

Written Testimony of Mark Schulze
Vice President of Safety, Training and Operations Support
BNSF Railway Company



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For a Hearing on “The Impact of Railroad Injury, Accident, and
Discipline Policies on the Safety of America's Railroads”

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BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
Telephone: 1-800-795-2673

Chairman Oberstar, distinguished Members of the Committee, my name is Mark Schulze and I am the Vice President of Safety, Training and Operations Support for BNSF Railway Company. In my testimony to you today, I want to make three key points:

First, safety in the railroad industry has improved enormously over the years. That's not the product of managed reporting. That's a fact. Twenty years ago, more employees were getting hurt and there was more risk from rail accidents. Like much of the industry, over that 20 year period BNSF has immensely improved in our safety. Our injury rate is down nearly 80% while rail equipment incidents are down over 25%. The safety plans that railroads have implemented over the years with the help of their employees have accomplished these improvements in safety. The fact remains, however, that approximately one-third of our accidents and one-half of our injuries are human-factor related. There's more to be done. We intend to keep the ground we've gained and continue to make even further progress through improved processes, training and deployment of technology.

Second, railroad safety plans are important. At BNSF, we develop our safety plans with a thoughtful balance of employee empowerment and accountability at all levels of our operation. Railroading is - and always will be - a unique work environment. The factory workforce stretches across vast distances. In many instances, our employees are independent operators, substantially self directed in their work. That's why many self-starting, independent men and women sign up for the railroad. They recognize that their co-workers, their communities, and their company depend upon them to exercise their best judgment, and follow the rules. The routine work of handling heavy, moving equipment in an outdoor environment makes adherence to uniform safety rules even more important.

That adherence to operating rules and eliminating at-risk behaviors can be life-or-death critical. I believe our employees appreciate that reality, and we take that into consideration in developing our safety plans and the fairest means of implementing them.

Third, and most importantly for the purposes of this hearing, there is no place on our railroad for harassment and intimidation - neither for meeting safety goals, nor for managing employees. BNSF has zero tolerance for harassment, intimidation or discrimination. We believe any such behavior must be addressed immediately if we are to maintain a climate in which every BNSF employee can reach is or her full potential. Our position on this is clear.

With the remainder of my testimony, I want to share with you our safety vision and how we implement it, so that you can understand not only just our operations, but also our philosophy.

At BNSF, safety is our highest priority. A safe railroad aligns with every aspect of our corporate vision – return, corporate citizenship and being a valued employer.

Our safety vision is to operate injury- and accident-free. This is about our employees going home after work injury-free, not about managing to statistics. We believe our vision is achievable because we believe every accident is avoidable. We are committed to the ongoing development of processes, training and technology targeted to protect our employees and communities.

The BNSF vision of an accident and injury free workplace has been embraced at all levels of our company.

BNSF will achieve this vision through:

- A culture where safety is our highest priority

- Providing resources and tools where known hazards will be eliminated or safe-guarded
- Employing work practices and training for all employees
- Empowering the workforce

All employees are empowered to take responsibility for their own safety and the safety of their colleagues and our communities. They are expected to take the initiative to stop work processes when they feel safety may be compromised, and they do. The fact is, we learn a great deal from our employees about safety and what we all need to do to be safer. We'd like to take that even further, but often find that post incident collaborative root-cause analysis is made difficult because of FELA. The adversarial nature of the FELA system, and some of the plaintiffs' attorneys, interferes with the railroad's ability to reasonably discover how an injury accident occurred. Others on this panel will speak of FELA at greater length, but it is my opinion that we manage to be safe in spite of not being given the opportunity all of the time to understand those root causes of incidents.

Like all U.S. railroads, BNSF is required to comply with all safety rules, regulations and requirements of the Federal Railroad Administration (FRA). These regulations govern the safety of railroad operations and rail employees throughout the country. BNSF consistently meets or exceeds these requirements. In addition, BNSF has our own safety rules and operating rules for employees and complies with the General Code of Operating Rules (GCOR) which governs the operations of most western U.S. railroads. At BNSF, we utilize a federally mandated operations testing program to confirm that our employees are working safely and in adherence with those rules. Tests under that program occur in a normal operating environment and require employees to show

understanding of the concepts involved in our operating rules. This overall program then is used as a guide to focus resources such as programs, process improvements or training.

