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Here is a timeline as to my contacts with BNSF manager Dennis Kautzmann and other BNSF officials connected to my complaint.

In late 2006 or early 2007, I had my first encounter with Road Foreman of Engines (RFE) Dennis Kautzmann. Mr. Kautzmann had showed up to the East End Shanty to "ride along" with me on my yard job as part of engineer certification requirements. While I considered him to be somewhat overly formal for a routine procedure, I listened contently while he explained the evaluation criteria he intended to observe during his yard "ride along." The trip was uneventful up to the point our crew was making our last move to secure the locomotives at the completion of our shift.

As we proceeded to the East End of the yard by way of a track we had cleared all of the cars off of during our work, I called the Yardmaster (Randy Brebner) by radio and asked him where he wanted us to leave the locomotives (Two-Engine Consist). Mr. Brebner indicated to leave them in the track I was presently in (17, I believe). At this point, Mr. Kautzmann directed me not to leave the engine in track 17 as the rules required the engines be coupled to at least one railroad car. I indicated to Mr. Kautzmann that it was usual procedure we followed at the East End, regardless if cars were attached or not. Mr. Kautzmann bristled indicating I would follow his directive and find a track where the engines could be coupled to at least one car.

I then called Mr. Brebner back and ask for another track to leave the engines indicating the Road Foreman was ordering me to so. There was a long pause before Mr. Brebner answered. When he finally did answer, he politely (and with bit of sarcasm) asked where Mr. Kautzmann would like the engines to be parked. I indicated that Mr. Kautzmann wanted them in a track with at least one car in it. There was another pause and then Mr. Brebner indicated the engine could go to track 19 or 20. My crew placed the engines in one of those tracks (I do not recall which one) and I secured the engines.

As I gather up my grip to disembark the engine, Mr. Kautzmann made the comment to the effect that I had "flown under his radar" up to this point but that was going to change in the future. I didn't say anything back, shrugged my shoulders, finished gathering my things on the engine, and walked back into the yard office. I put my things my locker and departed for home.

As the months went by, I recall Mr. Kautzmann showing up at my job location (East End) or in the vicinity of my job location (Tacoma yard) to conduct "official business" on an abnormally frequent basis. Based on my 12 years of previous experiences with RFE personnel, no other RFE had found reason to spend as much time in and around my work location (Yard or Road) as Mr. Kautzmann.

In 2008, Mr. Kautzmann called me while I was at home to inform me of a "ride along" he intended to conduct on my next job start. I recall this specifically because I did not appreciate being disturbed at my home, while off-duty, and on my own time. Again, Mr. Kautzmann commented that I had "flown under his radar." This was the second time Mr. Kautzmann had made the "radar" comment as to me going unnoticed at work by

Exhibit: 11  
Witness: Elliott  
Date: 12-11-14  
Lauren G. Harty, CCR 2674

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management. I still wasn't certain what he meant by that remark but I do recall him making it.

In 2009, I recall Mr. Kautzmann's contact with me in and around the workplace was increasing. He seemed to be "finding cause" to be at my location of work on a regular basis. Operational Testing "in the yard" seemed to be the new standard in Mr. Kautzmann's official capacity as RFE.

On or about June 6th, 2009, I had contact with Mr. Kautzmann leading me to believe, beyond any doubt, the "unusually" frequent contacts between him and I were not purely coincidental or in the scope of his official duties as RFE. While working on a switch engine at Tacoma yard, Mr. Kautzmann showed up at my work location and announced that he would be riding with me as our crew switched in the yard. I recall this in some detail due, in part, to the fact we were switching on the West End of the yard (not preferred) and by the fact the job Foreman (Dave Bauschman) had taken exception to Mr. Kautzmann's presence.

