real quick.
3 You've been doing MS-1 for six years?

4 A. Yes, sir.

5 Q. And that's in (indiscernible) 2017?

6 A. Yes, 2017.

7 Q. Just making sure we're clear. Your shift -- you said you
8 started at 10:00?

9 A. Yes, sir.

10 Q. When was your shift running until?

11 A. 10:00 to 6:00.

12 Q. 10:00 to 6:00 a.m.?

13 A. Uh huh.

14 Q. Did you have normal rest before you came into work?

15 A. Yes, sir.

16 Q. About how many hours do you think you got?

17 A. Probably a good eight hours maybe. Something like that; I
18 don't know exactly.

19 Q. How did you feel?

20 A. I felt fine.

21 Q. Okay, I want to -- you indicated that you'd worked with him
22 before and his fitness for duty, you said he was okay?

23 A. Yes.

24 Q. Okay, I don't want to -- have you ever had an issue with him
25 as in working on your crew?

- 1 A. Absolutely not.
- 2 Q. No?
- 3 A. He's a solid individual.
- 4 Q. Okay, did he appear alert when you did fitness for duty?
- 5 A. Absolutely.
- 6 Q. Ready to work?
- 7 A. Absolutely.
- 8 Q. Okay, now you said that you gave him -- and I'm going to jump
9 right ahead here -- you gave him a proceed?
- 10 A. Yes, sir.
- 11 Q. Did you maintain vision on the train? I mean, was there any
12 movement of that train after you gave a proceed?
- 13 A. After I gave a proceed was there any --
- 14 Q. Yeah, when you gave your proceed to Mr. Joseph?
- 15 A. Yes, to him, yes.
- 16 Q. Did that train move at any point? Or how soon did you see
17 that -- if you saw it, how soon did that train move?
- 18 A. I couldn't tell you. I don't know.
- 19 Q. Okay.
- 20 A. I don't know. I didn't see that particular thing. I saw him
21 acknowledge and then I turned my attention away from him and it
22 was more about making sure the train was going to get past safely.
- 23 Q. Okay, and how did he acknowledge that?
- 24 A. By giving me the (indiscernible) thing.
- 25 MR. HERBERT: I don't have anything further, thanks.

1 BY MR. ZAGATA:

2 Q. Zach Zagata, NTSB. This is confusing all of us here. So,
3 just for clarification, you said he got in the clear, what do you
4 mean by got in the clear? Did he get up on the walkway or where
5 does he go to clear?

6 A. I didn't say that he got in the clear because I didn't see
7 him get in the clear, you know what I'm saying?

8 Q. Okay.

9 A. I can't say I personally saw him get in the clear. I saw him
10 acknowledge and then I was sort of now looking to make sure that
11 the train is, you know, not going to trip on anything and, you
12 know, passengers, like, they see the train is coming, so they're
13 coming to the edge of the platform.

14 Q. Understand. So, just in general, for somebody to get in the
15 clear, where would they go to get in the clear?

16 A. He was supposed to be on the bench wall.

17 Q. On the bench wall?

18 A. I spoke to him about that twice.

19 Q. Have you worked with him before?

20 A. Yes.

21 Q. Has he always gotten up on the bench wall or do you observe
22 him doing anything other than that?

23 A. No, it depends on where you're working and where you're
24 flagging at. The variables of that, you know, whether -- you
25 know, whether there's a bench wall there, you know what I'm

1 saying? Like, it just always -- it's --

2 Q. So, if there's not a bench wall?

3 A. You could -- it depends on where you're at, you know, maybe
4 you'll clear it behind the third row. Maybe -- you know, it
5 just -- there's many different areas you can clear up. Like in
6 the station, for instance, my guys would clear up -- there's
7 niches in the station that you have room that you can clear up at
8 34th Street, so that's where my guys cleared up at.

9 Q. So, what about those niches underneath that walkway there?

10 A. No.

11 MR. ZAGATA: No, okay. That's all I've got for now.

12 BY MR. RICHARDSON:

13 Q. All right, I just have a couple quick questions. You
14 mentioned when you were giving your statement that you noticed
15 that the lights were strung up and you went back and turned them
16 on because you got distracted?

