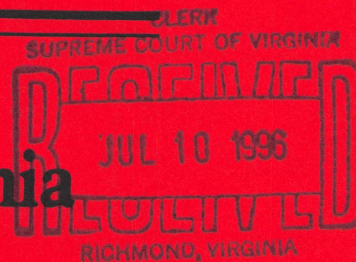


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IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 960533



NORFOLK SOUTHERN RAILWAY COMPANY,

Appellant,

v.

CLINTON TRIMIEW,

Appellee.

JOINT APPENDIX

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Fred R. Kozak
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& HUENNEKENS
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(804) 644-0313**

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Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW NO. 14.520.3

NORFOLK SOUTHERN RAILWAY COMPANY,

Serve: Wiley F. Mitchell, Jr.
Registered Agent
Norfolk Southern Building
Three Commercial Place
Norfolk, Virginia 23510

Defendant

JURY TRIAL DEMANDED

MOTION FOR JUDGMENT

Plaintiff, Clinton Trimiew, by counsel, moves this Court for a judgment and an award of execution against Defendant, Norfolk Southern Railway Company, by reason of the following:

1. Defendant is a railroad corporation organized and existing under and by virtue of the laws of the Commonwealth of Virginia, and was, at all times mentioned herein doing business within the jurisdiction of this Court as a common carrier of intrastate and interstate commerce.

2. Venue lies in this Court as Defendant regularly conducts and solicits business in the City of Richmond, and the Plaintiff resides within the City of Richmond.

3. Plaintiff's action arises under 45 U.S.C. Sections 51-60, commonly known as the Federal Employers' Liability Act, and 45 U.S.C. Sections 1-16, commonly known as the Safety Appliance Act, and 45 U.S.C., Section 23, commonly known as the Boiler Inspection Act.

Filed in the Clerk's Office this 19th day of May, 1972
W.F. Mitchell, Jr. A.M.-P.M.
L.A. 14.520.3
Teste: C. M. M. F. DEAN, CLERK
C. M. M. F. DEAN
L.A. 14.520.3
Total Paid
WILSON & HAJEK
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
VIRGINIA BEACH, VA 23455

4. At all relevant times, Defendant was an intrastate and interstate carrier, and was engaged in interstate transportation and commerce. At the time of his injury, Plaintiff was working in furtherance of interstate commerce and participating in work which directly, closely and substantially affected the general interstate commerce carried on by Defendant.

5. On or about August 20, 1993, Plaintiff was an employee of Defendant, and on or about said date, while so employed in the regular course of his duties at or near Burkeville, Virginia, Plaintiff was injured while performing such duties, which involved his attempt to alight and exit from the passenger side cab of a high rail vehicle which ran along the railroad track. Upon alighting from the vehicle, he suddenly slipped on excessively high and ungroomed ballast rock which lined the track area just outside his vehicle.

6. Plaintiff's initial medical treatment was received at St. Mary's Hospital within the City of Richmond, within this District and Division.

7. Plaintiff alleges that, in violation of the Federal Employers' Liability Act, Defendant failed to provide Plaintiff with a safe place to work and safe equipment with which to work; that Defendant failed to inspect, find, and warn Plaintiff of a dangerous condition; that Defendant and its agents failed to issue appropriate warnings, violated their own standards as to the proper grooming and placement of ballast rock along the railroad line prior to Plaintiff's accident; and that as a result of this negligence and carelessness on the part of Defendant and

its agents, Plaintiff was caused to suffer severe and permanent injuries.

8. The Defendant failed to comply with 45 U.S.C. Sections 51-60, commonly known as the Federal Employers' Liability Act.

9. Plaintiff alleges that, in violation of the Safety Appliance Act, Defendant failed to provide Plaintiff with a safe place to work and safe equipment with which to work as to the high rail vehicle which operated along the railroad line and had certain coupling mechanisms to allow it to push or pull other track equipment; that Defendant failed to inspect, find, and warn Plaintiff of a dangerous condition; that Defendant and its agents failed to issue appropriate warnings prior to Plaintiff's accident; that Defendant failed to install accessible handholds on the interior or exterior of said vehicle; and that as a result of the aforesaid carelessness and negligence of Defendant, Plaintiff was caused to suffer severe and permanent injuries.

10. The Defendant failed to comply with 45 U.S.C. Sections 1-16, commonly known as the Safety Appliance Act.

11. Plaintiff alleges that, in violation of the Boiler Inspection Act, Defendant failed to provide Plaintiff with a safe place to work and safe equipment with which to work; that Defendant failed to inspect, find and warn Plaintiff of a dangerous condition; that Defendant and its agents failed to issue appropriate warnings prior to Plaintiff's accident; and that as a result of this negligence and carelessness on the part of Defendant and its agents, Plaintiff was caused to suffer severe and permanent injuries.

12. The Defendant failed to comply with 45 U.S.C. Section 23, commonly known as the Boiler Inspection Act.

13. As a result of the accident, Plaintiff was caused to lose, and will in the future be caused to lose, income which he otherwise would have earned.

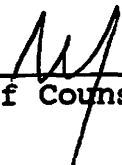
14. As a result of the accident, Plaintiff was caused to suffer, and will in the future be caused to suffer, great physical pain and mental anguish.

15. As a result of the accident, Plaintiff was caused to expend, and he will in the future be caused to expend, large sums of money for medical expenses, and has suffered through surgical procedures and has permanent scarring and impairment as a result of the subject incident.

16. As a result of the accident, Plaintiff was caused to be unable, and will in the future be unable, to perform his necessary and lawful affairs.

Plaintiff DEMANDS A TRIAL BY JURY and prays for judgment against the Defendant in the sum of Eight Hundred Thousand Dollars (\$800,000.00), and his costs expended.

CLINTON TRIMIEW

By: 
Of Counsel

Richard N. Shapiro, Esquire
WILSON & HAJEK, P.C.
Post Office Box 5369
Virginia Beach, VA 23455
(804) 460-7776

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff,

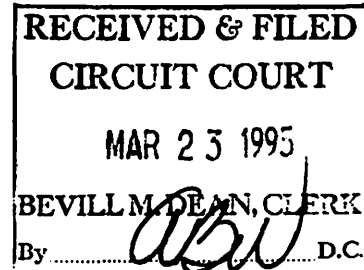
v.

At Law No: 95A-520-3

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

GROUND OF DEFENSE



The defendant, Norfolk Southern Railway Company, for its grounds of defense to the Motion for Judgment filed by the Plaintiff in this action, states as follows:

1. Defendant admits that it is a corporation engaged in intrastate and interstate commerce as a common carrier by railroad. Defendant denies any other allegation in paragraph 1 of the Motion for Judgment.

2. Defendant lacks sufficient information or knowledge at this time to admit or deny, and therefore denies the allegations in paragraph 2 of the Motion for Judgment.

3. Paragraph 3 of the Motion for Judgment sets out legal conclusions to which no response is required; however, to the extent a response may be deemed required, the allegations are denied.

4. Defendant admits that at the times alleged in the Motion for Judgment it was an intrastate and interstate carrier engaged in interstate transportation and commerce, and that

Plaintiff was employed by Defendant as a track laborer. Defendant denies any other allegation in paragraph 4 of the Motion for Judgment.

5. Defendant admits that on or about August 20, 1993, Plaintiff was an employee of the Defendant working at or near Burkeville, Virginia. Defendant lacks sufficient information or knowledge at this time to admit or deny, and therefore denies, the remaining allegations in paragraph 5 of the Motion for Judgment.

6. Defendant lacks sufficient information or knowledge at this time to admit or deny, and therefore denies, the allegations in paragraph 6 of the Motion for Judgment.

7. Defendant denies the allegations in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Motion for Judgment.

8. Defendant denies any allegation in the Motion for Judgment that it has not expressly and specifically admitted herein.

9. Defendant denies that the Plaintiff is entitled to recover the amount claimed, or any amount, for any reason against this Defendant.

10. Plaintiff's injuries, if any, were caused solely by Plaintiff's own negligence.

11. Alternatively, Plaintiff's injuries, if any, were caused by Plaintiff's own contributory negligence.

12. Plaintiff's injuries, if any, were due solely to an intervening and superseding cause and/or causes, and no action or

omission of Defendant was the proximate cause of Plaintiff's injuries, if any.

13. Plaintiff failed to mitigate the extent of his injuries and damages, if any.

WHEREFORE, Defendant Norfolk Southern Railway Company denies that it is liable to Plaintiff in any amount, and requests that Plaintiff's action be dismissed with prejudice, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded the cost of this action, including its reasonable attorneys' fees.

NORFOLK SOUTHERN RAILWAY COMPANY

By:  _____

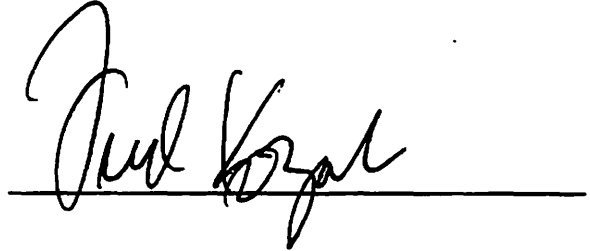
Counsel

John S. Barr (VSB # 5229)
Fred R. Kozak (VSB # 17791)
MALONEY, YEATTS & BARR,
A PROFESSIONAL CORPORATION
600 Ross Building
801 East Main Street
Richmond, VA 23219
(804) 644-0313
Counsel to Norfolk Southern
Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March, 1995, a true and exact copy of the foregoing Grounds of Defense was mailed, first class mail with postage fully prepaid to:

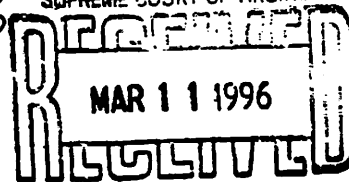
Richard N. Shapiro, Esq.
Wilson & Hajek, P.C.
P.O. Box 5369
Virginia Beach, VA 23455

A handwritten signature in cursive script, appearing to read "Paul Kozal", is written over a horizontal line.

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SUPREME COURT OF VIRGINIA

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING

CLINTON TRIMIEW,

PLAINTIFF,

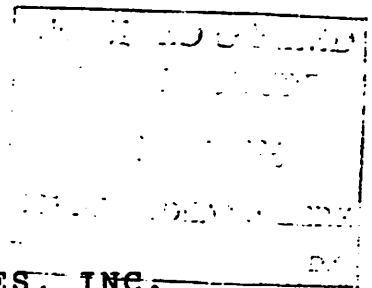
VS.

NORFOLK-SOUTHERN RAILWAY, CO.

DEFENDANT.

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: LA-520
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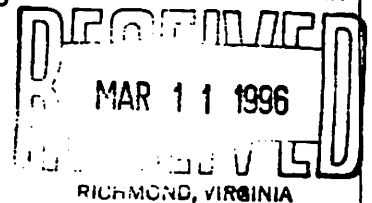
Complete transcript of testimony
and other incidents in the above, when
heard on December 7, 1995, before the
Honorable R. G. Johnson, with a jury.



CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

CLERK
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All right, Mr. Shapiro.

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MR. SHAPIRO: From the first supplemental request for admissions, number 11 read:

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14

"That defendant admits that defendant maintains no written records, or written safety rule, which specifies how a worker's arms and legs are to be positioned prior to exiting from the cab of a high rail vehicle." The response is "admitted."

15

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Number 12. "Admit that defendant has no written memoranda or documents which were distributed to, or conveyed to the plaintiff, detailing the manner in which plaintiff was required to dismount from the cab of a high rail vehicle, such as the one involved in the subject accident." Response, "admitted."

23

24

THE COURT: All right. Now, your first witness is Mr. McGinley?

25

MR. SHAPIRO: Yes. Mr. McGinley.

1 THE COURT: Mr. McGinley, would
2 you come to the witness stand, please.

3 THE BAILIFF: Would you raise
4 your right hand and face the Judge.

5
6
7
8
9
10 CARL CLAYTON MCGINLEY, JUNIOR,
11 a witness having been called upon by the
12 plaintiff, and having been duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SHAPIRO:

16 Q Could you please state your full
17 name, sir, for the Court and jury.

18 A Carl Clayton McGinley, Junior.

19 Q And what is your home address,
20 Mr. McGinley?

21 A 213 Garnet's Way, Suffolk,
22 Virginia.

23 THE COURT: Just pretend that the
24 microphone is not there. You have a good
25 strong voice.

1 MR. SHAPIRO: You're coming
2 through.

3 BY MR. SHAPIRO:

4 Q What is your position?

5 Are you employed by the
6 Norfolk-Southern Railway Company?

7 A Yes, I am.

8 Q And what is your position with
9 the railway company?

10 A Foreman. Right now.

11 Q How long have you been a foreman
12 with the Norfolk-Southern, Mr. McGinley?

13 A Off and on, since '89.

14 Q Since 1989. And are you here
15 today under a subpoena that we issued on behalf of
16 Mr. Trimiew?

17 A Yes, I am.

18 Q And you work out of the Richmond,
19 Virginia area, is that correct?

20 A Correct. That's correct.

21 Q And is that the Richmond
22 District, as they call it?

23 A Well, it would be Virginia
24 Division. The Virginia Division.

25 Q All right.

1 A It's in Richmond.

2 Q What area do you cover in your

3 work?

4 A Burkeville to West Point.

5 Q All right. And Richmond falls in

6 the middle of those two points?

7 A Right.

8 Q And about how many miles of track

9 does your gang work over?

10 A About a hundred.

11 Q When did you first know

12 Mr. Trimiew?

13 A I met Mr. Trimiew when I came to

14 Richmond to work.

15 Q Was it before you became a

16 foreman?

17 A Yes.

18 Q Was it during the '80s, sometime?

19 A First time I met him, it was in

20 the '80s. I don't know when, but --

21 Q How many men do you supervise, as

22 a foreman?

23 A Let's see. Most times it's four.

24 But it varies. It cuts down to two, four, five.

25 Q All right. During --

1 A Somewhere in there.

2 Q During a portion of the time in
3 1993, say from January through August, were you
4 the foreman over any gang?

5 A No, I weren't.

6 Q Who was the foreman up until
7 May -- up until March of 1993?

8 A I believe it was Ernest Jones,
9 but I don't remember.

10 Q And after March of '93, you
11 became the foreman?

12 A After Jones got -- yeah.
13 Whatever time it was.

14 Q So, sometime in 1993, but before
15 Mr. Trimiew's accident in August you were foreman?

16 A Yes. Yes. I believe I was.

17 Q What type of work did your gang
18 do, in general terms, up and down the railroad
19 track?

20 A Repair the track. Whatever
21 needed to be done. Repair the track.

22 Q Did you and your men work off of
23 a certain kind of a truck?

24 A We work out of a gang truck.

25 Q Describe for the jury a gang

1 truck, would you?

2 A Okay. It's a boom truck. How
3 would I explain it?

4 Q Does it have a cab in the front?

5 A It's got, of course, the cab in
6 the front. It's just a regular truck where you
7 carry people in the back. They can sit on a long
8 bench. They are just sitting in there.

9 Just a regular cab truck. This
10 truck runs on the rail.

11 Q So, it was a high rail; it has
12 high rail capabilities?

13 A It has high rail capabilities,
14 plus a boom. We have a boom on the back, so we
15 can --

16 Q And is there a way to get up on
17 to the bed, or the rear of the truck?

18 Are there steps getting up to the
19 rear of the truck?

20 A There's, normally, some steps n
21 the back.

22 Q All right. Who was your
23 supervisor, during that period of time, from -- in
24 1993?

25 A Steve Palmer.

1 Q And what's his title with the
2 railroad, or what was his title, at that time?

3 A Track supervisor.

4 Q What is the track supervisor's
5 responsibilities, as you understood them?

6 A To make sure that we do our jobs.
7 And to help us in any way we need help.

8 Q Who makes work assignments for
9 the gang to go out and do work everyday?

10 A Track supervisor.

11 Q All right. If Mr. Palmer was not
12 around --

13 THE COURT: Excuse me one second.
14 Do we need the easel any more?

15 MR. SHAPIRO: I'm probably going
16 to use it with one other thing, Your
17 Honor.

18 THE COURT: Okay. Let's move it
19 until you need it.

20 MR. SHAPIRO: Okay.

21 BY MR. SHAPIRO:

22 Q When Mr. Palmer was not in
23 Richmond, or was not working, who was the
24 supervisor; or who is the next in line, as far as
25 supervision?

1 A Bob Forsythe.

2 Q And who is Mr. Forsythe?

3 A He's the assistant track
4 supervisor.

5 Q And was he a track inspector and
6 rode in a different truck and inspected track?

7 A Yes. He was track inspector.

8 Q What type of position did
9 Mr. Trimiew have in 1993?

10 A He rode a high rail inspection
11 truck.

12 Q Was he a laborer?

13 A Yes.

14 Q What other gang members were
15 there in 1993 that you supervised, after you
16 became foreman around March?

17 A What other gang members?

18 Q Yes.

19 A You want names of the people I
20 worked with?

21 Q Yes, sir.

22 A Linwood Ferebee. I have to thnk
23 about it. Now, let's see.

24 Q I'll suggest a few.

25 A Joe Wynn.

1 Q Okay.

2 Q Curtis Folks?

3 A Curtis Folks. Yeah, he's still
4 there.

5 Q And --

6 A In '93.

7 Q And up until March, who was the
8 foreman, again, of '93?

9 Was it Ernest Jones?

10 A Ernest Jones. He was, yeah.

11 Q And was Mr. Forsythe the track
12 inspector, between points of time in 1990 and
13 1993?

14 A Yes, he was.

15 Q What does the assistant track
16 inspector do?

17 You mentioned what you did with
18 your gang. What's the job of the assistant track
19 inspector?

20 A He checks the track and makes
21 sure that it's rotatable. I mean, make sure there's
22 no broken rails, no broken joints, no trees
23 hanging down. Make sure the rail is viable for
24 the train to go by.

25 Q Are they supposed to look for any

1 unsafe conditions?

2 A Unsafe conditions. Yes.

3 Q All right. Let me show you some
4 photographs, Mr. McGinley, and ask you if you
5 recognize this truck.

6 MR. SHAPIRO: May I approach the
7 witness, Your Honor?

8 BY MR. SHAPIRO:

9 A Yes, sir, that's the picture of a
10 gang truck -- inspection truck

11 Q Is that the high rail truck that
12 Mr. Forsythe and Trimiew used during 1993?

13 A Yeah, it looks like it.

14 Q Same type?

15 A Same type, yeah. A bread truck.

16 Q Do you have a nickname for that
17 type of vehicle?

18 A We call it -- I don't know. High
19 rail, bread truck, whatever you want to call it.
20 Inspection truck.

21 MR. SHAPIRO: I'd move to
22 introduce those.

23 THE COURT: Any objections, Mr.
24 Kozak?

25 MR. KOZAK: No, Your Honor.

1 THE COURT: They will be admitted
2 as Plaintiff's Exhibits 1 through 3.

3
4 NOTE: The above-referred-to
5 photographs were marked and filed as
6 Plaintiff's Exhibits Nos. 1 through 3.

7
8 BY MR. SHAPIRO:

9 Q Mr. McGinley, do you recognize
10 what this is?

11 Does this appear to be a blow up
12 of one of the --

13 A Yeah. That's the same picture I
14 saw over there.

15 Q Okay. Did you ever ride in this
16 bread truck, or high rail truck yourself --

17 A Yes, I did.

18 Q -- before August of 1993, from
19 time-to-time?

20 A I'm sure. I mean, I rode it from
21 time-to-time. I don't remember the dates.

22 Q Okay. Did you learn in August
23 1993 that Mr. Trimiew suffered an injury at work?

24 A If that was the date. I
25 remember. I know I heard something about it.

1 Q You were not working right with
2 him, at that time, were you?

3 A No, he was with the inspection
4 truck.

5 Q Were you told the vicinity, or
6 what milepost he had been hurt?

7 A Not at the time. Not that I
8 recall. I think he said Burkeville, but I'm not
9 sure.

10 Q Around Burkeville?

11 Okay. What is ballast rock,
12 generally?

13 Is it just a rock that lines the
14 railroad track?

15 A Ballast rock is what we put out
16 to stabilize the track. It's to keep it from
17 moving so much.

18 Ballast rock is just rock. I
19 mean that's it; three inches.

20 Q Is there any particular railroad
21 machine that runs along the rail that's designed
22 to smooth or plow ballast rock?

23 A Yeah. There's a ballast
24 regulator.

25 Q So, do those appear familiar to

1 you?

2 A Yes, sir. They look like ballast
3 regulators.

4 Q All right.

5 MR. SHAPIRO: I'd moved to
6 introduce those.

7 THE COURT: Any objection,
8 Mr. Kozak?

9 MR. KOZAK: No, Your Honor.

10 THE COURT: They will be admitted
11 as four and five.

12

13 NOTE: The above-referred-to
14 photographs were marked and filed as
15 Plaintiff's Exhibits Nos. 4 through 5.

16

17 BY MR. SHAPIRO:

18 Q Have you seen ballast regulators
19 a lot of times during your career on the railroad?

20 A A lot of times. Yeah. About --
21 I guess about 10 years, you know, I seen them all
22 over.

23 Q How long have you worked the
24 railroad, did I ask you?

25 A 20 years.

1 Q 20 years. How does a ballast
2 regulator machine work?

3 You've operated one yourself,
4 haven't you?

5 A It's just the wing comes out and
6 you just regulate ballast. You drop it down on to
7 the head of the ballast, or whatever, and you
8 regulate it to where you want to get it; a nice
9 flow of ballast.

10 Q Well, what does it have, a plow
11 on each side?

12 A Plow in the front, broom in the
13 back. And the arms drop on the side there to pull
14 in or push out rocks; whichever way you want it.

15 Q You say you've operated a
16 regulator before?

17 A Yes, I have.

18 Q Was there a ballast regulator
19 kept or stored anywhere around Burkeville,
20 Virginia as of the summer of 1993?

21 A We had a ballast regulator.

22 Q Where was it kept?

23 A Where was it kept?

24 Q Was it in a sidetrack near
25 Burkeville?

1 A It could have been. I think it
2 was up there in Burkeville, up there near the
3 sidetrack. I'm not --

4 Q And if Mr. Trimiew's accident
5 happened at the 89 milepost, how far would that
6 sidetrack be, approximately, from where that is,
7 in miles?

8 A Oh, that's three miles.

9 Q And you operated that ballast
10 regulator from time-to-time that was over there,
11 didn't you?

12 A Yes, I did.

13 Q Who gave you work assignments
14 to --

15 A Steve Palmer.

16 Q And he would tell you where he
17 wanted you to go to work on the regulator?

18 A Yes.

19 Q Were there any other members of
20 the gang that were qualified or knew how to use
21 that ballast regulator machine when you were there
22 in 1993, in the summer?

23 A Linwood Ferebee could run it.

24 Q Okay. And who else? Anyone?

25 A And Curtis Folks. He probably

1 could run it.

2 Q And from time-to-time did
3 Mr. Palmer call on them to run that regulator?

4 A Called mostly on Ferebee. Yes.
5 Called Ferebee mostly to run it. Yeah.

6 Q Mr. McGinley, what is a timber
7 and surfacing gang?

8 Could you just briefly describe
9 to the jury what that gang does?

10 A Mostly they just put in cross
11 ties. The ties you see on the tracks, they
12 install the ties on the tracks.

13 They take out the old ties and
14 put in the new ties. And then dust it up behind
15 them.

16 Q Just roughly, how many different
17 types of machines, besides -- including ballast
18 regulators and other machines, does a T and S gang
19 have a long a stretch of track?

20 A Well, you got -- you start off
21 with a ballast regulator. You knock the rock down
22 that we already dumped, to sweep away for the
23 spike pullers.

24 The spike pullers come by and
25 pull the spikes. Then you got people that come by

1 with plate jacks; lift up the rail to get the
2 plates off.

3 Then you got a tie sorter. He
4 comes by and kicks the ties out and puts new ties
5 out.

6 Q You mean takes the entire wooden
7 cross ties out and puts a new tie in?

8 A Well, before that you got a tie
9 handler. He's spotting the ties so they would
10 have -- when they come up to a place, all they got
11 to do is grab a tie, pull it in underneath the
12 tracks.

13 Q Now, you didn't work on a T and S
14 gang during 1993, right?

15 A Right, I was with --

16 Q You were with the track
17 maintenance truck?

18 A Right.

19 Q So, let's go back to March of
20 1993. Did you participate in a ballast dumping
21 operation, where a train came in and dumped
22 ballast rock?

23 A Yes, we dumped ballast.

24 Q And where did you dump ballast
25 rock; where was that?

1 A Burkeville. It was from -- we
2 started at the -- I believe we were backed up to
3 the 84, and went to -- 84 to about five miles.

4 Q About five miles?

5 A About five miles. Five or six
6 miles.

7 Q But, was it somewhere in that
8 vicinity of Burkeville, Virginia.

9 A Yes.

10 THE COURT: You don't need that
11 again.

12 A Yes.

13 THE COURT: We've seen it.

14 A Yes.

15 BY MR. SHAPIRO:

16 Q And did it continue past the 89
17 milepost, where the ballast was dumped?

18 A Oh, yes. Yes. Yeah, we --

19 Q Okay. Did the members of your
20 gang all assist with dumping that ballast out from
21 the ballast train?

22 A Yeah. That was a hard day.

23 Q And what was unusual about that
24 day, that the ballast was being dumped --

25 A It was frozen.

1 Q -- in 1993?

2 A The ballast was frozen.

3 Q Was it a cold day?

4 A It had icicles hanging from the
5 cars. And it was kind of cold.

6 Q But, you guys were out there
7 trying to unload it from what?

8 Are there shoots on the bottom of
9 the car doors for the rock to go through?

10 A Right. You're opening up a door
11 on the side. The ballast pours out as you're
12 walking a long.

13 It's supposed to pour out, but
14 that --

15 Q What happened that day?

16 A It didn't pour out. We had to
17 take a hammer and beat it and run with the train.

18 Q Well, why didn't the rock pour
19 out when the door was open?

20 A It was frozen.

21 Q It was frozen solid?

22 A Yeah. Pretty good frozen.

23 Q Did you have to do anything
24 unusual in the way the ballast doors were opened
25 on that day, because of the frozen rock?

1 A Well, yeah. Like I said, we had
2 to beat it with sticks and bars, jam it, and
3 everything else.

4 Q Did you?

5 A Anything to get the rock out.

6 Q : Could you -- would the rock flow
7 smoothly?

8 A No. It didn't.

9 Q Did you have to open the doors
10 wider because of that?

11 A Oh, yeah. We had them opened all
12 the way. Then all of a sudden they'd come out.
13 All of a sudden, if it broke loose it would come
14 out.

15 And it left big piles here, big
16 piles there. And it really wasn't even all the
17 way down.

18 Q So, you're saying the ballast
19 that came out on the -- on both sides of the track
20 was not even, you say?

21 A It was not even.

22 Q Okay.

23 A You had piles in one place, and
24 it would get short and then run back up into big
25 piles. You couldn't get it even because of the

1 way we was beating on it.

2 Q All right. When you were
3 dumping -- when you were dumping that ballast on
4 that particular occasion, did you continue to dump
5 that rock all the way down the entire mileage, or
6 are there any places where you stopped and started
7 again?

8 A Well, you try not to make it
9 through road crossings, and around switches. You
10 try to --

11 Q What do you mean by road
12 crossings; where some road comes across the
13 railroad tracks?

14 A Right. Where the road comes
15 across the railroad track, you try to avoid that.
16 You try to keep the doors shut so you won't have
17 to go back and shovel that off or nothing; so the
18 people can drive.

19 Q So, in other words, if you
20 approached crossings, you would stop the dumping
21 and then start it again on the other side of the
22 crossing, at some distance?

23 A That's right. Just right across
24 the crossing.

25 Q What about on switches?

1 On occasion, did they do a little
2 stop at the switches, sometimes?

3 A It all depends if you could get
4 the door closed. Sometimes you did, sometimes you
5 didn't. And most of the time you went right
6 through it, it then would come out.

7 Q All right. Once you finished
8 that dumping, or -- let me step back for a minute.
9 Why did you all dump the ballast
10 in March of '93?

11 A We were getting ready for a T and
12 S gang.

13 Q All right. And was Mr. Palmer
14 coordinating that work with the supervisors that
15 would bring in that big T and S gang?

16 A He was talking to them. So, I
17 guess he was.

18 Q All right. This was -- the
19 dumping was sometime in March, right, of '93?

20 And when did you -- did you learn
21 at a later date that the T and S gang was not
22 going to come through Burkeville, as scheduled?

23 A Well, yeah. They were scheduled
24 for May. March, April, May. And they changed
25 their mind and scheduled it 'til later.

1 Q All right. And as a matter of
2 fact --

3 A They didn't --

4 Q -- when they rescheduled they
5 never came through before August 20, 1993, did
6 they?

7 A No, they didn't.

8 Q Okay. Well, you, from
9 time-to-time, worked all the way from Burkeville
10 to West Point with your gang truck, didn't you?

11 A That's correct.

12 Q Did you ever talk to Mr. Palmer,
13 do you remember, about that ballast sitting there
14 after, after the T and S gang had been cut off?

15 Did he ever comment to you about
16 it?

17 A No, he didn't.

18 Q Did he know it was there?

19 A He helped dump it.

20 Q Did he ever ask any of your men
21 to smooth the ballast rock, at any time after it
22 was dumped, up until August of 1993?

23 A We got to smooth it down, but I
24 don't remember the date. And this was after
25 Trimiew and some people -- a train crew, they'd

1 been complaining about how high it was up there.

2 So, after that we went down.

3 Transportation men had been complaining and we
4 went down there.

5 Q Okay.

6 A But, I don't remember the date.

7 Q Does the railroad have standards
8 on how ballast is to be maintained and groomed
9 along track, like in the area of Burkeville or
10 anywhere on your line?

11 A Well, getting ready for a T and S
12 gang, just being dumped. So --

13 Q Not the dumping. I'm talking
14 about just normal track --

15 A Oh, yeah.

16 Q Are there rules on how the track
17 is to be generally maintained, as far as ballast?

18 A Yes, there are rules. There are
19 rules.

20 Q For groomed, maintained track,
21 where is the ballast supposed to be in relation to
22 everything that's on the track itself?

23 A It's supposed to be below the
24 ties and -- so, the drainage -- it keeps the
25 drainage good. And keep the track stabilized.

1 Q When you say "below the ties" --

2 A Yes. You got the ties, cross
3 ties there.

4 Q If I can just hold this up. When
5 you say below the ties --

6 A Yes.

7 Q Well, what is it, as far as the
8 level --

9 A Well, coming up even with the
10 ties; right.

11 Q So, you're saying that the
12 ballast has to be even with the cross tie here,
13 pretty much?

14 A Right.

15 Q Is it supposed to be in mounds or
16 big piles?

17 A No, not -- not unless you're
18 getting ready for a gang of T and S.

19 Q To work with?

20 A Right. To work with. Other than
21 that, it's supposed to be like that. Six inches
22 on each side and sitting in a curb we give twelve.

23 Q This six inches is from the cross
24 tie end, right?

25 A Right.

1 Q And that's where the slope is to
2 be?

3 A Right. It slopes down; gives it
4 drainage and keeps the track from moving.

5 Q Where do men like yourself and
6 other gang members walk when you're walking to
7 repair or maintain track, generally?

8 A Well, most of the time we --
9 well, you're already out of the truck. You're
10 walking in the middle of the track.

11 Q Okay. Are there any rules that
12 say that unless you're working in side the rail,
13 that you are to walk outside the rail?

14 A That's correct.

15 Q And that's a rule of the
16 railroad; that you are not allowed to walk in
17 between the rail, unless you're working inside the
18 rail, correct?

19 A That's correct.

20 Q So, men, generally -- or a lot of
21 times are walking on the margin, or the outside of
22 the rail, right?

23 A Right. We walk on the outside;
24 just walking down.

25 Q And does the standard about

1 keeping the ballast flat assist workers in anyway
2 in having a flat walking surface to walk on?

3 A Yes. Definitely.

4 Q Did you know and work with
5 Mr. Trimiew over those years from, I think, the
6 late '80s you said, until 1993?

7 A Oh, yes.

8 Q You all worked together from
9 time-to-time?

10 A Right.

11 Q Did you know whether Mr. Trimiew
12 was generally a safe worker, at least as far as
13 your knowledge?

14 A As far as my knowledge, he's a
15 safe worker.

16 Q You were supervisor over him as a
17 foreman, technically, weren't you; for a period of
18 time there?

19 A For -- Yes -- well --

20 Q Just a number of months in '93?

21 A Yes.

22 Q Did you ever have to discipline
23 him for any type of rule violation, or company
24 rule?

25 A No, I didn't.

1 Q Did you ever have to turn him in
2 for violating any type of rule or procedure?

3 A No, I didn't.

4 Q As a laborer out there, in
5 general, would you agree that the men have to do
6 work from time-to-time that can be seventy-five or
7 a hundred pounds of pushing, pulling, or lifting?

8 A Yes.

9 Q How much does a regular cross tie
10 itself weigh on the railroad track; what are the
11 ranges?

12 A About two hundred.

13 Q Sometimes men have to manipulate
14 or move cross ties, don't they?

15 A Yes.

16 Q And do men have to swing a maul
17 still on the railroad track?

18 A Yes.

19 Q And do they sometimes have to
20 hammer in spikes?

21 A All the time. Yes.

22 Q Did you ever know whether
23 Mr. Trimiew, any time before August 20th of 1993;
24 the last day he worked, ever complained to you of
25 any problem working on the railroad with physical

1 requirements?

2 A None that I know of.

3 Q Did he ever make any complaints
4 about a back problem, of any kind?

5 A Not to me. No.

6 Q Do you all have a nickname for
7 Mr. Trimiew?

8 A We call him Chief.

9 Q Does anyone every call him Slim?

10 A Slim. Chief.

11 Q All right.

12 MR. KOZAK: Please answer

13 Mr. Kozak's questions. Thank you, Mr.
14 McGinley.

15 THE COURT: Mr. Kozak?

16 MR. KOZAK: Your Honor, may we
17 approach the bench?

18 May we approach the bench?

19 THE COURT: All right.

20

21 NOTE: At this time, a sidebar
22 discussion is had off the record,
23 following which the case continues, viz:

24

25 THE COURT: All right, Mr. Kozak.

1 CROSS-EXAMINATION

2 BY MR. KOZAK:

3 Q Mr. McGinley, you said that
4 Mr. Trimiew was a safe worker. And as far as you
5 knew he never violated any rule, right?