As our crew arrived on the West End of the yard to switch, the Mr. Bauschman noticed Mr. Kautzmann had arrived in his company vehicle and parked in or about the roundhouse / rip shed area. Mr. Kautzmann approached Mr. Bauschmann (standing on the switching lead) and indicated he was going to "ride along" with the engineer (me). Mr. Bauschmann had previously witnessed Mr. Kautzmann's zeal for his RFE job as it applied to me on previous occasions and expressed concerns to me as to having Mr. Kautzmann's on the job site while we worked. Because of this, and my own concerns, we decided to conduct a Job Safety Briefing including Mr. Kautzmann making it clear as to what our expectations were regarding his "official business" and interactions with the crew. Specifically, we indicated he was not to create any distractions by his presence that could jeopardize the safety or efficiency of our crew.

Mr. Kautzmann seemed unprepared, surprised, and annoyed by our decision to conduct a JSB that directly involved him. He got his bag, got on the engine, and sat in the Conductors seat of the locomotive. He did not speak to me or attempt to engage me in conversation during the nearly two hours he was riding on the engine supposedly "evaluating" my skills in operating a switch locomotive within the confines of the yard. When our crew finished the work we had been assigned and prepared to take a break, Mr. Kautzmann indicated he would be contacting me at a future date to "critique my run." He then got in his company vehicle, and left.

After Mr. Kautzmann had left, Mr. Bauschmann approached me and recommended I report Mr. Kautzmann for harassment. He indicated it was his opinion Mr. Kautzmann's contacts were beyond the scope of his official duties, that I may have been targeted by management for my workplace safety activism, and that I should explore the possibility of legal action against Mr. Kautzmann and/or the company. I agreed and decided I would plan to contact someone in management about the situation as it was creating distractions at work and in my private home life.

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On or about June 8, 2009, Mr. Kautzmann again showed up at my work location. As I prepared for my yard job, he indicated he was "following-up" with to critique the Operational Testing and/or "check ride" he had conducted with me a few days earlier. He came into the crew lunch room where other crews were located, pulled up a chair, and asked me to sit down at the table so he could critique my switch engine ride along from the previous week. I recall confronting Mr. Kautzmann as to this and asking him why he had found it necessary to conduct a critique of a switch engine ride along as no other RFE had ever done this in my 12+ years as a Locomotive Engineer. Mr. Kautzmann indicated he was simply doing his job as required by the FRA. As a switch engine in the yard does not travel more than 10 mph or use train braking techniques, there is very little to "critique" in terms of engineer skills a RFE would be evaluating under company policy or FRA regulations. It was clear to me Mr. Kautzmann had another agenda. At this point, the contacts with Mr. Kautzmann were creating serious distractions in my work life and in my home life. I was not able to sleep following the June 8, 2009 contact with Mr. Kautzmann and was having serious problems concentrating at work. I decided the best course of action was to request that Mr. Kautzmann be removed from his position as RFE on the Northwest Division.

On June 9, 2009, I sent an email message to Douglas Jones, Northwest Division General Manager requesting Mr. Kautzmann be removed from his position for creating unsafe conditions at work for not only me but for my membership (see attached). Unfortunately, Mr. Jones refused to act on my request. I continued to be distracted at work by thoughts of Mr. Kautzmann following my every move and waiting for me to make the slightest of mistakes or rule violations so he could de-certify me and/or call a personnel investigation. I could not sleep or eat as I worried as to when or where the next encounter with Mr. Kautzmann might be. This went on for several days until; finally, the yard accident involving a departing Union Pacific train happened.

On June 9th, 2009, I was involved in a yard accident whereas the switch engine and cars I was operating collided with a departing Union Pacific train near the East End of the Tacoma yard. A contributing factor in this accident was due to the fact the carrier had decided to "mothball" several yard engines to save fuel in response to the recession. By doing so, "double sets" of locomotive power (two locomotives facing in opposite directions and set-up as a Multiple Unit Consist) were no longer available for use in switching operations. In some cases, this created a single engine, "long nose" scenario (having to operate the engine in reverse mode) which greatly restricts the view of the track while operating the locomotive under in reverse. This situation, coupled with the tonnage I was handling, lack of sleep, and the serious distractions Mr. Kautzmann had created with his harassment, were all contributing factors in the accident I was involved in on June 9<sup>th</sup>, 2009. I was injured in the accident, was transported by ambulance to St. Joseph Hospital, examined, required to take a FRA blood test, and was then "held from service" pending a personnel investigation.

