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CASE OF EARL R. BLISH AGAINST THE BURLINGTON NOW ON TRIAL

Blish Sues for \$25,000 Damages for Loss of Foot in Railroad Collision in Local Yards Last July.

The trial of the case of Earl R. Blish against the Burlington railroad commenced yesterday afternoon, the work of impanelling the jury being taken up at 2 o'clock. The plaintiff is represented in this case by Matthew Gering, while the defendant was represented by Byron Clark and W. A. Robertson.

The case in brief, is one brought by Earl R. Blish for the loss of his left foot which was crushed in a collision in the Plattsmouth yards on July 1st last, between a switch engine on which the plaintiff was fireman and a fast freight train. The switcher was backing out of a siding at the west end of the yards when the freight train bound east rounded the curve and crashed into the switcher. Blish started to jump from the switcher, but did not have time, and his foot was caught between the engine and tank and crushed. There was no semaphore working at the west end of the yards, owing to some grading which was being done there, and the company was presumed to have out instructions for engine and trainmen to enter the yards under control, that is, so the train could be stopped within a short distance. The plaintiff contends that the train which ran into the switcher was not under control when the collision happened, and that the negligence of the crew of the freight made the company liable. The plaintiff contends further that his injury is such as to incapacitate him for labor and is permanent.

The selection of the jury resulted in the plaintiff exhausting all of his three challenges, the defendant waiving all its challenges. The jury, as finally chosen, are Jno Bogard, Wm. Cross, John Domingo, Emerson, Dowler, W. E. Dull, John Frolich, Creed Harris, Chas. Jackman, H. F. Kropp, Wm. Kunz, John Schoerman and George Vogel.

Matthew Gering, for the plaintiff, made the opening statement to the reviewing the life of the plaintiff, whom he stated was a young man 28 years of age, who had fired on the Lehigh Valley railroad in Pennsylvania, and had done other work there, coming to Nebraska in June, 1909. He sought work of the Burlington and was sent here and went to work firing on June 30, 1909. He was ignorant of semaphores and the like. That when he went to work, grading was in progress in the west end of the Burlington yards, and the wires leading to the semaphore at the west end of the yards had been torn up. The operating officers of the Burlington knew the semaphore lights did not work and on June 30th, an order was issued from the superintendent's office that all trains approach Plattsmouth yards under complete control, as the semaphores were out of order. Another order was issued on July 1, at 10 p. m., which merely stated the semaphores at the west end of Plattsmouth yards were out of order and to approach the yards under caution. The train which collided with the switcher was known as No. 74's extra. It left South Omaha at 9 p. m., on July 1st. One of the two orders was in force when the train left Gibson at 11 o'clock. It arrived at Oreapolis at 11:40 o'clock. Engineer Davis and Conductor Allen were in charge. It came from Oreapolis to the scene of the accident in seven minutes, or arrived at 11:47. The distance is 3.91 miles. The rules provided that a train should stop when a semaphore light was seen to be out. According to the evidence, Mr. Gering contended, the delivery of the orders to the engineer and conductor was overlooked by the telegraph operator at Gibson. Mr. Gering contended that within yard limits, switching crews could work on any of the tracks up to ten minutes of the superior trains time, but the switchers had rights over inferior trains. The evidence, it was claimed, would show the night operator here, informed the night yardmaster that 74's extra would not be here until 12 or 12:10, midnight. The movement of the switcher and the subsequent collision with the freight was then described. Mr. Gering went into the question of the measure of

damages. Mr. Clark, for the Burlington, stated he did not consider there would be much difference in the evidence. He believed that Blish had been instructed to keep a look out, and that he knew the point where the switcher was working was a dangerous one. He also contended Blish knew the extra train was coming and he should have kept a lookout. He also contended that the place where the accident occurred was one where trains coming in could see but a short distance and that the freight was under control. There was a duty incumbent on the plaintiff to keep a lookout. Mr. Clark then discussed the measure of damages and decided that was a matter for arbitration. Court then adjourned until 9 a. m.