The foundation of a particular work group's safety effort is its Safety Action Plan. Every operating division and shop creates and implements a Safety Action Plan that defines the vision and requirements for a safe workplace. These plans include risk identification procedures, employee participation in safety committees, communication, and incident reporting and emergency response procedures.

BNSF employees are also represented in the system-wide Safety Assurance and Compliance Process (SACP) Task Force, a joint safety improvement process that includes the FRA, BNSF management and labor representatives. On each of BNSF's 13 operating divisions, division safety teams, which include labor and management representatives, oversee resolution of issues raised by local site safety teams. Site safety teams are responsible for continuous improvement in processes that identify and reduce human and environmental safety risks at a local level.

Additionally, BNSF was the first railroad to establish safety participation agreements with our labor unions. The first such agreement was signed by the United Transportation Union in March 2002, and by the end of 2007 nearly all of BNSF's labor unions had such agreements in place. These agreements represent a fundamental change in our approach to safety for employees and allow for non-punitive, training-based responses to many types of rule violations instead of traditional discipline.

These agreements, which include craft employees, also provide for workplace observations to identify and prevent potentially at-risk behaviors and conditions. In addition, through these safety participation agreements, more than 100 craft employees

have been selected by their labor leaders to focus full-time on safety programs and to oversee craft-specific safety processes.

Training is also a fundamental element of BNSF's safety program. To assist our employees to properly understand these rules and polices and improve their performance, BNSF provides state of the art training. At our Technical Training Center, located on the campus of Johnson County Community College in Overland Park, Kansas, more than 110,000 square feet of office, classroom and studio space features extensive simulation and lab equipment. I invite you to take a tour of our facility at your convenience. The center's training programs are complemented by other BNSF training methods such as field trainers, training simulators, rules classes and computer based training. These methods allow for additional time and delivery varieties to enhance employees' ability to understand and demonstrate the concepts.

As I previously mentioned, the key element of our safety plan is to educate, train and obtain the commitment of each employee to their own safety and that of those around them. The vast majority of our employees are committed to working safely. However, as we all know, inattention can set in, normal practices can slip for whatever reason or skills can decline as new technology or operating practices are introduced. Our safety program is aimed at respecting the commitment these employees have made to working safely and helping them maintain mindfulness, and at refreshing and improving their skills when needed. With any human organization, there is a small percentage of employees – we estimate no more than 3% - that are either risk-takers, troubled or do not maintain awareness of the consequences of their actions. There is usually a cumulative string of incidents that indicate that an employee is having difficulty. We are focused on identifying

those employees who present risk to themselves and others through an employee review process.

The purpose of our Employee Review Process (ERP) is to assist employees in working without an accident or injury. When an employee's record indicates that individual assistance may be needed, the supervisor will contact the affected employee and conduct an ERP session. Multiple criteria for selection of employees may be used. The ERP is a problem-solving process that does not impact an employee's employment record, nor is it in any way related to an employee discipline process or FELA defense. It involves an employee's supervisor and union representative, if the employee so desires. It begins with an interview, produces a work plan with a list of actions that the employee and the supervisor should take to assist the employee in remaining injury- and accident-free for the remainder of his or her railroad career. Coaching, training and understanding the employee's perspective are at the heart of this employee review process.

As with every work environment, and especially in a safety-critical work environment, accountability for compliance with work rules matters. One of the reasons you've asked me here today is to discuss this. Our goal at BNSF is to consistently, but fairly, apply employee accountability so that the seriousness of safety rules violations is appreciated. The employee discipline process is conducted in accordance with the BNSF "Policy for Employee Performance Accountability." It is designed, first, to encourage all BNSF employees to be actively engaged in safe work behaviors and in ensuring a safe work environment. Second, when a rule violation occurs, this policy provides a process for arriving at an understanding of improvements needed to prevent similar rule violations.