6 A That's correct.

7 Q And he never received any
8 discipline?

9 A Not that I know of.

10 Q Are you aware that Mr. Trimiew
11 was --

12 MR. SHAPIRO: I'm going to --
13 Your Honor, we need to approach the bench.

14 THE COURT: Let me hear the
15 question.

16 BY MR. KOZAK:

17 Q Are you aware that Mr. Trimiew
18 was disciplined as a result of the way he got out
19 of the vehicle when he slipped in this case?

20 THE COURT: No. Do you object?
21 What's your objection?

22 MR. SHAPIRO: Can I approach?

23 THE COURT: No, go back. Go
24 back. Tell me what your objection is.

25 MR. SHAPIRO: My objection is

1 Your Honor, that Mr. Trimiew -- whether
2 the company charged Mr. Trimiew with
3 anything is irrelevant.

4 THE COURT: But you asked the
5 witness whether he was ever disciplined
6 for anything.

7 MR. SHAPIRO: I asked the witness
8 if he was every disciplined by
9 Mr. McGinley. He only worked as a foreman
10 for him for six months.

11 THE COURT: Overruled. Go ahead.

12 BY MR. KOZAK:

13 Q I'm sorry, I lost your answer.
14 Were you aware that Mr. Trimiew was disciplined as
15 a result of the way he got out of the vehicle, in
16 this case?

17 A Was I aware of it?

18 Q Yeah. Did you know that?

19 A Sometime later. Yeah, I heard
20 about it.

21 Q After he fell?

22 A Sometime later I heard about it.

23 Q What did you hear?

24 A I heard that --

25 MR. SHAPIRO: Objection, Your

1 Honor. Hearsay.

2 THE COURT: Mr. Kozak?

3 MR. KOZAK: Withdraw

4 THE COURT: Objection sustained.

5 BY MR. KOZAK:

6 Q All right. Mr. McGinley, before
7 March of 1993, you helped unload ballast before,
8 hadn't you?

9 A Yes, I have.

10 Q And is that something that people
11 in the gang do a lot, or whatever?

12 A Well, wherever we're getting
13 ready for a T and S gang, they unload ballast.

14 Q Any idea in the years you've
15 worked on railroad how many times you had unloaded
16 ballast for a T and S gang?

17 A Not really.

18 Q A lot of times?

19 A A lot of times.

20 Q And every time you do that, the
21 ballast is built up and high around the rail,
22 right?

23 A Yes.

24 Q And it stays that way until the T
25 and S gang comes through.

1 And then after the T and S gang
2 goes through, it's regulated?

3 A Normally, yes.

4 Q That's the normal procedure?

5 A That's normal procedure.

6 Q Now, when the ballast is unloaded
7 and its -- after it's been unloaded, and it's
8 still high built up, it's difficult to walk in,
9 isn't it?

10 A Very difficult.

11 Q And you knew that, didn't you?

12 I mean, you know that, right,
13 from your experience working on the railroad?

14 A Yeah. Yes.

15 Q Is it fair to say that everybody
16 who worked on the railroad around ballast knows
17 that?

18 A Yes. I'll say, yes.

19 Q And, so, obviously knowing that,
20 you need to be extra careful whenever in your job
21 you have to walk in ballast that's still built up,
22 right?

23 A Yes.

24 MR. KOZAK: That's all.

25 THE COURT: Is there any

1 redirect?

2 MR. SHAPIRO: Nothing further,
3 Your Honor. Thank you.

4 THE COURT: Thank you very much.
5 Mr. McGinley, you can step down.

6 Can Mr. McGinley be excused?

7 MR. SHAPIRO: Yes. By the
8 plaintiff, Your Honor.

9 THE COURT: Mr. Kozak, is there
10 any reason why Mr. McGinley --

11 MR. KOZAK: He can be excused.

12 THE COURT: Mr. McGinley, you may
13 leave, sir. If you'd like to remain in
14 the courtroom, you may.

15

16 NOTE: At this time, Mr.
17 McGinley is excused.

18

19 Your next witness, Mr. Shapiro?

20 MR. SHAPIRO: One moment, Your
21 Honor. We call Joseph Wynn, Your Honor.

22 THE COURT: Wynn?

23 MR. SHAPIRO: Yes. W-Y-N-N.

24 THE COURT: You all are not
25 talking about the case, I hope?

1 Okay. It's very important that
2 you all are not talking about the case.
3
4
5
6
7

8 JOSEPH WYNN, a witness having
9 been called upon by the plaintiff, and
10 having been duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. SHAPIRO:

14 Q Could you please state your full
15 name.

16 A Joseph Wynn.

17 Q Mr. Wynn, where do you live --
18 reside?

19 Where do you live?

20 A Edenton, North Carolina.

21 Q Are you -- were you employed by
22 the Norfolk-Southern Railway Company?

23 A Yes.

24 Q When were you first hired by the
25 Norfolk-Southern Railway Company?

1 A 1974.

2 Q And when did you last work at
3 Norfolk-Southern?

4 A Richmond.

5 Q What was the date, or the month
6 that you last worked for the railroad?

7 A I think it was in May, I believe
8 it was. I can't exactly recall what that date
9 was.

10 Q May of this calendar year, '95?

11 A Yes.

12 Q And in 1993, what was your job
13 with Norfolk-Southern?

14 A I was -- 1993?

15 Q Yes.

16 A I was working on their high rail
17 truck.

18 Q All right. And did you work on
19 the high rail truck with Mr. Forsythe?

20 A Yes.

21 Q And did you start working on that
22 truck, actually, the day after Mr. Trimiew got
23 hurt?

24 A Yes.

25 Q Prior to that time, were you a

1 member of the work -- of a work gang working with
2 Mr. McGinley who just previously testified?

3 A Yes.

4 Q Who else was on that gang with
5 you and Mr. McGinley?

6 A It was Ferebee.

7 Q Is that Linwood Ferebee?

8 A Linwood Ferebee.

9 Q All right.

10 A And also Curtis Folks.

11 THE COURT: Is this going to be
12 any different than what Mr. McGinley said?

13 MR. SHAPIRO: I just -- I don't
14 know, Your Honor.

15 BY MR. SHAPIRO:

16 Q Is there anyone else --

17 THE COURT: Well, if it's the
18 same, we don't need to hear it again. If
19 you think it's different -- Is there any
20 dispute about who was on the gang?

21 MR. KOZAK: I don't know --

22 THE COURT: You all can stipulate
23 to that.

24 MR. SHAPIRO: All right.

25 A And --

1 THE COURT: That's all right.

2 We've heard that.

3 BY MR. SHAPIRO:

4 Q I'm sorry, was there one other
5 person?

6 THE COURT: We've heard that.

7 Let's go.

8 MR. SHAPIRO: All right.

9 BY MR. SHAPIRO:

10 Q During 1993, you worked on the
11 gang truck?

12 A Yes.

13 Q Before August of '93?

14 A I worked on gang truck before I
15 went on the high rail.

16 Q Okay. Before you went on the
17 high rail truck, where did you work?

18 A I worked on the gang truck.

19 Q And was that the two ton gang
20 truck we're talking about?

21 A That's right.

22 Q Prior to August of 1993, when you
23 went on to the high rail truck to replace
24 Mr. Trimiew, had you ever received any training
25 about how a man was supposed to get in or out of

1 the cab of a high rail vehicle?

2 A No.

3 Q Had you gotten any training at
4 all about how to get in and out of a gang truck?

5 A Afterwards.

6 Q After when?

7 A After Mr. Trimiew had got hurt.

8 Q All right. As of the time that
9 Mr. Trimiew got hurt in 1993, had you ever heard
10 of a phrase called three points of contact?

11 A No.

12 Q Do you know what the phrase three
13 points of contact means, or when did you first
14 hear about that?

15 A After Mr. Trimiew -- they sent a
16 letter after Mr. Trimiew got hurt.

17 Q All right. When you got -- did
18 you ever ride in the high rail truck with
19 Mr. Forsythe before Mr. Trimiew got hurt in August
20 of 1993?

21 A Yes.

22 Q Did you ever have that occasion?

23 A Yes.

24 Q Did you ride in the passenger
25 side of that truck?

1 A Yes.

2 Q Did you have any particular
3 manner in which you got out; that is, did you get
4 out facing out like you get out of a car, or did
5 you back out?

6 How did you do it?

7 A I get out facing -- backing out.

8 Q Backing out?

9 A Backing out..

10 Q Okay. But had the railroad told
11 you how you were supposed to do that?

12 A No.

13 Q Were you involved in the ballast
14 dumping operation in March of 1993?

15 A Yes.

16 Q Was Mr. Palmer?

17 A Yes.

18 Q When did you first hear, in 1993,
19 that the T and S gang was not going to come
20 through the Burkeville area, after the dumping was
21 done, do you remember?

22 A I can't recall what that date was
23 when they said they wasn't coming through.

24 Q Have you dumped ballast over the
25 years in the past?

1 A Yes.

2 Q Normally, how often -- how
3 quickly did a timber and surfacing gang come and
4 do their maintenance, after the ballast is dumped?

5 A It may be about two or three
6 months, something like that.

7 Q Was it ever less than that?
8 Was it ever less than two months?

9 A Yes. Yes. Yes.

10 Q All right. Mr. Wynn, did you
11 ever operate a ballast regulator?

12 A Yes. A little bit.

13 Q And in 1993, prior to Mr. Trimiew
14 getting hurt, was there a ballast regulator
15 anywhere in the area of Burkeville, Virginia?

16 A Yes.

17 Q Where was it?

18 A Sitting on the sidetrack up
19 there.

20 Q Is that the one you had operated
21 before?

22 A I hadn't operated that one, but I
23 could operate it.

24 Q Were there any other members of
25 the gang that could operate that ballast

1 regulator, that you knew?

2 A Yes.

3 Q Who?

4 A Linwood Ferebee. And, also, Clay
5 McGinley. And, also, Curtis Folks.

6 Q Okay. You said you've operated
7 ballast regulators in the past?

8 A Yes.

9 Q Similar to the one in Burkeville?

10 A Yes.

11 Q Do you know about how many miles
12 in which the stone, or the rock, had been dumped
13 in that area of Burkeville, approximately?

14 A It might have been about --
15 approximately five or six miles.

16 Q All right. How long would it
17 take to take that ballast regulator, if you were
18 operating it, and smooth out all the stone that
19 had been dumped, right over in that Burkeville
20 area, in your opinion?

21 A I would say, approximately, about
22 four to five hours.

23 Q After the stone had been dumped
24 and before Mr. Trimiew got hurt, did anybody ever
25 instruct you, or any members of the gang, to take

1 that ballast regulator and to plow -- smooth down
2 that rock that had been dumped?

3 A No.

4 Q Who do you receive work
5 assignments from?

6 A Mr. Palmer.

7 MR. SHAPIRO: That's all the
8 questions I have, except for one more.
9 Wait. I'm sorry.

10 Excuse me, Your Honor.

11 BY MR. SHAPIRO:

12 Q Is it true that our firm
13 represents you, Mr. Wynn; our law firm?

14 Is it true that my law firm
15 represents you on a claim that you have against
16 Norfolk-Southern Railway Company?

17 A Yes.

18 Q You have a lung disease?

19 A Yes.

20 Q Thank you.

21 THE COURT: Any
22 cross-examination?

23 CROSS-EXAMINATION

24 BY MR. KOZAK:

25 Q Good morning, Mr. Wynn -- good

1 afternoon.

2 A Good morning.

3 Q In the two or three months
4 between when the ballast would get regulated, a T
5 and S gang normally comes when the ballast would
6 be built up along the rails, right?

7 A Yes.

8 Q And people would work in it in
9 that condition, right?

10 A Yes.

11 Q And it would be more difficult to
12 work in while it's built up, wasn't it?

13 A Yes.

14 Q People who work on railroads
15 knew, didn't they?

16 A Yes.

17 Q When you testified that you would
18 get out of a high rail vehicle backwards, facing
19 the truck, do you remember that?

20 A Yes.

21 Q You said nobody at
22 Norfolk-Southern instructed you to do that, right?

23 A Yes.

24 Q So, that was just your own common
25 sense about the best way to get out, right?

1 A Right. That's right.

2 Q The safest way?

3 A Yes.

4 Q Thank you.

5 THE COURT: Is there any
6 redirect?

7 REDIRECT EXAMINATION

8 BY MR. SHAPIRO:

9 Q Mr. Wynn, you've seen people get
10 out facing out, or backing out of the cab of a
11 high rail, haven't you?

12 A Yes.

13 Q Did you see Mr. Forsythe, the
14 track inspector, ever get out of the cab of the
15 high rail vehicle facing out, as opposed to
16 backing out?

17 A No.

18 Q How does he get out?

19 A He get out face.

20 Q Did you ever see, before August
21 '93, people getting in and out of the high rail
22 truck, such as Mr. Trimiew and other people?

23 MR. KOZAK: Excuse me, Your
24 Honor. I think I'm going to object
25 without some foundation as to where this

1 is occurring. Is this a high rail vehicle
2 in the yard, out on the track?

3 THE COURT: Mr. Shapiro?

4 BY MR. SHAPIRO:

5 Q Did you ever see people getting
6 in and out of the high rail vehicle on the track
7 before Mr. Trimiew was hurt?

8 A Yes.

9 Q Did you ever see people get out
10 facing out of the cab, of the high rail vehicle?

11 A I can't recall right off-hand.
12 But, I have seen them, you know, getting out --
13 most of the time they would be getting out the
14 side, too, something like that. I didn't really
15 pay that much attention.

16 Q Okay.

17 MR. SHAPIRO: No further
18 questions.

19 THE COURT: Any other questions
20 of Mr. Wynn?

21 MR. KOZAK: No, Your Honor.

22 THE COURT: Can Mr. Wynn be
23 excused?

24 MR. SHAPIRO: By the plaintiff,
25 yes, Your Honor.

1 THE COURT: Mr. Kozak?

2 MR. KOZAK: Yes.

3 THE COURT: Mr. Wynn, thank you
4 very much, sir. You may step down, and
5 you are free to leave, if you'd like.

6 If you'd rather stay in the
7 courtroom, you may do that.

8
9 NOTE: At this time, Mr. Wynn
10 is excused.

11
12 THE COURT: Your next witness,
13 Mr. Shapiro?

14 MR. SHAPIRO: Mr. Ernest Jones,
15 Your Honor.

16 THE COURT: Mr. Ernest Jones.

17

18

19

20

21

22 ERNEST JONES, a witness having
23 been called upon by the plaintiff, and
24 having been duly sworn, testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. SHAPIRO:

3 Q Good afternoon, Mr. Jones.

4 A Good afternoon. How are you
5 doing?

6 Q Please state your full name, sir.

7 A Ernest Dallan Jones.

8 Q And what is your home address,
9 Mr. Jones?

10 A Route 1, Box 249 J, Keysville,
11 Virginia.

12 Q Mr. Jones, were you previously
13 employed by Norfolk-Southern Railway Company?

14 A Yes.

15 Q Can you tell the jury when you
16 first went to work for that railroad?

17 A February the 22, 1973.

18 Q And did you last work for the
19 railroad in March of 1993?

20 A Yes.

21 Q Can you tell the jury some of the
22 jobs you've held with the railroad; just
23 generally, throughout your career?

24 A Yes. I was track laborer.
25 Machine operator. And also a foreman.

1 Q And you were a foreman before
2 Mr. McGinley became the foreman over the gang in
3 Richmond?

4 A That's correct. Yes.

5 Q And how long had you been a
6 foreman over that Richmond gang, prior to March of
7 1993; do you recall?

8 A Approximately, four --
9 approximately four years.

10 Q All right. Did you work under
11 Steve Palmer, the track supervisor, for a short
12 period of time there?

13 A Yes.

14 Q He came to Richmond, what, in
15 1991 or 1990?

16 A Somewhere along there. Yeah.

17 Q Did you participate in ballast
18 dumping in March of 1993, in the Burkeville area?

19 A Yes.

20 Q And who was there, as far as
21 supervisors, at the time that you were there?

22 A Mr. Steve Palmer. And also
23 Mr. Barrett Forsythe.

24 Q All right. Can you describe the
25 conditions of that ballast dumping, and tell us if

1 there's anything unusual about the day when you
2 dumped that ballast.

3 A Yes. The day -- it was very cold
4 that day. The ballast had gotten wet and it was
5 frozen. And we -- as we proceeded to unload the
6 ballast, the ballast -- when we opened the door
7 the ballast wouldn't run out. We had to open the
8 doors all the way up.

9 Q You mean, like the chutes?

10 A Yes. We had to beat on the side
11 of the car, and also chunk up inside the ballast
12 to get the ballast start flowing.

13 Q Did the ballast run out smoothly
14 once you got it coming?

15 A No. It came out mostly in
16 chunks. Frozen chunks.

17 Q Did that -- did a normal amount
18 of ballast come out of the cars, as the cars
19 moved?

20 Did the cars move while the
21 ballast is being dumped?

22 A Yes.

23 Q How fast are the cars moving
24 along the track?

25 A Approximately, two to three miles

1 per hour.

2 Q And the men are walking along?

3 A Yes.

4 Q How was the flow of the ballast
5 rock that was coming out?

6 A Oh, it was coming out piling up.
7 Coming out in chunks, piling up along the rails.

8 Q Okay. Over how many miles --
9 well, let me -- wait a minute. I'm sorry.

10 How many cars were in the ballast
11 train that was unloading ballast, approximately,
12 at that time?

13 A Approximately -- that day, it was
14 about fifty-three, fifty-four cars.

15 Q And is there a specific distance
16 over which that, approximately fifty car ballast
17 train will cover, generally, as it's unloaded in a
18 normal process?

19 A Usually, eight to twelve miles.

20 Q Eight to twelve miles?

21 A Uh-huh.

22 Q Did that train unload over eight
23 to twelve miles?

24 A Approximately, five to six, I
25 think it was.

1 Q So, was the rock compressed into
2 a shorter distance?

3 A Yeah.

4 Q When your men on your gang worked
5 on railroad track along the district that you were
6 in, when the men got out of the gang truck, or
7 whatever, would the men normally walk on the
8 outside of the rail, or inside of the rail?

9 And, explain that, please.

10 A Normally -- only reason you walk
11 on the inside of the rail is in the line of duty;
12 when you have to perform work inside the track.

13 Otherwise, you have to walk on
14 the out -- out of the gates of the track.

15 Q Were there any company rules or
16 standards about how ballast was supposed to be
17 maintained, normally?

18 A Yes.

19 Q And what are those?

20 A Ballast is to be maintained level
21 with the ties, and six inches on -- I think it's
22 six inches ahead of the ties and slope down.

23 Q All right. After you dumped the
24 ballast, or -- let me ask it this way.

25 What did you understand, as

1 foreman, as to when the timber and surfacing gang
2 was scheduled, at least, to come through to smooth
3 the ballast that was dumped in March?

4 A Within a month, usually.

5 Q All right. Did the team -- well,
6 you weren't there after March of '93, were you?

7 A No.

8 Q Did you get hurt on the day of
9 the ballast dumping operation yourself?

10 A Yes.

11 Q Is our firm -- did our firm
12 represent you in the past?

13 A Yes.

14 Q Does the fact that we represented
15 you in the past affect your testimony today, in
16 any way?

17 A No. I just came to tell the
18 truth.

19 Q All right. Did you know whether
20 there was a ballast regulator available for your
21 gang, as of March of 1993.

22 THE COURT: Is his testimony
23 going to be any different then what we've
24 already heard?

25 MR. SHAPIRO: Possibly just on

1 one point, Your Honor.

2 THE COURT: All right. Let's get
3 to the point you think is going to be
4 different.

5 MR. SHAPIRO: Understood.

6 BY MR. SHAPIRO:

7 Q Was there a ballast regulator in
8 that area?

9 A Yes.

10 Q Had you or your men ever used
11 that regulator?

12 A Yes. We had Mr. Clay McGinley
13 who was a qualified ballast regulator. Also,
14 Mr. Linwood Ferebee.

15 Q Did the men use it under your
16 supervision, from time-to-time?

17 A Yes.

18 Q Until March of 1993, when you
19 last worked, had you ridden in a high rail truck
20 like Mr. Forsythe operated on the track?

21 A Yes, I had.

22 Q Up until that time, did anybody
23 ever use a phrase to you called three points of
24 contact?

25 A No.

1 Q When was the first time you ever
2 heard that phrase?

3 A When you asked about it. I
4 haven't heard that phrase.

5 Q All right. Had you ever seen Mr.
6 Forsythe get in and out of the high rail vehicle
7 before March of 1993?

8 A Yes, I had.

9 Q Did you observe whether
10 Mr. Forsythe always got out of the vehicle facing
11 out, or backing out, or what did you see?

12 A Well, he used to get out facing
13 forward, you know, and sometimes he might back
14 out, you know. It didn't --

15 Q Did anyone ever tell you it ever
16 mattered while you were working on railroad?

17 A No.

18 Q Thank you, Mr. Jones.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. KOZAK:

22 Q Good afternoon, Mr. Jones.

23 A How are you doing?

24 Q In addition to the one case that
25 Mr. Shapiro mentioned that his firm represents

1 you, you had another claim sometime before that in
2 which they represented you as well, didn't you?

3 A Yes.

4 Q Something about hearing loss, or
5 something?

6 A Yes.

7 Q So, that's -- they've been your
8 lawyers in two cases before, right?

9 A That's correct.

10 Q And before that, did they
11 represent you in any other claims?

12 A No.

13 Q Okay. Thank you, sir.

14 THE COURT: Is there any
15 redirect?

16 MR. SHAPIRO: Nothing further.

17 THE COURT: Thank you very much,
18 Mr. Jones. You may step down, sir. I
19 assume that Mr. Jones can also be excused?

20 MR. SHAPIRO: Yes.

21 MR. KOZAK: Yes, Judge.

22 THE COURT: Mr. Jones, you're
23 free to leave.

24 MR. JONES: Thank you.

25

1 NOTE: At this time, Mr. Jones
2 is excused.

3
4 THE COURT: Your next witness,
5 Mr. Shapiro.

6 MR. SHAPIRO: Mr. Linwood
7 Ferebee, Your Honor.

8 THE COURT: Mr. Linwood Ferebee.

9 MR. SHAPIRO: Your Honor, we need
10 to take a quick break. Mr. Trimiew needs
11 a break.

12 THE COURT: All right. We'll
13 stand in recess for five minutes. Members
14 of the jury, we'll stand in recess for
15 five minutes.

16 I know it looks like I'm up here
17 pushing everybody fast. But, I need to do
18 that because this case is going to last a
19 couple days.

20 Do we have anyone on the jury
21 that smokes? Any smokers?

22 I'm going to ask that you all go
23 into the jury room. We'll stand in recess
24 for five minutes.

25

1 NOTE: At this time, the jury
2 exits the courtroom, and a brief recess is
3 had; whereupon, the case continues, as
4 follows:

5

6 THE COURT: You can bring the
7 jury back, please.

8

9 NOTE: At this time, the jury
10 enters the courtroom; whereupon, the
11 proceeding continues, as follows:

12

13 MR. SHAPIRO: Our next witness is
14 Linwood Ferebee.

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LINWOOD FEREBEE, JUNIOR, a
witness having been called upon by the
plaintiff, and having been duly sworn,
testified as follows:

24

THE COURT: You could be seated.

25

DIRECT. EXAMINATION

1 BY MR. SHAPIRO:

2 Q Could you please state your full
3 name, sir.

4 A Linwood Ferebee, Junior.

5 Q Mr. Ferebee, what is your home
6 address, please?

7 A 525 Goshen Avenue, Edenton, North
8 Carolina.

9 Q Are you employed by
10 Norfolk-Southern Railway Company?

11 A Yes, sir.

12 Q And how many years have you been
13 employed by the railroad?

14 A Coming this December will be
15 twenty-one years -- I mean September it will be
16 twenty-one years.

17 Q What position are you -- do you
18 have with railroad now?

19 A Laborer.

20 Q During 1993 were you working as a
21 laborer?

22 A Yes, I was.

23 Q And were you working out of the
24 Richmond yard?

25 A Uh-huh.

1 Q Were you qualified to operate a
2 ballast regulator machine in 1993?

3 A I wasn't qualified, but I used to
4 run it.

5 Q You used to run it. How many
6 years had you run a ballast regulator machine?

7 A We just -- on just district I had
8 run it before, you know.

9 Q I'm sorry?

10 A I had run it. Just running it.

11 Q All right. Is a ballast
12 regulator operator required to be familiar with
13 the railroad company rules on maintaining ballast
14 rock?

15 A Uh-huh. I think so.

16 Q Is that required to plow and to
17 do the regulation?

18 A Uh-huh.

19 Q Were there railroad procedures on
20 maintaining ballast rock in the area of Burkeville
21 to Richmond?

22 A Yeah, it was, you know.

23 Q How was the ballast to be
24 maintained?

25 A You plowed it down, you know.

1 You got it the height, you plowed it down.

2 Q What level is the ballast
3 supposed to be outside of --

4 THE COURT: Is it going to be
5 different than what we've heard?

6 MR. SHAPIRO: Just a couple
7 points, Your Honor.

8 THE COURT: Is it going to be
9 different?

10 MR. SHAPIRO: I think so.

11 THE COURT: Okay. If it's going
12 to be. If it's going to be different from
13 what Mr. McGinley told us?

14 MR. SHAPIRO: As I understand it.

15 THE COURT: All right.

16 BY MR. SHAPIRO:

17 Q Are you familiar how long it
18 takes to regulate ballast?

19 A I don't know. Probably -- about
20 five miles, four, five hours. Or something like
21 that.

22 Q To regulate the ballast that was
23 dumped at Burkeville?

24 A I think so. That particular day
25 I remember.

1 THE COURT: You look very
2 surprised, but that's the same thing the
3 other witnesses said. Come on.

4 MR. SHAPIRO: All right, Your
5 Honor.

6 THE COURT: Come on.

7 BY MR. SHAPIRO:

8 Q Were you ever --

9 MR. SHAPIRO: I'm trying to move
10 through my testimony; taking a moment to
11 try to cut things out, so just bear with
12 me a moment, all right?

13 BY MR. SHAPIRO:

14 Q Had you ridden on a high rail,
15 bread truck, type of truck, before August of 1993;
16 the kind that Mr. Trimiew and Forsythe rode?

17 A No. I don't think I've been on
18 that one.

19 Q Did you ever see people getting
20 in and out of the high rail cab?

21 A Yeah.

22 Q Did you see -- how did you see
23 them getting out?

24 A Like normal. They normally get
25 out -- jump right out of it, if that's the way

1 they've been doing.

2 Q Had you ever heard of the phrase
3 three points of contact, prior to August of 1993?

4 A No, I haven't.

5 Q When was the first time you ever
6 heard the phrase three points of contact?

7 A I think after Trimiew got hurt.
8 I think something about the three point contact.
9 I never heard of that before.

10 MR. SHAPIRO: Nothing further,
11 Your Honor.

12 THE COURT: All right. Is there
13 any cross-examination?

14 CROSS-EXAMINATION

15 BY MR. KOZAK:

16 Q Mr. Ferebee, you remember before
17 Mr. Trimiew fell on August of '93, sometime before
18 that, Mr. Palmer had demonstrated getting on and
19 off a gang truck?

20 MR. SHAPIRO: Objection.
21 Leading.

22 THE COURT: This is
23 cross-examination. Overruled.

24 BY MR. KOZAK:

25 A He demonstrated.

1 Q Is that right?

2 A Uh-huh.

3 Q And do you recall the phrase, or
4 the terminology, three point contact being used in
5 that demonstration?

6 A Uh-huh.

7 Q And that was before Mr. Trimiew
8 was hurt, is that right?

9 A No, I don't think so.

10 Q Well, the demonstration with
11 Mr. Palmer was sometime before Mr. Trimiew fell,
12 isn't that right?

13 A It might have been. I don't
14 remember, you know. I just don't remember that.

15 Q All right. That's fine. Thank
16 you.

17 THE COURT: Is there any
18 redirect?

19 REDIRECT EXAMINATION

20 BY MR. SHAPIRO:

21 Q If Mr. Palmer talked about the --
22 what he was talking about the gang truck, where
23 was the demonstration being done when he talked
24 about the gang truck?

25 A Right in front of the office out

1 there, you know.

2 Q Was he talking about it in the
3 rear of the truck, at the bed?

4 A The rear of the truck, yeah.

5 Q Thank you.

6 MR. SHAPIRO: That's all I have.

7 THE COURT: Anything else for Mr.
8 Ferebee?

9 MR. KOZAK: I almost forgot.

10 RE CROSS-EXAMINATION

11 BY MR. KOZAK:

12 Q Do you have a claim against the
13 railroad, in which Mr. Wilson's firm represents
14 you, don't you?

15 A No, I don't.

16 Q Did you have one -- you had one
17 in the past, though, didn't you?

18 A I think about that hearing loss,
19 or something about that.

20 Q Excuse me?

21 A About the hearing loss, or
22 something like that.

23 Q You had a hearing loss against
24 the railroad?

25 A That's been quite a while or so.

1 About a year or so ago.

2 Q And Mr. Shapiro's firm and
3 Mr. Hajek's firm represented you in that?

4 A I think so.

5 THE COURT: Any other questions?

6 MR. SHAPIRO: Nothing further.

7 THE COURT: All right. Mr.

8 Ferebee, you may step down, sir. And
9 unless I hear an objection from counsel,
10 you are free to leave.

11 Or if you'd like to remain in the
12 courtroom, you may.

13 Next witness, Mr. Shapiro?

14 MR. SHAPIRO: We call the
15 plaintiff, Mr. Trimiew, Your Honor.

16 THE COURT: Okay.

17 MR. SHAPIRO: It's going to be
18 long.

19 THE COURT: Why don't we break
20 for lunch. Members of the jury, it's
21 about quarter to one. I'm going to --
22 we're going to take a luncheon recess.

23 I'm going to ask that you all be
24 back here at quarter to two. That gives
25 you about an hour to get something to eat.

1 Again, it's very important that
2 you not talk about this case; either among
3 yourselves or with anyone else. Have a
4 good lunch and we'll see you back here at
5 quarter to two.

6
7 NOTE: At this time, the jury
8 exits the courtroom for a luncheon
9 recess; whereupon, the proceeding
10 continues, out of the presence of the
11 jury, as follows:

12
13 THE COURT: Counsel, anything we
14 need do before --

15 MR. SHAPIRO: I have one brief
16 matter. The Court made the ruling on the
17 rule issue, and I'm going to be talking to
18 Mr. Trimiew. I need to make sure I
19 understand.

20 He was allowed, by the Court, to
21 ask about the rule; which they charge him
22 with the rule violation. I want to make
23 sure I know about the scope, now that the
24 door is cracked. I want to know if it's
25 going to be broken wide open.

1 Now, they did an investigation
2 and these people testified ex parte. And
3 a lot of the case law says --

4 THE COURT: What do you mean?
5 The question that you objected to was, was
6 Mr. Trimiew disciplined by the railroad.

7 MR. SHAPIRO: Right.

8 THE COURT: You had asked on
9 direct examination of a foreman, did you
10 ever discipline Mr. Trimiew. Are you
11 saying that it was okay to ask this
12 particular foreman, but if another foreman
13 had not disciplined him, that that's not
14 relevant?

15 I'd like to hear your argument on
16 that, if that's your argument.

17 MR. SHAPIRO: No, that's not what
18 I'm saying.

19 THE COURT: Okay. What is it?

20 MR. SHAPIRO: I want to make sure
21 you understand. It's not that.

22 THE COURT: That's the only --

23 MR. SHAPIRO: I'm not trying
24 to -- I'm not trying to reopen that. No.
25 What I'm saying -- let me explain.

1 THE COURT: What's your question
2 for me?

3 MR. SHAPIRO: There was an
4 investigation done. The railroad
5 charged -- the charge is one thing. To
6 say they charge you.

7 The scope --

8 THE COURT: Let me -- because I
9 want to give you all time to get something
10 to eat, too.

11 Are you asking me what questions
12 you will be allowed to ask?

13 MR. SHAPIRO: No. I would like
14 to know --

15 THE COURT: Well, are you asking
16 me what questions Mr. Kozak is going to be
17 allowed to ask?

18 MR. SHAPIRO: We want to exclude
19 further reference to the investigation
20 itself. If the Court says that a
21 charge --

22 THE COURT: No. Listen to my
23 question. No, stand. Are you asking me
24 what questions I'm going to allow you to
25 ask, or are you asking me what questions

1 I'm going to allow Mr. Kozak to ask?

2 MR. SHAPIRO: Mr. Kozak.

3 THE COURT: Well, I mean, when
4 Mr. Kozak asks a question that you feel is
5 inappropriate, object.

6 I mean, I've listened to motions
7 in limine. And to the extent that I can
8 rule on them, I do. I heard motions in
9 limine this morning. I made a ruling on
10 that.

11 But, then you -- I don't think
12 this has anything to do with rules. I
13 mean, this has something to do with
14 discipline. And I'll tell you now, if you
15 ask a question -- I don't know why it was
16 relevant whether this foreman, Mr.
17 McGinley, had disciplined Mr. Trimiew.

18 Had I been defending, I would
19 have objected. Mr. Kozak chose not to
20 object, and now I know why. Because, he
21 wanted to ask the question on
22 cross-examination.

23 Any time you ask a question,
24 Mr. Kozak is going to be allowed to ask a
25 question on cross related to that.

1 MR. SHAPIRO: I understand, Your
2 Honor. We're not opening the door to talk
3 about the investigation itself; is what
4 I'm saying. That's what we're concerned
5 with. I don't want to create -- I mean,
6 I've been here. I worked a lot to get to
7 this point. I don't want to --

8 THE COURT: It doesn't sound to
9 me, at this point, that you have, but I
10 don't know. I have to hear your argument
11 in the context of a particular question.
12 That's one of the problems with motions in
13 limine.

14 That's why I say I try to rule on
15 them, because I think it's helpful. But,
16 sometimes I have to hear the precise
17 question that's asked. And I think this
18 is one of those circumstances.

19 You know, the question you asked,
20 had you all asked me that before trial and
21 said, can I ask that question? I would
22 have said, no.

23 But, once you asked it, then I
24 have to allow the defendant to follow up
25 on it. So --

1 MR. SHAPIRO: I understand. I
2 don't have any problem with that. It's
3 just that I feel like the -- what the
4 people said, and in that investigation
5 they held, where they took transcripts,
6 should be off limits.

7 Because, what that tribunal --

8 THE COURT: Why don't you talk to
9 Mr. Kozak at lunch and see if he plans on
10 trying to get any of that in. He may not
11 want to get any of that in. If he does,
12 then when he attempts to do it, make your
13 objection. I'll rule on it.