Court opened this morning at 9 o'clock promptly and the plaintiff, Earl R. Blish was called to the stand immediately. Almost the first evidence to be placed before the jury after the plaintiff had taken the stand was the introduction of a plat of that section of the Plattsmouth yards where the accident in which plaintiff was injured, took place. This plat showed the various distances between a number of points such as fixed signals and the like. This plat was admitted to be a correct one by the defendant. The plaintiff also introduced a number of photographs taken at the same points and covering the same places as shown on the plat. The plat and photographs were identified by the witness, Blish, who pointed out where the camera stood at the time the several photographs were taken. He was then excused for the time being.

G. R. Olson, the photographer who took the photographs mentioned, was then called and also testified as to the location of the camera at the time the several photographs were taken. The photographs in question witness testified were taken at 9 a. m., the day after the accident. They represented the position of the engines on the track at that time. Mr. Olson also testified for the railroad company as to certain measurements he had made at or near the scene of the accident and certain photographs which the defendant offered were admitted by plaintiff to be correct.

L. D. Hlatt, photographer, called, testified to having taken certain photographs which were offered in evidence, on January 23. He also testified as to the location of the camera when these photographs were taken. They were taken at the point where witness understood the accident had taken place.

C. S. Johnson, yardmaster of the Burlington at Plattsmouth, called, is in charge of switch crews at all times. Yardmaster 15 years and familiar with yards. Recalled accident, tracks, etc., now as they were in July last. Witness shows plat and testified as to location of yard limit sign, semaphore platforms and semaphores at west end of yards. The jury was then agreed by the parties to be allowed to visit the yards with Yardmaster Johnson, and on suggestion of Judge Travis, the counsel for the parties, Mr. Johnson to explain to the jury the situation of the signals, stands, tracks and engines at the time of the accident so far as he knew. Counsel was not to speak to jury.

Before the jury left the photographs offered by defendant were admitted in evidence.

Judge Travis ruled the jury was to view the place and understand the plat and photographs offered in evidence but not to go into the facts of the accident.

Judge Travis then instructed the jury to go with Mr. Johnson to place of accident and with the plat and photographs and examine things shown on them, and they were not to discuss the matter among themselves or other persons but might ask Mr. Johnson any question about the plat or photographs but not for opinions or conclusions. The attorneys were to go along but were not to ask or answer question.

The jury then left for the scene of the accident accompanied by one bail-

iff and the sheriff.

The jury completed its survey of the premises at about 11 o'clock and returned into court when Mr. Johnson resumed his testimony. He testified that he in company with the attorneys had explained to the jury the plan of the yards. He testified that Chrissinger was engine foreman, Neilson engineer, Gochenour follower and Blish fireman on the switcher on the night of July 1st. Chrissinger was in charge of engine and crew. The rights of switching engines and crews were outlined in a book of printed rules witness testified in answer to Mr. Clark. Witness testified an inside switch train had rights over all trains except first-class trains which they must clear by ten minutes. They had absolute rights over freights and extra trains. Witness then explained what a semaphore was and its operation and also the use of semaphore lights. The location and number of semaphores at the west end of the Plattsmouth yards was explained by witness. The semaphores were out of condition on the night of July 1st. The reason was the company was ditching its tracks and the semaphore post had been removed. Witness showed on plat where the work was done. An east bound train when the semaphore lights were out should stop at that indicated danger. Knew Con Gillespie was section foreman of the Burlington. He had no control over semaphores. Knew George Dyer who had worked for the Burlington on semaphores. Geo. Poissal, Sr., was doing the ditching. Witness shown book of rules of the Burlington which he identified as the rules in force on July 1st. Defendant admitted that book of rules offered was correct and both parties offered read from them.

