

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Bryan Thompson,

Court File No. _____

Plaintiff,

vs.

ANSWER

BNSF Railway Company,
a Delaware Corporation,

Defendant.

TO: Plaintiff Bryan Thompson and his counsel of record, Duane A. Lillehaug, Maring Williams Law Office, 1220 Main Avenue, #105, P.O. Box 2103, Fargo, ND 58107-2103, and Thomas M. Flaskamp, Hunegs, LeNeave & Kvas, P.A. 1000 Twelve Oaks Center Drive, Suite 101, Wayzata, MN 55391:

Defendant BNSF Railway Company ("BNSF"), by and through the undersigned counsel, as and for its Answer to Plaintiff's Complaint, states and alleges as follows:

1. Denies each and every allegation, matter, and thing contained in Plaintiff's Complaint except that which is hereafter expressly admitted, qualified, or otherwise answered.
2. Answering Paragraph 1 of the Complaint, admits only that Plaintiff has brought this action under the Federal Employers' Liability Act.
3. Answering Paragraphs 2 and 5 of the Complaint, admits only that BNSF owns and operates certain tracks and facilities in Cass County, North Dakota and is engaged as a common carrier in interstate commerce.
4. Admits the allegations contained in Paragraphs 3 and 6 of Plaintiff's Complaint.
5. Admits the allegations contained in Paragraph 4 of the Complaint upon information and belief.

6. Answering Paragraph 7 of the Complaint, admits only that on the referenced date, and at or near the referenced location, Plaintiff was working as a locomotive engineer in the course and scope of his employment and was operating a locomotive consist pulling a loaded eastbound oil tanker train, that certain railcars from a westbound grain train derailed, that the lead locomotive of Plaintiff's eastbound train struck a derailed railcar and itself derailed, and that several oil tanker cars then caught fire and exploded.

7. Denies the allegations contained in Paragraphs 8, 10, 12, 13 and 14 of the Complaint.

8. Specifically denies negligence or violation of any federal law, statute or regulation or that any such alleged negligence or violation caused or contributed to the cause of Plaintiff's alleged injuries or damages.

AFFIRMATIVE DEFENSES

Defendant BNSF asserts the following Affirmative Defenses to the allegations set forth in Plaintiff's Complaint and reserve the right to assert any additional defenses that further investigation or discovery may warrant.

1. Affirmatively alleges that Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. Affirmatively alleges that Plaintiff's claims may be barred by the applicable statute of limitations.

3. Affirmatively alleges that Plaintiff may have failed to join parties indispensable to a just adjudication of this action.

4. Affirmatively alleges that Plaintiff's claims may be barred, in whole or in part, to the extent it is for an injury to an area of his body that was the subject of a prior release or settlement agreement.

5. Affirmatively alleges that Plaintiff is not entitled to recover damages, if any, to the extent that those damages were caused or contributed to by Plaintiff's own contributory or sole fault.

6. Affirmatively alleges that Plaintiff's injuries and damages, if any, are the result of unknown causes for which BNSF is not responsible.

7. Affirmatively alleges that Plaintiff's injuries and damages, if any, are the result of acts or omissions of persons, entities, or corporations other than BNSF and over whom defendant had no control or right to control at the time of the alleged incident.

8. Affirmatively alleges that Plaintiff is not entitled to any damages for injuries that may have been sustained by Plaintiff to the extent that they were increased and/or aggravated by Plaintiff's failure to mitigate his own damages.

9. Affirmatively alleges that Plaintiff is not entitled to any damages he may have sustained to the extent that such damages or injuries were caused by events other than those alleged in Plaintiff's Complaint.

10. Affirmatively alleges that Plaintiff is not entitled to damages for any conditions from which he suffers to the extent that those conditions preexisted in whole or in part the happening of the incident alleged in the Complaint.

11. Affirmatively alleges that Defendant BNSF is entitled to a set-off for monies paid or to be paid for the benefit of Plaintiff or for credits applicable to Plaintiff.

12. Affirmatively alleges that Defendant BNSF is entitled to a lien or offset for any sums paid or advancements made by the Railroad Retirement Board or any other entity prior to the final disposition of this action.

13. Affirmatively alleges that Plaintiff's claims may be precluded under the FRSA, FSAA, LIA, FRA regulations or other federal law, statutes or regulations.

14. Affirmatively alleges, without relieving Plaintiff of his burden of proof in any respect, that the claims asserted may be barred, in whole or in part, by any and all of the affirmative defenses contemplated by N.D.R.Civ.P. 8(c). The extent to which the Plaintiff's claims may be barred by one or more of said affirmative defenses, not specifically set forth above, cannot be determined until there has been further discovery. Defendant BNSF therefore incorporates all such affirmative defenses set forth in Rule 8(c) by reference.

PRAYER FOR RELIEF

WHEREFORE Defendant BNSF Railway Company prays that Plaintiff's pretended causes of action be dismissed, with prejudice and on the merits, that Plaintiff take nothing by his Complaint, and that judgment of dismissal be awarded in BNSF's favor, together with its costs and disbursements incurred herein and such other and further relief as the Court deems just and proper.

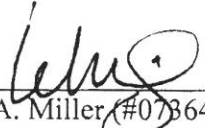
JURY DEMAND

Defendant BNSF Railway Company demands trial by jury in this matter.

ARTHUR, CHAPMAN, KETTERING,
SMETAK & PIKALA, P.A.

Dated: _____

3/25/15



Lee A. Miller (#07864)
500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402-3214
(612) 339-3500

Attorneys for Defendant BNSF Railway Company

Bryan Thompson v. BNSF Railway Company
Cass Court No.

AFFIDAVIT OF SERVICE BY FACSIMILE AND U.S. MAIL

STATE OF MINNESOTA)
):ss
COUNTY OF HENNEPIN)

Ann M. Vars, being first duly sworn, states that she is a secretary in the office of Arthur, Chapman, Kettering, Smetak & Pikala, P.A., 500 Young Quinlan Building, 81 South Ninth Street, Minneapolis, Minnesota, and that on the 26th day of March, 2015, she served the attached:

Defendant's Answer to Plaintiff's Complaint

upon the following person(s) by facsimile to the number identified below and placing a copy of each in an envelope properly addressed to such person(s) at his/her/their last known address, and the envelope, with postage prepaid, was deposited in the United States Mail at Minneapolis, Minnesota, for delivery by the United States Postal Service, as directed by said envelope:

Attorney(s) for Plaintiff

Bryan Thompson


Thomas M. Flaskamp, Esq.

Hunegs, LeNeave & Kvas, P.A.

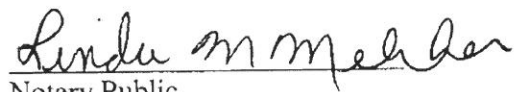
1000 Twelve Oaks Center Drive, Suite 101

Wayzata, MN 55391

F: (612) 339-5150


Ann M. Vars

Subscribed and sworn to before
me on March 26, 2015.


Notary Public