14 All right. Anything else we all
15 need to talk about?

16 We'll stand in recess until
17 quarter to two.

18 THE BAILIFF: This Court stands
19 in recess.

20
21 NOTE: At this time, a
22 luncheon recess is had; whereupon, the
23 proceeding continues out of the presence
24 of the jury, as follows:
25

1 THE COURT: All right. Counsel,
2 are we ready to get started?

3 I understand that one of the
4 jurors was sitting in the wrong courtroom.
5 You can bring the jury back in, please.

6
7 NOTE: At this time, the jury
8 enters the courtroom; whereupon, the
9 proceeding continues in the presence of
10 the jury, as follows:

11
12 THE COURT: All right. Now, that
13 we're in the right place, we can get
14 started.

15 Mr. Shapiro, who's the next
16 witness, sir?

17 MR. SHAPIRO: My next witness is
18 Mr. Trimiew. Your Honor, right before I
19 call him, I would like to read three more
20 Requests for Admissions. I've talked this
21 over with Mr. Kozak.

22 THE COURT: You've shown that to
23 Mr. Kozak?

24 MR. SHAPIRO: Yes.

25 THE COURT: All right. Members

1 of the jury, Mr. Shapiro is going to read
2 three more statements that the defendant
3 has admitted are true.

4 MR. SHAPIRO: Plaintiff's request
5 for admissions number four. "Admit that
6 there is no compulsory retirement age for
7 men in plaintiff's work classification.
8 The answer is, "admitted."

9 Number five. "Admit that the
10 compulsory retirement age in the
11 plaintiff's work classification is seventy
12 years of age." Answer, "denied."

13 Six. "Admit that plaintiff and
14 all persons in plaintiff's occupation had
15 received periodic increases in rates of
16 pay, and fringe benefits from the date of
17 the plaintiff's first date of hiring,
18 until the time of the accident." Answer,
19 "admit."

20 THE COURT: All right. Now, Mr.
21 Trimiew, would you come to the witness
22 stand, sir.

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CLINTON TRIMIEW, the
plaintiff, having been duly sworn,
testified as follows:

THE COURT: You may be seated.

DIRECT EXAMINATION

BY MR. SHAPIRO:

Q Afternoon. Could you please
state your full name to the jury and Court,
please.

A Clinton Garnet Trimiew.

Q What is your home address, Mr.
Trimiew?

A 1317 North Thirty-second Street.

Q Richmond, Virginia?

A Richmond, Virginia.

Q And what is your present age,
Trimiew?

A Sixty-seven.

Q And have you lived in the
Richmond area your whole life?

A Yeah.

Q Who resides with you, now, in
Richmond?

1 Does your wife reside with you?

2 A Wife.

3 Q And her daughter?

4 A Her daughter. Yeah..

5 Q Mr. Trimiew, how far did you go
6 in school, as far as your schooling?

7 A Eighth grade.

8 Q Did you attend school here in
9 Richmond?

10 A No.

11 Q Why did you stop going to school,
12 in the eighth grade?

13 A Because, stop going to school;
14 went to work to take care of my sister.

15 Q How old were you when you
16 actually were hired by Norfolk-Southern Railway
17 Company, the defendant?

18 A Forty-five.

19 Q Between when you were a young
20 teenager and when you were forty-five, could you
21 just briefly tell the jurors what kinds of jobs
22 you had, and with who.

23 A First job would be Philip Morris.
24 Next one was Lee Industries.

25 Q All right. What kinds of things

1 did you do at that Lee Industries job?

2 A Well, first of all I was in the
3 box department making -- cutting out lumber for
4 boxes with a rib saw.

5 Q What is a rib saw?

6 A It's a table saw that you cut out
7 lumber -- and the next one I was really -- the box
8 department went out of business. They went and
9 put me in the furniture department, making --
10 running the molding machine.

11 Q All right. And was Lee
12 Industries the last position you held before you
13 started working with Norfolk-Southern Railway?

14 A Yes.

15 Q What year did you start with the
16 railroad?

17 A April of '72 -- '73.

18 Q All right. And what job did you
19 take when you started with Norfolk-Southern
20 Railway Company?

21 A Track laborer.

22 Q And has that been the job that
23 you had ever since up until 1993; laborer?

24 A Yeah.

25 Q So, how many total years did you

1 work with the railroad?

2 Is it just over 20 years?

3 A Over 20 years.

4 Q Did you have a nickname on the
5 railroad of Slim?

6 A Some called me Slim. Some called
7 me Chief.

8 Q Tell us about some of your duties
9 as a laborer; just in general terms, so the jury
10 understand what you did?

11 A Sometimes we had to pull ties.
12 Put ties in. Spike them up. Chain and drill.
13 Drill the holes and put joints on them.

14 And all different things. From
15 all the way from West Point to Richmond to
16 Burkeville.

17 Q Okay. Over those years, those
18 twenty odd years, was the railroad the main source
19 of your income?

20 A Yes.

21 Q What was your last date of work
22 with the railroad; was it August 20, 1993?

23 A August 20, 1993.

24 Q Why was that your last day?

25 A Because, I fell and hurt -- and

SO

1 injured my back.

2 Q Before we go into the details
3 there, let me ask you some more things about your
4 job. What were you -- and what you were earning.

5 Over those last two years in 1992
6 and 1993, for example, what were you earning a
7 year with the railroad?

8 A 1992 was over -- a little over
9 thirty-two thousand. That was '93 -- no, '91.
10 '92 was thirty-one thousand.

11 Q All right.

12 THE COURT: You can approach the
13 witness.

14 MR. SHAPIRO: Thank up, Your
15 Honor.

16 BY MR. SHAPIRO:

17 Q Mr. Trimiew, let me show you
18 those two W-2's for 1992 and 1993. Are those the
19 W-2's you received from the railway company?

20 A Yeah.

21 Q And in 1992, did you earn
22 thirty-one thousand six hundred and nineteen
23 dollars and twelve cents?

24 A Yeah.

25 Q And for '93 you worked up until

1 August, right?

2 A Yeah.

3 Q And you earned twenty-two
4 thousand six hundred forty-nine dollars --

5 A And eighty-eight cents.

6 MR. SHAPIRO: Your Honor, I'd
7 move to introduce them.

8 THE COURT: Any objection?

9 MR. KOZAK: No, Your Honor.

10 THE COURT: That will be admitted
11 as one exhibit, Plaintiff's Exhibit Number
12 6.

13

14 NOTE: The above-referred-to
15 1992 and 1993 W-2 forms were marked and
16 filed as Plaintiff's Exhibit No. 6.

17

18 MR. SHAPIRO: Jointly as number
19 six? Jointly as one exhibit?

20 THE COURT: Yes. Plaintiff's
21 Number 6.

22 MR. SHAPIRO: Thank you.

23 BY MR. SHAPIRO:

24 Q How many hours did you usually
25 work a week, during these last couple years?

1 A Well, regular working hours was
2 40 hours -- 40 hours a week.

3 Q Mr. Trimiew --

4 A I mean, eight hours a day. But
5 most of the time I -- we'd be on the high rail,
6 I'd work most of the time overtime.

7 Q Mr. Trimiew, have you ever
8 testified in a courtroom before?

9 A No, I haven't.

10 Q I put some water up there for
11 you, if you need something to drink.

12 Was there any wage raise for
13 workers in your position in July of 1993; a month
14 or two before your last day of work?

15 A Yes.

16 Q And how much was that; was it a
17 three percent increase?

18 A Three percent increase.

19 Q As of the summer of 1993, how old
20 were you?

21 A Sixty-five.

22 Q And what were your plans for your
23 future with Norfolk-Southern, as of the summer of
24 1993?

25 A Trying to keep on working.

1 Q Did you and your wife ever
2 discuss how long you were going to work by that
3 time?

4 A Yeah, we discussed it.

5 Q And did your wife work, at that
6 time?

7 A No. No. She's --

8 Q When were you planning to work
9 until?

10 A I planned to work until I was
11 about seventy. I felt good.

12 Q Well, what was your physical
13 condition, as of the summer of --

14 A I was in good shape. I was in
15 good physical condition.

16 Q Had you had any company
17 physicals --

18 A Yeah.

19 Q -- between, let's say, 1988 and
20 1993?

21 A Yes.

22 Q And what is a return to work
23 physical with the railway company; could you tell
24 the jury?

25 A You have to -- the company

1 supervisor sends you to a company doctor, and then
2 the company doctor gives you a physical.

3 Q Did the doctor -- the company
4 doctor -- on those occasions check your spine?

5 A Yes.

6 Q Your back?

7 A Yes.

8 Q Did they have you do any
9 movements, or did they --

10 A Yeah.

11 Q -- give you a physical
12 examination of your ability to move?

13 A Yes.

14 Q Did you go to any doctors for any
15 back problems between 1988 and August of 1993,
16 when the accident happened?

17 A Not as I can remember.

18 Q All right. Would you be working
19 for the railroad now, if you hadn't been injured
20 in August of 1993?

21 A Yes.

22 MR. KOZAK: Object, Your Honor.
23 That's speculative.

24 THE COURT: I think it's a good
25 objection to that specific question.

1 Mr. Shapiro, you can probably rephrase it.

2 MR. SHAPIRO: I'll move on.

3 BY MR. SHAPIRO:

4 Q What type of physical lifting
5 requirements were there for a person who was a
6 laborer with the railroad, during your last few
7 years?

8 A Well, I was on the high rail and
9 we had to cut the plugs to put in the track. We
10 cut plugs for the welding -- to put in track for
11 the welding.

12 Q What is a plug? Do you mean a
13 plug of metal rail?

14 A Metal rail six feet long.

15 Q What do those weigh?

16 A That's a hundred and thirty-two
17 pounds, six feet.

18 Q Did you move those plugs around
19 in your job duties?

20 A Two of us. Me and Mr. Forsythe.

21 Q All right.

22 A We used to load them on the high
23 rail and bring them down the track.

24 Q Let me turn your attention to
25 before 1993. Were you in a car accident in 1987?

1 A Yes.

2 Q And did you miss any time from
3 work?

4 A Yes.

5 Q And did the company give you a
6 physical before you could return to full duty in
7 1987, or early 1988?

8 A Yeah, they give me a complete
9 physical.

10 Q Where did they send you to?

11 A The doctor on Hull Street. I
12 can't think of his name.

13 Q Does Dr. Kramolowsky sound like
14 the name?

15 A Yeah. Yeah.

16 Q What did he do as far as
17 determining whether you can go back to duty as a
18 laborer, when he examined you?

19 A He checked me all over. He
20 checked me all over, from my shoulder on down to
21 my back. He had me bend down, stoop over. Touch
22 the floor with my hands. Raise my leg up and hit
23 on my knees.

24 Q Did he report to the railroad?

25 A Yes.

1 Q And did you get cleared for full
2 duty back in 1988?

3 A Yes, I did.

4 Q Did you have any other physicals
5 after that by the company; between 1988 and 1990?

6 A I had another physical for the
7 commercial driver's license.

8 Q Did that doctor check your back
9 out, also?

10 A Yes.

11 Q And that was at the request of
12 the company?

13 A Right.

14 Q Did you get clear?

15 A Cleared for full duty.

16 Q Mr. Trimiew, over the last
17 several years, did you work as a laborer assisting
18 the track inspector, Mr. Bob Forsythe?

19 A Yes. Right.

20 Q What did the assistant track
21 inspector generally do for the railroad?

22 We've heard some of that.

23 A We'd go along the track. Inspect
24 the rails. And if we see anything wrong, we'll
25 stop and correct it; check switches from one end

1 of the territory to the other.

2 And if we find anything broke, we
3 had to fix it. Broken combine joints. Joints
4 that tied the rail together with the switch. We
5 had to fix it.

6 Q Okay. You're familiar with --

7 THE COURT: Let me interrupt you
8 for just a moment. It's very important
9 that all of you pay attention and listen
10 to all the evidence.

11 If you feel you need to take a
12 break, just let me know and we'll take
13 one. But everybody needs to stay awake.

14 Go ahead, Mr. Shapiro.

15 MR. SHAPIRO: Thank you, Your
16 Honor.

17 BY MR. SHAPIRO:

18 Q You've heard testimony about a T
19 and S gang. You're familiar with what a T and S
20 gang is, right?

21 A Yes. I know mainly, but I know
22 what a T and S gang is.

23 Q But you worked around them when
24 they were --

25 A Worked around them.

1 Q -- were working, sometimes,
2 right?

3 A Right. I worked around.

4 Q And let me turn your attention to
5 questions about a ballast regulator, okay?

6 Was there a ballast regulator in
7 the area of Burkeville, Virginia in 1993?

8 A Yes. There was a ballast
9 regulator in the area of Burkeville form 1980 til
10 1993.

11 Q Had you seen it yourself before?

12 A Yes, I seen it myself.

13 Q Was it working? Was it used
14 during that year?

15 A Yes, it was working.

16 Q Let me turn your attention now to
17 the date of the accident, Mr. Trimiew. You were
18 in, I guess, a one person gang. And you worked
19 with Mr. Forsythe, right?

20 A Right.

21 Q And was he your supervisor?

22 A Yes, he was the supervisor.

23 Q Did he -- who, between the two of
24 you, determined what you were going to do and
25 where you were going to go each day?

1 A Mr. Forsythe.

2 Q All right. I want to show you
3 some pictures, Mr. Trimiew.

4 MR. SHAPIRO: I think they're
5 already in evidence. The pictures of the
6 high rail.

7 THE COURT: Of the high rail?

8 MR. SHAPIRO: All of those, Your
9 Honor.

10 THE COURT: Well, let's see where
11 we go with those.

12 MR. SHAPIRO: Okay.

13 THE COURT: Again, if he's going
14 to say something different about them than
15 what we've already heard, feel free to do
16 so. Go ahead.

17 MR. SHAPIRO: Yes. I want to
18 show that one. Are there any other
19 pictures, or are these the only ones?

20 Just those two. Okay. That's
21 fine.

22 THE COURT: But only if you're
23 going to ask him something different than
24 we've already heard.

25 MR. SHAPIRO: Yes, Your Honor.

1 BY MR. SHAPIRO:

2 Q Mr. Trimiew, do you have a
3 picture there of the opened door of the track
4 inspector's truck?

5 A Yes.

6 Q And is this just a larger picture
7 of that picture you're looking at?

8 A Right.

9 Q This vehicle ran on the tracks,
10 or on the highway, right?

11 A Right.

12 THE COURT: Come on, Mr. Shapiro.
13 I mean it. Let's just get to something
14 that we haven't heard.

15 MR. SHAPIRO: I understand.

16 THE COURT: We've heard that.

17 MR. SHAPIRO: Yes.

18 THE COURT: I know you're going
19 to tell me you're going to get to
20 something different. I want you to get to
21 the different part now.

22 MR. SHAPIRO: All right. All
23 right.

24 THE COURT: Let's go.

25 BY MR. SHAPIRO:

1 Q Mr. Trimiew, on the day of August
2 20, 1993 where did you leave with Mr. Forsythe to
3 start working; from where?

4 A From Richmond to -- we went up
5 there on the highway to Burkeville and got on at
6 Burkeville and headed back to Richmond.

7 Q Okay. When you say you got on at
8 Burkeville, you mean you put the high rail truck
9 on the rail?

10 A Put the high rail on the rail on
11 the crossing.

12 Q And --

13 MR. SHAPIRO: Do we have that map
14 around hear somewhere?

15 THE COURT: Why -- what -- Is
16 there a dispute about where this took
17 place?

18 MR. KOZAK: No.

19 MR. SHAPIRO: No, Your Honor.

20 THE COURT: Well, if there's not
21 a dispute why do you really need to be
22 showing this witness the same --

23 THE COURT: I was just going to
24 show the jury where he got on.

25 THE COURT: But, if there's no

1 dispute -- I mean, if you tell me that's
2 relevant and it makes a difference whether
3 he got hurt in the City of Burkeville or
4 one mile out or five miles out, I'll let
5 you show it to the jury again.

6 I really don't understand what
7 difference it makes where on that map he
8 got hurt.

9 MR. SHAPIRO: Okay.

10 THE COURT: All right.

11 MR. SHAPIRO: Well, it matters
12 for a number of reasons. But, I don't
13 think it's disputed where he got on --

14 THE COURT: No. If you can --

15 MR. SHAPIRO: So, I agree with
16 you.

17 THE COURT: No. If you can
18 explain to me why it is. I don't want to
19 prevent you from putting on your case.

20 But, I do want to prevent you
21 from taking up more time than is necessary
22 for presenting your case

23 MR. SHAPIRO: And I agree with
24 you.

25 THE COURT: All right. Let's go,

1 then.

2 BY MR. SHAPIRO:

3 Q So, you put the vehicle on in
4 Burkeville sometime in the morning of August 20th?

5 A Right.

6 Q Okay. And what happened next,
7 after you started heading north back towards
8 Richmond?

9 A Well, all I can recall is that I
10 think we stopped at a few switches there in
11 Burkeville and checked on them.

12 Q All right. At those points, was
13 there mounds of ungroomed ballast where you
14 stopped?

15 A Not around the switches.

16 Q All right. And then where did
17 Mr. Forsythe head?

18 Did he head north or --

19 A He headed north.

20 Q Did he tell you he was getting
21 ready to stop to cut down bushes after that; right
22 before the accident happened?

23 A I think he stopped first. Then
24 he said he had a bush to cut.

25 Q You can put those photos down. I

1 don't think we're going to refer to them, yet, Mr.
2 Trimiew.

3 Who selected the spot to stop
4 there?

5 A Mr. Forsythe.

6 Q What did you do? Who got out
7 first?

8 A Mr. Forsythe.

9 Q And was he driving the truck?

10 A He was driving the truck.

11 Q All right. And what -- did you
12 have to do anything before you started to get out
13 of the truck?

14 A I reached down and got my hard
15 hat and put it on.

16 Q Did you have any other safety
17 equipment you had to put on before you got out of
18 the truck?

19 A Hard hat and gloves.

20 Q And then what do you do next?

21 THE COURT: Is there a reason
22 you're holding that up there?

23 MR. SHAPIRO: Because the jury
24 can see how --

25 THE COURT: Well, if you want

1 Mr. Trimiew to refer to anything on this
2 picture, let's get to that picture now. I
3 want the jury to pay attention to Mr.
4 Trimiew. Unless, you want the jury to pay
5 attention to the picture.

6 MR. SHAPIRO: When it gets to the
7 point, I'll --

8 THE COURT: Yeah. When we get to
9 that point, you can show it to the jury.
10 But you were asking him questions and just
11 holding the picture up, and I'd rather the
12 jury focus on Mr. Trimiew.

13 MR. SHAPIRO: Okay.

14 THE COURT: Okay. Go ahead.

15 BY MR. SHAPIRO:

16 Q What happened next, Mr. Trimiew,
17 when you turned in the seat?

18 A When I turned in the seat?

19 Q Yeah. When you started to get
20 out.

21 A I turned around and I looked down
22 on the ground. And it looked safe to get out.

23 So, I took it and reached up and
24 put my hand on the door and reached up to grab the
25 iron. I stepped down on the ballast. And as I

1 stepped down on the ballast, the ballast just
2 rolled out from under me likes marbles.

3 Q And where did you go? Where did
4 your body go?

5 A I went down in the ditch and
6 landed down in the ditch.

7 MR. SHAPIRO: Now, Your Honor, I
8 want to hold up the photo here. Could I
9 approach the witness, or can we use the
10 easel?

11 THE COURT: Which would you
12 rather do? Do you want to use the easel?

13 MR. SHAPIRO: I'd rather -- just
14 so he can point, without getting up.

15 THE COURT: All right.

16 BY MR. SHAPIRO:

17 Q Mr. Trimiew, where did you put
18 your hands when you were getting out of the truck?

19 Just point.

20 A I put my left hand over there and
21 reached for the grab iron up there.

22 Q So, is there a grab iron up here?
23 It's hard to see it.

24 A There's supposed to be. I think
25 it is a higher one.

1 Q And where was Mr. Forsythe, when
2 you slid down the ballast line?

3 A He was over there cutting the
4 bush down.

5 Q And did you feel anything when
6 you slid?

7 A When I slipped down in the ditch,
8 I felt something pop in my back.

9 Q And how soon did Mr. Forsythe
10 come around the truck, to see you on your side?

11 A When I hollered.

12 Q Did he come around the back, or
13 the front of the truck?

14 A He come around the back.

15 Q And where were you when he first
16 saw you?

17 What position were you in?

18 A I was sit -- I was sitting on --
19 like I said, I pulled myself up and sat up on the
20 side of the bank. I reached down and picked up my
21 hat and had put on my hard hat.

22 Q Where had your hard hat gone?

23 A Fell down beside me. Fell down
24 in the ditch.

25 Q At that point, when you were

1 seated there, was the ballast -- describe the
2 ballast rock, at that point there.

3 A The ballast was up to -- it was
4 even with the top of the rail.

5 Q Top of the rail?

6 A Top of the -- yeah. But, it
7 was -- you know, not against the rail, but it was
8 about this far from the rail. It was just up to
9 the top of it.

10 MR. SHAPIRO: Your Honor, may I
11 hold this up and let him demonstrate.

12 THE COURT: Yes, sir.

13 BY MR. SHAPIRO:

14 Q Mr. Trimiew, I put some red lines
15 on here, but I don't want you to be influenced by
16 that.

17 I want you to tell the jury, by
18 looking at this diagram, how high the ballast rock
19 was on both sides of the rail?

20 A The ballast rock was just about
21 like this.

22 THE COURT: Can you hold it and
23 turn it around a little bit, so the jury
24 can see?

25 Q Yeah. So, the jury can see it.

1 A Just about like he got it, on
2 both sides of the rail.

3 Q Okay. Mr. Trimiew, do you have
4 some photographs there that you took; two
5 photographs of the ballast?

6 A Uh-huh.

7 THE COURT: Yes, sir, what's the
8 question?

9 MR. SHAPIRO: He hasn't found
10 them yet. Then I'm going to ask him.

11 THE COURT: What's your question?

12 BY MR. SHAPIRO:

13 Q Did you take those pictures of
14 the area where you fell?

15 A Yes. I took the pictures of
16 where I fell.

17 Q And was that the exact area,
18 pretty much, where you fell?

19 A Pretty much exact area.

20 Q Was the ballast in the same
21 general condition in those photographs, as to when
22 you fell?

23 A Yes.

24 Q Can you point to the jury and
25 kind of tell them where it was that you fell?

1 Maybe we'll put -- maybe you can
2 just put some little type of arrow next to the
3 photo, or something, where the general area was.

4 A Right up here. Right where you
5 can't see nothing. Right up here where the rail
6 stops. That's just -- almost at the crossing.

7 And down here from the crossing
8 here, by the rail, the ballast is up to the top of
9 the rail. That's where I fell.

10 Q Okay. Are there any other
11 photographs?

12 Let me take that from you, Mr.
13 Trimiew.

14 A There's another photograph. I
15 don't know who took this one. But, this
16 photograph is why we stopped -- where we stopped.
17 You can see the ballast. You can see the ballast
18 high right there, and all the way back.

19 But, they're usually not up
20 against the rail here. That's why they started
21 cutting off back here, because there's a crossing
22 right there.

23 Q So, you're saying toward the
24 foreground, the ballast isn't in mounds, at that
25 point?

1 A Right.

2 Q Okay.

3 A We started cutting the ballast
4 off.

5 MR. SHAPIRO: Your Honor, could
6 we mark this first one as the next
7 Plaintiff's Exhibit.

8 THE COURT: Any objection, Mr.
9 Kozak?

10 MR. KOZAK: Is that the one he
11 testified that he didn't know who took it?

12 MR. SHAPIRO: That's the one he
13 took; one of the ones he took. This is
14 the one.

15 MR. TRIMIEW: That's not the one
16 I took right there. Yeah, that's the one
17 I took.

18 MR. KOZAK: I didn't hear him
19 testify as to when he took it.

20 THE COURT: He didn't. Do you
21 have any objection?

22 MR. KOZAK: Yeah, I object,
23 without a proper foundation.

24 THE COURT: All right. Objection
25 is overruled. This will be Plaintiff's

1 Exhibit Number 7.

2 MR. TRIMIEW: This is the one I
3 took.

4
5 NOTE: The above-referred-to
6 photograph was marked and filed as
7 Plaintiff's Exhibit No. 7.

8
9 BY MR. SHAPIRO:

10 Q All right. You're holding up
11 another picture. That's the one you didn't take?

12 A Yeah. That's the one.

13 Q And you talked about that one
14 just now?

15 A Right. Yeah.

16 Q All right. Let's go ahead and
17 advise the Court. Was that provided by the
18 railroad in the litigation?

19 A Yes.

20 Q Okay.

21 THE COURT: Any objection,
22 Mr. Kozak?

23 MR. KOZAK: No, Your Honor.

24 THE COURT: All right. This will
25 be the next --

1 BY MR. SHAPIRO:

2 Q And is there another photograph?

3 MR. SHAPIRO: I'm sorry, Your
4 Honor.

5 THE COURT: That's all right. Go
6 ahead.

7
8 NOTE: The above-referred-to
9 photograph was marked and filed as
10 Plaintiff's Exhibit No. 8.

11

12 BY MR. SHAPIRO:

13 A Yes. Here's another one.

14 Q And did you take that photograph?

15 A Yes.

16 Q And where was -- can you hold
17 that up so the jury can see it?

18 A That's supposed to be -- that's a
19 rail right there.

20 Q Okay.

21 A And I slid from the ditch across
22 the rail.

23 Q What were you trying to show in
24 that photograph?

25 A How high the ballast was from the

1 ties up to the rail.

2 Q Okay.

3 MR. SHAPIRO: I move to introduce
4 that.

5 THE COURT: Mr. Kozak.

6 MR. KOZAK: No objection.

7 THE COURT: That will be
8 Plaintiff's Exhibit Number 9.

9
10 NOTE: The above-referred-to
11 photograph was marked and filed as
12 Plaintiff's Exhibit No. 9.

13

14 MR. SHAPIRO: All right. Let me
15 just see. I think that one is already an
16 exhibit. Hold on to that one, okay?

17 Your Honor, should I move to
18 introduce this.

19 THE COURT: Any objection,
20 Mr. Kozak?

21 MR. KOZAK: Well, Your Honor, I
22 believe that the plaintiff did not make
23 the drawings. Mr. Shapiro made those
24 and --

25 THE COURT: You do object?

1 MR. KOZAK: I do object.

2 THE COURT: I think you have to
3 establish what those marks are.

4 MR. SHAPIRO: All right.

5 BY MR. SHAPIRO:

6 Q Mr. Trimiew, there's a circled
7 red area there. What is that circled red area?

8 A How high the ballast is.

9 Q Where the circle is. Would that
10 have been the general area in which you would have
11 stepped down?

12 A Yeah. Yeah.

13 Q And what are the little dotted
14 red lines?

15 Did you --

16 MR. SHAPIRO: I think he's
17 already testified that that's where the
18 mounds of ballast were. So, I think I'd
19 move to introduce it, Your Honor.

20 THE COURT: Any objection?

21 MR. KOZAK: No objection.

22 THE COURT: All right. That will
23 be Plaintiff's Exhibit Number 10.

24 MR. SHAPIRO: Thank you.

25

1 NOTE: The above-referred-to
2 drawing was marked and filed as
3 Plaintiff's Exhibit No. 10.

4
5 BY MR. SHAPIRO:

6 Q Well, Mr. Trimiew, was the
7 ballast rock groomed in the normal fashion where
8 you slipped?

9 A No, it was not.

10 Q Was that area where you slipped
11 the same area over which that ballast had been
12 dumped in March of 1993?

13 A Yes.

14 Q How long after ballast dumping,
15 in your experience, is it that the T and S gang
16 comes through and does its maintenance and smooths
17 the rock?

18 A Usually, it'd be, most of the
19 times, a month to two months.

20 Q Did you understand, whether
21 Mr. Palmer or Mr. Forsythe knew that the T and S
22 gang was not coming through?

23 A Yeah. They knew. Yeah, I hear
24 that they knew they wasn't coming through.

25 Q Well, had you and Mr. Forsythe
 118

1 passed that very area where you fell on work days
2 before August 1993?

3 A Yes.

4 Q Had you seen that there -- did
5 you know that the ballast was in mounds in that
6 general area?

7 A Yes. I knew ballast was in that
8 general area. But, I didn't -- we had never
9 stopped, not that I can remember, in that area
10 anymore than we had the switches.

11 Q How much area of track did you
12 all cover in your duties, from West Point to
13 Burkeville?

14 A Fifty-three miles, I think. A
15 little over fifty-seven miles.

16 Q Richmond to Burkeville?

17 A Burkeville to Richmond.

18 A How about Richmond to West Point
19 on the other side?

20 A Forty-eight miles.

21 Q Okay. And was ballast dumped in
22 mounds like that anywhere but that area of
23 Burkeville?

24 A Just in that area.

25 Q Was the ballast in March of '93

1 dumped near a railroad crossing, where the road
2 came across?

3 A No.

4 MR. SHAPIRO: Your Honor, at this
5 point we have about a three minute
6 videotape that we'd like to show.

7 THE COURT: All right. Mr. Kozak
8 has seen it?

9 MR. SHAPIRO: Yes.

10 THE COURT: Mr. Kozak, you have
11 seen it?

12 MR. KOZAK: Yes, I have. I don't
13 have any objection to it.

14 THE COURT: All right.

15 MR. SHAPIRO: Put it right here,
16 Your Honor?

17 THE COURT: Yeah.

18 MR. SHAPIRO: Could have Mr.
19 Trimiew stand in front of -- stand right
20 here while it's being shown?

21 THE COURT: Any objection?

22 MR. KOZAK: No, Your Honor.

23 THE COURT: All right. Mr.
24 Trimiew, you may step down, sir.

25

1 NOTE: At this time, a video
2 is now being show; whereupon, the
3 proceeding continues, as follows:
4

5 Q Okay. Mr. Trimiew, what is being
6 shown right here?

7 A Two inspectors are walking down
8 the track, checking ties and marking the bad ones.

9 THE COURT: You need to keep your
10 voice up.

11 BY MR. SHAPIRO:

12 Q Yes, they need to hear you.

13 A The two track inspectors are
14 walking down the track, checking bad ties.

15 Q Is that the kind of truck,
16 generally, that you were in with Mr. Forsythe;
17 riding on the high rail?

18 A Right. That's the kind of truck.

19 Q And this is the kind of work that
20 you all did?

21 A Yeah.

22 Q Okay. Now, what is being shown
23 in this instance?

24 A That's a bush hog that comes down
25 the track about every three years and cuts bushes

1 down on both sides of the track, at the same time.

2 Q Now, when you're in between the
3 three years, is this the kind of things that you
4 and Mr. Forsythe checked for, to make sure bushes
5 weren't over-hanging?

6 A Yeah. Right. Between the three
7 years, me -- the bush hog goes out like that,
8 stops, and cuts them down.

9 Q Okay. What is this?
10 Is this ballast rock in a normal
11 condition, or in an abnormal condition?

12 A That's ballast rock in a normal
13 condition, like it should be. That's a painter
14 going down painting the ties for the T and S gang.

15 Q Now, what do they do, do they
16 mark these so the T and S gang will know which
17 ones to replace?

18 A Marks them so they know which
19 ones to replace.

20 Q Was that done around the time
21 that the ballast was dumped in Burkeville?

22 A Yes.

23 Q And now what's being shown here,
24 Mr. Trimiew?

25 A That's the train cars, empty

1 cars. And then we send them back to load them
2 with ballast.

3 Q Is this ballast being loaded in
4 the train cars?

5 A Being loaded in.

6 Q And is this train, basically,
7 delivering ballast in the train cars?

8 A Right.

9 Q Now, you and your gang, when you
10 unloaded ballast in March of '93, is this the kind
11 of thing you did?

12 A That's kind of the way we did it.

13 Q And what is this showing here?

14 A Showing them unloading ballast.

15 Q Okay. Now, there's a lot of
16 mechanized vehicles here. What is this?

17 Is this the T and S gang?

18 A That's the T and S gang.

19 Q All right. This is the kind of
20 thing that would have been done, if it had come
21 through Burkeville?

22 A Right. Right.

23 Q All right. What is that?

24 A That's ballast right here.

25 That's a broom sweeping the ballast after the

1 ballast regulator regulates it.

2 Q Is this T and S type of
3 machinery?

4 A That's what they call a cherry
5 picker. We have that.

6 Q Now, what is this, Mr. Trimiew?

7 A That's a ballast regulator.

8 Q Is this the kind of thing you're
9 saying was in Burkeville?

10 A Was in Burkeville.

11 Q And what are they showing here?

12 A They're showing the way they plow
13 ballast when the tamper comes through and tamps.

14 Q Was the machine in Burkeville,
15 something like that one?

16 A Something like that one. It
17 might not be as used as that one, but it was
18 something like that one.

19 Q Is these other pictures of a
20 ballast regulator?

21 A Other pictures of a ballast
22 regulator.

23 Q What is this right over here?

24 A The way you put down -- you put
25 the ballast in the truck.

1 Q Okay.

2 MR. SHAPIRO: I think that's it.

3 THE COURT: All right. You can
4 have a seat.

5 BY MR. SHAPIRO:

6 Q You can resume your seat, Mr.
7 Trimiew. Thank you.

8
9 NOTE: At this time, the video
10 is concluded; whereupon the proceeding
11 continues, as follows:

12
13 BY MR. SHAPIRO:

14 Q Let me turn your attention back
15 to you on that ballast on August 20, 1993. What
16 did you and Mr. Forsythe do right after the
17 accident happened?

18 What happened next?

19 A What happened next?

20 Q Yes, sir.

21 A We put the bush hog -- I mean,
22 the bush ax back in the truck and came to
23 Richmond.

24 * * *

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15 CROSS-EXAMINATION

16 BY MR. KOZAK:

17 Q Good afternoon, Mr. Trimiew.

18 A Good afternoon.

19 Q In your, about 20 years or so,
20 that you worked on the railroad, you worked around
21 the ballast, didn't you?

22 A Yes.

23 Q And you had walked on ballast
24 before, during that 20 years?

25 A Yes.

1 Q And you had walked on ballast
2 after it had been unloaded and before it was
3 groomed, hadn't you?

4 A After it had been groomed.

5 Q You never, in 20 years on the
6 railroad, ever walked on ballast that had not been
7 groomed?

8 A Once in a while. But, not --
9 most of it, I would be either walking on it when
10 it's been groomed.

11 Most of the time, when the
12 ballast hasn't been groomed, if you got anything
13 in a bad place, they ought to -- they usually put
14 a footing on it.

15 Q But, when you walk on the ballast
16 after it was unloaded, before it had been groomed,
17 is it more difficult to walk on it?