Mr. Gering read Rules Band F, which Mr. Johnson testified were in force. Rule on page 6 also offered. Also on a great many other pages of the book of rules, such rules as related to the duty of employes in following the rules as to signals and their observance, the classes of trains and their rights, rates of speed, orders their delivery and promulgation, duties of operators, train registering and reporting, semaphores and their significance, duties of chief dispatchers, dispatchers and operator, and engine and trainmen and their duties. Mr. Johnson also identified the official time card of the Burlington and the rules thereon which were admitted by consent of defendant as the time table and rules in force on July 1 and 2. Mr. Johnson testified an order had been issued by the superintendent that the semaphores were out of order. The duties of the fireman were to obey the instructions of the engineer. He had no control over the signals. His work was to fire the engine and take signals. He did not control the engine movements. Witness usually received notice when extra trains would reach the yards. From Oreapolis to Plattsmouth station was 4 miles. Notice of trains passing Oreapolis usually sent Plattsmouth. Some times night yard foreman notified. Usually any of crew present were told by operator. Some times the fireman was told merely to notify the remainder of the crew.

(Saturday's Session.)

At the afternoon session yesterday Yardmaster Johnson resumed his testimony explaining what was meant by complete control of a train and explaining the duties of engineers when approaching semaphores where the lights were out. The operation of switchboards and lights was explained at length. Witness knew plaintiff by sight. He was under Supt. of Shops Baird. First time witness ever saw Blish was the night he was injured. No cross examination.

F. C. Weber called; superintendent of the Plattsmouth Water company. Pumping station one mile north of the Burlington station. Robt. Christopherson engineer at pumphouse. Traveled Burlington yards to and from the pumping station and knew yards. Remembered accident and saw wreck about 9 a. m., next morning. Knew semaphores' location and the wires to the semaphore were torn up. Witness did not believe semaphore was in working order. No cross examination.

George Dwyer called; went to railroading May 1st as telegraph messenger, later took care of switch lamps and semaphores on Tuesdays and Fridays. Took care of semaphores during week before July 1st. No light there that night as semaphores were out of commission. This was true for several days before July 1st. George Poissal was working west of the tracks at that time. Switches east of semaphore were

lighted when he left them. Cross examined, witness said lights some times smoked when turned too high.

Con Gillespie, section foreman of the Burlington called. Had lived here since 1890 and been foreman of section 22 since 1891. His territory ran from one-half mile west of the pumphouse to the east end of the Platte river bridge. Went through yards every morning and evening and saw a man ditching between the semaphores. Work caused wires to be pulled up and semaphores could not work. Could not say how long this state of affairs existed. Cross examined, witness testified that the wires would likely have to be taken out.

Robt. Christopherson, engineer at pumphouse called. Lived at Perkins House, Plattsmouth. Pumping station one mile north of the Burlington station on the east side of the Burlington tracks. His testimony as to the state of the wreck the next morning after the collision corroborated Mr. Weber. Witness testified to knowing semaphores location and that wires were taken down several days prior to the accident. Mr. Christopherson's testimony was largely corroborative of others.

On behalf of the defendant Mr. Clark admitted that the semaphores were out of order and had been for several days.

George Poissal called. Knew Roadmaster Ibsen, roadmaster of the Burlington who had contracted with him to ditch the Burlington tracks from down in the yards up to beyond the pumphouse. Had taken out the semaphore wires before he commenced work on June 27 or 28. Saw wreck about 8:30 a. m., next day and found his scrapers under the wreck. Witness produced letters from Roadmaster Ibsen showing his employment to do the ditching. Cross examined. Wires had to be taken out to do the work.

