

# Rail Carrier Files Suit Against Employees in Kentucky Train Wreck

In early April, Norfolk Southern filed suit against two crew members of a train that wrecked a few weeks prior. The rail carrier claims that the crew was negligent and failed to prevent a March 18th train crash and derailment in Georgetown, KY in which two locomotives and thirteen cars derailed. The suit - filed in U.S. District Court in Lexington - states that locomotive engineer Kevin Tobergte and conductor Andrew Hall had failed to reduce the speed of the moving southbound train and prevent the resultant collision with the stopped northbound train.

The suit states that the two ignored a signal that required them "to be prepared to stop," further stating that the two were negligent, that they failed to maintain a reasonable lookout, failed "to pay attention to their duties," failed to properly control the movement and speed reduction, and failed to announce to the dispatcher that they were in emergency so that "other trains in the vicinity could be notified of the event."

The suit goes on to claim that the two men are liable for damages to the railway's property, including, but not limited to, damages to the locomotives, rail cars, tracks, right of way, communications and signal equipment, expenses related to getting the rail cars back on the track, transporting the locomotives for repair, and damages for loss of use of the locomotives and rail cars in addition to other clean-up related expenses.

This lawsuit comes a few months after the long-awaited acquittal of Canadian railroad workers who had likewise been charged after a train had wrecked in Canada in 2013. In that case, the jury found the defendants "not guilty" January 19th, 2018. There, the workers faced criminal charges that could have resulted in life imprisonment. In this recent lawsuit filed by NS, the workers stand to lose everything they own.

Criminalization of workers for accidents, injuries and wrecks has become an alarming trend in recent years as corporations attempt to shift blame and focus away from their own reckless and irresponsible policies, procedure and practices that lead to such mishaps at work. The law is very clear - the employer must provide a safe workplace, and as such, has a responsibility when things go wrong, when property is damaged and people get hurt. But the large and powerful rail carriers have a vested interest in convincing judges, juries and the public at large that when something goes wrong - such as the train crash at Georgetown, KY on March 18th - it is not their fault.

Just as Railroad Workers United (RWU) took up the case of Tom Harding and Richard Labrie - the train engineer and dispatcher who were unfairly scapegoated for the tragic wreck at Lac-Mégantic, Quebec - the organization is now considering a strategic defense of these two fellow workers - Andrew Hall and Kevin Tobergte. According to RWU member Fritz Edler, "If the Norfolk Southern proceeds with its lawsuit against these two railroaders, we should all come to their defense. It is in the interest of all railroad workers to stand up for these brothers. If they are found guilty and forced into bankruptcy, their lives destroyed, then none of us who work on the railroad are safe from this kind of retribution."

Lawsuits of this nature - while relatively rare - do occur and appear to be happening more frequently. The practice known as "behavior based safety", a favorite ideology of the railroad industry, claims that "all accidents and injuries are avoidable" and that



**Norfolk Southern points the finger at two of its employees who it claims are solely responsible for the train wreck in Georgetown, KY on March 18th. Those who work on the railroad know that behind every train wreck there is a whole series of underlying factors, often hidden from view, and usually the result of failed corporate policies, practices and procedures.**

"individual behaviors" are responsible for accidents and injuries. As such, when a worker is injured or killed on the job, the carrier focuses (and wants us to focus as well) on specific worker behaviors that can be held responsible. When workers, unions and the general public buy into this world view, and simply "blame the worker", we fail to see the underlying policies, practices and procedures that accompany practically every single incident. Short-staffing, inadequate training, draconian attendance policies that force workers in to work when sick, poor train lineups, lack of reasonable work schedules and time off, poorly maintained equipment, and more all go unrecognized as the root causes of these debacles. Unfortunately, this "blame-the-worker" ideology has taken on an even uglier guise now, as workers are not only blamed when they get hurt, they are now being criminalized.

Union officials from the operating crafts have both weighed in on the question. According to John Risch, National Legislative Director for the SMART Transportation Division, "It's outrageous behavior by Norfolk Southern." Dennis Pierce, the President of the Brotherhood of Locomotive Engineers & Trainmen (BLET) wrote, "There has been a trend to criminalize railroad workers and prosecute them as the sole cause of these tragedies." It remains to be seen what if any actual aid, assistance, and resources the unions will lend to mounting a campaign of support for the workers facing prosecution.

Just as with the recent trial of scapegoated rail workers in Canada, rank and file railroad workers need to mount a "political" defense. We need to dig into what happened on March 18th. Why did this train get past a red signal? What were the precursors? What underlying factors contributed? What actions (or inactions) by the company contributed to this wreck? What unsafe policies, procedures and practices - formal and informal - played a role? In the case of Lac-Mégantic, it all came out at the trial: the failure of the carrier to provide a safe workplace, to maintain its equipment in good working order, to promote proper training and safety practices, and to set clear rules and guidelines. And as we know now, the carrier irresponsibly and recklessly ordered its engineers to leave trains with upwards of 10,000 tons on a 1.2% grade with no derail or other protection and *not to set the automatic air brakes on the train's cars!*

So what will be discovered from investigating the March 18th NS wreck? It is up to us to find out and publicize the failure of the corporation in the weeks and months leading up to, and at, the trial. Let's make the Norfolk Southern - and any other rail carrier who takes a similar notion - regret the day they decided to legally prosecute their hard-working employees.