A day or two following the accident, I met with terminal management (Dan Ferguson, Roland Hackney) to sign the various papers associated with the accident (de-certification papers, an accident report, and an injury report, etc.). This meeting took

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place at the Tacoma Freight Office in the second floor Superintendent's office located in the southwest corner of the building. While meeting with Mr. Ferguson and Mr. Hackney, I noticed Mr. Kautzmann was standing in the hallway outside the Superintendent's office holding some papers. I recall this because Mr. Kautzmann seemed especially gleeful in his mannerisms and demeanor. When he tried to enter the room where I was seated, Mr. Ferguson stopped him, took the papers away from him, and told him to wait outside in the hallway. I recall the paperwork was related to my engineer certification being suspended and/or revoked because of the yard accident. The entire situation was a nightmare. I was humiliated and made to feel ashamed by all of it.

I was held from service for approximately two weeks following the accident. One reason for the delay involved a medical release required by the company's agent (Joan Costa) that was associated with the injuries I have sustained. But another reason involved management's "dissatisfaction" with my accident statement as to why the accident had occurred. Namely, management contended I needed to "assume responsibility" for the accident in order to be eligible for Alternative Handling under our collective bargaining agreement. While my union representative and I both felt my initial accident statement was within the framework of our contracts, I submitted a "clarification statement" so as to qualify for Alternative Handling and to return to work.

In the weeks following the accident, I feel a poor investigation was conducted by the FRA inspector assigned to investigate the yard accident. He did not delve into the possibility of distractions that may have contributed to the accident very well. He only asked if I was distracted by a cell phone or other electronic device. Fortunately, I was able to submit a supplemental statement regarding the accident to the FRA in Washington D.C. that further explained why I felt the accident happened (see attached). I submitted the supplemental statement to both the BNSF and to the FRA.

On or about July 1<sup>st</sup>, 2009, I returned to work per our Alternative Handling agreement. Part of that process is a "re-fresher" program of sorts where additional training, in the area of deficiency, is conducted. I recall it was manager Gary Hein (Dennis Kautzmann's supervisor) who had assembled the "re-fresher" program. There were literally dozens of hours of Computer Based Training modules assigned as my re-fresher program that had absolutely nothing to do with the type of accident I was involved in. There were modules on Fuel Conservation, Distributed Power procedures, and other topics that were in no way related to the accident for which I had been involved. I had to complete all the modules and pass all the tests associated with each module. Both my union representative (David Beech) and I believed the Alternative Handling assignment went way beyond the scope of our agreements. We both felt the carrier's intent was to punish rather than correct any deficiency that may have existed regarding my work habits.

After completing a week's worth of Computer Based Training Modules, I was allowed to return to work as a Switchman. The reason for working as a Switchman was because the company and/or the FRA considered the accident to be a "de-certifiable event" with

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regards to my Locomotive Engineer certification. Apparently, because there was a reportable injury and/or the estimated dollar amount of damage (track structure and/or equipment) exceeding a certain threshold, the accident was classified as a de-certifiable event. With the exception of my injury, there is some "subjectivity" in the establishing what is, or is not, a FRA reportable accident. For instance, damage to yard track can be very subjective. Most yard track structure is older, "recycled" main track and ties. There are no real "hard numbers" when making estimates as to yard track damage. Equipment damage can be subjective as well. There is cost to replace the equipment and then there is cost to repair it. Some of the equipment in use on the railroad is so old that it may, in present day dollar amounts, may not be worth repairing. In these cases, it is simply sold as scrap metal.