Deposition of John I. McShane, the chief dispatcher of the Burlington read by Mr. Gering. Reviewed his connection with the Burlington. Jerry McManus, night chief dispatcher at Omaha; operators under witness and McMannus. Jas. Welch, dispatcher at time. Explained system of handling train orders on the road. The duties of operators are to keep copies of all orders and deliver orders to conductors. Witness further deposed as to duties of operators handling train orders and also as to the workings and significance of semaphores. Witness then deposed as to the movements of the train known as 74's extra. This train had 42 loads and 8 empties with a tonnage of 1,950. Train in charge of Conductor Allen and Engineer Davis. Witness did not know of whereabouts of either conductor or engineer. Train left South Omaha at 9:10, and Gibson was reached at 9:30. I. L. Mitchell was operator at Gibson. Next operator was at Oreapolis. Could not say whether operators at Oreapolis or Plattsmouth knew about trains' time. They were not usually told. This train was a regular train running extra. Welch would know of notification of agent at Plattsmouth. Witness deposed as to duties of engineers regarding semaphores. Knew Engineer Snead who ran a train from Sioux City to Plattsmouth that night. He came from Ashland to Plattsmouth in time between 8:15 and 9:30 p. m. Witness explained about semaphores in Plattsmouth yards and testified as to an order for Engineer Davis stating all signals at west end of Plattsmouth yards were out of order but could not say whether he got them or not. Running orders were also introduced and also a long set of meeting and running orders were introduced and read. Order regarding semaphores at Plattsmouth was in force on July 1st and 2nd. Witness testified that this order was not delivered to the engineer or fireman of the extra. The operator forgot to deliver the order was disclosed at an investigation held by the company. Engineer Davis ran extra the night of the wreck and the train should have been under full control. Road from Oreapolis to Plattsmouth at river grade, a distance of 3.91 miles. Train left Oreapolis at 11:40 p. m., and the wreck happened at 11:47 or 11:48. Davis ran trains after the wreck and after the investigation by Supt. Flynn. Cross examination held by Mr. Clark was very brief and showed witness had no personal knowledge of the construction of semaphores.

J. E. McManus deposition read by Mr. Gering was largely corroborative of McShane's, especially as regards who were dispatchers, engineer, trainmen and operators and as to orders issued to the train of 74's extra, wit-

ness developed that the extra was running late on the night of July 1st, but it was not necessary to notify the switching crews or yardmen at Plattsmouth. A great deal of the deposition was devoted to the question of rules, and the duties of yardmen and trainmen.

The deposition of Jas. Welch, trick dispatcher at Omaha read by Mr. Gering, was largely corroborative of those of McShane and McManus and related to the duties of operators, trainmen and engine men and as to the handling of orders. It developed that the operator at South Omaha had been discharged from the company's service for failing to deliver the order to engineer of 74's extra, telling him of the condition of the semaphores at the west end of Plattsmouth yards.

W. L. Pickett was called. He is agent at Plattsmouth and has been for 17 years. Is in charge of operators here and had a record of same. H. J. Leuchtweis was operator from 11 p. m., to 8 a. m. July 1-2. Moore worked from 2 p. m. to 11 p. m., on July 1st. Witness explained the handling of any notification of approaching trains in the local yards by which it appeared that it was the duty of the operator to deliver this message to the yardmaster. Witness was notified by night police Cory of the wreck here and visited the scene about half an hour after the accident. Witness showed by a photograph where he first saw Blish which was a point between the engine and tank. Witness could not see much of plaintiff except his foot. Saw him about an hour, plaintiff begged to be released and begged the boys to cut his foot off. Mr. Clements and Dr. J. S. Livingston were present. Witness left scene about 3 a. m. Cross examined by Mr. Clark, witness stated memorandum of approaching trains was merely for the information of yardmen working in the yards. Witness thought all of a switch crew should watch for approaching trains.

A. O. Moore, operator at Plattsmouth called. Operator here night of July 1st. Had had three years experience. Worked from 2 to 11 p. m., on July 1st, and received no word of extra 1973 or 74's extra as he remembered. Did not always keep a record of train lineups. Usually notified the yardman in charge. Never notified engineer or fireman.

H. A. Howerger, operator at Plattsmouth. Was operator at Oreapolis from 4 p. m. to 12 a. m., on July 1st. Engineer Snead was on train No. 88 and passed Oreapolis that night between 9 and 11 p. m. Did not receive notice of 74's extra leaving Gibson. Received an order which he was instructed to produce at once.

