



Judge: Railroad engaged in 'staggering' pattern of misconduct

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Burlington Northern Santa Fe Corp. engaged in a "staggering" pattern of misconduct aimed at covering up its role in the deaths of four young people whose car collided with a train largely because a crossing gate wasn't working properly, a Washington County judge declared Thursday.

To punish the railroad, which allegedly began destroying evidence within minutes of the 2003 accident, Judge Ellen Maas awarded \$4 million to the victims' families and their attorneys. The award comes on top of \$21.6 million from a jury that placed 90 percent of the blame for the accident on Burlington Northern.

"When encountering conduct as egregious as that of BNSF, this court ... has a duty to impose sanctions of a sufficient severity in order to deter future misconduct of the same caliber," Maas ruled.

A westbound freight train, traveling at 59 miles per hour on Sept. 26, 2003, collided with Brian Frazier's car as it crossed the tracks around 10 p.m., at Ferry Street, just north of Hwy. 10 in Anoka. Burlington Northern said the driver ignored a warning signal and tried to beat the crossing gate, but a jury concluded the crossing gate wasn't working properly.

Maas found that the railroad company lost or fabricated evidence, interfered with the families' investigation of the accident and "knowingly advanced lies, misleading facts and/or misrepresentations" in order to conceal the truth.

The railroad, Maas noted, "has attempted to explain away each instance of misconduct as either an innocent mistake or a mere coincidence. ... This court is not persuaded."

"There's no precedent for this," said Allan F. Shapiro, an attorney for the family of one of the victims. "What Burlington Northern did undermines the rule of law. It's a black eye to American ideals. That's why it's so offensive to see this."

Tim Thornton, a Twin Cities attorney representing the railroad, declined to comment.

The company's conduct stunned legal experts.

Corporate defendants rarely lose documents or tamper with evidence pertinent to investigations, said Steven Duke, a professor at Yale University Law School. "It rarely surfaces because they'd be caught," Duke said. "This is a very unusual allegation."

In interviews, Minnesota court officials could not recall another major Minnesota case that involved allegations of such pervasive misconduct. Charges of tampering are extremely rare, Minnesota courts spokesman Kyle Christopherson said. Since 2000, there were just two years in which there were more than 10 charges of tampering in the entire state court system, with the high of 17 such allegations in 2002, Christopherson said. He didn't think any of those cases involved a death.

Another first for Minnesota courts: Two witnesses, neither of whom were experts or at the scene of the accident, were paid thousands of dollars by an attorney hired to help Burlington Northern fight the wrongful-death verdict.

Bob Pottroff, a Kansas-based attorney representing the families, said Burlington Northern's conduct is "unprecedented."

"We can't find a parallel case with so many levels of abuse," said Pottroff, a national expert on railroad cases.

The jury award of \$21.6 million was also historic, ranking as one of the highest jury awards ever in Minnesota.

The families asked Maas to award an additional \$45 million in sanctions against the railroad for its attempt to perpetrate "one of the largest miscarriages of justice" in American history.

Maas said that characterization goes too far, but she agreed the company's conduct placed the families at a "tremendous disadvantage," forcing them to hire expensive experts to cut through the "fog" created by the railroad's abuses. She said the railroad's misconduct delayed legal proceedings for at least a year, and she awarded the families \$3 million for their time. She also ordered the railroad to pay nearly \$1 million for the families' legal expenses.

Among the railroad company's biggest blunders:

- Losing or destroying a computer disk that recorded the train's speed and other factors on the night of the collision. The disk would have revealed whether the victims were given adequate warning time at the crossing. A laptop containing the data was also destroyed.
- The railroad's failure to disclose its awareness of previous signal problems at the crossing.
- The destruction of records relating to work done on eight feet of track at the crossing.

"It was revealed that a work gang had, in fact, worked on the approach track at the Ferry Street Crossing the day before the accident and that, shortly after the accident, the signal system had been revised," Maas said in her ruling.

Family members said they couldn't believe some of the tactics the railroad company used in the case.

"We lost the worst thing possible -- we lost our kid," said Mike Frazier of Ham Lake, whose son Brian died in the crash. "Did they really have to go to these extremes?"

Also killed in the crash were Bridgette Shannon, of Ramsey; Corey E. Chase, 20, of Coon Rapids, and Harry Rhoades, Jr.,

20, of Blaine.

"It still makes us so angry that they've played the games they've played," said Denise Shannon, Bridgette Shannon's mother. "The only good thing that's come as this has dragged on is it's given us focus. They need to be held responsible. They've definitely not played by the rules."

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