

BNSF Conductor Receives Record FRSA Jury Verdict

A federal jury has awarded former BNSF conductor Zachary Wooten \$2,171,154.50, following successful prosecution of claims under the Federal Employers' Liability Act and the whistleblower protections of the Federal Rail Safety Act in October and November 2018. The verdict followed an 11-day trial in Missoula, Montana, addressing personal injuries that Wooten suffered to his right hand and wrist and BNSF Railway Company's subsequent termination of his employment. Wooten was represented during the trial by YJB attorneys William G. Jungbauer, John D. Magnuson, and Christopher W. Bowman, along with Paralegal Nathan Miller.

The case stems from an incident that occurred shortly after midnight on July 31, 2015, when Wooten reported to work. After arriving at BNSF's Whitefish Yard, he went to the Shanty, a building where employees gather their paperwork before heading out to their train. Wooten got his paperwork in order, picked up his grips, and walked out to a van to be driven out to the locomotive. The van driver and other employees saw Wooten carry his bags to the van, load them in the van, fasten his seat belt, unload his bags, carry them to the locomotive, toss the bags onto the train, and pull himself onto the locomotive without any difficulty.

About an hour into his shift, Wooten and his engineer prepared to do a roll-by inspection of a passing train near Coram, Montana. Wooten went to exit the locomotive, when the front door latch stuck before swinging open. When it swung open, Wooten felt a pop in his right wrist, which he described as feeling like a bee sting. The pain went away, he dismounted the locomotive, and performed the inspection. When he attempted to climb back on the train, he lost grip strength in his right wrist and fell to the ballast below, severely fracturing and dislocating the bones in his right wrist. The injury required emergency surgery (performed in Missoula), with plates and screws being inserted to hold the wrist together.

Wooten reported his injuries to BNSF in compliance with the applicable rules. BNSF reacted by noticing an investigation, arguing that Wooten had lied in his report on the basis that the engineer did not remember Wooten telling him about the fall and video from the Shanty showed Wooten using his left hand to move some papers and open a door. According to BNSF's argument, Wooten had broken his wrist roughly 24 hours before coming to work. Despite no prior discipline in his railroad career, BNSF fired Wooten for the injury report.

At trial, YJB established not only that BNSF's negligence was a cause of Wooten's personal injuries, but also that Wooten had acted in good faith in reporting his injuries. After deliberating for approximately five-and-a-half hours, the jury unanimously found that BNSF's termination of Wooten's employment was in violation of federal law and that BNSF's conduct was malicious or oppressive. The jury returned a verdict awarding \$13,177.50 for the personal injury, \$1,407,978 in lost wages for the termination, \$500,000 in emotional distress damages for the termination, and \$249,999 in punitive damages (\$1 below the statutory maximum). The verdict represents the largest verdict under the strengthened FRSA whistleblower protections to date.

The matter now moves to post-trial motions, where Wooten has requested an additional \$1.6 million in attorneys' fees and costs, plus additional damages to account for prejudgment interest. BNSF is expected to oppose the motions and appeal the jury's verdict to the Ninth Circuit. As of this writing, no hearing has been scheduled on the post-trial motions.

This case represents the importance of seeking legal representation at the first sign of railroad discrimination. BNSF refused to abide by an April 2016 order from the United States Department of Labor reinstating Wooten (which would have cut off his wage loss claim and likely reduced the other damages as well), and refused to discuss possible settlement of the case, never making an offer. If you believe that you have been discriminated against at the hands of BNSF or any other railroad, don't leave your rights up to just anyone. Call the nationally recognized team at YJB today at 1-800-435-7888.



Trial team after the jury returned its verdict. From left to right: Attorney Bill Jungbauer, Paralegal Nathan Miller, Attorney Christopher Bowman, Attorney John Magnuson, Zac Wooten, and Field Representative/Investigator Jim Larkin.