18 A Yes.

19 Q And, when you were helping to
20 unload the ballast in March of 1993, that wasn't
21 the first time that you had helped unload the
22 ballast, was it?

23 A No. No, it was not.

24 Q What would you say, maybe six,
25 seven times before that that you helped unload

1 ballast?

2 A Probably more than that.

3 Q Was unloading ballast something
4 that was common for track laborers in your
5 position, to help when it occurred?

6 A To help unload it?

7 Q Right.

8 A Yeah.

9 Q And did you help at all with the
10 T and S gang when it came through?

11 A No.

12 Q Now, during the time that the
13 ballast was unloaded and before the T and S gang
14 came through, the ballast would be high along the
15 rail, isn't that right?

16 A Right.

17 Q And that would have -- that would
18 be like that for a month or two months, or
19 whatever it was, until the T and S gang came
20 through, right?

21 A Sometimes.

22 Q But, in any event, during that
23 period of time, whatever time it was, it was not
24 unusual for the ballast to remain high between the
25 time it was unloaded and whenever the T and S gang

1 came through, right?

2 A Say that again?

3 Q It was not unusual for the
4 ballast to remain high, between the time that it
5 was unloaded, and the time, whenever it was, later
6 that a T and S gang came through?

7 A Most of the time it was being
8 high.

9 Q Right. And when you were
10 stepping down into the ballast, when you slipped,
11 you said you looked down on the ground before you
12 stepped down?

13 A I looked down before I stepped
14 down. Yes.

15 Q And surely you saw the ballast
16 there that you were stepping down into, didn't
17 you?

18 A Yes. But, when I -- when
19 Mr. Forsythe stopped the truck, he went over to
20 cut the bush, and I stepped down. And that
21 ballast just went from under me, like, if you were
22 to step on a pile of marbles.

23 I mean, there wasn't any way in
24 the world that -- when I went down, that's when
25 something popped in my back.

1 Q But, before you stepped down into
2 it, you saw the ballast that you were stepping
3 into?

4 A Yes, I saw the ballast.

5 Q And when you stepped out of the
6 truck -- I might have missed this. I wasn't quite
7 clear.

8 But, you stepped out of the
9 truck, you stepped out frontwards, right; facing
10 forward?

11 A Yeah.

12 Q And you put your right hand on
13 the rail?

14 A Yeah. I caught it by the rail.

15 Q And you put your left hand on the
16 door?

17 A On the door.

18 Q And then you had two feet on the
19 step?

20 A Yes. Two feet on the step when I
21 went to step down.

22 Q And, so, as you were stepping
23 off -- and then as you were stepping off with your
24 left foot, you let go with your right hand, right?

25 A My right hand wasn't quite --

1 when I stepped down, my -- I hadn't got a hold all
2 the way to the iron -- to the grip for the step
3 down.

4 But, when I stepped down the
5 ballast went from under my feet and I kept on
6 walking.

7 Q But, at the point you were
8 stepping down with your left foot, you let go of
9 the grab hold with your right hand, didn't you?

10 A Yeah -- no, I didn't -- yes.

11 Q So, as your left foot was
12 touching the ground, the parts of your body that
13 were -- you had the right foot on the step and you
14 had the left foot on the window, right.

15 A Right. But my foot didn't never
16 touch the ground.

17 Q Excuse me?

18 A My feet did never touch the
19 ground. It touched the ballast, and that's --

20 Q Right. Right. Touched the
21 ballast. Now, you recall, don't you, that several
22 months or so before you slipped that Mr. Palmer,
23 who was the track supervisor, had demonstrated
24 getting on and off the back of a gang truck.

25 You remember that, don't you?

1 A I remember demonstrating getting
2 off the back of a gang truck, yeah.

3 Q But you remember that
4 demonstrate?

5 A Yes.

6 Q And during that demonstration,
7 Mr. Palmer demonstrated getting down off the gang
8 truck, maintaining three points of contact. Do
9 you remember that?

10 A No.

11 Q You don't ever remember --

12 A Never remember no three point
13 contact.

14 Q Well -- but the way he
15 demonstrated it was, you were on the back of the
16 gang truck and you have a hand hold with your left
17 hand, right, with the bar on the back of the gang
18 truck?

19 A Yeah. A bar on back of the gang
20 truck.

21 Q That's how he demonstrated it,
22 right?

23 You grab hold with the left hand
24 on the back of the truck --

25 A Grab hold with your left hand.

1 Yeah.

2 Q And with your right hand --

3 A He never told -- he never told --
4 talked about no three point stand.

5 Q I know. I understand that. But,
6 I'm just asking what he actually did demonstrate
7 to you.

8 A He showed us -- told us. Showed
9 us how to get up in the truck, the gang truck and
10 get back out.

11 Q Right. And I'm asking you how he
12 showed you to get out.

13 A Put your hand up and your feet
14 and step on up into the truck.

15 Q When you step off the -- you have
16 both your hands holding at some point on the
17 truck, right?

18 A Yeah. And then you step back
19 down.

20 Q You put one foot down on the
21 ground, right?

22 A Right.

23 Q So, at that point you have three
24 points of contact. You have one hand -- both
25 hands on the truck, one foot on the truck, one

1 stepping down, right?

2 I mean, that's the way he
3 demonstrated it, isn't it?

4 A Yeah. But, not on the high rail.

5 Q I understand that.

6 A Not on the high rail that I got
7 hurt on.

8 Q And he also demonstrated how to
9 get off facing the truck, right?

10 A Off a gang truck.

11 Q Well, a gang truck. And you
12 don't recall during that demonstration, Mr. Palmer
13 said -- demonstrating and saying, this is the way
14 you should get off all types of equipment?

15 A No. No. Never.

16 Q Would you agree, as a matter of
17 just common sense and safety, that it is safer to
18 just get off a high rail vehicle, facing the
19 vehicle backwards, then it is facing forward?

20 A I believe it would be just the
21 same, one way or the other. Because, when you get
22 off facing the outboards, you're looking down, and
23 see where you're stepping.

24 I mean, when you turn around
25 backing out, you don't know if you're going to

1 step on a snake, or anything.

2 Q Have you ever got off a ladder
3 before, Mr. Trimiew?

4 A Right.

5 Q You get off a ladder backwards,
6 don't you?

7 A You have to. Common sense will
8 tell anybody that.

9 Q Yes, sir. When Mr. Forsythe
10 stopped the high rail to cut the tree branch down,
11 what side of the track was the tree on?

12 A On his side.

13 Q On his side?

14 A Yeah.

15 Q Did he have to go around to the
16 back of the truck to get any tool, or anything?

17 A He had to go around and get
18 that -- I believe he had -- I don't know. I don't
19 know whether it would be -- the blade was in the
20 back of the truck, or if he had to go around back
21 to get it. I can't remember.

22 Q So, when he got out of the truck,
23 he might have had to go around to the back of the
24 truck?

25 A Sometimes he would stick it in

1 the side, behind it in the back of it.

2 Q All right. The track from
3 Burkeville back up towards Richmond runs north and
4 south, right?

5 A North and south.

6 Q And, so, where you were on the
7 passenger side of the high rail, you would be
8 riding up on the east side of the track, right?

9 A Who?

10 Q You. If you're riding north in
11 the high rail vehicle, and you're in the passenger
12 side --

13 A I guess you call it --

14 Q -- you would be on the east side
15 of the track?

16 A I guess you call it the east
17 side.

18 Q Do you -- after this incident
19 where you slipped in the ballast, the railroad
20 charged you with a Rule Violation for the way you
21 got off the vehicle, didn't they?

22 A You call that charging with a
23 rule violation? I don't think that's -- It wasn't
24 no rule violation.

25 Q Well, you were charged with a

1 Safety Violation or something?

2 A Safety violation. But, there
3 wasn't nobody to demonstrate to me how to get out
4 of the high rail.

5 MR. SHAPIRO: Your Honor, just to
6 interpose our continuing objection to that
7 line.

8 THE COURT: Yes, sir. I
9 understand your objection. It's
10 overruled.

11 BY MR. KOZAK:

12 Q And as a results of that, you
13 were disciplined or suspended for a period of
14 time?

15 A That's what they say.

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THE COURT: Mr. Hajek, who is
your next witness, sir?

MR. HAJEK: Mr. Palmer, Your
Honor. And I have another request for
admission, as well, Your Honor.

I have another request for
admission that I'd like to read to the
jury.

THE COURT: All right. We can
have Mr. Palmer come up to the witness
stand, since he's in the courtroom.

Mr. Palmer, you can have a
seat for a minute and then I'll swear
you in.

Mr. Hajek, has -- how many?

MR. SHAPIRO: They all concern
the same document.

THE COURT: Mr. Hajek has some
more statements that the defendant has

1 admitted are true. These are some more
2 admissions that the defendant has made.

3 MR. HAJEK: "That the attached
4 document Exhibit 1 is a true, genuine, and
5 an authentic copy of a document
6 entitlement "maintaining track stability".

7 It was produced by the defendant.
8 It is maintained by the defendant as an
9 official company document. And it is a
10 railway business document which was
11 brought by the defendant railway and has
12 been in effect on the railraod at least as
13 early as January 1, 1992.

14 And I would move to admit, Your
15 Honor, Norfolk-Southern Railway Standard
16 Procedure Number 390.

17 THE COURT: Any objection,
18 Mr. Kozak?

19 MR. KOZAK: No, your Honor.

20 THE COURT: That will be admitted
21 as Plaintiff's Exhibit 16.

22
23 NOTE: The above-referred-to
24 Standard Procedure 390 was marked and
25 filed as Plaintiff's Exhibit No. 16.

1

2

3

THE COURT: Now, are you ready
for Mr. Palmer?

4

MR. HAJEK: Yes, Your Honor.

5

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10

STEPHEN PALMER, a witness

11

having been called upon by the

12

plaintiff, and having been duly sworn,

13

testified as follows:

14

MR. HAJEK: Thank you, Your

15

Honor.

16

DIRECT EXAMINATION

17

BY MR. HAJEK:

18

Q

Would you please state your name

19

and address.

20

A

Stephen L. Palmer. 4116 Foreman

21

Way, Hephzibah Georgia.

22

Q

And you're employed by

23

Norfolk-Southern?

24

A

Yes.

25

Q

And you have been since 1985?

1 A Yes.

2 Q You're a track supervisor?

3 A Yes.

4 Q Do you have a college degree?

5 A Yes.

6 Q In what field?

7 A Civil Engineering.

8 Q And are you licensed as an

9 engineer?

10 A I don't have a professional

11 engineer's license. No.

12 Q How long have you been a track

13 supervisor at the railroad?

14 A Eight years.

15 Q And you came to Richmond in 1991

16 for Norfolk-Southern?

17 A Yes.

18 Q And Clinton Trimiew is one of the

19 employees you supervised?

20 A Yes.

21 Q What area were you responsible

22 for as a track supervisor, when you were in the

23 Richmond area?

24 A The Richmond District, covering

25 Burkeville to West Point.

1 Q And what were your general
2 duties?

3 A To maintain and inspect the
4 railroad within Norfolk-Southern and FRA
5 Guidelines.

6 Q Before August 1993, Mr. Trimiew
7 worked in your area on a regular basis?

8 A Yes.

9 Q You weren't aware of any prior
10 back problems involving Mr. Trimiew?

11 A No.

12 Q In fact, he had no trouble
13 performing his job duties for you?

14 A No.

15 Q His duties included heavy work
16 and lifting up to a hundred pounds on occasion?

17 A Yes.

18 Q As far as you know, he was fully
19 capable of performing his job on a full time basis
20 before his injury in August 1993?

21 A Yes.

22 Q You observed him at work?

23 A Yes.

24 Q You took no exception to the way
25 he performed his duties?

1 A No.

2 Q You even observed him getting in
3 and out of high rail trucks?

4 A Yes.

5 Q And you took no exception to the
6 way he got in and out of a high rail truck?

7 A No.

8 Q You never took him aside and
9 said, this is the way you should be getting in and
10 out of a high rail truck?

11 A We had -- we did have a
12 discussion about that, as far as getting in and
13 out of vehicles.

14 Q You never took Mr. Trimiew aside
15 and said --

16 A No.

17 Q -- this is how you should do it?

18 A No.

19 Q You gave Mr. Trimiew training
20 with safety presentations?

21 A Yes.

22 Q And you keep a record of those
23 presentations?

24 A Yes.

25 Q In fact, there's a computer

1 printout that you can obtain of Mr. Trimiew's
2 safety training?

3 A Yes.

4 MR. HAJEK: Your Honor, if I may
5 approach the witness, I will hand him the
6 document.

7 THE COURT: All right. Make sure
8 you show Mr. Kozak the same.

9 MR. HAJEK: I've provided Mr.
10 Kozak a copy of the same.

11 THE COURT: I just want to make
12 sure he knows which document you're shoing
13 now.

14 MR. KOZAK: Thank you, Your
15 Honor. I have seen it.

16 THE COURT: All right. Go ahead.

17 BY MR. HAJEK:

18 Q Mr. Palmer, do you recognize that
19 document?

20 A Yes.

21 Q And that's Mr. Trimiew's safety
22 training record?

23 A Yes.

24 MR. HAJEK: Your Honor, we'd move
25 to admit that.

1 THE COURT: Any objection,
2 Mr. Kozak?

3 MR. KOZAK: No, Your Honor.

4 THE COURT: That's Plaintiff's
5 Exhibit 17.

6
7 NOTE: The above-referred-to
8 safety training record was marked and
9 filed as Plaintiff's Exhibit No. 17.

10
11 BY MR. HAJEK:

12 Q You're familiar with that safety
13 record of Mr. Trimiew?

14 A Yes.

15 Q And you know that in that safety
16 record there aren't any presentations concerning
17 the mounting and dismounting from the cab of a
18 high rail vehicle?

19 A Not on that, no.

20 Q Or from any vehicle?

21 A I don't follow.

22 Q In that document --

23 MR. HAJEK: And, Your Honor, if I
24 could just have that document again.

25 BY MR. HAJEK:

1 Q As you look through that
2 document, there aren't any presentations
3 concerning mounting and dismounting from any
4 vehicles?

5 A No.

6 Q In fact, the railroad had no
7 written rules in its Rule Book concerning the
8 mounting and dismounting from vehicles?

9 A No.

10 Q You know what ballast is?

11 A Yes.

12 Q And as part of your training, you
13 have to know the procedures regarding the way
14 ballast is laid down and groomed?

15 A Yes.

16 Q And there are certain safety
17 standard procedures on the way ballast is groomed?

18 A Yes.

19 Q The ballast regulator is the
20 machine that grooms the ballast?

21 A Yes.

22 Q And it should be groomed to
23 restore full ballast section; which means, it's
24 six inches out from the edge of the tie, and then
25 it begins to slope to the ground?

1 A That is a full standard section.

2 Q Let me hand you another document
3 entitled Norfolk-Southern Corporation Standard
4 Procedure Number 20. I'll ask you if you're
5 familiar with that?

6 A Yes.

7 MR. HAJEK: Your Honor, we move
8 to admit that as Plaintiff's next exhibit.

9 THE COURT: Any objection?

10 MR. KOZAK: No, Your Honor.

11 THE COURT: That will be
12 Plaintiff's 18.

13

14 NOTE: The above-referred-to
15 Standard Procedure 20 was marked and
16 filed as Plaintiff's Exhibit No. 18.

17

18 BY MR. HAJEK:

19 Q Based on your familiarity with
20 those standard procedures, when the ballast is
21 groomed, it should be level with the cross tie on
22 the track?

23 A The ballast is generally groomed
24 level with the level of the cross tie, yes.

25 Q And it's not supposed to be

1 higher than the level of the cross tie?

2 THE COURT: That's redundant.

3 Come on.

4 BY MR. HAJEK:

5 Q When the ballast is higher than
6 the level of the cross tie, it makes for a
7 difficult walking surface?

8 A Yes.

9 Q And that is a safety
10 consideration that you, as a supervisor, would
11 want to watch out for, when your employees are
12 faced with it?

13 A Yes.

14 Q And that's because ballast is a
15 known hazard for railroads?

16 A Walking in ballast is difficult,
17 period.

18 Q Now, in early 1993, a ballast
19 train dumped ballast near Burkeville on your
20 district?

21 A Excuse me?

22 Q In early 1993 --

23 A Yes.

24 Q And that ballast was dumped in
25 anticipation of a T and S gang coming through the

1 area?

2 A Yes.

3 Q And you were the supervisor on
4 site?

5 A Yes.

6 Q The ballast was frozen when it
7 was unloaded?

8 A Yes. It was partially frozen.

9 Q It came out in large chunks?

10 A Some of the did, yes.

11 THE COURT: We're going over
12 testimony that we've heard before,
13 Mr. Hajek.

14 MR. HAJEK: Thank you, Your
15 Honor. I'll move on.

16 THE COURT: All right.

17 BY MR. HAJEK:

18 Q You learned in April or May 1993
19 that the T and S gang was not coming through after
20 the ballast had been dumped?

21 A Yes.

22 Q And your understanding was that
23 they were not coming through because of budget
24 reasons?

25 A Yes.

1 Q It had been decided to have them
2 come through the next year, or possibly the year
3 after that?

4 A Yes.

5 Q And, in fact, they didn't come
6 through until 1995?

7 A That's correct.

8 Q Did you have a ballast regulator
9 in the Richmond District, at that time?

10 A No, sir.

11 Q There wasn't one located in
12 Burkeville?

13 THE COURT: He just said no.
14 Three or four other witnesses said that
15 there was; and you're going to keep on
16 asking every witness.

17 Now, we have a contradiction.
18 But, go ahead. You can ask him the
19 question again, Mr. Hajek.

20 MR. HAJEK: Well, he is the
21 supervisor, Your Honor.

22 THE COURT: I understand.

23 MR. HAJEK: I will move on.

24 THE COURT: I don't know why you
25 think the jury, after hearing it from four

1 witnesses that there was one, why you
2 think that they don't believe that there
3 was one.

4 MR. HAJEK: I don't either.
5 Thank you, Your Honor.

6 THE COURT: Come on, Mr. Hajek.
7 Let's go.

8 BY MR. HAJEK:

9 Q Were there ballast regulators in
10 adjacent districts?

11 A Yes.

12 Q Could you have them groom the
13 ballast, if you wanted to?

14 A I didn't have control of them.

15 Q You have the right to write work
16 assignments in your district?

17 A Yes.

18 Q Including in 1993, those of Mr.
19 Trimiew?

20 A That's correct.

21 Q You weren't present at the time
22 that Mr. Trimiew was injured?

23 A No.

24 Q And you didn't go to the scene,
25 because you didn't know exactly where he had been

1 hurt?

2 A I didn't go to the exact scene,
3 no.

4 Q He did tell you that he slipped
5 on ballast and fell?

6 A Yes.

7 Q And you knew the general area
8 where he fell, because there was high ballast
9 there?

10 A Yes.

11 Q And you believe that that high
12 ballast contributed to cause Mr. Trimiew's injury?

13 A It could have, yes.

14 Q He also reported to you that he
15 felt a pop in his back when he slipped?

16 A Yes.

17 Q And you reported that to your
18 supervisors?

19 A Yes.

20 Q And two days later you took Mr.
21 Trimiew to the hospital?

22 A Yes.

23 Q Did you see him get the pain shot
24 administered by the doctor?

25 A Yes.

1 Q And he never came back to work,
2 did he?

3 A No.

4 MR. HAJEK: That's all I have,
5 Your Honor. Thank you.

6 THE COURT: Is there any
7 cross-examination?

8 MR. KOZAK: Yes, Judge.

9 CROSS-EXAMINATION

10 BY MR. KOZAK:

11 Q Mr. Palmer, how often do you have
12 safety meetings with your gang in Richmond, or did
13 you when you were in Richmond?

14 A We have official safety meetings
15 on every Monday morning. But, we have small
16 safety meetings every morning.

17 Q Is every safety meeting that you
18 have with the gang recorded on this safety record?

19 A No, sir.

20 Q Do you recall giving a
21 demonstration during the summer of 1993 to the
22 gang on how to mount and dismount a gang truck?

23 A Yes.

24 Q When was that demonstration
25 given?

1 A It was in, actually, about
2 February of '93.

3 Q And was it given at one of the
4 weekly safety meetings?

5 A Yes.

6 Q Was that recorded on this safety
7 history?

8 A No.

9 Q Was Mr. Trimiew present for that
10 demonstration?

11 A Yes.

12 Q Can you tell us what you
13 demonstrated?

14 A I demonstrated to Mr. Trimiew,
15 and all the rest of the people; track maintenance
16 crew at Richmond, the proper mounting and
17 dismounting procedures for vehicles, or other rail
18 equipment, and the like.

19 Q All vehicles, or just the gang
20 truck?

21 A Well, I demonstrated on the gang
22 truck. But, I stipulated that it would be -- that
23 procedure would be for all types of vehicles and
24 rail equipment.

25 Q What was the procedure that you

1 demonstrated?

2 A The procedure I demonstrated was
3 to maintain three points of contact, at all times.
4 And not to release the hand hold, until you are
5 firmly on the ground.

6 Q What is meant by "three points of
7 contact"?

8 A Three points being -four points
9 would be two hands and two feet. And three of
10 those would be in contact with something; either
11 the ground, or a point on a vehicle, or rail
12 equipment, at all times.

13 Q Did you demonstrate that
14 yourself?

15 A Yes, I did.

16 Q Did you have the members of the
17 gang demonstrate it, individually?

18 A Yes.

19 Q Did Mr. Trimiew demonstrate that?

20 A Yes.

21 Q Did he get off the gang truck
22 properly, at the demonstration?

23 A Yes.

24 Q Had you -- did you see Mr.
25 Trimiew, on other occasions, get out of the high

1 rail vehicle properly?

2 A Yes.

3 Q You indicated to Mr. Hajek that
4 the ballast in the area where Mr. Trimiew stepped
5 out, could have contributed to this.

6 Is there anything else that could
7 have contributed to this slip?

8 A The fact that he did not maintain
9 a firm hand hold, or three points of contact, when
10 getting off the truck.

11 Q Okay. And, in fact, did you cite
12 him for that?

13 A Yes.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING

CLINTON TRIMIEW,

PLAINTIFF,

VS.

NORFOLK-SOUTHERN RAILWAY COMPANY,

DEFENDANT.

:
:
:
:
:
: CASE NO.
: LA-520
:
:

Complete transcript of testimony
and other incidents in the above, when
heard on December 8, 1995, before the
Honorable R. G. Johnson, with a jury.

CRANE-SNEAD & ASSOCIATES, INC.
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Richmond, Virginia 23230
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RICHMOND, VIRGINIA

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DIRECT CROSS REDIRECT

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Peter Molberg

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By: Mr. Shapiro 9

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William Reece, Jr.

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By: Mr. Kozak 30

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Jacqueline Trimiew

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Wanda Burrell

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Bernard Lublin

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By: Mr. Kozak 122

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By: Mr. Shapiro 138

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5 DIRECT EXAMINATION

6 BY MR. KOZAK:

7 Q Good morning, Mr. Forsythe.

8 A Good morning.

9 Q Could you introduce yourself,
10 please, to the ladies and gentlemen of the jury?

11 A I'm Robert Forsythe. I'm an
12 assistant track supervisor with Norfolk-Southern
13 Corporation.

14 Q How long have you worked for the
15 railroad?

16 A Fourteen years.

17 Q And what is your position with
18 the railway?

19 A I'm an assistant track
20 supervisor. I share some duties with the track
21 supervisor.

22 And my territory is the Richmond
23 District, which runs from Burkeville, Virginia to
24 West Point, Virginia.

25 Q Did you start with the railroad

1 as a supervisor?

2 A Started as a laborer in September
3 of 1981.

4 Q When did you first meet Mr.
5 Trimiew?

6 A In 1981. He was working in
7 Richmond when I was hired. And I was hired to
8 work in Richmond.

9 Q Did you work with Mr. Trimiew?

10 A Yes, I did.

11 Q As a laborer?

12 A Yes, I did.

13 Q When did you become a supervisor?

14 A I was promoted to this job in
15 January of 1988.

16 Q As part of your job as a track
17 supervisor, what -- does the railroad send you to
18 any schools, or give you any training to do that
19 job?

20 A Yes. The railroad has a school
21 in McDonough, Georgia, at which facility they do
22 various trainings. And training for assistant
23 track supervisor is among their programs.

24 Q Are you tested --

25 A Yes.

1 Q -- on what you're taught at these
2 training sessions?

3 A Yes.

4 Q And how have you done on your
5 tests?

6 A Perfectly well.

7 Q What are your duties, generally,
8 as an assistant track supervisor?

9 A The primary duty of the assistant
10 track supervisor, is the inspection of the
11 railroad; both for compliance with the railroad
12 standards, and the standards set out by -- set
13 down by the Federal Railroad Administration.

14 MR. KOZAK: Could we hand the
15 witness Plaintiff's Exhibits 16 and 18?

16 THE COURT: 16 and 18?

17 MR. KOZAK: And 18.

18 BY MR. KOZAK:

19 Q All right. Mr. Forsythe, you
20 have -- first of all, do you have a document
21 that's labeled Plaintiff's Exhibit 16?

22 A Yes, I do.

23 Q And is that a Norfolk-Southern
24 Railway Standard Procedure on maintaining track
25 stability?

1 A That's correct.

2 Q And the other document, you have,
3 Plaintiff's Exhibit 18, is that a Norfolk-Southern
4 Procedure on ballast?

5 A Yes, it is.

6 Q Are these procedures something
7 that's covered in the schools that you go to?

8 A The Standard Procedure 390 is
9 covered annually, as a part of a preparation for
10 the hot weather; the onset of hot weather. The --

11 Q Well, just for a second. The
12 390, which one is that?

13 A This is maintaining track
14 stability.

15 Q Okay. How about the other one?

16 A And Standard Procedure 20 is one
17 that's available to us in our offices, if you need
18 to refer to the Procedure for guidance in
19 performing certain tasks.

20 Those procedures are available in
21 each office; the track supervisors office.

22 Q Is there a difference between
23 rules and standards and procedures on the
24 railroad?

25 A Yes, there are. Standards, or

1 the procedures are guidelines for performing the
2 work, and setting down the parameters within which
3 we operate.

4 The rules, generally, govern the
5 ways we go about doing the work. The cautions
6 that we should understand.

7 In some instances, it will be
8 close. Say, in obtaining track time. There's an
9 instruction on how to go about properly obtaining
10 that track time.

11 But, there's also a rule
12 governing the proper way in which you could do
13 that.

14 Q Now, you're familiar with the
15 ballast the -- of the ballast that was unloaded in
16 the Burkeville area in 1993?

17 A Yes, I am.

18 Q Did you participate in that
19 unloading process?

20 A Yes, I did.

21 Q And you were with Mr. Trimiew, on
22 August 20, 1993, in the high rail vehicle when he
23 stepped out and slipped?

24 A Yes, I was.

25 Q Was the ballast on the track that

1 Mr. Trimiew slipped on, in August of 1993,
2 improper in relation to the procedures that you
3 just talked to us about, of the ballast and the
4 track stability?

5 A No, it was not.

6 Q Why? Why was it not? Why is
7 that?

8 A Well, it fell well within the
9 parameters of -- that you would expect with the
10 normal unloading of ballast.

11 Q How so?

12 A Ballast is unloaded from the side
13 of a fifty car train. You lay down a berm of
14 ballast on the head of ties, or heads of the ties.

15 And that berm of ballast is,
16 generally, going to be eight to twelve inches
17 above the top of the rail, as it's laid out.

18 And the ballast that was laid out
19 by that train was well within that estimate.

20 Q But, isn't that ballast under the
21 normal procedure at some point supposed to be
22 regulated after a T and S gang comes through?

23 A That's correct. The ballast is
24 laid down in advance of a timbering, surfacing
25 job.

1 And as the job is concluded, the
2 ballast is regulated back to the prescribed
3 profile. And that's how it should be left, after
4 the job is completed.

5 Q Well, in this particular case,
6 there was a T and S operation scheduled for the
7 summer of 1993?

8 A That's correct.

9 Q And that did not go through
10 before Mr. Trimiew slipped?

11 A No. No, it did not.

12 Q So, was it improper to -- in
13 relation to those procedures -- to leave the
14 ballast as it was, after the T and S gang was
15 cancelled?

16 A No. That would be a normal
17 situation.

18 Q Why is that?

19 Could you explain why that would
20 be a normal situation?

21 A The timeframe between the
22 unloading of the stone and Mr. Trimiew's fall;
23 several months, five months, is well within the
24 normal time that ballast, or ballast would be on
25 the ground, in anticipation of the T and S gang

1 process.

2 Q What's involved in scheduling a T
3 and S process?

4 A The estimation of the division
5 engineer, my boss, that the track is in condition,
6 or in a condition, where it will be benefited by
7 the introduction of new cross ties.

8 And a new surface, which is the
9 second part of the timbering and surfacing. When
10 they put the elevation on curves. And maintain
11 the plain of the rail, which maintains the track,
12 straight track.

13 So, it's the division engineers
14 job to ascertain when a track is in need of
15 timbering and surfacing. Generally, it's done on
16 a cycle. This particular track is on an eight
17 year cycle.

18 Or, if its condition warrants
19 more frequently; if you're experiencing the
20 deterioration of the ties at a more rapid rate
21 than was anticipated.

22 Q On the day that Mr. Trimiew fell,
23 you were -- you and he were driving in the high
24 rail vehicle back up toward Richmond?

25 A That's correct.

1 Q And why -- can you tell the jury
2 why you stopped the high rail?

3 A There was a small tree growing on
4 the west side of the tracks that --

5 Q Now, let me stop you one second.
6 When you say the west side --

7 A That would be the driver's side
8 of the truck.

9 Q You're driving north. So, the
10 west side would be the driver's side. East side
11 would be Mr. Trimiew's --

12 A Mr. Trimiew's side. That's
13 correct. The Federal Railroad Administration has
14 a defect vegetation, brush and growing --

15 Q You had to stop to cut down a
16 tree, right?

17 A That's correct.

18 Q Then what did you do after you
19 stopped?

20 A I think I just mentioned to Slim
21 that there was a tree that we had to cut.

22 Q Slim. Is that Mr. Trimiew's --

23 A Yes. Clinton. Excuse me.

24 Q You can call him Slim.

25 THE COURT: No, you have to call

1 him Mr. Trimiew.

2 THE WITNESS: All right.

3 BY MR. KOZAK:

4 A I grabbed my hardhat, safety
5 glasses, gloves and dismounted the truck. I went
6 to the rear of the truck to get the bush ax. A
7 small tree bush ax was all that was necessary to
8 cut it down.

9 I went around to the rear of the
10 truck and I heard the sound of ballast skidding
11 down the other slope that the ballast was on.

12 Q Did you see Mr. Trimiew getting
13 out of the truck?

14 A No. I had already dismounted. I
15 dismounted. Rounding the rear of the truck, I saw
16 Mr. Trimiew in a seated position on the ballast,
17 on the slope of the ballast, several feet away
18 from the door of the truck.

19 Q Did he have his hardhat on?

20 A My recollection is that he did.
21 My initial concern was that he may have struck his
22 head, while falling, and was relieved to note that
23 the hardhat was in place. And my recollection is
24 that the hardhat was in place.

25 Q How long was it, about, from the

1 time you got out of the truck and went around to
2 the back and heard the ballast slip, or fall?

3 A About five seconds. Ten seconds.

4 Q How long after that was it when
5 you saw Mr. Trimiew?

6 A Another several seconds.

7 Q All right.

8 A Just up to putting the sounds
9 together, with the possibilities. And felt that I
10 needed to see what had taken place.

11 Q Did you see Mr. Trimiew fall down
12 the slope?

13 A No, I did not.

14 Q Did you see his hardhat fall down
15 the slope?

16 A No, I did not.

17 Q Did you see him putting his
18 hardhat back on?

19 A No. I don't recall seeing him
20 put his hardhat back on.

21 Q Did you say anything to him?

22 A Yes. I was concerned that he
23 would be -- that he was all right.

24 So, I approached Mr. Trimiew and
25 asked him about his condition. Although, he was a

1 little flustered, I took it to be much
2 embarrassment, as anything else.

3 And he responded that he felt he
4 was okay. And then after a brief hesitation, that
5 he had felt something pop in his back. And I
6 asked him to sit still and collect himself; just
7 to inventory his own condition before attempting
8 to move or join.

9 Satisfied that he was, indeed,
10 doing that and not attempting to get up to assist
11 me cutting the tree, I went back and cut back the
12 tree. It took but just a few slices of the bush
13 ax.

14 And then returned to see how Mr.
15 Trimiew was doing. He had risen and had made his
16 way to the back of the truck, and was standing on
17 the rail, or the track.

18 As I finished, then we --

19 Q And then what did you all do
20 after that?

21 A Remounted the truck and proceeded
22 north, back towards Richmond.

23 Q Did you make any more stops,
24 along the way?

25 A We stopped once in Amelia. A

1 similar situation, this time bamboo that had begun
2 to lean over the tracks.

3 And Mr. Trimiew, again, indicated
4 he was feeling a little stiff, and --

5 THE COURT: Excuse me, just one
6 second. I hate to interrupt. We're going
7 to have to take a brief recess.

8 We're going to take a five minute
9 recess. You have to stay with me, sir.
10 You just have to stay awake, okay?

11 We've come to far in this case to
12 call it all off. And I'd have to do it if
13 you don't pay attention to the testimony.

14 I don't mean to embarrass you,
15 you have to keep your eyes opened and let
16 me know that you're with me.

17 We're going to take a five minute
18 recess. Go put some water on your face.
19 We'll stand in recess until 12 o'clock.
20 We'll get started in about five minutes.
21 We'll stand in recess until 12 o'clock.

22

23 NOTE: At this time, the jury
24 exits the courtroom and a brief recess
25 is had; following which, the proceeding

1 continues, as follows:

2

3 THE COURT: You're ready to start
4 again?

5 MR. KOZAK: Yes, Judge.

6 THE COURT: I'm sorry we had to
7 interrupt you on direct examination, Mr.
8 Kozak, but I thought I had to.

9

10 NOTE: At this time, the jury
11 returns to the court room; whereupon,
12 the proceeding continues, as follows:

13

14 THE COURT: Mr. Kozak, you may
15 continue.

16 BY MR. KOZAK:

17 Q Mr. Forsythe, going back to the
18 ballast unloading operation of March of 1993, was
19 there anything unusual about that, particularly,
20 as far as any icy conditions that affected the
21 unloading of ballast?

22 A Yes. It was a very difficult
23 train. The west side especially had ice on the
24 doors, up in the rocks, it forms a matrix.

25 The ice has to be broken up

1 before the rock will flow from the door. The
2 train had been stored inside Green Bay previous to
3 our picking it up.

