

Jury awards \$4.9M to injured train switchman

By Bill Hetherman City News Service
Posted: 02/04/2011 02:14:57 PM PST
Updated: 02/04/2011 02:15:02 PM PST

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LOS ANGELES - A railroad switchman from Whittier who sued the BNSF Railway Co. for an on-the-job injury that he says could result in amputation of his right foot was awarded \$4.9 million today by a Los Angeles jury.

The Superior Court panel deliberated for 1 1/2 days before finding that the railroad's violations of locomotive inspection and communications regulations caused the injuries to David R. Martin Jr.

The accident was largely attributable to a breakdown in radio communications between Martin and his engineer, John Franks, according to the suit.

The jury split up the award so that most of it will compensate Martin for his future medical needs as well as his past and future pain and suffering. Railroad workers are not covered by workers' compensation.

"This is a guy who faces a long and difficult path," said Martin's lawyer, Anthony S. Petru. "I think the jury appreciated this."

Had the BNSF been more flexible about settling the suit, a trial would not have been necessary, Petru said. Nonetheless, he said he respected their lawyers for wanting to take the case before a jury.

Defense attorneys declined to comment on the verdict, and BNSF spokeswoman Lena Kent did not immediately return a call for comment.

During final arguments Wednesday, BNSF attorney James S. Van Dam conceded Martin was entitled to some compensation, but not the multimillion-dollar amount Petru recommended.

"There is no evidence

of any medical need for an amputation," Van Dam said. "You should not create a war chest for things that may not be necessary."

Martin, 30, testified that he jumped off a moving locomotive just before a Nov. 18, 2008, collision between two sets of trains going to and from a diesel engine repair facility about 3 1/2 miles from the sprawling Hobart Yard in Commerce.

The accident occurred after a breakdown in radio communications between Martin and Franks, who was in the rear locomotive pushing the other seven while the plaintiff was on a platform on the front engine acting as a lookout. He said he tried to warn the engineer of an impending collision

with a stationary set of four locomotives, but that he received no response.

Van Dam discounted the claims regarding the radio communications and said Martin could have prevented the 5:30 p.m. collision by climbing into the cab of the locomotive on which he was riding and applying the brake.

Petru said going into the cab was not a viable option because Martin had to leave the locomotive immediately or be seriously hurt or killed in the imminent collision.

Martin said he was taken to Beverly Hospital in Montebello, where he took a cell phone photo of

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his injured ankle, which was left severely turned to the right.

Martin walks with the aid of a cane and is considering amputation among his possible future options because of the severe damage to his ankle, according to his court papers. He had ankle fusion surgery last April.

Martin, who was born in La Mirada, said doctors have told him he also suffers from post-traumatic stress disorder. He graduated from Whittier High School and earned a bachelor's degree in biology from Whittier College, but said he later decided to follow his father's footsteps as a railroad man.

Martin is still an employee of the BNSF, but is pondering leaving the railroad and going back to school to train for another career, said his other attorney, Victor A. Russo. Franks was later fired by the BNSF for a reason unrelated to the Martin accident, according to Russo.

Petru said the collision of the trains caused about \$80,000 in damage and that about four other BNSF employees also were injured.

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