

Local News

Court of Appeals upholds \$1.25M verdict against BNSF for terminating whistleblower



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9th Circuit Court of Appeals has upheld the 2015 jury verdict awarding \$1.25 million to a railroad whistleblower who claimed he was fired after reporting safety concerns.



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A three-member panel of judges from the 9th Circuit Court of Appeals has upheld a [\\$1.25 million verdict awarded in July 2015 to a railroad whistleblower](#) who claimed he was retaliated against and terminated for reporting safety violations to federal regulators.

The judges rejected claims by the BNSF Railway that the trial court applied the wrong legal standard to its efforts to show that Michael Elliott, a 16-year veteran locomotive engineer and a senior elected officer for the Brotherhood of Locomotive Engineers and Trainmen, had engaged in misconduct and that was the reason he was fired.

Moreover, the unanimous panel found there was “substantial evidence” to support the jury’s finding that complaints that Elliott had made about safety concerns were a “contributing factor” to BNSF’s efforts to fire him.

Those efforts, according to testimony and court documents during a six-day trial, **included evidence that a supervisor set up a physical confrontation with Elliott in a BNSF parking lot, and then had him arrested and charged with assault.** Elliott spent two days in jail but was acquitted in Pierce County court. The railroad used the incident to justify his dismissal.

Evidence also showed that BNSF officials in Washington colluded to provide inaccurate information to a mediator about whether Elliott had properly reported a prior criminal conviction. Elliott insisted he had, and internal emails he produced at trial indicated BNSF supervisors intentionally misled the mediator, according to testimony at trial.

Elliott had reported several complaints about overgrown vegetation blocking the signal system along BNSF-owned tracks between Tacoma and Vancouver, Wash., along with several potentially catastrophic signal malfunctions. The signal system is designed to keep trains from colliding on tracks that are owned by BNSF and shared by passenger and cargo trains.

Elliott alleged that BNSF was slow to address the issue, and in January 2011, after receiving no response, Elliott bypassed the railroad and took his concerns to the Federal Railroad Administration (FRA). The FRA conducted a six-week inspection in which it found more than 375 violations, including one that resulted in a \$1,000 fine.

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