17 A. Yes, before track, yeah.

18 Q. So, the lights were working when you departed the flagman
19 area?

20 A. Yeah -- no, it was on the adjacent track, but, like, I said
21 there's, you know, gaps where you can see the other tracks, so I
22 was hoping that light would sign over there too.

23 Q. Okay, because I noticed -- when we went out there last night,
24 we noticed there was a string of lights on the third rail side?

25 A. Yeah, I don't --

1 Q. Those aren't the lights you're talking about turning on?

2 A. On B2 track?

3 Q. Uh huh, down there where the flag was located.

4 A. On the --

5 Q. If you look at the third row side, there was a string of
6 lights hanging. They weren't on last night?

7 A. No, sir.

8 Q. Okay, that's (indiscernible). And one more question, you
9 mentioned that you discussed your rule of the day with your group?

10 A. Yes, sir.

11 Q. Is the flagman included in that group meeting or is he a
12 separate entity?

13 A. Well, he is in a different gang, so he wasn't with me when I
14 initially did that rule of the day in the quarters. But when we
15 got out to the -- you know, when we go out to the job site, that's
16 where I give him his rule of the day.

17 Q. He gets the same briefing, just separately from the rest?

18 A. Just separately because I wasn't with him, you know.

19 Q. Okay, do you remember the rule of the day that day?

20 A. I believe it to be 10-32 I believe and I believe it's --

21 Q. Do you know what that is? I don't.

22 A. I don't -- I can't recall that.

23 MR. RICHARDSON: Okay, that's fine. That's all I have.

24 BY MR. KRAHOLIK:

25 Q. Todd Kraholik with NTSB again. So, the flagger's in a

1 different gang than you and your guys?

2 A. Yes, sir.

3 Q. Do you have the same -- I believe that night you had 12 guys
4 and -- something like that?

5 A. Yes.

6 Q. Are those always the same or do you have different guys every
7 night?

8 A. No, sir, it's different.

9 Q. And, so --

10 A. Well, I mean, I have a core group that normally goes out with
11 me and then, you know, they'll give different people from
12 different gangs to supplement.

13 Q. So, I'm not putting any numbers in there, but let's just say
14 there's 50 maintenance away guys at the headquarters or whatever,
15 you could just get random people along with your core group of
16 people?

17 A. Yes, sir.

18 Q. Okay, and the flagger could be anybody?

19 A. Any qualified person.

20 Q. And you don't determine who your flagger is, that's given to
21 you?

22 A. No, sir -- well, I have a flagger in my gang, but, you know,
23 sometimes he's not there. He was there that night, but -- you
24 know, but sometimes you need more than one flagger, you know what
25 I'm saying?

1 Q. So, you needed -- I don't want to put words in your mouth,
2 did you need another flagger, is that how Mr. Joseph got attached
3 to you?

4 A. Yes, I needed to add a flagger, yes.

5 Q. Okay, so you needed an extra one, so you -- who do you ask
6 for the flagger? Who do you talk to?

7 A. Me, personally, I would ask for the most competent person.

8 Q. But, I mean, who do you call? Like, to your supervisor or
9 how do you get the other flagger?

10 A. Well, every track worker is a qualified flagger.

11 Q. Okay, so how did you get Mr. Joseph that night?

12 A. They assigned him to me.

13 Q. Who assigned them?

14 A. The office.

15 Q. Like the dispatch office?

16 A. Yeah, you know, my T-7 office, it's the -- you know, the
17 people that work in T-7 office, they -- I guess they generate
18 lists and they'll see who their manpower is based on who came in
19 for the night and then they'll assign people to supplement jobs.

20 Q. T-7 would be more of, like, a maintenance away type of
21 headquarters?

22 A. That is -- yeah, it's the track cleaning. Yes, sir.

23 Q. Okay, so we've been -- discussed a lot about banker lights?

24 A. Yes, sir.

25 Q. Can you tell me what a banker light is -- exactly what a

1 banker light is?