In the weeks following the yard accident, I continued to fear the wrath of the company and Dennis Kautzmann. I had seen time and time again what happens to employees who file injury reports on the railroad. I had requested the company remove Mr. Kautzmann and they had refused to do so. I continued to have problems sleeping and concentrating at work. I seriously contemplated selling my house and moving back to Spokane to get away from Dennis Kautzmann and the retaliation the company was raining down on me. But the housing market had collapsed to the point I could not even come anyway with a break-even scenario if I had sold my house.

Desperate to stop the harassment and retaliation, I decided to try filing a complaint through the company's Employee Hotline. This hotline is maintained by an outside contractor whose purpose is to collect information and then return the information back to the company for resolution. I called the line to report Mr. Kautzmann and the company for harassing and retaliating against me for filing an injury report. In the end, the reports were turned over to BNSF Human Resources in Seattle for handling. I received a phone call from Heather Miller, BNSF Human Resources indicating she was the "finder of facts" regarding my complaint. I talked to her on the phone and told her about the harassment and retaliation I was experiencing. That was the last I heard from Heather Miller until the "return to work" interview following the West Seattle incident and suspension (more information on this below).

After completing the Alternative Handling and working "on the ground" as a Switchman for 30 days, I returned to the craft of Locomotive Engineer. I recall working for a short time in Tacoma but when I noticed a job opening for a Switch Engine Job in West Seattle. I talked with some friends and decided this might be a way to avoid contact with Mr. Kautzmann and to "lay low" from management scrutiny for awhile. I marked up to the West Seattle afternoon job in August of 2009.

I have a particular fondness for West Seattle as it is one of the very first locations I worked at when I hired out on the railroad back in 1995. The original crew "Shanty" is still in use although a freeway ramp and concrete wall now dominates the south side of the building and parking area. While quite-a-few changes have occurred to the surrounding neighborhood over the past 15 years, most of the rail operations, as I

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remember them, are still intact. I enjoyed working the West Seattle job and felt I had found a "temporary" sanctuary where I could quietly earn a living and avoid the wrath of the company and Dennis Kautzmann. However, that was not to be.

On August 27<sup>th</sup>, 2009, I reported for duty at the West Seattle Shanty. As I prepared for my shift, Mr. Kautzmann arrived in his company vehicle. Neither I nor any of the other crew members had any idea why Mr. Kautzmann was at the location. He entered the Shanty, removed papers from his bag, and announced to everyone present, "Here's what's going to happen." He then slapped a paper down on the table in front of me and ordered me to sign it. There are documents related to this incident attached, therefore, I will forego going into a lot of detail here. Mr. Kautzmann was the cause of the West Seattle incident and escalated the situation to the point one of our crew members had to go home sick. I was held from service, drug tested, and called to a personnel investigation account of Mr. Kautzmann's conduct. I was found "at fault" in the company's Kangaroo Court system and served a 30 day actual suspension.

On or about October 2<sup>nd</sup>, 2009, I received a letter from the carrier directing me to contact Jeff Beck and schedule a meeting with management for the purpose of "discussing any issues or concerns that I may have going forward in the performance of my duties." I scheduled the meeting and met with management to discuss issues I had regarding management and Mr. Kautzmann. In attendance were Roland Hackney, Jeff Beck, Gary Hein, Heather Miller, Rich Reeves, and me. I indicated I wanted the harassment and retaliation to stop. Additionally, I requested that Mr. Kautzmann not be allowed to have contact with me and that any issues involving my locomotive engineer licensing be handled by another RFE. Management denied all my requests. Heather Miller indicated management would not accommodate me as, if the company did this for me, they would have to do the same for everyone else across the entire railroad system. Manager Gary Hein basically indicated the same adding that Dennis Kautzmann was my supervisor and I was going to have contact with him—like it or not.

