

## Federal Jury Awards \$1.6 Million in Lawsuit Over Termination of BNSF Whistle Blower

Curtis Rookaird was a Conductor for BNSF Railway Company, working out of the Pacific Northwest near Seattle. On February 23, 2010--during the Vancouver Olympics--Rookaird and his crew were instructed to pick up a group of 42 cars, including 40 placarded Hazardous Material cars containing propane and butane residue. After moving a bar-order car that had been left on the tracks, the crew took their locomotives down to the 42-car consist. After consulting their rule books and following a job safety briefing, Rookaird and the other two members of his crew determined that they needed to perform a "transfer train air brake test" on cars in order to ensure that the brakes were functioning. While the crew was performing the test, they were contacted over the radio by a supervisor who questioned why the test was being performed, stating that they "didn't do that where [he was] from." BNSF officials then ordered all three crew members to return to the depot and sent them home before they could complete their work shift. All three were then noticed for a BNSF-conducted investigation. Following the 13-hour company investigation, BNSF fired Rookaird and issued record suspensions to the other two crew members.

Rookaird contacted the Department of Labor in 2010, which opened an investigation into whether BNSF's termination of Rookaird's employment violated his rights under Federal law. Following a three-year investigation, OSHA found that BNSF had violated the law by firing Rookaird due to his performance of the air brake safety test despite the objections and questioning by his supervisors. The Department of Labor ordered that Rookaird be immediately reinstated and awarded damages of approximately \$136,000.

Rookaird then contacted the YJB offices, and removed his case to Federal Court. In May 2016, six years after BNSF fired him and more than two and a half years since BNSF first refused to abide by the Department of Labor's reinstatement order, a Federal Jury unanimously awarded Rookaird more than \$1.6 Million in damages, including \$200,000 in punitive damages based on its finding that the railroad's actions were "malicious, oppressive, or in reckless disregard of [Rookaird's] rights." The jury's award--one of the largest ever awarded under the FRSA's whistle blower protections--is more than ten times BNSF's offer at a mediation in 2015.

"This case showed that BNSF puts 'profits over safety,' which is horrible and bad business," YJB President and Lead Trial Counsel William Jungbauer commented, "some BNSF officials deserve to be fired" over this termination for performing a safety test. "Sooner or later, Berkshire Hathaway stockholders will tire of the lack of any true 'Risk Management' at BNSF." Jungbauer previously had testified before the United States Congress when the FRSA's protections were being considered.

The jury award is likely to increase as the law also provides that BNSF is liable for all of Rookaird's litigation expenses, including attorneys' fees. That amount--likely to approach or exceed \$400,000--will be set by the Court following a hearing that will likely be held some time in the summer of 2016. "We're very pleased with the Jury's verdict," Attorney Christopher Bowman added. "BNSF told the Jury in closing argument that it got to see BNSF officials testify and judge their credibility. We believe that the verdict shows that the Jury did exactly that."



Rookaird leaves the Court House after the jury announces its verdict.



Trial team after closing arguments. From left to right, Field Representative Jim Larkin, Paralegal Nate Miller, Local Counsel Brad Crosta, Curtis Rookaird, Attorney William Jungbauer, and Attorney Christopher Bowman.

BNSF has indicated that it is "disappointed" in the Jury's verdict and is evaluating its options including a possible appeal to the Ninth Circuit. "If I were caught violating Federal law, I'd be disappointed too," Bowman commented.

The Rookaird verdict is the latest in a series of defeats for BNSF and other railroads under the FRSA's protections, and from the beginning, YJB and its attorneys and staff have been on the front lines protecting the rights of the nation's railroad workers. If you believe that the railroad has discriminated against you in violation of the law, don't leave your case in the hands of just anyone. Call the nationally recognized team of YJB today at 1-800-435-7888.