Pending his securing this order, Mr. Chrissinger was called. He was a helper in the yards and in charge on July 1st at night. First saw him on the night of June 30th at work in the yards. Crew that night was P. M. Lindsey and Harry Gochenour, helpers; Julius Neilson, engineer, and Earl Blish, fireman. Train 74 was due here at 11:05 p. m. Switcher left for the west end of the yards about 11:35 p. m., and No. 74 had not come then. He did not know of 74's extra coming but had been told that No. 74 would be here about midnight. Operator Leuchtweis told him 74 would arrive at 12 o'clock. Neilson and Blish were on the engine and Gochenour was close at hand. Crew then went to the west end of the yards to make room for cars off train No. 74. Did not tell any of the crew about the message. Did not tell Blish any of this information. Witness explained responsibility for handling the engine. Witness shown plat and on it traced details of the movement of the switcher in the yards culminating in backing out on the east bound main line when the extra came around the bend and crashed into the switcher. He also detailed the position of each man. Witness was thirteen car lengths from the engine when he saw the extra coming and he told Gochenour to get off and he signaled to stop, then he jumped. Mr. Clark questioned the witness to show that he did not know where the point of collision was and succeeded in cutting out his testimony on that point. Witness related further details regarding the collision which were intended to show his position at the time and details regarding the position of the switcher as related to the semaphore. No signals were displayed against 74's extra as the switching crew had rights on them. Did not hear either whistle or bell of extra but saw headlight. Chrissinger met Neilson and the latter told him he guessed no one had been hurt and witness then went

to the station to report the wreck. Did not see Blish until about an hour later. Blish could have seen the approaching train by looking out but not over the tank. Blish was on left side of engine and Neilson on the right.

When court opened this morning there was quite an appreciable increase in attendance, there being a number of girls and women in the audience. The first witness called was Harvey Howerger, the operator at Oreapolis last July, who was called to produce copies of orders from 74's extra which he received the night of the wreck here. The only order which he produced bearing upon the accident was one to the conductor and engineer of the extra telling them that all trains due had passed and they need not register in this city. Aside from this his testimony seemed unimportant.

Julius Neilson, the engineer on the switcher on which Blish was firing was called on; his testimony was corroborative of Foreman Chrissinger as to the workings of the switcher on the night of the accident and the facts of the wreck. He testified that the extra train could not have seen the red switch light of the track on which the switcher was working, on account of the position of the switch engine. The witness was corroborative of the other witness who had testified as to the facts of Blish being caught between the engine and tank and the intense pain which he suffered before he was released. Witness also testified to having tried to warn Blish of the impending collision before he leaped from the engine but Blish could not get out in time to escape.

Mrs. Isabel McLaughlin, a nurse from the Wise Memorial hospital at Omaha, who took care of Blish during his confinement after the accident, was called and testified merely to the condition in which he was after she took charge of the case and as to the amount of care which was necessary to his recovery. Her testimony was largely of merely a technical nature. At the conclusion of her testimony court adjourned for noon.

At the afternoon session John Cory, night policeman at the time of the accident in this city, was called and testified to the wreck and that he heard the noise of the collision while he was down on Main street at a distance of about one mile from the scene of the accident. The witness hurried to the scene of the accident and found Blish pinned between the engine and the tank as other witnesses had testified to. He also corroborated Agent Pickett as to calling him after the accident. In the main his testimony was largely corroborative of others.

Engineer J. H. Snead was called and testified that he was engineer of train No. 88 which had come from Ashland to Plattsmouth about two hours prior to the accident and that he had received copies of orders calling his attention to the condition of the semaphores at the west end of the Plattsmouth yards and ordering him to exercise due caution in approaching the yards and to have his train under control.

The deposition of Harry Gochenour, follower of the engine on which Blish was firing, was read and the deposition corroborates very largely the testimony of Chrissinger and Neilson, the facts to which they testified being borne out by Gochenour's deposition.

The deposition of H. J. Leuchtweis, operator at Plattsmouth on the night of the accident, was read and it corroborated Chrissinger as to the time of arrival of 74's extra, although it was not so strong as Chrissinger's testimony.

The deposition of P. M. Lindsey, switchman, was read and it was also largely of a corroborative nature and added nothing new to the testimony. At three o'clock an adjournment was taken until Monday next in order to allow the jurors to go home for Sunday.

They will Have It.

Uncle John P. Keil of near Cullom is in the city today looking after business matters and visiting with friends and while here he called at the Journal office and placed his name upon the list of subscribers for the Daily Journal. Uncle Peter, as everyone knows him, is one of the best men in Cass county and a good citizen who has made good in this world's goods by much hard work. He has now accumulated a competence and is going to enjoy life as he should. He came down on the switcher train this morning and will return on the same train this afternoon.