In the weeks following the October meeting with management, I did not have any contact with Mr. Kautzmann. He did not show up on my job nor did I notice him around the locations where I was working. However, Art Garcia (RFE. for Stampede and Scenic Subs) did show up at the Auburn Yard Crew Shanty to ride with me on the Ellensburg Pool route one evening. He approached me, introduced himself, was polite, was professional, and discussed the purpose of his contact with me from the very beginning. While on the route, we discussed many topics including some of the pressures he faces from BNSF's Service Design department regarding operation of heavy trains on grade (Mr. Garcia had worked on the Cahon Pass where heavy trains are operated on steep grades). While "venting" we both acknowledged that, while we don't agree with everything the railroad does, they had never bounced one of our paychecks. After running with Mr. Garcia on-board for a few hours, I recall he commented that "any problems (between me and Mr. Kautzmann) are not with you." I couldn't have agreed with Mr. Garcia more.

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In the late fall or early winter of 2009, I recall talking with Tacoma Trainmaster Dale Davidson at work. He brought up the topic of Mr. Kautzmann, indicated he empathized with me regarding "the situation" I was forced to endure, and offered to help by entering "employee/management contact (as required as part of my probationary status from the West Seattle incident and the workplace injury I had sustained). In doing so, he indicated the possibility of contacts with Mr. Kautzmann would be reduced substantially. I indicated I greatly appreciated that gesture and he entered a management "contact" in the computer for that day. It was my understanding these "employee/management contacts" were to continue for one full year.

The next time I recall seeing Mr. Kautzmann was in December of 2009. I was working as locomotive engineer assigned to a Tacoma TEMCO Road Switcher job. We had pulled cars out of the TEMCO elevator and transferred them to Auburn Yard for the Carmen to inspect and air test. As we were getting off of the train and into a waiting crew hauler van, I notice Mr. Kautzmann pull up near the lead locomotive of our train (from which we had just disembarked), climb on-board, and access the "event recorder" download panel located on the back wall of the crew compartment. Both the Conductor and I were bewildered as to why Mr. Kautzmann had a police escort with him (BNSF Asset Protection) as he downloaded event tapes from the locomotive I had been operating. We got into a waiting Crew Hauler vehicle and drove away.

Several months passed without any contact with Mr. Kautzmann. Trainmasters Dale Davidson and Pam Sullivan were interceding with the "employee/management" contacts that were needed to satisfy probationary concerns and I was glad about that. It seemed the harassment and retaliation I had experienced in 2009 was occurring less frequently in 2010. Then there was another contact with Mr. Kautzmann at the Tacoma Freight Office.

In late April or early May of 2010, there was an incident involving Dennis Kautzmann where he tried to board our train for "a ride along." I have documented this incident on a separately. Please refer to that document for a detailed account of the incident.

Approximately, two or three weeks following the Balmer Yard incident (where we turned Dennis Kautzmann away as he attempted to board our train), I received an "Operations Test Failure" via U.S. Mail at my home addressed from Dennis Kautzmann. The letter from Mr. Kautzmann indicated I had not followed proper Air Brake and Train Handling (ABTH) procedures when securing equipment (over reduction). The date of the download and failure were immediately following the incident at Balmer Yard where we had refused to allow Mr. Kautzmann to board our train. Further, in the 16+ years I have worked on the railroad, I have never received a test failure notice by way of U.S. Mail delivered to my personal residence. Clearly, Mr. Kautzmann was retaliating for "losing face" over the Balmer Yard incident three weeks earlier.

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Weary of the harassment and retaliation by Mr. Kautzmann, I once again requested to management Dennis Kautzmann removed (see email request to Douglas Jones). Again, management refused my request.

Related to Mr. Kautzmann's harassment and retaliation of me were complaints of safety issues on his territory of responsibility (Seattle Terminal South, Auburn/Tacoma Terminal, Seattle Subdivision North). Since mid-year in 2009, I had been receiving complaints from my Union Pacific membership regarding trackside vegetation blocking the view of signals and of signals malfunctioning. What was remarkable about these reports is they were all generated by Union Pacific crews working on much of the same actual track as BNSF employees. The one factor my Union Pacific crews do not have in their operations is Dennis Kautzmann. He is not the supervisor for any of the Union Pacific employees even though they operate trains on the same track my BNSF members. The Union Pacific employees have a separate supervisor independent of Mr. Kautzmann. I took the complaints of vegetation and signal malfunctions to BNSF management for corrective action. Management indicated my complaints would be addressed and the problems (if any) corrected.