2 A. Banker light is a series of five bulbs that go into, like, a
3 piece of wood and it has wires that go down and you can attach to
4 the third rail and to the running rail to illuminate the area.

5 Q. And that night, was there any banker lights there?

6 A. No, sir.

7 Q. Okay, on any of the tracks?

8 A. Well, the track that I turned the switch on, it has many
9 banker lights and it would light up that area. That was on the
10 adjacent track.

11 Q. So, when -- sorry, I'm not familiar with the area. So, you
12 were on -- the incident occurred on B-2?

13 A. B-2.

14 Q. And then you have two tracks in the middle, what are those
15 two tracks?

16 A. Four and three.

17 Q. Four and three, so you would've turned it on three or four?

18 A. Yeah, I turned it on four.

19 Q. Turned the lights on four, and is that normal procedure for
20 you to do that?

21 A. As in normal procedure for me to turn on those lights? I
22 mean, if I'm going to have flagging there, I would make an attempt
23 to -- why not, you know?

24 Q. Okay, yeah, I'm assuming you've cleaned at 34th Street many
25 times, right?

- 1 A. Yes, sir.
- 2 Q. Do you ever -- a banker light up when you work there?
- 3 A. Yes, sir, actually T-7 uses portable lights and -- I guess
4 just to get away from guys always having to always deal with the
5 third rail. You know, it's probably just safer that way and --
- 6 Q. And -- sorry, go ahead?
- 7 A. And my other flagger had a portable light.
- 8 Q. And those go on the wall and shine towards the third rail?
- 9 A. Yes.
- 10 Q. Is that what those -- where those go?
- 11 A. No, they -- shine towards the third rail?
- 12 Q. Where do those lights -- those portable lights --
- 13 A. There's -- you know Milwaukee -- the Milwaukee portable
14 lights?
- 15 Q. Uh huh.
- 16 A. The Milwaukee's, those.
- 17 Q. Where do you set them at when you --
- 18 A. We set them --
- 19 Q. On the wall?
- 20 A. On the bench wall.
- 21 Q. On the bench wall, okay.
- 22 A. Yeah, because we put them on the bench wall.
- 23 Q. So, your other flagger had that that night?
- 24 A. Yes.
- 25 Q. But Mr. Joseph did not have it?

- 1 A. No, sir, he didn't.
- 2 Q. Who would be responsible for him to have that light?
- 3 A. I would be.
- 4 Q. So, you would be? So, do you assign those lights at night?
- 5 Or is he supposed to come to the job with those lights and you say
- 6 okay, tonight you're going to use these lights or you're not? Or
- 7 how do those lights get there, do you bring the lights to the --
- 8 A. I bring the lights.
- 9 Q. You bring the lights to the job, okay. Do you know -- you
- 10 didn't see Mr. Joseph give his stop light, correct? You didn't
- 11 see him raise the red?
- 12 A. I did see him. From what I saw, I do believe he had it in
- 13 his hand and he was waving it.
- 14 Q. Do you know how long after he did that to when he -- when the
- 15 train went into emergency? Do you know how long -- was that a
- 16 long period of time? If you don't remember, you don't remember.
- 17 A. I can't.
- 18 Q. Yeah.
- 19 A. I mean, it wasn't very quick because she came in slow; she
- 20 didn't come in quick.
- 21 Q. Okay, and -- so when he whistled to you, how long did it take
- 22 you to clear, roughly?
- 23 A. Yes, it took maybe -- I don't know. I don't want to really
- 24 speculate too much. Maybe a minute, 45 seconds, something like
- 25 that, you know.

1 Q. Okay.

2 A. The skies get clear, the trains come in, get clear, you know,
3 they're not jumping out the way they're, you know, putting stuff
4 down.