4 And the west side of the train
5 had been in the shade. The east side of the train
6 had gotten a little sunlight, passing solar beams,
7 heating that side.

8 So, it had fallen somewhat. But,
9 the west side of the train was very difficult to
10 unload.

11 Q How was the unloading from the
12 east side of the train?

13 A My understanding was that from
14 all of the slamming and banging that we were doing
15 on the west side of the train, made their side
16 fairly routine.

17 We were actually dislodging any
18 ice that was in their doors, by our activities on
19 the opposite side of the train.

20 Q Which side of the track did Mr.
21 Trimiew slip in?

22 A He was on the east side.

23 Q Between the time the ballast was
24 unloaded, in March of '93, and when Mr. Trimiew
25 slipped in August of '93, did you and he ride back

1 and forth through that area of track on occasion?

2 A Yes. Yes. Like I said, Mr.
3 Trimiew rode with me on the track inspection
4 scheduled for that end of the railroad twice a
5 week, orderly.

6 And then during the summer
7 months, when it's hot, that's everyday. We have
8 an interest when it's above 90, so that you can
9 monitor the effects of the heat on the rails and
10 it's a matter of record. So, frequently.

11 Q Were there any occasions during
12 that period of time when Mr. Trimiew got out of
13 the high rail vehicle, into the ballast that had
14 been unloaded?

15 A We're required by the Federal
16 Railroad Administration to make walking
17 inspections at all switches monthly.

18 And there's a certain type of
19 bar, a joint bar on the railroad car, a compromise
20 bar, where you go from one size railroad to
21 another. They were required to inspect weekly.

22 Once that compromise bar, ties
23 and switches within the area, in which the ballast
24 has been unloaded, and then a number of just
25 routine stops, similar to the cause for stopping

1 that day; vegetation rubbing the sides of trains,
2 loose bolts on a jointed rail headed south, it's
3 just routine stops.

4 It's not an area where we will be
5 dismounting everyday, but a number of times during
6 that time period. Yeah.

7 Q What's a switch?

8 A A switch is where you go from one
9 track to another. On this particular stretch of
10 railroad, the switch will go from the main line to
11 a siding; various types of siding.

12 Q When the ballast train goes
13 through to unload ballast, does it unload ballast
14 through the switches?

15 A You don't want to unload quite as
16 much in the switch, because you have to be able to
17 move the point from one side to the other. You
18 don't want to have rock behind the points.

19 And you need to leave the area a
20 little more accessible to the train. You would be
21 dismounting the trains to throw the switch.

22 Generally, what is called the
23 turnout side, which is the side that you would go
24 into the siding; via, the ballast is cut back and
25 you can almost close the doors on the side where

1 you do not cross over the turnout track.

2 The amount of ballast is
3 generally slight. You can unload through that
4 side of the switch, without cutting back on the
5 door, a great deal.

6 Q And when Mr. Trimiew, on the
7 occasions when he would get out to inspect the
8 switches, would he have to go through that area of
9 unloaded ballast?

10 A He would have to be aware of it.
11 Yes.

12 Q Okay. What's involved in
13 changing the combine?

14 A A compromise bar?

15 Q A compromise bar. I'm sorry.

16 A It's a bar that's a little bit
17 more fragile, a little bit more breakable than the
18 ordinary joint bar, because of the step within the
19 bar, the casting.

20 So, we inspect them weekly for
21 cracks. And if a crack is found, the bar is
22 removed and a new bar is applied. It's a matter
23 of removing four bolts and applying a new bar.

24 Q Okay. Thank you, sir.

25 MR. KOZAK: That's all I have.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. SHAPIRO:

4 Q Good afternoon, Mr. Forsythe.

5 How are you?

6 A I'm fine.

7 Q We have met before in your
8 deposition, haven't we?

9 A Yes, we have.

10 Q Mr. Forsythe, if I understood you
11 correctly, you said that the ballast that was
12 dumped in that Burkeville area in March was about
13 eight to ten inches over the top of the rail
14 level, if you're looking from the side; right?

15 A Roughly. It will range -- well,
16 eight to ten, actually, is going to be on the high
17 side.

18 But, yeah, it can be that far
19 above the level of the rail.

20 Q That's what you told Mr. Kozak,
21 isn't you?

22 A That's correct.

23 Q And if the ballast can be that
24 high all the time, the railroad doesn't need those
25 procedures or standards that they have, do they?

1 A I'm sorry, could you rephrase it
2 or say it again?

3 Q Well, I thought that you said
4 just now to Mr. Kozak that there was nothing
5 improper about ballast eight to ten inches above
6 the rail. Is that what you said?

7 A That's correct.

8 Q Well, even throughout those
9 procedures and standards that talk about smoothing
10 the ballast, can't we, if that's fine?

11 A Sure.

12 MR. KOZAK: This is
13 argumentative.

14 THE COURT: This is. It is
15 argumentative. Objection sustained.

16 MR. SHAPIRO: All right. Your
17 Honor, if I could use one of these
18 exhibits here, please.

19 BY MR. SHAPIRO:

20 Q Mr. Forsythe, I want you to take
21 a look at this. Can you see those red lines?

22 A Uh-huh.

23 Q Would you agree that those red
24 dotted lines would be simulating ballast in the
25 Burkeville arear?

1 A Correct.

2 Q And would you agree with me, that
3 it certainly is easier for workers who are walking
4 along the margins outside the rail, to walk on a
5 smooth, flat surface than a surface that has
6 mounds of ballast, wouldn't you?

7 A Yes, I would.

8 Q And the railroad has those
9 procedures and standards and they say that when
10 it's properly groomed, it's supposed to be flat
11 with the cross tie?

12 A That's correct.

13 Q Now, you and Mr. Palmer knew by,
14 I think you've testified, April or May of '93 that
15 the T and S gang was not coming through that
16 Burkeville area, is that correct?

17 A That's correct. I don't recall
18 the exact date when the job was cancelled, but
19 that's going to be a ballpark.

20 Q And a ballast regulator could
21 have come through that area and smoothed it, any
22 time after the T and S gang was cut off, couldn't
23 it?

24 A Providing the ballast regulator
25 was available for that job and how that particular

1 job would be arranged as a --

2 Q And that was Mr. Palmer's duty,
3 most of the time, to assign the work on the
4 district, correct?

5 A That would be correct.

6 Q Well, when he wasn't around, you
7 had the authority, didn't you --

8 A That would be correct.

9 Q -- to order work assignments?

10 A Excuse me?

11 Q To order work assignments in his
12 absence?

13 A That would be correct.

14 Q There's a map here -- well, let
15 me ask you this:

16 You said that -- is it your
17 testimony that the ballast was not frozen one side
18 of the ballast cars, but one side was frozen?

19 A The -- yeah. The side of the
20 train which had been in the shade, had not
21 received the benefits of passage of solar heating,
22 and was more thoroughly frozen than the other
23 side.

24 Q But both sides had some frozen
25 stone, Mr. Forsythe, you'd agree with that, won't

1 you?

2 A My understanding is that they
3 weren't having a great deal of difficulty from
4 unloading the ballast from the east side of the
5 terminal.

6 Q Well, you drove through that area
7 and you observed mounds of ballast on both sides
8 of the rail, didn't you, from time to time, after
9 the ballast was dumped in that area?

10 A The variance in the height of the
11 ballast that's unloaded from a moving train,
12 shouldn't be a surprise.

13 Q And you saw it. And there was
14 mounds on both sides of the track, weren't there?

15 A The speeds of the train varies.
16 The locomotive engineer can't hold the speed of
17 the train constantly.

18 The door has to be opened and
19 closed to regulate the flow of stone. If the
20 train slows down, when the operator of that door
21 is away from his door, the ballast is going to
22 build up. It's an unavoidable part of the
23 operation.

24 Q And you were aware that because
25 of the peculiar circumstances of the frozen

1 ballast, that the doors had to be opened wider
2 than usual, isn't that true, on the trains?

3 A One, the situation of having ice
4 in ballast is not that peculiar.

5 And, two, once you get the
6 ballast to flow, the doors won't be opened more
7 than usual, they will be opened enough to regulate
8 the flow of stone to the desired height of the
9 berm, if you're trying --

10 Q You were out there that day,
11 weren't you?

12 A Yes, I was.

13 Q You don't remember that the doors
14 had to be opened wider than usual, because of
15 solid chunks of stone?

16 A And then once you have the
17 ballast flowing, you try to close the door down,
18 if you can.

19 It was a trying day. It was a
20 very difficult train to operate.

21 Q And that train did not unload the
22 rock over as long a number of miles as it was
23 supposed to, did it?

24 A We fell about a mile short. We
25 had seven hundred tons per mile. The ordinary

1 amount of stone for that type of job, with a T and
2 S job, and the various conditions would be six
3 hundred tons of stone per mile.

4 Q As a track inspector who had
5 supervisory authority over work assignments, all
6 those days that you drove back and forth from that
7 Burkeville area, did you ever think to yourself
8 about talking to Mr. Palmer and saying:

9 You know, you ought to get that
10 regulator that's nearby and smooth that rock. Did
11 you ever think about that?

12 A Yes. The regulator, first, was
13 assigned to the handling of lean ballast
14 situations, which is where you do not have enough
15 stone on the edge of the ties to satisfy that the
16 track would be properly restrained.

17 The regulator also was miss set
18 by mechanical problems. The hydraulic drive went
19 out on many occasions. So, we didn't have full
20 use of the regulator everyday that it was on our
21 territory.

22 And then as the priorities would
23 go, if the stone was to be regulated down, it
24 would be regulated down where it had been noted by
25 a trainman, or some other person; that there was

1 some difficulty in walking in an area where you
2 could expect depth between traffic.

3 On a stretch of mainline removed
4 from switches, outside of a yard board, there are
5 possibilities of, you know, someone having to get
6 down and walk. And Slim and myself are good
7 examples of that. But, it is not going to be a
8 frequent occurrence.

9 So, as you allocate the hours of
10 usage for this machine, you are going to put the
11 machine where it is more urgently needed.

12 Q Mr. Forsythe, the question is:
13 Could the ballast regulator had
14 done the job, sometime between March and August of
15 '93?

16 MR. KOZAK: I'm going to object,
17 Your Honor. I think he's answered the
18 question.

19 THE COURT: Overruled.

20 BY MR. SHAPIRO:

21 A Is there any possibility? Is
22 that --

23 Q Sure. That it could have done
24 the job; smoothed that ballast.

25 A There may have been, with a

1 perfect scheduling of the use of the machine, and
2 opportunity to do it.

3 That assumes a perfect
4 scheduling. And, also, observed an exigent need
5 to facilitate the movement on that track by foot.
6 Pardon me.

7 Q All right. Mr. Forsythe, you
8 said that area where you all were walking wasn't
9 an area that was walked often?

10 A No, it's not.

11 Q And you can't tell this jury for
12 sure that you and Mr. Trimiew ever had to get out
13 of that track inspector's truck in the area of
14 89.2 milepost, at anytime before that August 20,
15 '93 date, from the time that ballast was dumped in
16 March?

17 A Having been -- how do we describe
18 the area, of the 89.2 --

19 Q That entire area --

20 A Is that the --

21 THE COURT: Wait. Wait a minute.

22 A Is that the --

23 THE COURT: Wait a minute. Wait
24 a minute. Wait a minute.

25 THE WITNESS: I'm sorry.

1 Q Within the --

2 THE COURT: Wait a minute.

3 MR. SHAPIRO: Okay. I'm sorry.

4 THE COURT: Mr. Forsythe, you
5 just have to answer the questions that
6 Mr. Shapiro asks you.

7 And if he asks you about specific
8 mile markers, that's the question.

9 THE WITNESS: Okay.

10 BY MR. SHAPIRO:

11 A Had we descended at that
12 location?

13 Q Yes.

14 A That exact location before that.
15 No, I don't believe we had. I know we had not.

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1 when you go back there. You can also take
2 a look at the Safety Training Record. It
3 is very interesting, because there's
4 nothing about the three points of contact,
5 or getting in and out of cabs, or walking
6 on high ballast. That's been left out of
7 there. Nothing in there at all.

8 So, you can go through that and
9 take a look at all of that. The railroad
10 really, when you look at all the evidence,
11 had a condition here that was easily
12 preventable. Mr. Shapiro told you that at
13 the beginning of this case, that it was
14 just easily preventable.

15 If they had put out warnings,
16 bulletins, or if they had gone ahead and
17 groomed the ballast, anything like that to
18 correct the situation, then we wouldn't be
19 here today.

20 Now, these are the witnesses the
21 plaintiff called. And it's through these
22 witness that we've proved our case to you.
23 In response from the railroad, we heard
24 from Mr. Forsythe and Dr. Lublin.

25 And, really, what these witnesses



1 inconvenience, to not be able to wear a
2 pair of sneakers because you can't bend
3 down to tie your shoe laces, that's more
4 than just inconvenience. That's a
5 horrible transformation of your life.

6 He's got a forty-six percent
7 impairment of his body. I want to go back
8 for one moment; to the negligence issue,
9 because there's one other thing that you
10 should consider when you're thinking
11 about -- thinking about whether or not the
12 railroad was negligent, or whether or not
13 Mr. Trimiew was negligent.

14 And you should consider the
15 position of the parties. What Mr.
16 Trimiew's knowledge was and what the
17 railroad's knowledge was. Mr. Trimiew
18 worked out there for along time. He's
19 done his job.

20 But, in comes Mr. Palmer. He's
21 got a college degree in engineering. He
22 knows about all these standards for
23 ballast, and how it should be groomed;
24 just level with the cross tie. But, he
25 doesn't take the care to make sure all of

1 that is done. And Mr. Trimiew has paid
2 the price.

3 Mr. Trimiew is asking that you
4 award him the full amount that he's sued
5 for, in this case; eight hundred thousand
6 dollars. And he's asking that you not
7 reduce that for any contributory
8 negligence on his part, because he doesn't
9 feel that there is any. He's told you
10 he's done the best he could, under the
11 circumstances.

12 So, please take the time to go
13 through the instructions. Look at the
14 exhibits, and remember that you are the
15 conscience of the community. And it's
16 your chance, now, to do what's right for
17 Mr. Trimiew and for the railroad. Thank
18 you.

19 THE COURT: Mr. Kozak? It clips
20 at the top.

21 MR. KOZAK: All right. Sorry.
22 Ladies and gentlemen, thank you. I'd like
23 to pick up on what Mr. Hajek said, when
24 we're conscience.

25 All right. Ladies and

1 gentlemen -- I'm sorry. I'd like to pick
2 up on what Mr. Hajek said, as far as why
3 we're now here today, and doing justice.
4 And that involves being fair.

5 And, obviously, to both sides.
6 And, particularly, what it means is that
7 the fact that Mr. Trimiew suffered an
8 injury -- which we don't deny -- is not
9 sufficient in itself to justify an award.

10 That's not the way our system
11 works. Because, we also have the idea in
12 our system of justice, that people need to
13 be responsible for their own safety, to a
14 certain extent.

15 And that's why we have this whole
16 idea of contributory negligence. And
17 that's something we have less and less of
18 in society today, I think, is people
19 taking responsibility for their own
20 actions.

21 In this particular case, Mr.
22 Trimiew was a laborer of the railroad, for
23 20 years. Being a laborer on the railroad
24 is a hard job itself, and it's a dangerous
25 job.

1 And the railroad knows that. And
2 that's why the railroad has weekly,
3 perhaps, daily safety meetings. And the
4 purpose of the safety meeting is to
5 instruct the people that work there as to
6 how to try to do their job the best, and
7 safest way possible; in the midst of all
8 this machinery, and all the other
9 potentially dangerous things that are
10 there.

11 And this is reflected in the
12 Court's Instructions. The Law recognizes
13 this; that the Railway Company is not
14 required to furnish a place to work that's
15 absolutely safe. You can't do that.

16 The duty of the railroad is to
17 exercise reasonable and ordinary care, to
18 provide a reasonably safe place for Mr.
19 Trimiew to perform the work that he's
20 performing.

21 Now, the only thing that the
22 plaintiff says the railroad did, and that
23 was negligent in this case, is allowing
24 the ballast to be unloaded and to remain
25 on the track and Mr. Trimiew to fall. And

1 that's it.

2 I mean, that's the only thing.
3 You've been here for two days, and that's
4 the only thing that the plaintiff says
5 that we did wrong.

6 Now, let's look at that. The
7 purpose of unloading this ballast, is that
8 it's part of an operation. It's not an
9 isolated thing. It's in anticipation of
10 this T and S gang that comes in later to
11 change the ties, do all these other
12 things, and then the ballast is laid
13 around it.

14 Now, you saw the videotape that
15 the plaintiff played of this T and S
16 operation. This is a big operation.
17 There's all kinds of equipment. It's
18 something that involves a lot of men.

19 It's something that takes place
20 over time. And you can see in the process
21 of that what happens first. If you
22 remember the video, you get on the track
23 and mark the ties that need to be changed.

24 Then, sometime after that they
25 unload the ballast along the way. Then

1 they come through with the replacement
2 ties. And then they take the old ties out
3 and place the new ties in.

4 And then they come sometime after
5 that with the regulator machine to smooth
6 the ballast out, to provide stability and
7 drainage for the tracks.

8 Now, regulating the ballast is
9 the last thing that is done in that
10 operation. You've heard nobody come here
11 and testify that ballast was ever
12 regulated on the railroad before the T and
13 S gang came through.

14 Now, the plaintiff brought in a
15 number of workers out there and, again, to
16 say:

17 Well, there's another regulator
18 over on another track. We could have
19 brought that over. But, that's not what
20 Mr. Forsythe said. And he's the
21 supervisor.

22 And I think an interesting thing
23 that Mr. Hajek said, is that all the
24 people that Mr. Trimiew worked with came
25 in and said the same thing. They did

1 pretty much all come in here and say the
2 same thing.

3 And I think if you recall, most
4 of them had something else in common.
5 They were represented by the plaintiff's
6 firm. And it wasn't -- it wasn't
7 feasible.

8 It wasn't the way the railroad
9 operates; in other words, to just bring a
10 machine in, if it was even there. Mr.
11 Forsythe said it wasn't there, in order to
12 do this. It wasn't the way to operate.

13 But, the people who worked on the
14 railroad knew this. And they all had
15 unloaded the ballast. Mr. Trimiew helped
16 them unload the ballast. They knew it was
17 there.

18 They knew it was difficult to
19 walk in. And it was something that they
20 knew about. They work around it all the
21 time. They were trained, particular, to
22 deal with it. And particularly trained
23 how to get in and out of vehicles on that
24 ballast.

25 That gets us to the three points

1 of contact idea. Everybody, I think,
2 testified, including Mr. Trimiew, the
3 co-workers had never heard of this three
4 points of contact.

5 But, they remember Mr. Palmer
6 demonstrating the way to dismount off the
7 gang truck. And the way that that
8 demonstration was, demonstrated the three
9 points of contact with the two hands, and
10 the foot stepping down.

11 So, they remember the
12 demonstration. They remember it was
13 getting off backwards. They remember the
14 way it was actually done was to maintain
15 three points of contact. But, they don't
16 remember if that term was ever mentioned.
17 Or that you were supposed to do it on all
18 meetings.

19 But, in fact, even it there
20 hadn't been a demonstration, it's simply
21 common sense that -- and Mr. Wynn was one
22 of the witnesses for the plaintiff, and
23 testified that it was just common sense
24 that you need when you come up facing
25 equipment, holding on, particularly this

1 vehicle that the plaintiff was in.

2 And, particularly, when he not
3 only knew the ballast was there, but he
4 looked down at the ballast, saw it was
5 there and then just like he was getting
6 out of a car in his driveway, just stepped
7 down into it.

8 And that alone was sufficient to
9 have been the cause of this accident.

10 And, in addition to that, there was
11 testimony that -- Mr. Hajek said it wasn't
12 a rule, but on the other hand, there was
13 testimony that Mr. Trimiew was charged and
14 disciplined by the railroad for the
15 improper method in which he got off the
16 high rail.

17 And the instructions from the
18 Court instruct you that you can take that
19 into consideration in determining whether
20 Mr. Trimiew was negligent. The way that
21 the system is set up, we real only have
22 two parts to this trial. One is:

23 Liability. In other words, were
24 you decide who is negligent. And that
25 portion, I think, that you know the

1 railroad's position, based on what's been
2 proved, is that there hasn't been any
3 negligence shown on the part of the
4 railroad.

5 And, unfortunately, this accident
6 occurred as a result of Mr. Trimiew's
7 actions. But, we -- obviously we had a
8 lot of testimony. More than a lot of
9 injuries. So, obviously, we have to
10 address -- I have to address that with you
11 here.

12 Mr. Hajek said that Dr. Lublin's
13 testimony was so different than all the
14 other doctors, I don't think it was.
15 Dr. Lublin came in and acknowledged that,
16 as I told you in the opening statement,
17 that Mr. Trimiew slipped. There's no
18 question about that.

19 Then he had surgery after that.
20 And that was, in part, as a result of the
21 slip. Dr. Lublin was right up front about
22 that. But, what Dr. Lublin went on to
23 say, you know, what the plaintiff's
24 doctors wanted to say was:

25 But, wait a minute. There's more

1 going on here than that. Mr. Trimiew, at
2 the time he fell, was sixty-five. He had
3 arthritis in his back. It started showing
4 up in 1988.

5 By the time -- Dr. Rubis said
6 that when he look at the films back from
7 '88, he didn't see much arthritis. But
8 all the doctors, plaintiff's doctors,
9 agree that in 1993 he had extensive
10 arthritis throughout his back.

11 So, this was a condition that was
12 getting worse. And as the doctors told
13 you, arthritis is something that tends to
14 get worse. And Dr. Lublin told you that
15 as far as Mr. Trimiew's problems now,
16 after the surgery -- now, the surgery
17 helped him, as far as the herniated disk.

18 I mean, that's why people have
19 surgery; to get better. And, in fact, Mr.
20 Trimiew was better after the surgery.
21 But, he has the arthritis. He has
22 arthritis in his hips. That effects his
23 motion.

24 And all these things you need to
25 take into consideration in assessing if

1 damages are awarded; whether all of this
2 is the responsibility of the railroad.
3 Or, whether some of this is the result of
4 a pre-existing, and other conditions, that
5 has nothing to do with the railroad.

6 It is not the railroad's fault.
7 So, you have to take that into
8 consideration, if you get to that point in
9 the case.

10 I think I've covered it all and I
11 won't use up all of my time.

12 THE COURT: Thank you Mr. Kozak.
13 Mr. Shapiro?

14 MR. SHAPIRO: Thank you, Your
15 Honor. Could I take those exhibits,
16 please?

17 THE COURT: Yeah. And whatever
18 you're going to show the jury, I assume
19 you've shown Mr. Kozak?

20 MR. SHAPIRO: Yes. These are
21 blowups that were already entered in the
22 case.

23 Ladies and gentlemen, I'm going
24 to try to be brief. You've heard a lot.
25 At the beginning of the case, we told you

1 this accident was easily preventable. And
2 we've proven that.

3 We brought in the witnesses. The
4 railroad didn't. They brought in one
5 witness, Mr. Forsythe, who was the
6 supervisor.

7 We've shown you clearly that the
8 railroad could have prevented the
9 accident. We don't think you're going to
10 have any dispute about that when you get
11 back in the room, though.

12 What's really happened and what
13 Mr. Kozak said in his opening statement
14 is, look, you're going to have to compare
15 what the negligence was of Mr. Trimiew
16 versus the railroad.

17 And as Mr. Hajek touched on,
18 what's really gone on here in this whole
19 trial is a damage control action by the
20 railroad. It's been, let's control the
21 damages, and just hope that jury doesn't
22 really award him what they could award
23 him. Because, we know he's really hurt.

24 Let's try to convince that jury
25 when they get back there that it was his

1 fault. That's the plan. You can just see
2 the railroad's claims people sitting
3 around thinking about that and how they're
4 going to argue this case.

5 But, you know, from the Request
6 for Admissions that there was no rule
7 about dismounting. Remember at the very
8 beginning of the case, before Mr. McGinley
9 ever opened his mouth, I read this to you
10 all:

11 "Defendant maintains no written
12 records, or written Safety Rule that
13 specifies how a worker's arms and legs are
14 supposed to be positioned properly while
15 exiting a high rail vehicle. Admitted."

16 That's uncontested. And the
17 second one is about the same. It's
18 uncontested. They had not trained him.
19 They charged Mr. Trimiew with a Rule
20 Violation? What was the rule?

21 We never heard one during the
22 whole trial. It was the phoniest bologna
23 in the whole world. They charged him
24 because he was hurt and was going to make
25 a claim against him. That's all that was

1 going on.

2 You saw this exhibit. You know
3 what the mounds were like that were out
4 there. And you have some photographs here
5 of the scene of the accident. Mr. Trimiew
6 took them. Look at these and you'll see
7 how high the ballast was. That's taken
8 from the side, looking at the rail. And
9 you can see the mounds up and down here in
10 this picture.

11 There's a picture that the
12 railroad put in, if you'll remember. This
13 one. And what's great about this picture,
14 is you see how it's supposed to look when
15 you look at those cross ties, and it's
16 flat.

17 The margin there is how it's
18 supposed to be. The railroad took it in
19 that view. But, if you look down the
20 track a ways, you'll see where the ballast
21 was in mounds. And that's where the
22 accident happened.

23 Mr. McGinley was the first
24 witness. And he really told you most of
25 what you needed to hear. He's never been

1 represented by our firm.

2 But, we don't mind what Mr. Kozak
3 said about us having represented some of
4 those railroad workers. We're proud to
5 have represented the railroad workers.
6 And I'll tell you that without hesitation.
7 It didn't affect their opinions, or
8 testimony about anything.

9 Mr. Forsythe. You remember him?
10 He was the one witness that the railroad
11 brought on, who was the inspector with Mr.
12 Trimiew. You all ought to remember
13 exactly, when I asked him that question:

14 Did you think about bring the
15 ballast regulator in there, since you
16 drove through there all the time, as a
17 supervisor?

18 There must have been ten
19 different excuses he gave. And I just let
20 it go, because you all knew exactly what
21 was going on. He did not have an answer.
22 He did not have an answer to the question.

23 So, really, when we're talking
24 about fairness in this case, and being
25 fair to both sides, I have to think to

1 myself as I address you, what is fair?

2 Well, fair -- it wasn't fair to
3 Mr. Trimiew of what he's had to go
4 through. And Mr. Kozak said, people don't
5 want to accept responsibility.

6 Mr. Forsythe sat up there for the
7 railroad, and he did everything but accept
8 responsibility for what happened to his
9 mate, Mr. Trimiew. And I submit to you
10 that you, as the conscience of the
11 community here, have the power to write
12 the wrong. You have the power to give a
13 full measure of justice to Mr. Trimiew.

14 Now, justice, under the Court's
15 instructions, is not half justice. It's
16 not half of what would make Mr. Trimiew
17 whole. That's not being fair, under the
18 Law. What's being fair is what the Law
19 says you should do, when awarding damages.

20 And as Mr. Hajek pointed out, if
21 the railroad's negligence was the cause,
22 even the slightest, then the verdict is
23 for Mr. Trimiew. And what you really need
24 to discuss back there is how much the
25 award is.

1 You're not going to have any
2 problem arriving at that decision. So,
3 really, the damages and what to award is
4 what you really need to think about.

5 And the point of his wages that
6 he would have earned, that's the starting
7 point. That's just what he would have
8 earned; the hundred and thirty-four
9 thousand dollars.

10 I should mention, he earned two
11 hundred and eighty-five dollars in the
12 custodial job that he tried. And God
13 didn't he try. This man wants to be
14 working. And that's something that, you
15 know, you have to think about when you
16 think about damages. What is it worth
17 when you've lost your vocation?

18 And a man that works over twenty
19 years at a job, has a lot of pride in
20 that. And he can't do it. And on here
21 when you consider the damages, you think
22 about that, when you think about what is
23 it worth if you can't do what you've done
24 your whole life, and somebody else caused
25 it.

1 I don't think Mr. Hajek -- I
2 don't feel at all embarrassed about
3 telling you that we asked for eight
4 hundred thousand dollars in this case. I
5 don't feel the least bit hesitant in
6 saying that two or three times.

7 Because, what he went through, no
8 one should go through from someone else's
9 negligence. The catheter in the hospital.
10 The loss of bowel movement. The walker.
11 The picker upper. Not being able to tie
12 his own shoes.

13 Now, if it had been from nothing
14 and just life, that's fine. But, where
15 someone else does it, our system of
16 justice says:

17 If they're negligent, they are
18 responsible. And to do full justice, is
19 to award full damages. He's got a
20 forty-six impairment of his back. And Mr.
21 Trimiew has a life expectancy, which is in
22 the instructions of the Court, till age
23 80.

24 Now, that's under the Virginia
25 Code that says the average he's supposed

1 to live is to age 80. You can believe
2 that he might live longer than that. But,
3 the law says that's what you're to
4 consider. And he's 67 now. And he's got
5 those years to go with his back, just like
6 it is, for the rest of his life.

7 Now, please remember this. This
8 is Mr. Trimiew's one day in court. And
9 you have the power to give him full
10 justice. And I want you to consider this
11 one last thought, when you're back there
12 deliberating, before you come to your
13 verdict. Think to yourselves, if you run
14 into Mr. Trimiew on the street in a year,
15 or a couple years, and you pass him and
16 you look him in the eye, will you think
17 that you did full justice for Mr. Trimiew,
18 if you see him on the street?

19 And if you have done full
20 justice, you know that when you see him on
21 the street, you'll be able to say that to
22 yourselves.

23 Let me thank you.

24 THE COURT: All right. Members
25 of the jury, at this time, I'm going to



1 NOTE: At this time, a brief
2 recess is had; whereupon, the proceeding
3 continues out of the presence of the
4 jury, as follows:

5
6 THE COURT: You can bring the
7 jury in, please.

8
9 NOTE: At this time, the jury
10 returns to the courtroom; whereupon, the
11 proceeding continues, as follows:

12
13 THE COURT: All right. Members
14 of the jury, have you reached a verdict?

15 MS. NITZ: Yes.

16 THE COURT: Would you hand it to
17 the Bailiff, please.

18 All right. The verdict of the
19 jury is as follows:

20 "We the jury on the issues
21 joined, find in favor of the plaintiff and
22 assess his damages at five hundred
23 thousand dollars. Signed Carol Nitz,
24 foreman."

25 Is there a motion to pole the

1 jury?

2 MR. KOZAK: Yes, Your Honor, we'd
3 like to do that.

4 THE COURT: Ladies and gentlemen,
5 I am going to call your name. As I call
6 your name, if the verdict that I just
7 read, which is a verdict in favor of Mr.
8 Trimiew in the amount of five hundred
9 thousand dollars, if that is the amount of
10 the verdict that you agreed to,
11 individually, please say yes.

12 If you did not individually agree
13 to that verdict, please say no. Evelyn
14 Brinson?

15 MS. BRINSON: Yes.

16 THE COURT: Mary Gregory?

17 MS. GREGORY: Yes.

18 THE COURT: Carl Nitz?

19 MS. NITZ: Yes.

20 THE COURT: Wayne Smith?

21 MR. SMITH: Yes.

22 THE COURT: Alfred Thompson?

23 MR. THOMPSON: Yes.

24 THE COURT: Raymond Woodbury?

25 MR. WOODBURY: Yes.

1 THE COURT: And Latanya Yeldell?

2 MS. YELDELL: Yes.

3 THE COURT: The Court finds that
4 the verdict as read is, in fact, the
5 verdict of this jury.

6 Ladies and gentlemen of the jury,
7 let me thank you very much for your
8 attendance here. I'm sure the last thing
9 you want right now is another speech like
10 the lawyers.

11 I'm not going to make one to you,
12 but I want you to know how much I do
13 appreciate your service. Usually our
14 jurors are here for one day, you all were
15 here for two days. So, you've done twice
16 the amount of what we ask our jurors to
17 do.

18 Thank you very much. The only
19 other thing I have to remind you of,
20 though, is to remind you to call in next
21 Wednesday to see if you have to be here
22 next Thursday.

23 Have a very pleasant week.

24

25 NOTE: At this time, the jury

1 is excused; whereupon, the proceeding
2 continues, as follows:

3
4 THE COURT: Anything else,
5 counselor?

6 MR. KOZAK: Your Honor, for the
7 record I'd just make a motion to set aside
8 the verdict.

9 THE COURT: Any comment on that?

10 MR. KOZAK: Well, basically the
11 Law on the evidence, Your Honor.

12 I think that I attempted to make
13 a motion to strike. But, I think that the
14 evidence that was presented by the
15 plaintiff didn't prove any negligence on
16 the part of the -- on the part of the
17 railroad.

18 The only basis for the railroad's
19 negligence, in this case, was, obviously,
20 the ballast that was along side the track.

21 But, the evidence that was
22 presented was that that was consistent
23 with the procedures of the railroad, in
24 that the regulation of the ballast always
25 occurred as part of the T and S gang

1 operation, at the end of it.

2 And at the end of the evidence,
3 there wasn't any evidence that this was an
4 unusually dangerous situation. And that
5 everybody who worked on the railroad,
6 including Mr. Trimiew, knew and was aware
7 of it and was trained to deal with it.

8 And for that reason, we feel that
9 the jury's verdict is incorrect, as a
10 matter of law.

11 THE COURT: All right. Thank you
12 very much, Mr. Kozak.

13 The Court feels this was a jury
14 question; both with regard to liability
15 and with regard to damages. So, I feel
16 that there was sufficient evidence to
17 support the jury's verdict.

18 The motion to set aside, or to --
19 yeah, set aside the jury verdict will be
20 overruled. Judgment will be entered in
21 favor of the plaintiff for five hundred
22 thousand dollars.

23 Counsel, thank you very much.

24 THE BAILIFF: Court stands
25 adjourned.

1
2 NOTE: At this time, the
3 proceeding is concluded.
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INSTRUCTION NO. 1

L A-520-3
huer
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Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

(1) Was the defendant negligent?

(2) If he was negligent, was his negligence a cause of the accident?

On these issues the plaintiff has the burden of proof.

(3) Was the plaintiff negligent?

(4) If he was negligent, was his negligence a cause of the accident?

On These issues the defendant has the burden of proof.

(5) If the plaintiff is entitled to recover, what is the amount of his damages?

On this issue the plaintiff has the burden of proof.

Your decision on these issues must be governed by the instructions that follow.

INSTRUCTION 2

Answer

The Court instructs the Jury that when a party has the burden of proof on an issue, then he must prove that issue by the greater weight of all the evidence. This is sometimes called the preponderance of the evidence. It is that evidence which you find more convincing. The testimony of one witness whom you believe can be the greater weight of the evidence.

