

# Switchman Awarded \$1,000,000

**O**n January 19, 2007, a Cascade County jury in Great Falls, Montana awarded \$1,000,000 to a BNSF Railway switchman from Belt, Montana. The Plaintiff is a 27-year railroad veteran named Russell Crowell who suffered a career-ending soft tissue low back injury when he chased down and stopped a runaway train in BNSF's Great Falls railyard.

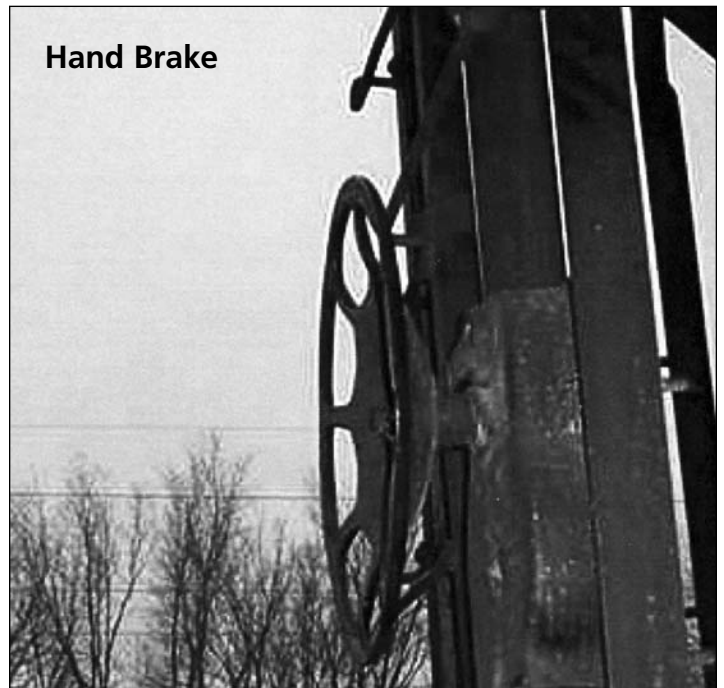
...he chased down and stopped a runaway train in BNSF's Great Falls railyard.

Crowell was performing switching maneuvers in the Great Falls railyard when a runaway cut of cars collided with the train he was working on, causing a derailment. Immediately following the collision, Crowell saw another cut of cars on a different track heading for a second collision with his train. Faced with an emergency situation, Crowell took decisive

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action and ran down the tracks, jumped onto the runaway train and tied down the hand brake, stopping the train within a few feet of the first train, avoiding another collision.

Following this incident, Crowell began to experience low back pain, but felt it was only a pulled muscle that would resolve on its own. He finished his shift and continued to work for the next two weeks. The pain became unbearable, so he sought medical treatment. His treating physician, a pain specialist, ultimately determined he suffered from myofascial low back pain, a condition that would



continue for the rest of his life. Due to his injuries, both his treating physician and the railroad's own doctor took him off the job.

At trial, the railroad denied any responsibility for his injuries, claiming all his lower back pain was due solely to pre-existing conditions. The Defendant's medical expert, Dr. James Burton, testified there was no evidence Crowell suffered any kind of traumatic injury, and all of his pain was unrelated to any activity he performed for the railroad. Dr. Burton even went so far as to allege Crowell had pain in his lower back prior to the April 9, 2003 incident, and that he just didn't tell anyone because it would help his claim not to do so.

YJB attorneys Greg Yaeger and Bob Dolan never denied Crowell had degeneration of his lower back; however, the damages he had suffered were



due to soft-tissue injuries that are separate and distinct from the degenerative changes in his back.

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The jury agreed that Crowell's pain was solely due to the soft tissue injuries he suffered on April 9, 2003, and had nothing to do with the degeneration in his back. The evidence in the case established that Crowell had never complained of lower back pain prior to April 9, 2003, despite the degeneration of his spine.

It is also significant to note that the BNSF spent a great deal of time hammering Crowell on his efforts to mitigate his damages. The BNSF claimed that he could have taken a

yardmaster position that would have been within his physical restrictions. This position pays more than what he was making before his injury. Unfortunately for the BNSF, Crowell had been a yardmaster several years prior to the accident and could not handle the position. Furthermore, despite the BNSF's claims, Crowell, in fact, had been mitigating his damages by going back to school after 27

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years on the railroad in order to improve his skills and make him more marketable in the job market. The jury also felt that Mr. Crowell's efforts to mitigate his damages by returning to school were reasonable, and they did not penalize him for not taking the yardmaster position. vjb



In the end, the jury did not buy any of the BNSF's arguments.