

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01890-CMA-MEH

GEORGE W. STRAUB, IV,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

MINUTE ORDER

Entered by Michael E. Hegarty, United States Magistrate Judge, on January 15, 2016.

Plaintiff's Unopposed Motion for Leave to Correct the Record [filed January 14, 2016; docket #40] is **granted** as follows. Plaintiff has clarified that his counsel as well as Defendant misunderstood which seat adjustment mechanism Plaintiff was using or attempting to use at the time of his injury. Motion, docket #40 at 1-2; *see also* Affidavit of George W. Straub, IV ("Plaintiff Aff."), docket #40-2 at 1. Plaintiff now clarifies as follows:

At the time of my injury on September 9, 2012, on BNSF 6295, I was attempting to use the portion of the seat that attaches to the "locomotive wall mounted channel" (*see* photo Bates stamped BNSF001125, upper right-hand corner). . . . It is this seat mechanism that is mounted in and moves in the locomotive wall-mounted channel that was inspected by Mr. Gay, and referenced in his report (Exhibit A), and by Mr. Ariounus (Exhibit G, attached). I do not know when the nine (9) photos of the locomotive chair (BNSF001122-001130) identified in Defendant BNSF Railway Company's Initial F.R.C.P. 26(a)(1) Disclosures, ¶ CC were taken or by whom. These photographs do not demonstrate the part of the seat that bound upon me, and which I pointed out to Mr. Gay and Mr. Ariounus as the source of the problem, and were inspected by Mr. Gay and Mr. Ariounus. The closest photograph is BNSF001128. The slide mechanism, and the release handles, and the locomotive wall-mounted channels are to the left of the seat seen in BNSF001128. The channel in which the mechanism slides when released by the handles is mounted to the inside wall of the locomotive on the engineer's, or right-hand, side of the locomotive, facing out the front window.

Plaintiff Aff. at 1-2. In light of this clarification, the Court **orders** that Plaintiff's Affidavit [docket #40-2] stands as a correction to his statements in Plaintiff's Unopposed Motion for Leave to File First Amended Complaint [*see* docket #23] and in Plaintiff's Second Amended Motion for Leave

to Supplement Plaintiff's Response to Defendant BNSF Railway Company's Rule 12(b)(6) Partial Motion to Dismiss [*see* docket #36].