INSTRUCTION

3

Conver
0

The Court instructs the jury that you are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

DEFENDANT'S INSTRUCTION NO. 4

Ames

You must consider and determine this case as litigation between persons of equal standing in the community. You should not be influenced or affected by the fact that the Norfolk and Southern Railway Company is a railroad or a corporation, nor should you be in any way influenced by any thoughts or ideas you may have as to the financial standing of any party to this litigation. Such matters have no proper place in a case of this kind. This case is to be considered and determined by you in the same unbiased way as you would consider and determine a case between two private individuals.

Even
D

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and the weight to be given to such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for his opinion, the sources of his information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION

6

Ames
D

The Court instructs the jury that negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

INSTRUCTION 2

Since a corporation can act only through its officers, or employees, or other agents, the burden is on the plaintiff to establish, by a preponderance of the evidence of the case, that the negligence of one or more officers, or employees, or other agents of the railroad [other than the plaintiff himself] was a cause of any injuries and consequent damages sustained by plaintiff.

Any negligent act or omission of an officer, or employee, or other agent of a corporation, in the performance of his duties, is held in law to be the negligence of the corporation.

DEFENDANT'S INSTRUCTION NO. 8

The mere happening of an accident causing injuries to Clinton Trimiew does not make Norfolk and Southern Railway Company liable nor does it raise any presumption of negligence on the part of Norfolk and Southern Railway Company.

Conner

INSTRUCTION 9

Plaintiff alleges that the railroad's conduct was negligent in that it did not provide Plaintiff with a safe place to work.

Section 1 of the Federal Employers' Liability Act (45 U.S.C.A. Section 51), one of the Acts under which the Plaintiff claims the right to recover damages in this action, provides in part that:

"Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, . . . for such injury. . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier. . . ."

It is agreed that, at the time and place alleged by Plaintiff, the defendant, Norfolk and Southern, was a common carrier by railroad, engaged in interstate commerce; that the Plaintiff was then an employee of the railroad engaged in such commerce.

INSTRUCTION 10

Ames
J

The Court instructs the jury that the duty of a railroad to use ordinary care to provide its employees with a reasonably safe place to work includes the inspection of the workplace for hazards and the taking of precautions to protect employees from possible unsafe conditions, practices and/or defects.

If a railroad fails to perform this duty, then it is negligent.

INSTRUCTION

10a

Ames
J

The Court instructs the jury that the duty to furnish an employee with a safe working place is a continuing one, and notice of defects and dangers will be imputed to the railroad where they could have been discovered by reasonable inspection and by the exercise of reasonable care.

DEFENDANT'S INSTRUCTION NO. 11

Ames
J

The Norfolk and Southern Railway Company was not required under the law to furnish Clinton Trimiew a place to work which was absolutely safe. Its duty in that respect was only to exercise reasonable and ordinary care to provide a reasonably safe place for him to perform the work he was performing at the time of the incident in question.

INSTRUCTION

12

Ames

The Court instructs the jury that notice and knowledge to the railroad of an unsafe condition may be actual notice or constructive notice. Constructive notice is that knowledge of a condition the railroad should have discovered by exercising ordinary care.

DEFENDANT'S INSTRUCTION NO. 13

Conver
J

You are instructed that guidelines or procedures enacted by the railroad do not establish the standard of care for the railroad, but you may consider them in determining whether the railroad acted reasonably.

INSTRUCTION NO. 14

Lover
J

The court instructs the jury that general, cautionary rules enacted by the railroad do not set the standard of care for the plaintiff at the time and place in question, but you may consider them in determining whether the plaintiff acted reasonably.

DEFENDANT'S INSTRUCTION NO. 15

Over
J

It was the continuing duty of the Clinton Trimiew to exercise reasonable and ordinary care for his own safety and protection. If he did not, then he was negligent.

In your consideration of this issue, you may consider Clinton Trimiew's actions in the light of any conditions known to him.

DEFENDANT'S INSTRUCTION NO. 16

Conner
J

If you find that plaintiff violated a safety rule of the defendant and that this violation contributed in whole or in part to the accident, you may consider this violation as evidence of negligence on the part of the plaintiff.

INSTRUCTION 17

You shall find your verdict for the plaintiff, if he proved by the greater weight of the evidence:

- 1) that the defendant was negligent, and
- 2) that the defendant's negligence was a cause, in the slightest, of the plaintiff's injuries.

If the plaintiff failed to provide either or both of the two elements above, then you shall find for the defendant.

If you find your verdict for the plaintiff, and if the defendant proves by the greater weight of the evidence that the plaintiff was contributorily negligent, then you shall reduce the amount of the verdict in proportion to the relative negligence of the plaintiff and the defendant.

INSTRUCTION 18

In determining the damages to which the plaintiff is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the the defendant:

- (1) any bodily injuries he sustained and their effect on his health according to their degree and probable duration;
- (2) any physical pain and mental anguish he suffered in the past and any that he may be reasonably expected to suffer in the future;
- (3) any associated humiliation or embarrassment;
- (4) any inconvenience caused in the past and any that probably will be caused in the future;
- (5) any medical expenses in the past;
- (6) any earnings he lost because he was unable to work at his calling; and,
- (7) any loss of earnings, fringe benefits and lessening of earning capacity that he may reasonably be expected to sustain in the future;

Your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages he sustained as a result of the accident.

INSTRUCTION 19

If you find that the plaintiff had a condition before the accident that was aggravated as a result of the accident, then if you find your verdict for the plaintiff, he may recover for the aggravation but he is not entitled to recover for the pre-existing condition.

DEFENDANT'S INSTRUCTION NO. 20

Conner
D

If you find in favor of Plaintiff and decide to make an award for any loss of earnings in the future, you must take into account the fact that the money awarded by you is being received all at one time instead of over a period of time extending into the future and that Plaintiff will have the use of this money in a lump sum. You must, therefore, determine the present value or present worth of the money which you award for such future loss.

Amey

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DEFENDANT'S INSTRUCTION NO. 21

If you find that the Norfolk and Southern Railway Company was negligent and that such negligence contributed in whole or in part to plaintiff's injury, but that plaintiff was himself negligent and that such negligence contributed in part to his injury, then plaintiff's damages must be reduced in proportion to the amount of his contributory negligence.

Accordingly, if you find the plaintiff's injury resulted in whole or in part from the negligence of both the plaintiff and the railroad, then you shall determine the damages to be awarded in the following manner:

First: Determine the amount of plaintiff's damages in dollars without considering the effect of the negligence of the plaintiff.

Second: Determine what percentage the plaintiff's negligence was of the total combined negligence.

Third: Reduce the amount of the plaintiff's damages, as previously determined, by the percentage of the plaintiff's negligence.

DEFENDANT'S INSTRUCTION NO. 22

You have been instructed as to how plaintiff's contributory negligence may limit the right to recover damages. However, it should be noted that, in certain circumstances, the plaintiff's own negligence may be a complete bar to recovery. For example, if you find that plaintiff was guilty of negligence, and that plaintiff's negligence was the sole cause of his injury, then you must return your verdict in favor of the defendant.

Over
9

DEFENDANT'S INSTRUCTION NO. 23

If your verdict is in favor of Clinton Trimiew you will not increase the amount of your verdict by reason of federal, state or local income taxes, since the amount awarded to Clinton Trimiew is not taxable income to him within the meaning of these tax laws.

INSTRUCTION NO. 24

The Virginia Life Expectancy Table shows that a 67 year old male such as the plaintiff has a remaining life expectancy of 12.9 years. You may use this information in determining life expectancy, but it is not in any way conclusive or binding. You should consider it along with all of the other evidence relating to the health, constitution and habits of the plaintiff.

DEFENDANT'S INSTRUCTION NO. 25

Ames
J

The fact that I am instructing you as to the rules of law which are to govern you in your consideration of the question of damages is not to be understood as an opinion by me as to whether damages should or should not be allowed. This is a matter solely for your determination under the rules of law as I have given them to you.

INSTRUCTION NO. 26

Lincoln
J

Any statement of counsel referring to the amount sued for, and any suggestion by counsel of an appropriate sum of money to be awarded as a verdict, are not evidence in this case. They are only statements and suggestions of counsel, and are in no way binding upon you.


INSTRUCTION P-D

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[Signature]

If you find that the railroad and the employee were both negligent, and that the negligence of each combined to cause the employee's injuries, then the employee is entitled to recover, but you are required to diminish his damages in proportion to the amount of negligence attributable to him.

VERDICT FORM

We, the jury, on the issues joined, find in favor of
the plaintiff, and assess his damages at \$ 500,000.00


Foreman/Forelady

We, the jury, on the issues joined, find in favor of
the defendant.

Foreman/Forelady

VIRGINIA:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CLINTON TRIMIEW

Plaintiff

v.

LA-520

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant

O R D E R

On December 7, 1995, came the parties, in person and by counsel, and came also a jury, to wit: Evelyn Brinson, Mary Gregory, Carol Nitz, Wayne Smith, Alfred Thompson, Sr., Raymond Woodbury, and Latanya Yeldell, who were sworn to well and truly try the issues joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented, and this case is continued to December 8, 1995.

ENTER 12/11/95


Judge

VIRGINIA:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CLINTON TRIMIEW

Plaintiff

v.

LA-520

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant

O R D E R

On December 8, 1995, again came the parties, in person and by counsel, and also the jury pursuant to its adjournment of yesterday.

The evidence of the defendant was presented.

After receiving instructions from the court and hearing arguments of counsel, the jury retired to their room to consult of their verdict and after some time returned into court with the following verdict:

We, the jury, on the issues joined, find in favor of the plaintiff and assess his damages at \$500,000.00.

Carol A. Nitz
Foreman/Forelady

The defendant by counsel moved to set aside the verdict for reasons stated in the record, which motion was overruled and to which action of the court counsel for the defendant objected.

It is, therefore, **ORDERED** that the plaintiff recover and have judgment against the defendant in the amount of \$500,000.00, with interest thereon at the rate of 9% per year from the date of judgment until paid, and the costs.

A copy of this order was this day mailed to counsel of
record.

ENTER 12/11/95


Judge

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW. NO. 95-A-530-3

NORFOLK SOUTHERN RAILWAY COMPANY,

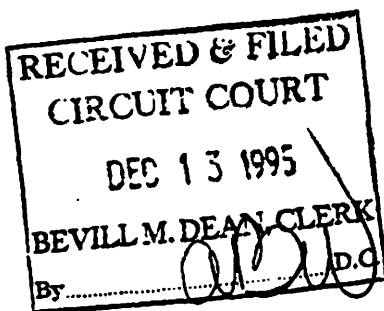
Defendant.

NOTICE OF HEARING

TO: Clinton Trimiew
c/o Richard N. Shapiro, Esquire
Wilson, Hajek & Shapiro, P.C.
1294 Diamond Springs Road
Post Office Box 5369
Virginia Beach, Virginia 23455

PLEASE TAKE NOTICE that defendant, Norfolk Southern Railway Company, by counsel, will bring its Motion to Vacate and Remitter and Motion to Reconsider on for hearing before this Court on December 19, 1995, at 3:45 p.m., or as soon thereafter as counsel may be heard.

NORFOLK SOUTHERN RAILWAY COMPANY



By: _____

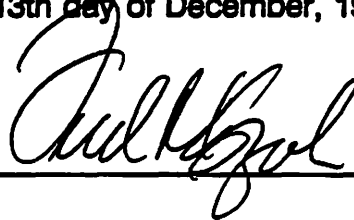
Of Counsel

John S. Barr (VSB #5229)
Fred R. Kozak (VSB #17791)
MALONEY, BARR & HUENNEKENS
A Professional Corporation
NationsBank Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219
(804) 644-0313

Counsel for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Hearing was forwarded via facsimile transmission to Richard N. Shapiro, Esquire, counsel for plaintiff at (804) 460-3428, and mailed to counsel for plaintiff, Richard N. Shapiro, Esquire, Wilson, Hajek & Shapiro, P.C., 1294 Diamond Springs Road, P.O. Box 5369, Virginia Beach, Virginia 23455, this 13th day of December, 1995.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW. NO. 95-A-530-3

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

MOTION TO RECONSIDER

Defendant Norfolk Southern Railway Company moves the court to reconsider its denial of defendant's oral post-trial motion to set aside the jury verdict as contrary to the law and evidence. In support of this motion, defendant adopts and incorporates here the authorities, reasons, and arguments stated in its Motion and Memorandum to Set Aside the Verdict or For Remittitur.


Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By: 

Of Counsel

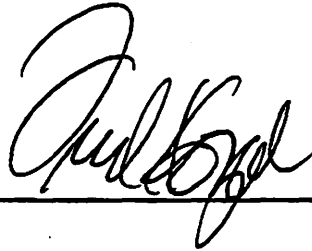
John S. Barr (VSB #5229)
Fred R. Kozak (VSB #17791)
MALONEY, BARR & HUENNEKENS
A Professional Corporation
NationsBank Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219
(804) 644-0313

RECEIVED & FILED
CIRCUIT COURT
DEC 13 1995
BEVILL M. DEAN, CLERK
By  D.C.

Counsel for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 1995, a copy of Defendant's Motion to Reconsider was sent by facsimile transmission at (804) 460-3428, and by first class mail, to counsel for plaintiff, Richard N. Shapiro, Esquire, Wilson, Hajek & Shapiro, P.C., 1294 Diamond Springs Road, P.O. Box 5369, Virginia Beach, Virginia 23455.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW NO. 95-A-520-3

NORFOLK SOUTHERN
RAILWAY COMPANY,

Defendant

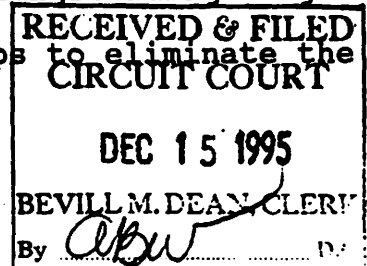
**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR NEW TRIAL OR REMITTITUR**

Plaintiff, by counsel, responds to defendant's Motion for a New Trial or Remittitur as follows:

(1) The Court has properly denied defendant's motion to set aside the verdict made after the jury's verdict was announced and after the jury was polled. No facts or compelling law has been set forth in defendant's Memorandum to alter the Court's decision. Defendant's only argument is that the verdict is somehow excessive and this is meritless as the verdict is reasonable and consistent with the weight of the damages evidence received at trial.

(2) Defendant's arguments as to the insufficiency of the evidence of negligence (Brief at pp. 1-3 and 9-12) should be summarily rejected, as defendant made no motion to strike plaintiff's evidence after the plaintiff rested his case, and defendant has thereby waived such arguments. The evidence overwhelmingly proved that defendant had intimate knowledge of the ungroomed ballast rock and knowledge of the longstanding dangerous condition, but chose not to take simple steps to eliminate the

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& SHAPIRO, P.C.
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
VIRGINIA, P.O. BOX 23455

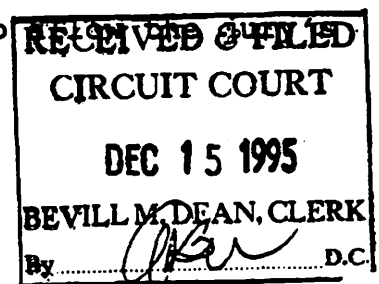


danger to plaintiff and others.

(3) Plaintiff's damages evidence of lost wages and unpaid medical bills in the sum of approximately \$142,000.00 was essentially un rebutted in any material way (no vocational rehabilitation expert or economist was offer by the defendant). Vocational testimony proved that the plaintiff was essentially unemployable in the labor market. Plaintiff's damages evidence proved he was in excellent health pre-accident, even jogging twice a week, but that he suffered through considerable back pain, and then painful back surgery (Dr. Mathews described the four level decompression surgery, with a single diskectomy), through penile catheters, rolling walkers to assist his ambulation, long and difficult physical therapy (Cheryl Johnson, physical therapist), and was left with a forty-six percent permanent impairment of his spine (as described by Ellen Hudgins, occupational therapist). Unrebutted evidence was adduced of plaintiff's pain and suffering, including but not limited to the fact that plaintiff uses a device to assist with picking up objects off the ground and that he cannot now tie his own shoelaces, together evidence of the embarrassment plaintiff suffered, humiliation, the deformity (surgical scarring), etc. The jury, by its verdict, obviously rejected defendant's flimsy and unsubstantiated arguments that the plaintiff suffered from any symptomatic arthritis pre-accident, contrary to defendant's argument in its Brief.

WHEREFORE, plaintiff requests that the Court reject defendant's motions in their entirety and to

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SHAPIRO, P.C.
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ITORS AT LAW
INIA BEACH, VA 23455



verdict and judgment to stand undisturbed.

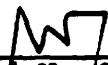
CLINTON TRIMIEW

By 
Of Counsel

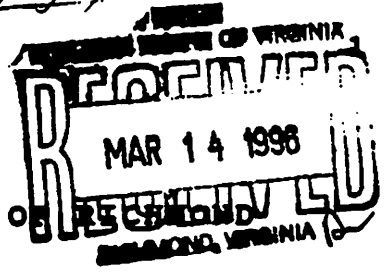
Richard N. Shapiro, Esquire
Francis P. Hajek, Esquire
WILSON, HAJEK & SHAPIRO, P.C.
1294 Diamond Springs Road
Post Office Box 5369
Virginia Beach, Virginia 23455
(804) 460-7776

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed
to all counsel of record this 14 day of December, 1995.


Richard N. Shapiro

760533



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF

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CLINTON TRIMIEW

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Plaintiff,

8

vs.

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NORFOLK SOUTHERN RAILWAY

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Defendant.

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December 19, 1995

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ORIGINAL

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CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue, Suite 203
Richmond, Virginia 23230
Tel. No. (804) 355-4335

25

1 **APPEARANCES:**

2 **WILSON & HAJEK, P.C., 1294 Diamond Springs Road, Post**
3 **Office Box 5369, Virginia Beach, Virginia 23455,**

4 **By: RICHARD SHAPIRO, ESQUIRE,**
5 **Counsel for the Plaintiff;**

6 **MALONEY, YEATTS & BARR, 801 East Main Street, Suite**
7 **600, Richmond, Virginia,**

8 **By: FRED R. KOZAK, ESQUIRE,**
9 **Counsel for the Defendant.**

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1 December 19, 1995

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3 NOTE: The captioned matter was called to be
4 heard at 3:47 p.m., viz:

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6 THE COURT: All right. We're here again on the
7 case of Trimiew versus Norfolk Southern.

8 Mr. Kozak, this is your motion to set aside?

9 MR. KOZAK: Yes, Your Honor.

10 THE COURT: All right.

11 MR. KOZAK: Judge Johnson, as you recall, at
12 the close of this case in which the jury rendered a
13 verdict in favor of the Plaintiff for \$500,000, we
14 made a motion to set aside the verdict, and I argued
15 that briefly and that was denied by the Court.

16 We subsequently filed a Motion to Vacate or
17 for remittitur. And, along with that, I asked the
18 Court to reconsider its earlier ruling on the Motion
19 to Set Aside. The Court, I'm sure, is well familiar
20 with the facts of this case, the motion to set aside
21 that we argued previously. And, obviously, this is
22 an FDLA case and the standards for negligence are so
23 relaxed, but still necessary for the Plaintiff to
24 show some negligence on the part of the Railroad.
25 And, in this case, the sole basis for negligence was

1 the fact that the ballast was unloaded in March of
2 '93 and was scheduled to be regulated for the TNS
3 operation sometime around May or June. It was a
4 little unclear, I think, as to the exact time frame.
5 The operation was canceled, and then the ballast is
6 not regulated and the Plaintiff slipped in August.

7 I think that the timing or the fortuitous
8 timing, I suppose, of the injury to Mr. Trimiew,
9 points out the lack of negligence on the part of the
10 Railroad here. It was common, and all the testimony
11 was it was common for the ballast to remain in a
12 built-up condition for a number of months before the
13 TNS gang came through. I think the testimony varied
14 from one month for the Plaintiff to two to three
15 months by some of the coworkers to five months by
16 track supervisors. The point is it is perfectly
17 common for the ballast to remain at exactly the
18 condition it was at the time the Plaintiff slipped a
19 part of the normal operations of the Railroad. And
20 during this period of time between March and June, i
21 the Plaintiff had stepped down on the ballast and he
22 slipped, there wouldn't be any basis for the
23 Plaintiff's allegation of negligence.

24 The Plaintiff was himself participating in
25 unloading the ballast, knew the ballast was there,

1 looked at the ballast when he stepped out. There
2 wasn't anything different about the ballast in March,
3 April, May, June, July, or August, and there simply
4 was no adequate showing that the Railroad could have
5 foreseen that when the TNS operation was canceled in
6 May or June that if they didn't go out and regulate
7 the ballast right away that someone who hadn't
8 slipped and fallen on it previously would go and slip
9 and fall on it two or three months later.

10 And, as for the Motion to Vacate and I think
11 that the size of the verdict, you know, in light of
12 the close issue of liability and also compared to
13 other cases, I just want to talk about one case, the
14 Bassett Furniture case that is cited in our brief.
15 There it was a case for permanent injuries to a
16 construction worker who was 33 years old, had \$20,000
17 in medicals, \$146,000 in lost wages. There is a
18 million dollar verdict that was reduced to \$550,000.

19 Now, the Plaintiff in this case got a five
20 hundred thousand dollar verdict, and I think the
21 amount of that verdict, based on the facts here, the
22 close issues of liability, and the fact that he was
23 65 when this happened, had preexisting arthritis.
24 His own doctor, Dr. Mathews testified that he
25 performed surgery at three levels, two of which was

1 for arthritis, and one of which was for the herniated
2 disc; that the size of the verdict should be reduced
3 and the alternative should be to have a new trial on
4 all the issues. Or, the best result would be for the
5 Court to set aside the verdict altogether as being
6 contrary to the law and the evidence.

7 THE COURT: All right. Thank you very much,
8 Mr. Kozak.

9 Mr. Shapiro?

10 MR. SHAPIRO: Your Honor, as this Court
11 pointed out at an earlier time in chambers in this
12 case, there is always a winner and a loser in a
13 trial, and the Defendant really didn't argue or raise
14 any issue about evidence of lack of negligence until
15 after the verdict went against them. And although
16 Mr. Kozak may be correct, I may have incorrectly
17 said, in my short response to his brief, the fact
18 that they failed to make a motion to strike they
19 shouldn't be able to argue the point, he is correct
20 in citing a case and apparently I'm incorrect on
21 that. But I still think it's certainly evidence to
22 the Court that it is sort of the after-the-fact issue
23 here. They didn't even raise the issue whether the
24 negligence was sufficient until after the Plaintiff
25 rested. It wasn't until after the adverse verdict

1 came back and we first raised that, that we think
2 that the evidence was clearly adequate on the issue
3 of negligence and the evidence was overwhelming about
4 the lack of due care on the Defendant as far as his
5 failure to smooth the rock.

6 On the issue of the verdict and the amount of
7 the verdict, Your Honor, there really is no evidence
8 that the jury misinterpreted their role or did not
9 adequately evaluate the issue for Mr. --

10 THE COURT: What was the negligence in this
11 case? The negligence was piling the gravel too high?
12 Is that what it was?

13 Yes, the evidence of negligence was that the
14 ballast was left in mounds. And after the Defendant
15 dumped those mounds of rock, they should have, within
16 a very reasonable short period of time, smoothed that
17 rock. I disagree with the Defendant --

18 THE COURT: But what was the cutoff? I mean,
19 suppose the Plaintiff had stepped out of the car two
20 days later. Would that have been negligence on the
21 part of the Railroad?

22 MR. SHAPIRO: Very possibly. So I disagree
23 totally with the Defendant's argument that it was a
24 time issue.

25 THE COURT: Suppose they had done it one day

1 after it was done? Would that have been negligence?

2 MR. SHAPIRO: I think that would have been a
3 jury issue. And, I think as you get closer to the
4 time they dumped it--

5 THE COURT: Well, how is the Railroad supposed
6 to put ballast on the track?

7 MR. SHAPIRO: It's supposed to dump it and
8 promptly come in and smooth the rock.

9 THE COURT: That's my question. What do you
10 consider promptly?

11 MR. SHAPIRO: I consider promptly within a
12 time that's reasonably close to when you dumped the
13 rock--

14 THE COURT: If it had been one day that may be
15 too long because you say that's a jury issue?

16 MR. SHAPIRO: It may be a jury issue. I think
17 there is a time curve there. But where I disagree
18 with Mr. Kozak is that it wasn't a matter of just it
19 happened four months later and that's why it's
20 negligence. I think as you got a week or two out,
21 when they knew that the scheduled maintenance was not
22 going to happen, that it was incumbent on the
23 Defendant to take action.

24 THE COURT: Why? I mean, why?

25 MR. SHAPIRO: Why? Because they know that the

1 ballast is dangerous, and if they keep a condition
2 that they know is dangerous out there, it was like a
3 time bomb. It's true that the men know that the
4 ballast was there. But, the Defendant organization,
5 company, Railroad here, can't just let a condition
6 that it has long-standing knowledge is dangerous
7 exist out there when they have the means to easily
8 prevent the risk. That's my position on the evidence
9 of negligence. It becomes any -- I think any case of
10 negligence becomes an issue of reasonable care,
11 what's reasonable under the circumstances of the
12 particular case.

13 And what's reasonable here would have been
14 within a few weeks when they knew that the work
15 wasn't going to be done, take the ballast regulator
16 that was just a few miles away and smooth the rock.
17 Mr. Kozak's argument is that, you know, two weeks;
18 four months, what's the difference in the lag? Well,
19 I think the difference is that the law presumes--the
20 law doesn't presume--the lawsuit states that if a
21 long-standing condition is dangerous and exists, a
22 Defendant had a duty to the prevent it, subject to,
23 depending upon what law you're under, the Plaintiffs
24 contributing to his own causing of an accident.

25 Here, the Defendant put on all the evidence it

1 chose to about Plaintiffs contributing to its own:
2 accident, and the jury has spoken. The jury did not
3 think that Mr. Trimiew did anything wrong. Or, if
4 they did, they apparently factored than into their
5 verdict in this case.

6 THE COURT: All right.

7 MR. SHAPIRO: I just, on the issue of damages,
8 Your Honor, and Mr. Trimiew's pain and what he went
9 through, Your Honor, heard it all, and I'm not going
10 to reiterate it. I mentioned--

11 THE COURT: There was plenty of evidence on
12 damages.

13 MR. SHAPIRO: One thing I didn't mention in my
14 memorandum is the law presumes that Mr. Trimiew had
15 at least a life expectancy to age 80. He was 67 a
16 few weeks ago during the trial, and obviously they
17 evaluated what he was has to go through the rest of
18 his life, plus his past pain and suffering. 46
19 percent impairment to his back and the Defendant made
20 a big deal of this pre-existing arthritis and the
21 evidence at trial was that he was totally
22 asymptomatic. The man had never been to a doctor for
23 it five years before the accident, and he jogged. We
24 just part company that that had anything to do with
25 his condition on the day of the accident. They think

1 it was a mitigating or minimizing factor on the issue
2 of pain and suffering, but the jury apparently
3 discarded that.

4 THE COURT: All right. Thank you very much, Mr.
5 Shapiro.

6 Mr. Kozak?

7 MR. KOZAK: I just want to --

8 THE COURT: Was there evidence of Mr.
9 Trimiew's knowledge or lack of knowledge of the
10 ballast still being in piles?

11 MR. KOZAK: Well, the evidence was
12 uncontradicted that he knew about it. He helped
13 unload the ballast. He was part of the crew that
14 unloaded the ballast. Now, Mr. Forsyth, the assistant
15 track supervisor, as to the unevenness of the ballast
16 testified as to how this is done. The ballast is set
17 off, pushed off as the train is moving along the
18 track, and it's tried to be kept evenly. But it's
19 impossible to have it perfectly contoured as they're
20 unloading it. So, the unevenness of it is a natural
21 condition of it. And the Plaintiff showed a video,
22 Your Honor, of, I mean, this isn't something where
23 you just put the ballast down and then you come in
24 the next day with a broom and clean it up. This is a
25 huge operation. And Mr. Palmar testified about the

1 schedule to that, and it's just unreasonable in this
2 instance to hold the Railroad at such a high standard
3 to have gone out there the day after or week after
4 and cleaned it up. And --

5 THE COURT: Does it make any difference why
6 Mr. Trimiew was on the ballast? As I recall, the
7 evidence he--whoever was with him. I forget whether
8 it was Forsyth or--

9 MR. KOZAK: Forsyth.

10 THE COURT: Forsyth got down to clip some
11 brush away from the track. What was the evidence as
12 to why Mr. Trimiew was down there? Did Mr. Forsyth
13 call him or was Mr. Trimiew just stretching his legs
14 or was he getting ready to perform some service for
15 the Railroad?

16 MR. KOZAK: Getting ready to perform some
17 service, I think, was part of their normal duties.
18 That's what they did in this vehicle, they rode the
19 track inspecting for debris and they saw a small tree
20 near the track, so they were both getting out in
21 order to remove the debris. So, he was getting out
22 to perform normal job duties. He testified as he got
23 out he looked down he saw the ballast and he stepped
24 right out into it.

25 THE COURT: But doesn't that go to the issue

1 of contributory negligence as opposed to the
2 Railroad's primary negligence.

3 MR. KOZAK: Yes, it does, Your Honor, except
4 for the fact that the ballast he looked out into and
5 stepped in was there from March. If they had had
6 occasion to cut down a tree in April or May or June,
7 there wouldn't have been any difference in the
8 condition of the ballast. And, that the Railroad
9 could foresee that the day after this TNS operation
10 was cancelled, they had a duty to go out there and
11 clean up a condition that had been there two or three
12 months; everybody knew about it and knew they had to
13 deal with. It's just unreasonable. For the record,
14 I just want to cite the case of McGhee versus
15 Commonwealth, it's 4 VA 317. It just stands for the
16 proposition that the Motion to Set Aside the verdict
17 may be made without a prior Motion to Strike.

18 THE COURT: I was made aware of that a couple
19 of years ago. I didn't think you could either, but
20 there is a case that specifically says you don't have
21 to make a Motion to Strike. I think Mr. Shapiro is
22 correct in his concession on that point.

23 Obviously, a Railroad has to put down ballast
24 until railroads find some other ways of -- I always
25 thought it was cushioning the track, but, apparently,

1 it's not. It's to stop the track from moving
2 around. So putting the ballast down is not
3 negligence.

4 The question or the question that I guess that
5 Mr. Shapiro or one of the questions that he raises is
6 whether leaving it there for a long period of time is
7 negligence. I'm not very comfortable by saying that
8 leaving it there for any particular amount of time is
9 negligence, because I don't know where to cut that
10 off. If the -- If the Plaintiff had fallen down a day
11 after the accident, was that negligence if he had
12 fallen down a month later or two months later? I'm
13 not sure that there is any cut off period, and I am
14 not sure it is appropriate just to give that question
15 to the jury to let the jury decide how long is too
16 long. That may be appropriate in the appropriate
17 case. I'm not sure this is that case.

18 It seems to me, though, that the real question
19 in this case is not just putting the ballast down,
20 but what did the Railroad require Mr. Trimiew to do
21 after it put the ballast down. Again, if Mr. Trimiew
22 just wanted to stretch his legs or saw a friend
23 standing next to the track and just wanted to get
24 down and go talk to his friend, I think you might
25 have a different situation. It seems the Plaintiff

1 would be hard pressed to cite any negligence on the
2 part of the Railroad. The Railroad put the ballast
3 down. Mr. Trimiew knew that the ballast was piled.
4 If it was in an unsafe manner, he knew that it was in
5 an unsafe manner, because he knew it was there when
6 it was put down. But, then, also, to require him to
7 perform his services, once the ballast was put down,
8 I think that's the negligence. A combination of both
9 putting the ballast down, leaving it in an unsafe
10 condition no matter how long, but while that's
11 happening, while that condition is in existence,
12 requiring Mr. Trimiew to do his job on that ballast,
13 and Mr. Trimiew had a choice to make. He could
14 either do what he was told to do by his supervisor or
15 not to do it. I think he did what you expect workers
16 to do. He obeyed the orders of his supervisor. In
17 doing so, he exposed himself to the hazardous
18 condition created by the Railroad. That became a jury
19 question, then, to determine the negligence of the
20 Railroad and Mr. Trimiew's negligence as being an
21 FDLA case. Mr. Trimiew's negligence did not bar his
22 recovery. That issue was presented to the jury. The
23 jury spoke to that issue, and the Court is not
24 inclined to set that verdict aside.

25 With regard to the amount of damages, there

1 was more than sufficient evidence, in the Court's
2 opinion, to support the particular amounts of damages
3 in this case, particularly with respect to the lost
4 wages, I think was more than sufficient to support
5 the half million dollar verdict. It sounds high,
6 but, in light of the amount of lost wages that the
7 Plaintiff proved or at least presented to the jury,
8 the Court does not believe that that is too high and
9 certainly doesn't shock the conscience of the Court,
10 which is the standard.

11 So, again, I think that the Plaintiff did
12 carry its burden of proving or a least putting on
13 enough evidence to present the question of the
14 Railroad's negligence to the jury. I think that
15 question is properly presented to the jury along with
16 the question of Mr. Trimiew's contributory
17 negligence. So the Motion to Set Aside, Motion to
18 Reconsider the Court's order refusing to set aside
19 the verdict will be denied.

20 Mr. Shapiro will you prepare the order on
21 that?

22 MR. SHAPIRO: Thank you, Your Honor.

23 THE COURT: I understand the argument fully,
24 and I am sure Mr. Shapiro hasn't heard the last of
25 you on that. Anything else?

1 MR. KOZAK: That's all, Your Honor.

2 THE COURT: Thank you very much.

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* * * * *

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CASE CONCLUDED.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW. NO. 95-A-530-3 ⁵²⁰

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

NOTICE OF APPEAL

Defendant Norfolk Southern Railway Company hereby notices its appeal to the Supreme Court of Virginia from the order of this Court entered December 11, 1995 awarding judgment in favor of the plaintiff.

A transcript of the trial and other incidents of the case, including defendant's post-trial motions, will be filed, and defendant certifies that a copy of the transcript has been ordered from the court reporter who reported the case.