My complaints were turned over to the Signal Supervisor and Maintenance of Way Supervisor for the territory in question. Some vegetation was removed and faulty electronic equipment replaced (capacitor, bonds). I recall having a conference call with the safety manager (Robert Raglin) and the signal supervisor (Jerry Specht) as a follow-up to my complaint. I remember expressing concerns about the electronic component failure (capacitor) as being a leak link in a system that really should have more redundancy. One of the responses from management I thought disturbing was the indication certain aspects of the signal system were considered "proprietary" in nature and not open to discussion. I thought this response to be a "cop-out" as, in my opinion, there was nothing proprietary about the signal electronics, vegetation clearing, or the manner in which the signal heads are positioned for viewing by train crews. I continued the safety dialog regarding my complaint issues with BNSF management over the next several months.

In the fall and winter of 2010, I continued to receive numerous complaints regarding signal malfunctions and vegetation obstructing signals on the Seattle Terminal South and Seattle Subdivision North territories. As before, all the complaints were coming from my Union Pacific membership. Again, I contacted BNSF management requesting corrective action. I indicated if the problems were not corrected, I would be forced to seek remedy outside of BNSF management.

In this time frame, I had also received complaints for my BNSF membership as to being harassed and intimidated by Mr. Kautzmann. The members I spoke with were afraid to make complaints about Mr. Kautzmann or workplace safety concerns for fear of reprisals and retaliation by railroad management.



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Note: The BNSF does maintain an Employee Hotline for reporting workplace harassment, intimidation, retaliation and other issues. However, I know from first-hand experience, it does not work. I had tried using the hotline (which is maintained by a contractor) in 2009 when I was being harassed by Dennis Kautzmann. I was contacted by a human resources person who indicated the alleged harassment and retaliation was allowed under our collective bargaining agreements!

One of the members being harassed by Mr. Kautzmann had decided to remain in the ranks of the conductor craft rather than promote to engineer to avoid having contact with Mr. Kautzmann.

Again I contacted BNSF management regarding the signal and vegetation issues. I requested action be taken to remove Dennis Kautzmann and Employee Assistant Program Manager Suellen James. Again, management failed to act on any of my complaints. Additionally, management indicated Dennis Kautzmann had personally been over the territory in question and had observed no vegetation or other safety issues involving the signal system.

At this point, I realized the BNSF was not going to address my concerns regarding Mr. Kautzmann, the vegetation issues, the signal issues, or any other safety issue I brought before them for action. Therefore, I drafted a complaint letter to the Federal Railroad Administration (see attached complaint). After submitting my complaint to the Federal Railroad Administration, I was contacted by one of their inspectors. He indicated the FRA would conduct an investigation into the complaint and the respond in an appropriate amount of time.

After a comprehensive audit of the Seattle Subdivision, the FRA investigation uncovered hundreds of federal safety violations. The railroad was subjected to fines and required to correct the problems. A significant number of violations were found on the territory for which Mr. Kautzmann has managerial responsibility.

I believe beyond any doubt the incident involving Mr. Kautzmann on March 3<sup>rd</sup>, 2011 was in retaliation for my safety activities and reporting of workplace safety violations to the Federal Railroad Administration. I was not working in the craft of locomotive engineer at the time of the March 3<sup>rd</sup> incident, I had not worked in the craft of locomotive engineer for two months prior to the March 3<sup>rd</sup> incident, and there was no immediate reason for Mr. Kautzmann to have contact with me on the day of the incident. I was "off- duty" following a CPR class, I was attempting to depart for home to get proper rest for my next job-start, and I was trying to avoid any type of confrontation with Mr. Kautzmann.