5 Q. So, you mentioned they went on the third rail slide in those
6 little niches over there?

7 A. Yeah.

8 Q. Did anybody come on the platform or just you? Was anybody
9 else that you know that came up on your platform?

10 A. Came up on the platform when the train was coming from the
11 roadbed? Not that I can recall.

12 Q. So, they all pretty much went to the third rail side?

13 A. Yeah.

14 Q. And you were on the platform with the trash?

15 A. Yes, sir.

16 MR. KRAHOLIK: Okay, that's all the questions I have.

17 BY MR. HERBERT:

18 Q. Phil Herbert, FTA. We talked a little bit about the banker
19 lights, we talked a little bit about the portable lights. How
20 many of those portable lights do you -- are you assigned a certain
21 number of the, you have four, five six? However many you need?

22 A. It's usually two, but I only have one right now.

23 Q. You only have one?

24 A. Yeah.

25 Q. We talked a little bit about places of safety. They were

1 talking about the bench way, they're talking about the niches and
2 I know -- and I just want to get it out of you, some areas of
3 safety, all right, to clear up. Could that be a center platform
4 or center walkway?

5 A. What do you mean?

6 Q. Well, so you have your bench wall at this location?

7 A. Right.

8 Q. Talking about other locations and places of safety. Where do
9 you -- where would you clear? Would that be --

10 A. It would usually be, you know, in the niche area, you know,
11 you get spaces that are cut out for a person to stand it. It
12 could be on the platform.

13 Q. Okay, but if there wasn't a bench wall?

14 A. But if there wasn't a bench wall?

15 Q. Right.

16 A. Would it -- okay --

17 Q. Where would they clear up?

18 A. In a niche.

19 Q. In a niche.

20 A. In a niche.

21 Q. Are there places that -- in the between tracks, right --

22 A. You wouldn't want it -- yeah, okay.

23 Q. That have areas of safety on your system?

24 A. I'm not quite understanding.

25 Q. So, in this instance, if you had track two and track four,

1 all right?

2 A. Uh huh.

3 Q. Track two and track four are just opposite each other and
4 then you get to track three?

5 A. Yes, sir.

6 Q. So, track two, track four, in the area in between, you have
7 where the bench wall is, okay?

8 A. Track two and track four has a platform in between.

9 Q. Okay, but back on the outside of the station, there's bench
10 walls?

11 A. Okay, yes, sir.

12 Q. Okay, so at any point do those bench walls disappear and it's
13 just an open space between tracks? Or does that bench wall
14 continue all the way through the system?

15 A. Outside of the station, you come down the stairs, there's an
16 open area, there's, like, another staircase that leads to -- from
17 two to four. That's where I first -- you know, that's where my
18 first initial was like all right, you good, like, you know what
19 I'm saying? Then you go down a little bit more and there's
20 another area there that you can see from the two tracks. But
21 other than that, it's a bench wall, I believe.

22 UNIDENTIFIED SPEAKER: Can we take a moment?

23 MR. ZAGATA: Yes.

24 UNIDENTIFIED SPEAKER: A pause here would be good.

25 (Off the record)

1 (On the record)

2 MR. NELSON: (Indiscernible) so, basically, --

3 UNIDENTIFIED SPEAKER: Say your name.

4 MR. NELSON: Oh, Avery Nelson, N E L S O N. Basically, 34th
5 Street is two islands stations, right? The bench wall -- this is
6 B-2, this is B-4, B-3, B-1, right, you understand?

7 MR. HERBERT: Yep.

8 MR. NELSON: Okay, so the bench wall for B-2 is over here.
9 The trains are going this way, right, think of it that way. The
10 trains are going this way. The bench wall is connected to the
11 platform, you know what I'm saying? There is no bench wall on
12 this side.

13 MR. HERBERT: Right.

14 MR. NELSON: So, I know --

15 BY MR. HERBERT:

16 Q. Those are where the niches are -- or niches?

17 A. Niches and niches, yeah.

18 Q. Right over (indiscernible).

19 A. Yeah.

20 Q. My wife calls them niches, okay.

21 A. So, the bench wall is sort of like the platform almost, you
22 know?

23 Q. Right.

24 A. Not as wide. But going down that way.

25 Q. Okay.

1 A. I wasn't quite sure where you were --

2 Q. And I'm not going to (indiscernible). So, after the bench
3 wall ends, right, that bench wall out of that station, it comes to
4 an end?