Respectfully submitted,

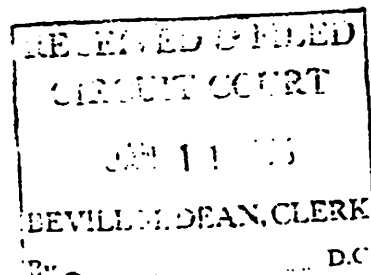
NORFOLK SOUTHERN RAILWAY COMPANY

By: 

Counsel

John S. Barr (VSB #5229)
Fred R. Kozak (VSB #17791)
MALONEY, BARR & HUENNEKENS
A Professional Corporation
NationsBank Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219
(804) 644-0313

Counsel for Norfolk Southern Railway Company



CERTIFICATE OF SERVICE

I hereby certify that on January 11, 1996 a copy of this Notice of Appeal was sent by first class mail, to counsel for plaintiff, Richard N. Shapiro, Esquire, Wilson, Hajek & Shapiro, P.C., 1294 Diamond Springs Road, P.O. Box 5369, Virginia Beach, Virginia 23455.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff

v.

AT LAW NO. 95-A-520-3

NORFOLK SOUTHERN
RAILWAY COMPANY,


Defendant :

O R D E R

This matter came before the Court on defendant's Motion for Reconsideration and Motion and Memorandum to Set Aside the Verdict or for Remittitur, in which defendant asked the Court to reconsider and/or set aside the entry of the Court's Order of December 11, 1995 regarding the jury's verdict in this cause. The Court heard oral argument of counsel for both parties in this cause on December 19, 1995, and hereby

DENIES the motion for reconsideration and/or to set aside the verdict or enter a remittitur in this cause for the reasons as stated on open Court.

11/17/96
ENTER: ~~DECEMBER 19, 1995~~


THE HONORABLE CIRCUIT COURT
JUDGE

I ask for this:


Richard N. Shapiro, Esquire, p.q.

Seen and objected to:


Fred Kozak, Esquire, p.d.

PLEADING\TRIMIEW.ORD

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

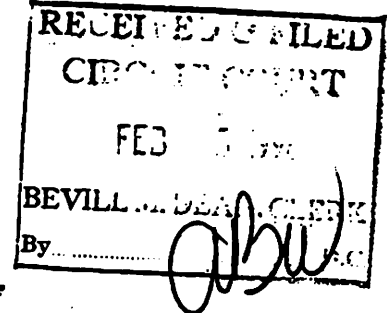
Plaintiff

v.

AT LAW. NO. 95-A-530-3

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.



NOTICE OF FILING TRANSCRIPT ON APPEAL

Defendant/Appellant Norfolk Southern Railway Company, in accordance with Rule 5:11, Rules of Supreme of Virginia, hereby files its Notice that the transcript of the trial and post trial proceedings in this case were filed with the clerk of the trial court on February 5, 1996.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

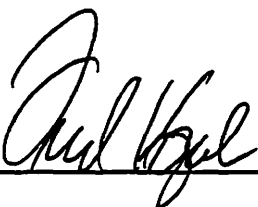
By: 
Of Counsel

John S. Barr (VSB #5229)
Fred R. Kozak (VSB #17791)
MALONEY, BARR & HUENNEKENS
A Professional Corporation
NationsBank Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219
(804) 644-0313

Counsel for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 1996, a copy of Notice of Filing Transcript on Appeal was sent by first class mail, to counsel for plaintiff, Richard N. Shapiro, Esquire, Wilson, Hajek & Shapiro, P.C., 1294 Diamond Springs Road, P.O. Box 5369, Virginia Beach, Virginia 23455.



BOND

No. 400JT4101

KNOW ALL MEN BY THESE PRESENTS, That we,
Norfolk Southern Railway Company, principal, and St. Paul Fire and Marine Insurance Company surety, are held and firmly bound unto Clinton Trimiew (appellee) in the sum of \$545,000.00 to the payment of which we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly by these presents.

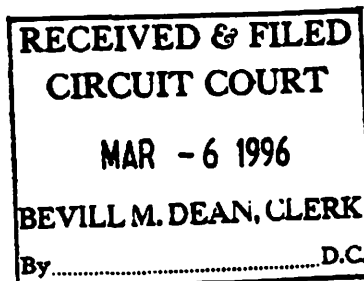
The condition of this obligation is such that:

Whereas judgment was rendered by the Circuit Court of the City of Richmond December 11, 1995, in the case of Clinton Trimiew v. Norfolk Southern Railway Company, Case No. 95-A-520-3;

And whereas it is the intention of Norfolk Southern Railway Company to appeal said judgment to the Supreme Court of Virginia, and suspension of execution of the judgment is sought;

Now, therefore, if Norfolk Southern Railway Company (appellant) shall perform and satisfy said judgment or the part thereof proceedings on which are stayed, in case such judgment or such part be affirmed in whole or in part, or the appeal be dismissed, refused or not timely prosecuted, and shall pay all damages, costs, and fees which may be awarded against it in the Supreme Court and all actual damages incurred in consequences of the suspension, then this obligation shall be void, otherwise to remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this instrument to be executed
on the date or dates shown below:

PRINCIPAL:

NORFOLK SOUTHERN RAILWAY CO.

BY: James A. Hixon
Vice President - Taxation

State of Virginia

City/County of Norfolk

The foregoing instrument was acknowledged before me this 2nd day of
February, 19 96 by James A. Hixon, Vice President - Taxation
of Norfolk Southern Railway Company

Rebecca J. Hagan
Notary Public

My commission expires: MARCH 31, 1999

SURETY:

ST. PAUL FIRE AND MARINE INSURANCE CO.

BY: Theresa S. Stump

By: Theresa S. Stump
Attorney-In-Fact

State of Virginia

City/County of Roanoke

The foregoing instrument was acknowledged before me this 30th day of

January, 1996 by Theresa S. Stump, Attorney-In-

Fact of the St. Paul Fire and Marine Insurance Company

Carol Stump Jordan

Notary Public

Carol Stump Jordan

My commission expires: 9/30/96

CERTIFIED
COPY NO.

For verification of the authenticity of this Power of Attorney, you may telephone toll free 1-800-421-3880 and ask for the Power of Attorney Clerk. Please refer to the Certificate of Authority No. and the named individual(s).

F-11887

GENERAL POWER OF ATTORNEY - CERTIFIED COPY
(Original on File at Home Office of Company. See Certification.)

1812560

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal office in the City of St. Paul, Minnesota, does hereby constitute and appoint:

E. Bruce Wilsie, Sandra Leslie, Theresa Stump, Carol Jordan, Linda White, Sherrie B. Denison, individually, Roanoke, Virginia

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

NOT TO EXCEED IN PENALTY THE SUM OF TWENTY-FIVE MILLION DOLLARS (\$25,000,000) EACH

and the execution of all such instrument(s) in pursuance of these presents, shall be as binding upon said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V, Section 6(C), of the By-Laws adopted by the Shareholders of ST. PAUL FIRE AND MARINE INSURANCE COMPANY at a meeting called and held on the 28th day of April, 1978, of which the following is a true transcript of said Section 6 (C):

"The President or any Vice President, Assistant Vice President, Secretary or Service Center General Manager shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- (2) To appoint special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
- (3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 5th day of May, 1959, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."



IN TESTIMONY WHEREOF, St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 30th day of November, A.D. 1990.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

STATE OF NEW JERSEY } ss.
County of Somerset

MICHAEL B. KEEGAN, Secretary

On this 5th day of January, 19 94, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he/she is the therein described and authorized officer of St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his/her signature were duly affixed by order of the Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the township of Bedminster, New Jersey, the day and year first above written.

LINDA SMETHERS, Notary Public, Middlesex, NJ
My Commission Expires December 16, 1996**CERTIFICATION**

I, the undersigned officer of St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.



IN TESTIMONY WHEREOF, I have hereunto set my hand this

30th day of January, 19 96

MICHAEL W. ANDERSON, Asst. Secretary

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies, carbon copies or other reproductions of this document are invalid and not binding upon the Company.

ANY INSTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VOID AND WITHOUT ANY VALIDITY.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CLINTON TRIMIEW,

Plaintiff,

v.

AT LAW NO. 95-A-520-3

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

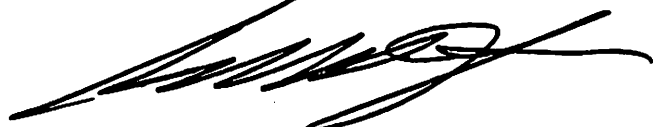
ORDER SUSPENDING ENFORCEMENT OF JUDGMENT

Came this day the Defendant, Norfolk Southern Railway Company (the "Defendant"), by counsel, upon its motion to stay or suspend proceedings to enforce the judgment entered by this Court on December 11, 1995 (the "Judgment"), and it appearing to the Court that the Defendant has filed its Notice of Appeal of the Judgment to the Supreme Court, and that the Defendant has filed an appeal bond with the Clerk of this Court in the amount of \$545,000.00 to suspend execution of the Judgment pursuant to Virginia Code § 8.01-676.1(C), and it appearing just and proper to do so, it is hereby

ORDERED that the Defendant's motion to stay or suspend enforcement proceedings be, and it hereby is, granted. All proceedings to enforce the Judgment are hereby stayed until there is a final disposition of the Defendant's appeal to the Supreme Court of Virginia.

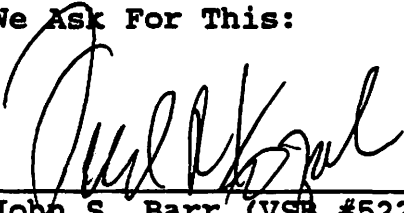
The Clerk is directed to send a copy of this Order to all counsel of record.

3/17/96

A handwritten signature in black ink, appearing to be "M. J. [unclear]", written over the date.

ENTER: / /

We Ask For This:



John S. Barr (VSB #5229)
Fred R. Kozak (VSB #17791)
MALONEY, BARR & HUENNEKENS,
A Professional Corporation
NationsBank Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3103
(804) 644-0313

Counsel for Defendant, Norfolk Southern Railway Company

Seen:



Richard N. Shapiro
Wilson, Hajek & Shapiro, P.C.
1294 Diamond Springs Road
Post Office Box 5369
Virginia Beach, Virginia 23455
(804) 460-7776

Counsel for Plaintiff, Clinton Trimiew

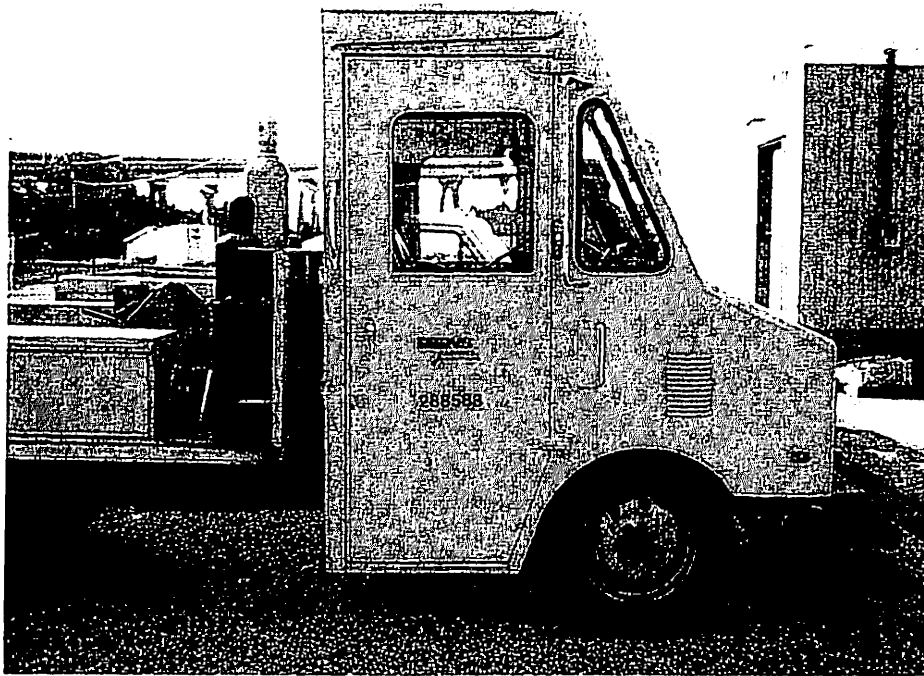
Assignments of Error

1. The lower court erred in denying Norfolk Southern's motion to set aside the verdict on the grounds that there was no showing the railroad was guilty of primary negligence.

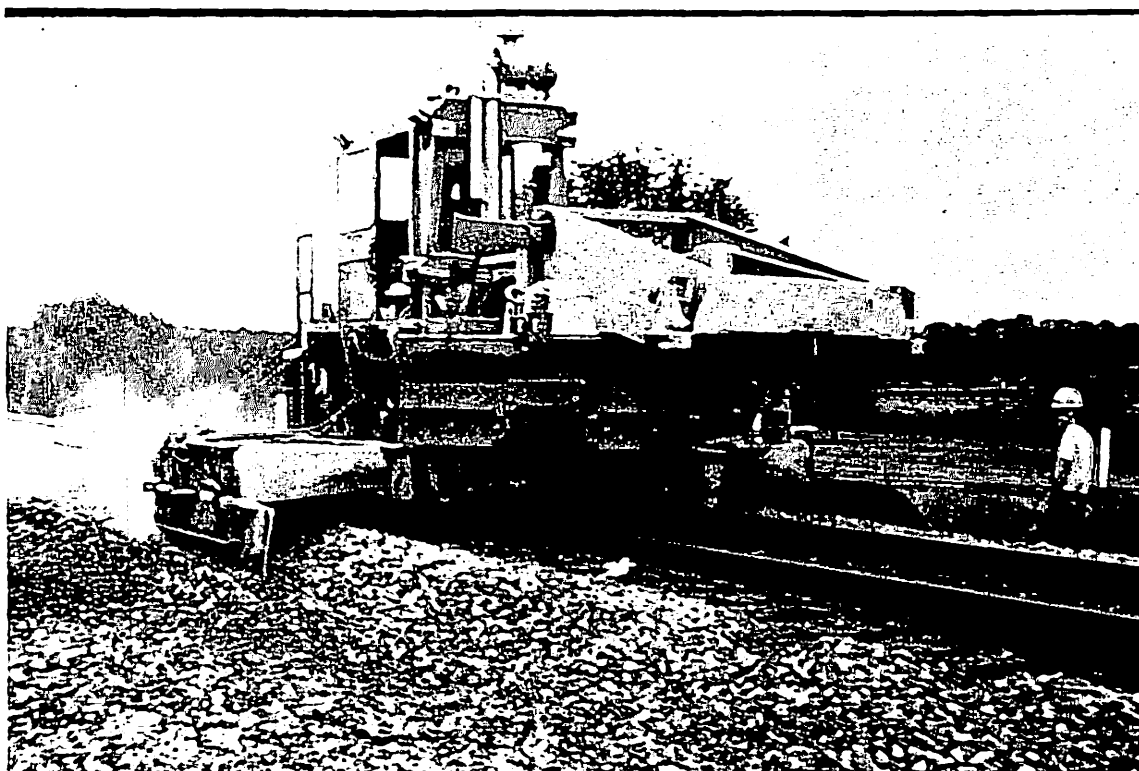
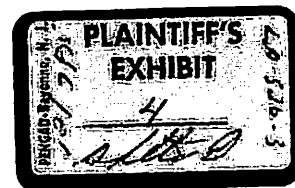
2. The lower court erred in denying Norfolk Southern's motion to vacate the judgment on the grounds that it was excessive.

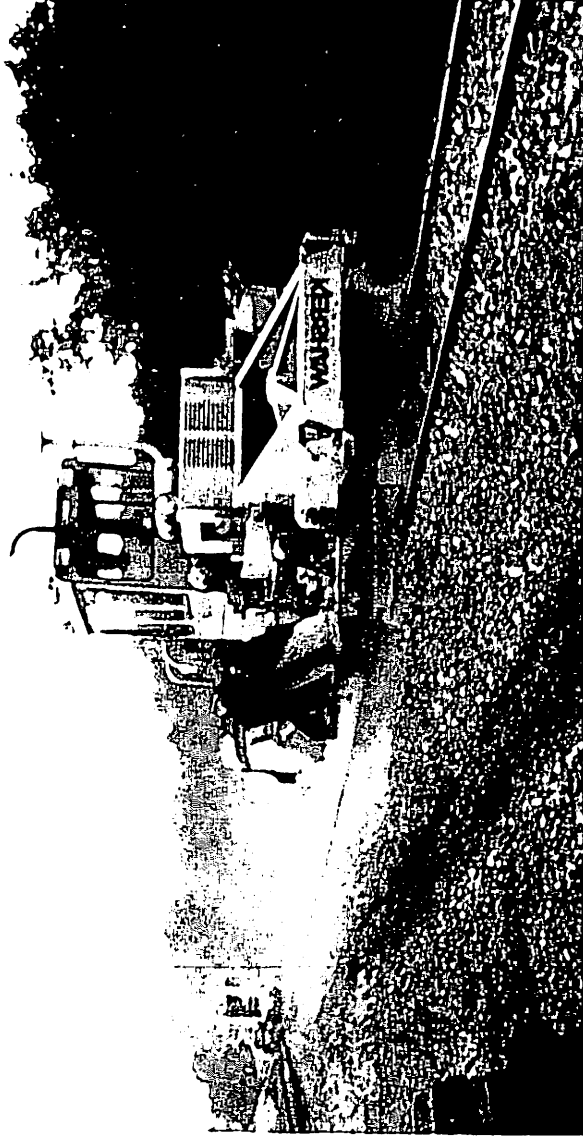
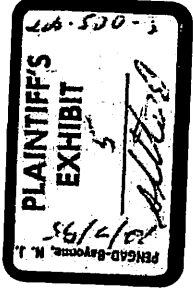
3. The lower court erred by failing to order a new trial on all issues, a new trial on the issue of damages, or to put appellee on terms to accept a remittitur.



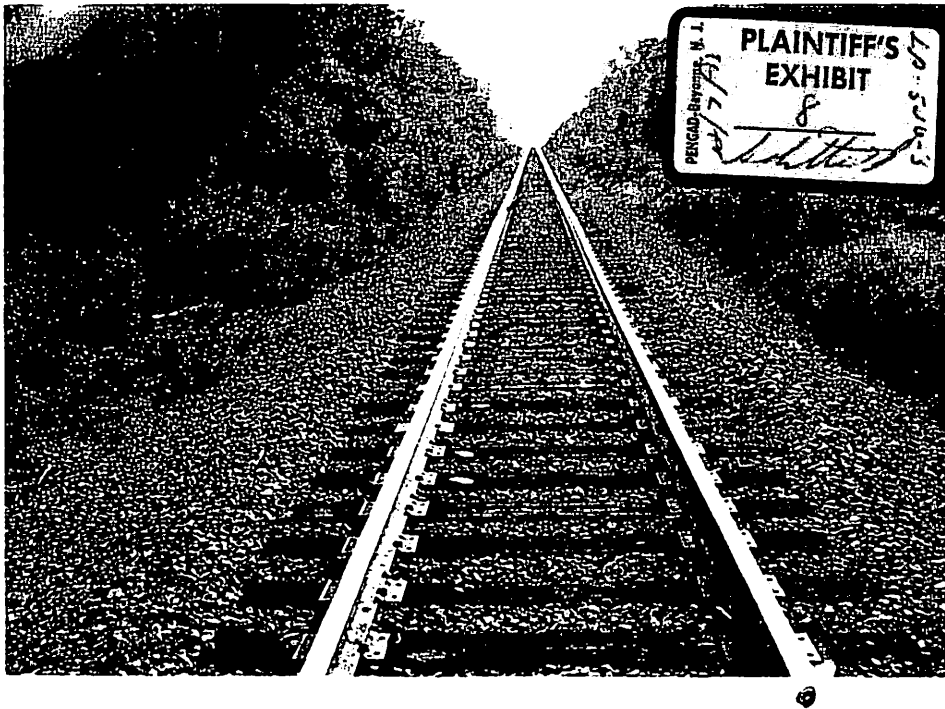




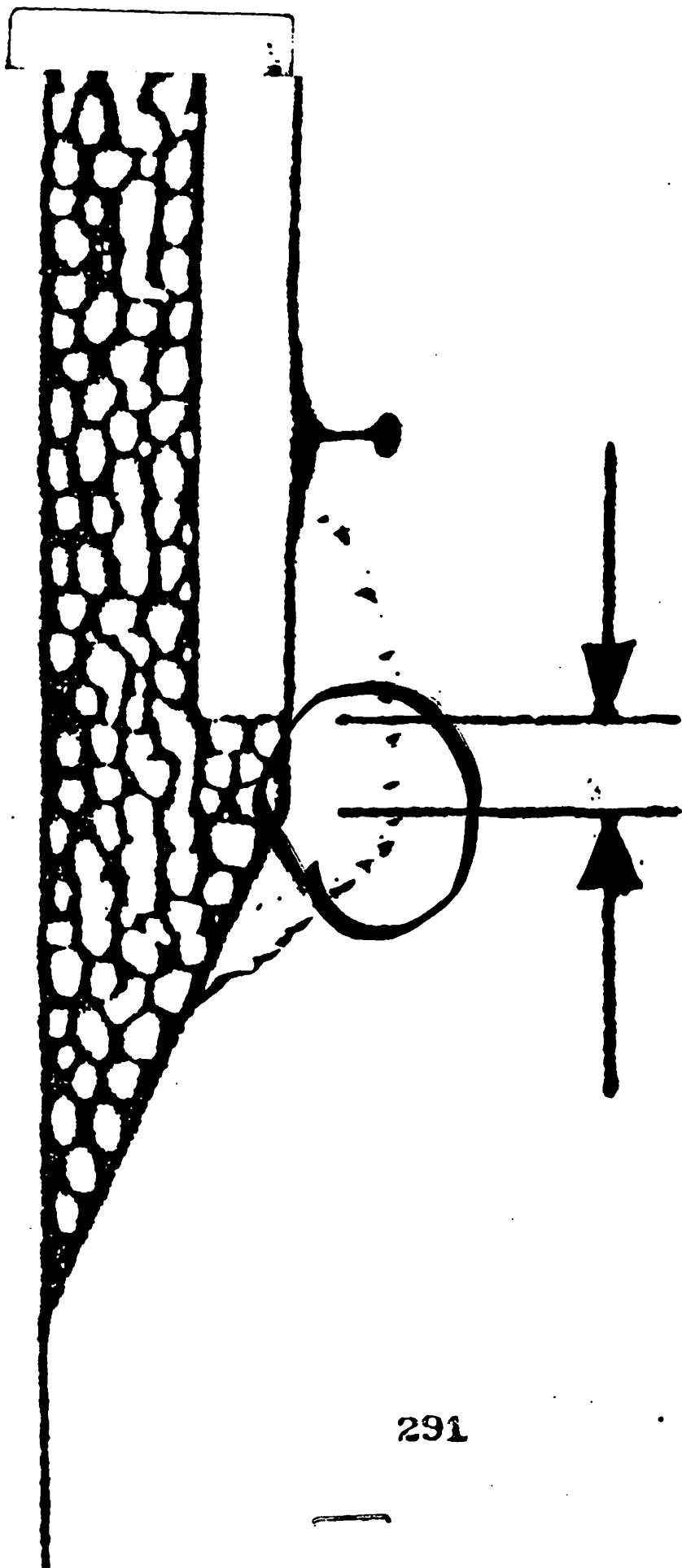




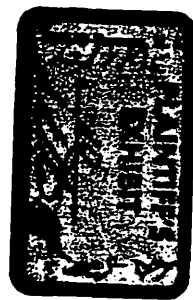


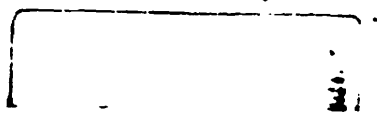




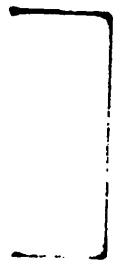
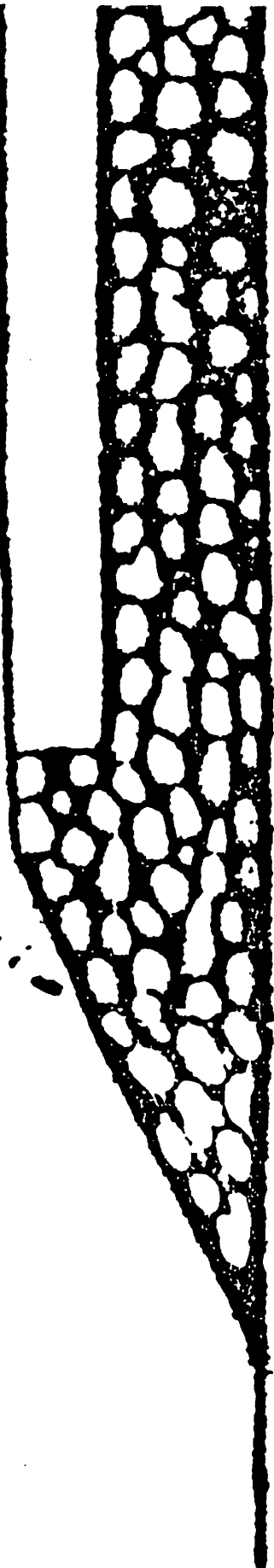
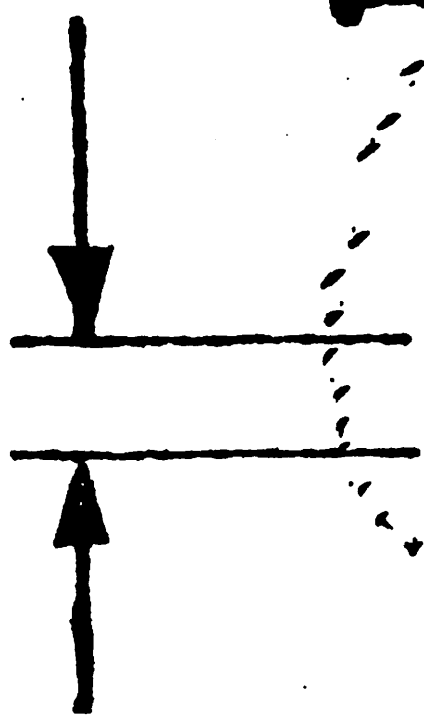


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NORFOLK SOUTHERN RAILWAY MW&S STANDARD PROCEDURE	SUPERSEDED DATE 01-01-87	NUMBER 390
	ISSUE DATE 04-01-91	
TITLE: MAINTAINING TRACK STABILITY (63107)	FILE NUMBER 107-1-829	Page 1 of 9

ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE
 SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE.

SCOPE AND NATURE

To establish a uniform system for prevention of buckled track due to extreme changes in rail temperature.

SPECIAL REFERENCES

- MW&S Standard Procedure 005 - Rail Anchors
- MW&S Standard Procedure 125 - Expansion Joints
- MW&S Standard Procedure 260 - Rail: Adjustment by Cutting
- MW&S Standard Procedure 375 - Spiking Patterns for Track and Bridges
- MW&S Standard Procedure 400 - Rail: Transposing or Replacing Curve Worn Rail

Weekly Report of Welded Rail Transposed
 or Laid by Division Forces, Form 11323
 Report on CWR Adjustment by Cutting, Form 11324
 Curve Movement During Track Surfacing in Cold Weather, Form 11325

} Copy attached
 to procedure.



OUTLINE OF PROCEDURE

	Begins on Page		Begins on Page
1. TRACK STABILITY FACTORS	2	7. MEASUREMENT OF TRACK CONDITIONS BEHIND SURFACING WORK	5
2. TRACK CONDITIONS	2	.01 Rail Temperature Measurements (System Gangs)	5
.01 Ballast Sections	2	.02 Track Movement Measurements	5
.02 Crossties and Switch Ties	2	8. RAIL LAYING BY SYSTEM GANGS	6
.03 Rail Anchors	2	9. SMOOTHING	6
.04 Tight Track	3	10. CRIBBING TRACK AND SPOT UNDERCUTTING	7
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3. TRACK INSPECTIONS	3	12. BRIDGE WORK	7
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PROCEDURE

possibility of track buckling is a constant threat and only alertness, good common sense, and
erence to the following instructions will keep the track in line for the safe operation of the
road.

BILITY FACTORS ARE:

disturbed by surfacing or smoothing
ave as little as 20% of the holding
(lateral restraint) of undisturbed
That is a loss of 80%.

Stability, both lateral and vertical,
ined by tonnage over the track or by
st compaction to a smaller degree.

with continuous welded rail must not
sturbed without the proper slow order.

orders must be based on track
lity. Stable track is obtained by
ng the track settle, under tonnage, at
duced speed.

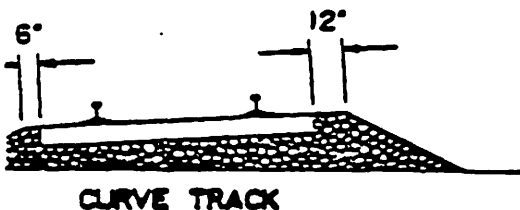
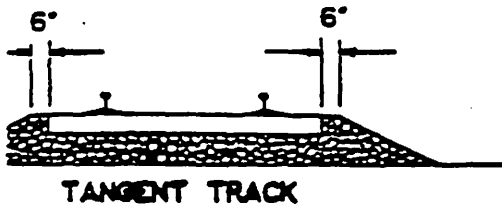
DITIONS

st Sections

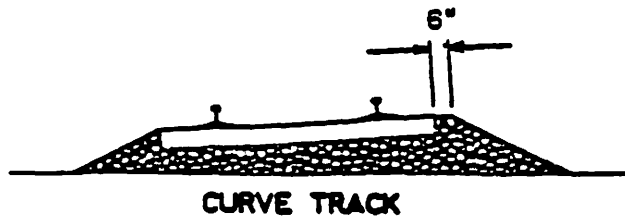
full standard ballast section must be
intained for jointed and welded rail
ack sections.

ward ballast sections are as shown in
etches below and in the next column.

WELDED RAIL



JOINTED RAIL



.02 Crossties and Switch Ties

Tie condition should be of sufficient
strength to hold gage, surface, and
alignment to prevent rail buckling.

.03 Rail Anchors

- Rail must be anchored in accordance with
M&S Standard Procedure 005 - "Rail
Anchors."
- In addition to anchors required by
M&S Standard Procedure 005, sufficient
anchors must be added to any moving rail
which is subject to getting out of line
or where anchors do not have sufficient
holding power.

NORFOLK SOUTHERN RAILWAY

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MAINTAINING TRACK STABILITY

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.04 Tight Track

- a. Adjustment by cutting may be necessary to welded rail which is tight or not properly adjusted.
- b. When track is known to be tight or has moved out of line at the end of a bridge where expansion joints do not exist, it is necessary that rail be cut and adjusted in order to relieve stresses in the track rather than by lining the track.
- c. Lining of curves outward may be required for curves which have moved inward due to low temperature from cold weather.
- d. Slow Orders must be placed at locations subject to getting out of line until the track condition has been corrected.

* .05 Adding Rail to CWR During Cold Weather

- a. When thermite welding in (1) yard tracks or leads with speeds greater than 25 mph, (2) main tracks, or (3) sidings AND the rail temperature is 75° or less, thermite welders are to determine the amount of rail added (+) or removed (-) when making thermite welds and this information is to be included in the daily thermite welding report.
- b. Whenever rail is cut into (1) yard tracks or leads with speeds greater than 25 mph, (2) main tracks, or (3) sidings for defective rail replacement or construction and if it is necessary to add rail, the amount of rail added (+) to the track is to be reported to the division engineer's office.
- c. Division engineers are responsible for reviewing the report of rail added by thermite welding for their territory as well as reports from their track supervisors of any rail added and have the rail adjusted as necessary in the spring.

3. TRACK INSPECTIONS

- .01 All scheduled track inspections must be maintained.
- .02 Additional inspections will be made during sudden changes in temperature where welded rail or recently worked loose track will be subject to getting out of line.
- .03 During periods of excessive temperature changes, weekend inspections will be made when required. When a slow order is being run because of tight track, it is necessary to make inspections on Saturday and Sunday.
- .04 Special attention must be given to track on curves, in dips, at the ends of bridges, heavy grades, recently disturbed track, track worked during the past winter, or locations of multiple thermite welds made during the past winter.

4. CROSSTIE OR SWITCH TIE REPLACEMENT

- .01 Whenever crossties or switch ties are replaced, a slow order must be used in accordance with instructions below. The foreman or person in charge of the work is responsible for placing the slow order.
 - a. A 10 mph slow order must be used in welded and jointed rail territory when the rail temperature is 110°F or above.
 - b. A slow order of 25 mph, maximum speed may be used when the rail temperature is less than 110°F. Slow orders between 10 and 25 mph cannot be used on jointed rail.
 - c. If in doubt as to temperature, follow 110°F or above rail temperature instruction.
 - d. When a slow order of less than 25 mph is used, the passage of two tonnage trains is required before slow order is raised.

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e. A slow order of 25 mph maximum speed must be in effect for a sufficient time beyond the work period so that the track will become settled and not be run over by trains at timetable speed immediately after having been disturbed.

f. When the 110°F rail temperature instructions are used, slow orders must remain in effect for at least 2 days of traffic.

.02 Newly installed ties are to be spiked and rail anchors applied in the prescribed spiking and rail anchor pattern at time of installation. (See MW&S Standard Procedures 005 and 375.)

.03 All newly installed ties must be tamped. If more than two ties are installed per 39 foot rail length in welded rail main track (or other than main track welded rail with speed of 25 mph or greater), ties must be power tamped before slow order is removed.

.04 Upon completion of tie replacement, ballast section must be restored to standard before slow order may be removed.

.05 Removal of Slow Orders

a. System Gang Work — The System Gang supervisor is responsible for ensuring removal of slow orders unless gang has moved 10 miles or more to a new work location, in which case the track supervisor is responsible for removing the slow order after personal inspection. They must confer with one another to be sure that this is handled properly.

b. Line Maintenance Work — The track supervisor, is responsible for ensuring the removal of the slow order.

5. SURFACING TRACK

.01 Without Track Stabilizer

Whenever surfacing work is performed WITHOUT use of a track stabilizer, a slow order must be used in accordance with instructions below. The foreman or person in charge of the work is responsible for placing the slow order.

a. A 10 mph slow order must be used in welded and jointed rail territory when the rail temperature is 110°F or above.

b. A slow order of 25 mph maximum speed may be used when the rail temperature is less than 110°F. Slow orders between 10 and 25 mph cannot be used on jointed rail.

c. If in doubt as to temperature, follow 110°F or above rail temperature instruction.

d. When a slow order of less than 25 mph is used, the passage of two tonnage trains is required before slow order is raised.

e. A slow order of 25 mph maximum speed must be in effect for a sufficient time beyond the work period so that the track will become settled and not be run over by trains at timetable speed immediately after having been disturbed.

