BNSF Engineer Wins Long Sought Whistleblower Settlement

After seven years and two trials, engineer Mike Elliott can finally close the book on his Federal Rail Safety Act (FRSA) Whistleblower case. This past summer, the Burlington Northern Santa Fe (BNSF) Railway Company has paid the over $1.8 million awarded by the jury and courts.

Elliott’s journey began in 2010 when as Chairman of the Washington State Legislative Board for the Brotherhood of Locomotive Engineers & Trainmen (BLET), he had received numerous signal and other safety complaints from his members working on the high-volume BNSF Seattle Subdivision. After attempts to resolve these issues with BNSF failed, Elliott took the complaints to the Federal Railroad Administration (FRA). That lead to an FRA Focus Inspection of the 133 miles of BNSF mainline right-of-way between Tacoma, WA and Vancouver, WA. The inspection revealed an astonishing 245 track, switch, and turnout defects and 112 signal defects. Ultimately, BNSF was fined by the FRA.

A short time following the FRA Focus Inspection, a BNSF manager staged a workplace conflict and Elliott was arrested. He was made to stand trial in criminal court where, ultimately, he was exonerated on all counts. At that time, BNSF held two separate “Kangaroo Court” disciplinary hearings, terminating Elliott’s employment, not once but twice.

Meanwhile, Elliott filed a FRSA Whistleblower complaint with the Occupational Safety and Health Administration (OSHA). He alleged that BNSF had retaliated against him for his reporting of safety concerns. The OSHA investigation uncovered important facts supporting Elliott’s allegations and laid the evidentiary foundation for the federal court trial that would inevitably follow (U.S. rail carriers appeal to the courts as a matter of course whenever an employees wins an OSHA whistleblower case).

In June 2015, Elliott “got his day in court.” After a six-day trial, a federal jury found BNSF had committed unlawful acts against Elliott in violation of his FRSA protections. The federal jury awarded him $1.25 million in damages and, in post-trial motions, the district court awarded an additional $423,625 to cover Elliott’s attorney fees. While BNSF did appeal to The Ninth Circuit Court of Appeals, all appeals were DENIED. This added another $125,000 to the total BNSF would have to pay. Realizing that it had been defeated, BNSF chose not to appeal the verdict to the Supreme Court of the United States.

While Elliott is grateful for the FRSA and for the federal court process that finally brought BNSF to justice, he acknowledges improvements to the FRSA are needed. “As it stands today, FRSA punitive damages are capped at $250K. Considering the financial resources of BNSF and Berkshire Hathaway, there’s no real deterrent effect in a $250K fine, Elliott said.”

What advice does Elliott have for rank & file railroad workers? “Know your rights under the FRSA and other worker protection laws like the FELA (Federal Employers Liability Act) and the FMLA (Family Medical Leave Act). Participate in your local union division/lodge and ask an ARLA (Academy of Rail Labor Attorneys) firm for a presentation on these topics.” Elliott also encourages participation in the political process at every level. “Industry lawyers are working every day to undermine existing worker protection laws and regulations. Pay attention and hold elected officials accountable. If they’re not working to protect your family and your work interests, vote them out”, Elliott said.

Mike Elliott remains an outspoken railroad safety advocate and continues to support worker rights and interests at every level. He lives in Tacoma, WA.

Attorneys James Vucinovich (left) and Sara Amies (right) flank railroad whistleblower Mike Elliott in a victory celebration upon the conclusion of Brother Elliott’s successful whistleblower law suit against BNSF. The federal jury awarded Elliott more than $1.25 million in damages after a seven year hard fought battle with the rail carrier. His victory strikes a blow for railroad safety and is a win for railroad workers across North America.