Third, for those rare cases where there is a marked disregard for safety and BNSF rules and procedures, it provides a process to enforce BNSF and federal safety requirements.

The vast majority of rules infractions are handled through coaching and counseling by supervisors. BNSF additionally has alternative handling agreements with labor that in many cases are utilized in lieu of formal discipline. Alternative handling includes training and other non-disciplinary, non-punitive responses to identified or self-reported rule violations. An alternative handling event is not recorded on the employee's personal record and is not considered discipline. Alternative handling events are tracked outside of the formal discipline process and may only be used to determine eligibility for future alternative handling. Formal discipline, whether an employee personal record notation, suspension or termination, represents a small percentage of follow-up to rules violations. Each termination case is reviewed by a senior team of operating employees, including the Chief Operations Officer, in order to ensure consistent and fair application of the policy.

I want to conclude my remarks with a final comment about harassment and intimidation. An essential part of all of the processes I've discussed is our belief that all employees deserve to be treated with dignity and respect. There is no room at BNSF for intimidation, discrimination or harassment. In addition to a corporate culture that absolutely rejects such tactics, BNSF operates under the requirements of Section 225.33 Internal Control Plans, of Title 49, Code of Federal Regulations, Part 225. Among these requirements is that BNSF have a "Policy Statement" prohibiting harassment and intimidation and a declaration of our commitment to complete and accurate reporting of all accidents, incidents, injuries and occupational illnesses. This regulation also requires a "Complaint Procedure" within our Internal Control Plan. BNSF's Internal Control Plan

“Policy Statement” and “Complaint Procedure” were developed through a labor-management consensus process as part of the SACP.

Additionally, BNSF safety rules and policies strictly forbid harassment and intimidation. We have instituted supporting policies and processes in order to make supervisors fully aware of their responsibilities in this arena. Supervisors found to be in violation of this policy would be subject to discipline up to termination.

BNSF’s injury handling and safety reporting policy clearly outlines supervisory responsibility regarding injury reporting and medical treatment. Our injury handling and safety reporting policy, currently located in our Management Instruction No. 21, states, “It is not only BNSF policy but also federal law that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical attention or from reporting an accident, incident, injury or illness will not be permitted or tolerated.” The policy, which has been communicated to supervisors in a number of ways, makes it clear that supervisors cannot, for any reason, discourage an employee from reporting an injury or seeking medical attention. Employees are encouraged to use the Internal Complaint Procedure to report any circumstances in which they feel a supervisor has discouraged them from reporting an injury.

This policy further states that when an injury does occur, the supervisor’s first concern must be the welfare of the employee and obtaining prompt medical treatment if required. The supervisor is to focus on the employee first and then on the need for information for the purpose of preventing future incidents.

In addition to the Internal Complaint Procedure, an individual employee has many other means by which he or she can report harassing or intimidating behavior. For

example, an employee may report such behavior to the FRA or to an anonymous BNSF hotline.

The FRA has instituted strict rules prohibiting harassment and intimidation. The FRA can investigate reports of harassment or intimidation and can levy penalties on individuals who willfully cause a violation of, or non-compliance with, the harassment and intimidation policy.

Another place where BNSF has demonstrated its commitment to a harassment-free work environment is through the creation of the third-party 1-800 hotline. This hotline is also available for employees to report a multitude of concerns such as fraud, theft, safety hazards or harassment. Those concerns may be reported anonymously if the employee desires. Those complaints will then be investigated by appropriate personnel in the BNSF's Law, Human Resources and/or Internal Audit departments. All internal hotline cases are reviewed by a group comprising senior executives, including the Chief Executive Officer.

Taken together, we believe we have processes and procedures and a culture that reject harassment and intimidation and promote a cooperative approach to safety. At the same time, we do not believe that the management of employee expectations and accountability is harassment or intimidation.

I welcome the opportunity to respond to your questions.