* .02 With a Track Stabilizer

When surfacing track AND a track stabilizer is used, a slow order must be used in accordance with instructions below. The foreman or person in charge of the work is responsible for placing the slow order.

a. Slow orders between 10 and 25 mph cannot be used on jointed track.

b. If the rail temperature is less than 110°F, a slow order of 40 mph maximum speed may be used following the surfacing work until track has been run over by at least two tonnage trains.

c. If the rail temperature is greater than 110°F, a slow order of 25 mph maximum speed is to be used following the surfacing work until track has been run over by at least two tonnage trains.

d. If in doubt as to temperature, follow the 110°F or above rail temperature instruction.

e. Regardless of instructions in b or c above, other conditions may warrant a slow order running for an additional length of time beyond the two tonnage trains before the slow order is raised or removed.

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ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HEREWITH ARE SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE.

f. If the track stabilizer breaks down, then 5.01 governs the surfacing of all track surfaced that was not settled by the track stabilizer.

.03 The runoff made at end of the day must be left in good cross level and alignment with a full standard ballast section, and no condition left which could contribute to buckled track.

.04 If insufficient ballast section exists behind newly surfaced track, the gang supervisor is responsible for placing a proper slow order and advising the track supervisor or division engineer of the condition. The track supervisor or division engineer is responsible for having the ballast section restored and removal of slow order.

.05 Removal of Slow Orders

a. System Gang Work — The System Gang supervisor is responsible for ensuring removal of slow orders unless gang has moved 10 miles or more to a new work location, in which case the track supervisor is responsible for removing the slow order after personal inspection. They must confer with one another to be sure that this is handled properly.

b. Line Maintenance Work — The track supervisor, is responsible for ensuring the removal of the slow order.

6. COMBINED TIMBERING & SURFACING WORK

.01 Where tie installation is combined with surfacing, i.e., T&S, sections 4 and 5 of these instructions must be applied together. Where instructions combined may conflict, the most restrictive instructions apply and must be followed.

.02 In addition, at end of the work week all disturbed track must be fully tamped.

7. MEASUREMENT OF TRACK CONDITIONS BEHIND SURFACING WORK

.01 Rail Temperature Measurements (System Gangs)

a. Rail temperatures will be taken three times each day and reported to the maintenance of way equipment and material coordinator in Atlanta (microwave 529-2401 or 529-1466) along with the daily production report.

b. The temperature will be measured at start of work, middle of day, and at end of work.

c. Rail temperature is measured on the shady side of the web of rail. The thermometer must remain on the rail for at least five minutes and be away from any form of artificial cold or heat other than when rail heater has been used in prescribed manner.

.02 Track Movement Measurements

a. Where track is to be surfaced at a rail temperature of 50°F or below, a Line Maintenance officer sets reference stakes at 3 or more locations on each curve before track is surfaced by T&S or Surfacing Gang.

b. Reference stakes are to be set along curves clear of gang activities.

c. A Line Maintenance officer records the amount of movement one week after each curve is surfaced and furnishes the measurements on Form 11325 (see exhibit page i) to the division engineer's office.

d. The division engineer is responsible for having curves with average inward movement of one inch or more lined out prior to hot weather, or else track is to be slow ordered in hot weather until lining is complete.

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ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE
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8. RAIL LAYING BY SYSTEM GANGS

- .01 When system rail laying schedules are prepared, the chief engineer program maintenance provides a copy of the schedule to the chief engineer bridges and structures in order that bridge engineering can determine required anchoring or use of expansion joints at bridges.
- .02 Whenever rail is laid in tracks with a timetable speed greater than 25 mph, a slow order must be used. The system gang supervisor is responsible for ensuring the placement of the slow order.
 - a. Recommended maximum speeds for slow orders when laying rail is 25 mph
 - b. Dependent upon other track conditions (such as alignment, tie condition, surface, or rail condition) a speed less than 25 mph may be required.
- .03 Before slow orders can be raised:
 - a. All joints tightly bolted with at least two bolts each rail end,
 - b. rail spiked in the prescribed pattern (See MW&S Standard Procedure 375),
 - c. rail anchors must be installed tight against the ties in prescribed pattern (See MW&S Standard Procedure 005),
 - d. all down ties fully tamped, and
 - e. standard shoulder ballast section must be provided.
- .04 Where speed has been restricted to less than 25 mph for rail laying, the passage of one tonnage train is required before raising the speed to 25 mph or greater.
- .05 The division engineer or the track supervisor, after personal inspection of the rail laid, determines the appropriate speed to run on the track.
- .06 If the rail temperature is below 80°F, rail heater must be used to raise the rail temperature ahead of spiking to a temperature of 85°F to 100°F, ideally 95°F.
- .07 Throughout welded rail laying, slack must be removed by use of rail pulling equipment.

- .08 The rail gang supervisor is responsible for ensuring that the rail temperature be taken at time of anchoring for each strand (single gang) or each ribbon (dual gang) and reporting to the maintenance of way equipment and material coordinator in Atlanta (microwave 529-2401 or 529-1466) along with the daily production report. These temperatures will in turn be furnished to the office of engineer of track.

*

*

- .09 The office of engineer of track prepares/updates rail temperature charts and furnishes to the chief engineers Line Maintenance and the division engineers for their territory.

- .10 The division engineers must review the rail temperature of all welded rail laid on his territory and make adjustments where required.

9. SMOOTHING

- .01 Good judgment should be exercised in smoothing during hot weather and extreme temperature changes.
- .02 Welded rail should not be smoothed when rail temperature is above 110°F unless such smoothing is necessary to afford safe passage of trains.
- .03 Slow Orders
 - a. A 10 mph slow order must be placed at any location in jointed or welded rail territory when it is necessary to smooth track and the rail temperature is 110°F or above.
 - b. A slow order of 25 mph maximum speed may be used when track is smoothed at a rail temperature of less than 110°F. Slow orders between 10 and 25 mph cannot be placed on jointed rail.
 - c. If there is a possibility that rail temperature will rise to 110°F later in the day, a 10 mph slow order must be used until track has settled under traffic and is safe for timetable speed.
 - d. A slow order of 25 mph maximum speed must be in effect for a sufficient time beyond the work period so that the track will become settled and not be run over by trains at timetable speed immediately after having been disturbed.

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- e. The track supervisor, assistant track supervisor, or the foreman in charge of the work is responsible for placing and removing the slow order.
- f. If more than 4 continuous ties are hand tamped in welded rail territory, a 25 mph slow order must be in effect until track is power tamped and track is settled for timetable speed.

.04 When smoothing or restoring prescribed elevation in curves, each tie must be fully tamped under each rail to eliminate voids between tie and ballast section.

.05 Tie cribs must be filled with ballast at any point disturbed by smoothing and track left in good alignment.

* .06 When Line Maintenance smoothing gangs are performing surfacing work, they are governed by the instructions under "Surfacing Track" in Section 5 beginning on page 4.

10. CRIBBING TRACK AND SPOT UNDERCUTTING

.01 A 25 mph maximum speed slow order must be used when cribbing tracks of foul ballast, cribbing road crossings, and spot undercutting.

.02 After a full standard ballast section has been restored, a slow order of 25 mph maximum speed must be in effect for a sufficient time beyond the work period so that the track will become settled and not be run over by trains at timetable speed immediately after having been disturbed.

11. UNDERCUTTING TRACK OUT OF FACE

.01 The track supervisor, division engineer or an officer designated by the division engineer must be with any track undercutting operation and is responsible for ensuring placement and removal of slow order.

- a. Following the undercutting operation, a slow order of 10 mph must be used and must remain for a minimum of 24 hours of traffic.

b. After 24 hours, speed may be increased to a maximum of 25 mph (Jointed rail may not have a slow order between 10 and 25 mph) The 25 mph slow order must remain in effect as follows:

Annual Tonnage	Time, at least
Less than 10 million	4 days of traffic
10 million or greater	2 days of traffic

.02 Tangent track that cannot be restored to proper alignment during the heat of the day (noon to 6 p.m.) account tight track must be cut and adjusted in accordance with MW&S Standard Procedure 260 — "Rail: Adjustment by Cutting" before slow order is raised or removed.

.03 Measurements of track movement on curves behind surfacing work done in conjunction with undercutting operation are as covered in section 7 beginning on page 5 with the following exceptions:

- a. Measurements will be made on curves if rail temperature is 70°F or less when track is undercut.
- b. Stakes are set clear of all work activities and initial measurements made before track is undercut.

12. BRIDGE WORK

.01 A slow order will be used when bridges ties are installed.

.02 Renewing Bridge Ties On Open Deck Bridges in Welded Rail Territory

- a. Remove only those rail anchors, where used, and fasteners on the ties to be installed that day.
- b. A 10 mph slow order must be used until all rail anchors are re-applied, where applicable, and all fasteners (such as hook bolts, drift pins, pandrol clips, etc.) are installed. Temporary lateral restraints (such as line drift pins of sufficient length to engage bridge steel) must be provided at least every fifth tie before permitting train operations.

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**ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HEREWITH ARE
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- * c. When rail temperature exceeds 95°F, no more than ten (10) ties are to be unspiked at one time unless one of the following conditions is met:
 - (1) The rail is known to be adjusted to a temperature greater than 95°F.
 - (2) The rail is cut off the bridge and allowed to move freely.
 - (3) The rail is protected by expansion joints and the rail is known to be moving freely into and out of the joints.

NOTE: On through girders and through trusses, it may be necessary to unspike more than ten (10) ties in order to change out ties between floor beams. In such cases, secure adjacent ties in place with drift or hook bolts AND the rail must be secured at necessary intervals by use of double jaw gage rods securing both the field and gage side of both rails .
- * d. When rail temperature is 95°F or less, there is no limit on the number of ties that may be removed at one time. However, if the rail displays behavior of being tight, then it must be handled per (c) above.
- * e. A 25 mph maximum speed slow order must be used until both requirements below are fulfilled.
 - (1) All guard timbers are installed.
 - (2) The ties are seated by the passage of two tonnage trains.
- .03 When jointed rail is extremely tight due to hot weather conditions, it should be handled as welded rail.
- .04 When renewing ties on ballast deck bridges, the instructions in section 4 (Crosstie or Switch Tie Replacement) governs.
- .05 When a B&B gang raises or disturbs the track approach to an open deck bridge, all items under section 9 (Smoothing) must be observed by the B&B forces.

- * .06 When track is known to be tight or has moved out of line at the end of a bridge where expansion joints do not exist, it is necessary that the rail be cut and adjusted in accordance with MW&S Standard Procedure 260 — "Rail: Adjustment by Cutting" in order to relieve stresses in the track rather than by lining.
- * .07 When ties are renewed or track is otherwise disturbed across a bridge or within 234 feet of a bridge, special attention is required to ensure that rail anchors are installed in accordance with MW&S Standard Procedure 005 — "Rail Anchors" and expansion joints (See MW&S Standard Procedure 125), where used, are in proper condition before temporary speed restrictions are removed.
- 13. LAYING OR TRANSPOSING WELDED RAIL BY LINE MAINTENANCE
 - * .01 Whenever rail is to be laid across bridges, the division engineer is to notify the chief engineer - bridges well in advance of laying so that Bridge Engineering can determine required anchoring or use of expansion joints.
 - * .02 MW&S Standard Procedure 400 — "Rail: Transposing or Replacing Curve Worn Rail" is to be followed when rail is laid or transposed by Line Maintenance forces. It is imperative that the reporting be made on Form 11323 (see exhibit page ii).
 - * .03 The track supervisor or an officer designated by the division engineer must be with any Line Maintenance forces transposing or laying welded rail.
 - .04 Transposing or replacement of curve worn rail shall be performed between May 15th and September 15th where possible.
 - .05 When welded rail is laid, rail must be anchored at a rail temperature of 75°F or greater.

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ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE.

.06 When a rail heater is used the rail is to be heated to a rail temperature between 85°F and 100°F, ideally 95°F, ahead of the spiking operation.

.07 The division engineer must review the rail temperature of all welded rail laid on his territory and make adjustments where required.

14. ADJUSTING WELDED RAIL

* .01 MW&S Standard Procedure 260 — "Rail: Adjustment by Cutting" is to be followed when welded rail is adjusted. Rail adjustments are made under a 10 mph slow order. It is imperative that the required reporting be made on Form 11324 (see exhibit page iii).

* .02 Rail Adjustment by Tie, Surfacing, T&S or B&B Gangs

* a. Track being worked by T&S, Tie, Surfacing or B&B Gangs may require that the rail be adjusted immediately to maintain proper alignment of track.

b. Since the rail is in compression, it must be cut with a torch, realigned, holes drilled, and angle bars applied.

* c. Each T&S, Tie, Surfacing and B&B Gang is required to have available:

- (1) A rail drill with proper size bits.
- (2) Two pair of angle bars of same weight as rail being worked, with necessary bolts, nuts, and nutlocks.

* d. When System Gangs or B&B gangs have made emergency rail adjustments, they must notify Line Maintenance track forces immediately so that they can complete adjustment of rail in accordance with MW&S Standard Procedure 260 — "Rail: Adjustment by Cutting."

* .03 Rail Adjustment by Line Maintenance Track Forces — The track supervisor or individual designated by the division engineer must be with any Line Maintenance track forces adjusting welded rail.

APPROVED:

Proffert
Assistant Vice President-Maintenance

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FORM 11325
 CURVE MOVEMENT DURING
 TRACK SURFACING IN COLD WEATHER
 THIS FORM PRINTED ON WHITE PAPER
 CLASS-ITEM NUMBER 420-113251



FORM 11325 (2/91)
 (113251)

CURVE MOVEMENT DURING TRACK SURFACING IN COLD WEATHER

GANG NO. _____ MONTH SURFACED _____

ROAD DIVISION OR DISTRICT	MILE POST LOCATION	TRACK MOVEMENT IN INCHES								*FOR D.E. REPORT DATES:	
		USE (-) FOR INWARD (+) FOR OUTWARD									
		STAKE NUMBER								LINED OUT	RAIL ADJUSTED
		1	2	3	4	5	6	7	8		

MEASURED AND REPORTED BY _____ DATE _____

- Measurements to be taken behind surfacing work. These measurements listed above are to be forwarded to the Division Engineer. If there is no movement, so indicate.
- On curves requiring correction, when corrections are made, Track Supervisors are to show date of corrective action taken in appropriate column. Forward photocopy of report with corrective action to Division Engineer.

Distribution:

Original - Division Engineer
 First Copy - Track Supervisor

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FORM 11323
 WEEKLY REPORT OF WELDED RAIL
 TRANSPOSED OR LAID BY DIVISION FORCES
 THIS FROM PRINTED ON WHITE PAPER
 CLASS-ITEM NUMBER 420-113235



MAINTENANCE DEPARTMENT

FORM 11323 (REV. 3/91)
 (113234)

WEEKLY REPORT

WELDED RAIL TRANSPOSED OR LAID BY DIVISION FORCES

Week Ending _____

Supervisory Officer _____

					EACH STRAND					
Date Laid	Division	Mile Post From To	Track	Wt.	New or Rly.	STD CM HT	Side (NS EW)	Length (L.F.)	Rail Temp.	
	</									

 (Signature)

 (Title)

Report is to be made daily, at end of week the local supervisor is to send report to Division Engineer and Engineer of Track.

DISTRIBUTION:
 Original — Office of Engineer of Track
 First Copy — Division Engineer
 Second Copy — Track Supervisor

<p align="center">NORFOLK SOUTHERN RAILWAY MW&S STANDARD PROCEDURE</p>	<p>SUPERSEDED DATE 01-01-87</p>	<p>NUMBER 390</p>
<p>TITLE: MAINTAINING TRACK STABILITY (6310T)</p>	<p>ISSUE DATE 04-01-91 FILE NUMBER 107-1-829</p>	<p>Page Exhibit iii</p>

FORM 11324
REPORT ON CWR ADJUSTMENT BY CUTTING
THIS FROM PRINTED ON WHITE PAPER
CLASS-ITEM NUMBER 420-113243



MAINTENANCE DEPARTMENT
REPORT ON CWR ADJUSTMENT BY CUTTING

FORM 11324 (2/91)
(113243)

Division _____

Report Date _____

Division Engineer _____

Officer Making Report _____

Date of Cut	Milepost Location	Track No.	Side NSEW	Rail Temperature	Length of Rail Cut Out

Report to be submitted on date that rail is adjusted.

DISTRIBUTION:

Original — Office of Engineer of Track
First Copy — Division Engineer
Second Copy — Retain

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY
228-32-6665 C G TRIMIEW

03/09/95

TRAINING

07-12-93 SUPERVISOR'S REVIEW OF SAFETY RECORD
PRESENTER: S L PALMER
06-18-93 FIGHTING BACK PAIN II AMERICAN BACK SCHOOL 20 MIN. 1992
PRESENTER: S M LLOYD
06-18-93 WARM-UP EXERCISE PROGRAM
PRESENTER: S M LLOYD
06-18-93 POWER TO CHANGE 1991 EMPLOYEE MODULE SUMMIT TRAINI
PRESENTER: S M LLOYD
06-18-93 INTRODUCTION TO CORPORATE SAFETY P. R. RUDDER 1990
PRESENTER: S M LLOYD
06-18-93 FIGHTING BACK PAIN II AMERICAN BACK SCHOOL 20 MIN. 1992
PRESENTER: S L PALMER
06-18-93 WARM-UP EXERCISE PROGRAM
PRESENTER: S L PALMER
06-18-93 POWER TO CHANGE 1991 EMPLOYEE MODULE SUMMIT TRAINI
PRESENTER: S L PALMER
06-18-93 INTRODUCTION TO CORPORATE SAFETY P. R. RUDDER 1990
PRESENTER: S L PALMER
06-18-93 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: J D BAGLEY

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY
228-32-6665 C G TRIMIEW

03/09/95

05-17-93 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1215
03-05-93 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: S L PALMER
02-09-93 DIFCO AUTO BALLASTER 7 MIN. DIFCO INC 1992 MWS
PRESENTER: S L PALMER
02-09-93 TRACK JACK VIDEO MWS 1992 BASIC
PRESENTER: S L PALMER
02-03-93 CERTIFIES 1993 HAZMAT-GENERAL MODULES 1, 2, & 6
PRESENTER: S L PALMER
01-18-93 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1051
01-11-93 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1380
01-05-93 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: J D BAGLEY
01-05-93 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: D L DALE
11-30-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: GR12
11-23-92 TRACK GAUGE DEMONSTRATION MWS 1992

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

PRESENTER: S L PALMER

11-11-92 THE NEW ROOM TO LIVE (SEAT BELT VIDEO) 33 MIN/SGT. JACK WARE 1992 SE

PRESENTER: R G STOKER JR

11-02-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1111

11-02-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1111A

11-02-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1111B

11-02-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1111C

10-12-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1237A

10-12-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1237B

09-28-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1229

09-24-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1226

09-21-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: S L PALMER

RULE DEPICTED: 1216

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

06-15-92 A NICE ROUND NUMBER 1992 SAFETY AND ENVIRONMENTAL PROTECTION

PRESENTER: S L PALMER

05-18-92 SAFETY RULES REVIEW - WELDING

SAFETY DEPARTMENT PROGRAM 8

PRESENTER: S L PALMER

03-13-92 RESPIRATOR TRAINING

PRESENTER: S L PALMER

02-20-92 SUPERVISOR'S REVIEW DIV. SAFETY

PERFORMANCE - ENGINEERING 199

PRESENTER: D L DALE

02-20-92 MOBILE CRANE SAFETY 18 MIN. MWS 1992

PRESENTER: D L DALE

02-20-92 POWER TO CHANGE 1991

EMPLOYEE MODULE SUMMIT TRAINI

PRESENTER: D L DALE

02-20-92 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN

PRESENTER: D L DALE

02-20-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: D L DALE

RULE DEPICTED: 1001

02-12-92 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN

PRESENTER: J D BAGLEY

02-12-92 ATTENDANCE AT EMPLOYEE/SUPERVISOR SAFETY MEETINGS

PRESENTER: J D BAGLEY

01-27-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

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727DG NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY 03/09/95
228-32-6665 C G TRIMIEW
PRESENTER: S L PALMER RULE DEPICTED: 1181
01-06-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1070
01-02-92 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1070
12-30-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R W FORSYTH IV RULE DEPICTED: 1110
12-23-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R W FORSYTH IV RULE DEPICTED: 1170
12-23-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R W FORSYTH IV RULE DEPICTED: 1204
09-23-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1341
08-30-91 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: D L DALE
08-30-91 SUPERVISOR'S REVIEW OF DIVISION SAFETY PERFORMANCE-MWS DEPARTMENT, 1
PRESENTER: D L DALE
08-30-91 AMERICAN BACK SCHOOL FOLLOW-UP
PRESENTER: D L DALE
08-29-91 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN
PRESENTER: S L PALMER
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228-32-6665 C G TRIMIEW
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: T B MATTHEWS RULE DEPICTED: 1212
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: T B MATTHEWS RULE DEPICTED: 1237
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1238
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1239
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R P STEELE RULE DEPICTED: 1612
06-19-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R P STEELE RULE DEPICTED: 1629
06-18-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1151
06-17-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1601
05-13-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1238
04-15-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1541
03-04-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

PRESENTER: S L PALMER RULE DEPICTED: 1201
02-11-91 SUPERVISOR'S REVIEW OF DIVISION SAFETY PERFORMANCE-MWS DEPARTMENT,
PRESENTER: S L PALMER
01-21-91 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: S L PALMER RULE DEPICTED: 1070
12-10-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1544
12-03-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1150
11-26-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: R W FORSYTH IV RULE DEPICTED: 1110
11-19-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1111
11-05-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1544
10-29-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1676
10-15-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1665
10-15-90 SUPERVISOR'S REVIEW OF SAFETY RECORD
PRESENTER: J R KAZMIERCZAK

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

10-08-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1663
10-01-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1662
09-21-90 SUPERVISOR'S SAFETY CONTACT
PRESENTER: J N CARTER JR
09-21-90 CONSTRUCTION WORKERS BACK VIDEO
PRESENTER: J N CARTER JR
09-21-90 WARM-UP EXERCISE PROGRAM
PRESENTER: J N CARTER JR
09-19-90 INSPECTING BEARINGS IN THE FIELD - BRINCO
PRESENTER: S P WILLIAMS
01-20-90 AMERICAN BACK SCHOOL FOLLOW-UP
PRESENTER: J N CARTER JR
01-02-90 PULLING SPIKES - TENNESEE DIVISION PRODUCTION - 9 MINS.
PRESENTER: J R KAZMIERCZAK
01-02-90 WHY RISK IT - 1987
PRESENTER: J R KAZMIERCZAK
01-02-90 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE
PRESENTER: J R KAZMIERCZAK RULE DEPICTED: 1541
10-26-89 COME-A-LONG

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

PRESENTER: J N CARTER JR

10-26-89 GRINDING WHEELS

PRESENTER: J N CARTER JR

10-26-89 FALL PROTECTION-WORKER SAFETY - MILLER EQPT.

PRESENTER: J N CARTER JR

10-02-89 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN

PRESENTER: J D BAGLEY

06-22-89 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: H E MCKELVEY RULE DEPICTED: 1050

06-22-89 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: H E MCKELVEY RULE DEPICTED: 1001

06-22-89 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: H E MCKELVEY RULE DEPICTED: 1002

06-22-89 OPERATING RULES CLASS ATTENDANCE

PRESENTER: H E MCKELVEY

06-22-89 DRUGS IN THE WORKPLACE

PRESENTER: H E MCKELVEY

06-22-89 QUARTERLY CONTACT AS REQUIRED BY 6 POINT ACTION PLAN

PRESENTER: H E MCKELVEY

04-12-89 THROWING SWITCHES - 1988

PRESENTER: R C YOUNG JR

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

04-12-89 FIGHTING BACK PAIN - GULF COAST PHYSICALTHERAPY GROUP

PRESENTER: R C YOUNG JR

04-12-89 WHY RISK IT - 1987

PRESENTER: R C YOUNG JR

03-22-89 FEDERAL HIGHWAY ADMINISTRATION -

TRAINING

PRESENTER: K W JORDAN JR

01-31-89 AMERICAN BACK SCHOOL PRESENTATION

PRESENTER: L E SWOAP

10-13-88 EXPLANATION AND/OR PHYSICAL DEMONSTRATION OF SAFETY RULE

PRESENTER: D L SELF RULE DEPICTED: 1001

10-06-88 CLAW BAR

PRESENTER: D L SELF

10-06-88 SAFE CROSSING OF EQUIPMENT

PRESENTER: D L SELF

10-06-88 NORFOLK SOUTHERN CARES

PRESENTER: D L SELF

04-20-88 WALKING - REVISED 1987

PRESENTER: H E MCKELVEY

04-18-88 DEFENSIVE DRIVING

PRESENTER: D W RUPERT

07-03-87 PHS VIDEO #1 - HEARING CONSERVATION (PRESENTED BY PHS)

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NORFOLK SOUTHERN EMPLOYEE HISTORY INQUIRY

228-32-6665

C G TRIMIEW

03/09/95

PRESENTER: D J AHERN
END OF REPORT

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14:06 3/09/95

NORFOLK SOUTHERN CORPORATION MW&S STANDARD PROCEDURE		SUPERSEDED DATE 05-17-76 N&W # 45 11-01-83 SOU #020 ISSUE DATE 11-30-87 FILE NUMBER 106 106-136 160-26	NUMBER 020 Page 1 of 4
TITLE: BALLAST: USE, UNLOADING, AND REPORTING			

(7371T)

ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HEREWITH ARE SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE

SCOPE AND NATURE

To establish a uniform system for the use, unloading, and reporting use of ballast.

SPECIAL REFERENCES

MW&S Standard Procedure 390 - Maintaining Track Stability.
 Federal Railroad Administration Track Safety Standards, Subpart D, paragraph 213.103.

NS SPECIFICATIONS

Ballast used is to be approved by the Research and Tests Department.
 Ballast to be used is of two sizes.
 #3 modified - Commonly known as 2 inch ballast.
 AREA #5 - Commonly known as 3/4 inch ballast.
 #3 modified - 2 inch ballast is to be used on all tracks except yard tracks where AREA #5 - 3/4 inch ballast is to be used.

OUTLINE OF PROCEDURE

	Begins on Page		Begins on Page
1. GENERAL	1	2. UNLOADING	2
.01 Purpose of Ballast	1	3. REPORTING	3
.02 Ballast Section	1	.01 To Materials Engineer	3
.03 Ballast Depth	2	.02 AFE Reporting	4
.04 Subballast	2		

PROCEDURE

1. GENERAL.

.01 Purpose of Ballast.

Unless the track is otherwise structurally supported, an approved ballast section is used that transmits and distributes the track load to the subgrade. The ballast is to restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by rolling equipment and thermal stresses exerted by the rails. It is to provide adequate drainage and afford a means of maintaining proper cross level, surface, and alignment for the track under load.

.02 Ballast Sections.

a. Standard ballast section from end of tie to edge of slope is to be as follows:

	Jointed Rail	Welded Rail
Inside of Curve	0"	6"
Outside of Curve	6"	12"
Tangent	0"	6"

b. Sidings, yard tracks, and branch lines with welded rail must maintain the standards for welded rail ballast sections.



NORFOLK SOUTHERN CORPORATION MW&S STANDARD PROCEDURE	SUPERSEDED DATE 05-17-76 N&W # 45 11-01-83 SOU #020	NUMBER 020
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	FILE NUMBER 106 106-136 160-26	Page 2 of 4

TITLE:

BALLAST: USE, UNLOADING, AND REPORTING

7371T)

ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE

c. Lean ballast sections must be filled in, especially before the summer months. Wherever lean ballast exists in welded rail or anywhere that insufficient ballast exists to provide a stable track, slow orders must be placed to protect the track.

d. All tie cribs must be properly filled behind T&S, Surfacing, and Smoothing Gangs. Cribs must be filled before the gang leaves the area. In some instances it is necessary to unload ballast behind system gangs. However, the crib area must be completely filled by regulators at time track is surfaced or smoothed. When additional ballast is unloaded on the track outside of the rails, it will only be necessary to plow and sweep.

.03 Minimum ballast depth under crossties is to be as follows:

- a. Heavy tonnage main track 12"
- b. Heavy tonnage other than main track 9"
- c. Industrial track 6"

.04 Subballast.

No track is to be constructed without subballast. This includes industrial tracks.

2 UNLOADING.

.01 Whenever practical for T&S work, ballast is to be unloaded prior to crosstie unloading.

.02 Ballast unloading in advance of system gang work must not exceed the quantity as given by current instructions. Any use exceeding the current instructions will require approval of the chief engineer line maintenance.

.02 Ballast must not be unloaded on two parallel tracks at the same time which are to be timbered and surfaced. Ballast between tracks adversely affects tie installation by any method.

.03 When unloading ballast, the local communication supervisor must be notified so that communication equipment such as hot box detectors are protected.

.04 Ballast will not be unloaded more than 3" above top of rail for a distance of 14" from field side of rail and then the maximum height above top of rail will be 8" beyond 14" from rail. This must be checked after ballast is unloaded.

.05 Ballast must not be unloaded between the rails of main track and left. If it becomes necessary from derailments, hot weather, washouts, etc. to unload ballast between main line rails, it must be dressed out in a reasonable time.

.06 Unloaded ballast must be cleared from road crossings and any parts of switches which interfere with proper operation of the switch.

.07 All ballast cars must be completely unloaded before being released. Ballast left on one side of a car can cause a derailment situation. All ballast car doors must be closed and properly latched before the cars are released.

.08 Whenever it is necessary for employees to get inside hopper cars in order to unload ballast, it will be the responsibility of the MW&S supervisor to see that the locomotives are neither uncoupled from nor coupled to the cars until all employees are safely out of the cars and on the ground. When it becomes necessary for the locomotives to shake the cars being unloaded in order to break the ballast loose, movement will not be made until all employees inside the cars are out of the car and safely on the ground.

.09 When unloading a unit ballast train, the MW&S supervisor should require that a member of the train crew with a radio be on the ground during the unloading process in order to aid in communication with the engineer.

.10 When the ballast unloading process requires that the train operate across bridges without adequate walking room on both sides, one MW&S employee is to catch up on each side of the train in front of the unloading point prior to reaching the bridge. These employees are to be in place to resume the unloading on the other side of the bridge. In some locations, it may be required that the train be stopped for the employees to catch up. Where it is necessary to stop the train, the supervisor in charge of the unloading must handle the communications between the ground and the engineer.

<p style="text-align: center;">NORFOLK SOUTHERN CORPORATION</p> <p style="text-align: center;">MW&S</p> <p style="text-align: center;">STANDARD PROCEDURE</p>	SUPERSEDED DATE	NUMBER
	05-17-76 N&W # 45 11-01-83 SOU #020	020
	ISSUE DATE 11-30-87	
TITLE:	FILE NUMBER	Page
BALLAST: USE, UNLOADING, AND REPORTING	106 106-136 160-26	3 of 4
(73717)		

ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE
SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE

3. REPORTING.

.01 To Materials Engineer.

- a. For odd cars ballast unloading, a telephone report is to be made to the materials engineer as follows:
 - (1) Car numbers.
 - (2) Date unloaded.
 - (3) Milepost or other location designation.
 - (4) How used.
 - (5) If unloaded in a joint facility territory, the materials engineer must be provided the joint facility number and a NS Form 11123 must be promptly prepared by the field supervisor showing car numbers. If the serial number of NS Form 11123 that is used to report the ballast is known, it must be given to the materials engineer. NS Form 11123 must be promptly forwarded through channels. If for any reason, an invoice for ballast that was unloaded in a joint facility is sent to the field location, a copy should be attached to NS Form 11123.
- b. For unit ballast train unloading, a telephone report is to be made to the materials engineer as follows:
 - (1) Unloading beginning and ending times.
 - (2) Release time of empty train.
 - (3) Number of cars unloaded.
 - (4) Gang number for which train was unloaded.
 - (5) Milepost, to include prefix or suffix if applicable, where unloading started and ended.
 - (6) Condition of ballast.
 - (7) If unloaded in a joint facility territory, the materials engineer must be provided the joint facility number and a NS Form 11123 must be promptly prepared by the field supervisor showing how many cars of the unit ballast train thus used along with the unit train designation (Materials engineer can provide train designation).

If the serial number of NS Form 11123 that is used to report the ballast is known, it must be given to the materials engineer. NS Form 11123 must be promptly forwarded through channels. If for any reason, an invoice for ballast that was unloaded in a joint facility is sent to the field location, a copy should be attached to the NS Form 11123.

- c. Ballast unloaded behind production gangs, to fill in lean spots, must be so reported to the materials engineer so that it is properly charged.
- d. Non-Standard Ballast.
 - (1) Any ballast that does not appear to meet proper specification such as having excessive fines or is too large must be reported to the materials engineer.
 - (2) If the supervisor in charge of the ballast unloading determines that a sample should be taken, the sample should be at least 50 pounds and reflect the proportionate quantities of the various size stone. This sample should be submitted to the Research and Tests Department. The sample should be identified with the milepost unloaded, date unloaded, car number, quarry if known, person taking sample and purpose of sample.
- e. If a ballast car has any damage, missing parts or does not operate properly, the car should be billed to the nearest repair track by the person unloading the car. A report of the defective car is to be made to the materials engineer at the same time the unloading is reported giving the car number, the nature of the problem, and location of the repair track where sent.
- f. If a ballast train cannot be promptly unloaded due to weather conditions, the materials engineer must be promptly notified in order that disposition can be determined.

NORFOLK SOUTHERN CORPORATION
MW&S
STANDARD PROCEDURE

SUPERSEDED DATE

05-17-76 N&W # 45
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TITLE:

BALLAST: USE, UNLOADING, AND REPORTING

(7371T)

ALL PREVIOUS PROCEDURES AND INSTRUCTIONS IN CONFLICT HERewith ARE
SUPERSEDED TO THE EXTENT OF THE CONFLICT UPON RECEIPT OF THIS PROCEDURE

.02 AFE Reporting.

- a. At the beginning of each year, by letter instruction, an AFE Number will be provided to which all program ballast is to be charged.
- b. Work Trains.
 - (1) Work train crews used for AFE ballast unloading must be advised of the AFE Number so they can show it on their time returns.
 - (2) If any ballast is unloaded in a Joint Facility territory a JOINT FACILITY WORK TRAIN REPORT must be promptly prepared and submitted.

c. Labor Distribution Sheet.

- (1) Whenever any AFE ballast is unloaded, labor used must be charged to the ballast AFE on the Labor Distribution Sheet.
- (2) All labor used for the actual surfacing by System Gangs is to be reported on the Labor Distribution Sheet.
FOR T&S GANGS ONLY: The labor directly involved with the surfacing operation (not the tie installation operation) is to be charged to the ballast AFE on the Labor Distribution Sheet.

APPROVED:



Assistant Vice President - Maintenance

VIRGINIA DIVISION