5 A. Okay, yes.

6 Q. And then between the tracks two and four, okay, there are
7 pillars, right? There's structures in between those two tracks?

8 A. It's a wall.

9 Q. I remember seeing pillars last night, but okay. But
10 that's -- I'm not going to -- but it's -- but that's an area that
11 you could clear too, right? Am I correct?

12 A. If there's -- if you did see pillars, they're -- you can
13 clear it with pillars. I'm not quite sure.

14 Q. Well, there's spaces between there, right?

15 A. Yeah.

16 MR. HERBERT: Between the two tracks? But that's fine.
17 So -- and I just -- real quick to describe it, Mr. Nelson has put
18 down coffee stirrers to indicate which tracks are there and to
19 explain where the niches are and where the bench walls are just so
20 we can have that on record. But other than -- I think we're okay.

21 BY MR. ZAGATA:

22 Q. Zach Zagata, NTSB. Just for clarification, so you said you
23 gave Mr. Joseph the signal that it was okay for -- to give
24 him -- for the train to proceed, correct?

25 A. Yes, sir.

1 Q. And you did that with your flashlight?

2 A. Yes, sir.

3 Q. How did he respond to you? Was it just with a whistle or did
4 he use a flashlight as well?

5 A. He used a flashlight as well.

6 Q. He used a flashlight as well?

7 A. Yes, sir.

8 Q. Was he facing towards you with the flashlight when he did
9 that motion?

10 A. Yes, sir.

11 Q. And then he turned around and gave another proceed to the
12 operator, is that correct?

13 A. I would assume so. I mean --

14 Q. Okay, did you see the two signals, or did you just see the
15 one? Do you remember?

16 A. I remember seeing the one for me.

17 Q. The one for you?

18 A. Yeah.

19 Q. You don't remember seeing the other one, though?

20 A. No.

21 MR. ZAGATA: Okay, no further questions. Thank you.

22 MR. RICHARDSON: I don't have anything.

23 BY MR. KRAHOLIK:

24 Q. Todd Kraholik with NTSB. I just got one question.

25 A. Sure.

1 Q. You said there was -- you have one light assigned to you now.
2 Is that a banker light or a portable light?

3 A. Portable.

4 Q. And that one portable light was with your other flagger?

5 A. Yes, sir.

6 MR. KRAHOLIK: Correct, okay, so that's all I have.

7 Anybody else have anything else?

8 BY MR. KRAHOLIK:

9 Q. All right, so do you have anything you would like to add?

10 A. I want to know, did she say that she saw him give her the
11 proceed?

12 Q. Yeah.

13 A. But she didn't see -- did she see him clear up?

14 Q. We don't know yet. That's to be determined, yeah. Do you
15 feel there's any questions that we should've asked that we did
16 not? Do you have any suggestions for us that may prevent this
17 from happening again because that's what we're after. We don't
18 want this to happen again. Do you -- is there anything that you
19 can think of that happened that we can use to prevent it from
20 happening again?

21 A. No.

22 Q. Okay, so I have your contact number. If we come up with
23 other questions, is it okay for us to reach out to you and discuss
24 further things if we have to?

25 A. Will you do it by text or will you do it by just phone calls?

1 Q. What would you prefer?

2 A. Just text me.

3 Q. Okay, I mean, it's not necessarily that we're going to, but
4 if something were to happen and we need to contact you, we'll just
5 send you a text.

6 A. Okay.

7 MR. KRAHOLIK: So, that's it. On behalf of the NTSB, we
8 appreciate your time. Thank you for coming in. I know it's not
9 easy. I'm sorry that -- for your loss. You worked with the guy,
10 I'm truly sorry. We're going to go off the record now.

11 (Whereupon, the interview was concluded.)

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CERTIFICATE

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

IN THE MATTER OF: MTA EMPLOYEE FATALLY STRUCK BY
 SUBWAY TRAIN IN MANHATTAN,
 NEW YORK ON NOVEMBER 29, 2023
 Interview of Avery Nelson

ACCIDENT NO.: RRD24FR003

PLACE: New York, New York

DATE: December 1, 2023

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.

