

Affidavit

State of Alaska

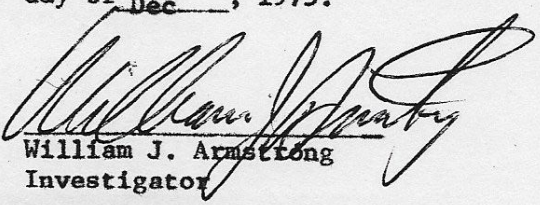
County of Anchorage Borough

I, Michael Kopcha, Locomotive Engineer, Alaska Railroad, living at 3806 Lois Drive, Anchorage, Ak, 99503, hereby solemnly swear that: I was interviewed by Mr. William J. Armstrong on 24 Nov 75. During the interview, I made the following statements:

1. First and foremost let it be established that the intent and purpose of this statement is not to discredit or bring reproach on the Alaska Railroad.
2. It is my opinion that due to the unique circumstance that surrounded the accident such as having to deal with men that were both white and black that were involved in the accident, this placed the Alaska Railroad in both a delicate and awkward position in trying to deal judiciously with the situation without showing prejudice or discrimination. As a result of this challenge facing the railroad it felt incumbent upon itself to conduct the investigation in the most circumspect manner possible according to their ability to do so.
3. It is my opinion that because of the nation-wide notoriety given the accident and the overriding political pressures and influences superimposed upon the case as a result of this notoriety, this placed the railroad in the most demanding posture possible where it felt compelled and obligated to deal as severely as possible with the white element involved with the resultant harsh disciplinary action taken. Such is the case of Conductor Fred Walters who I believe became a victim of reverse discrimination.
4. I am familiar with the accident and the investigation that followed since I was part of both. I am also cognizant of the disciplinary action taken against Mr. Walters which I feel was unwarranted because Mr. Walters was performing his duties as prescribed by the rules.

I have read the above statement consisting of 1 page, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

Subscribed and sworn to before me at Anchorage, Alaska on this 18th day of Dec, 1975.


William J. Armstrong
Investigator

3806 Lois Drive
Anchorage, Alaska 99503
July 29, 1975

Mr. Walker S. Johnston
General Manager
General Office Building, Suite 300
Pouch 7-2111
Anchorage, Alaska 99510

Dear Mr. Johnston:

In reply to Mr. Allen's letter of July 26, 1975, concerning the proposed removal of me from my position as engineman on the Alaska Railroad, the following response has been prepared to the alledged rule violations stated in that letter.

Reference is made to la. of Mr. Allen's letter which reads as follows: a. Rule 99 - that part which reads, "when it is known by the engineman that his train will be delayed, he must immediately whistle out a flagman". This violation occurred when Train No. 5 made a stop in the vicinity of Mile 279 and you failed to whistle out a flagman as required.

Response to la: Since the stop at Mile 279 was of such duration, one minute or less, no flagman was whistled out. Had it been known to me or brought to my attention that Train No. 5 would be delayed at Mile 279, I positively would have whistled out a flag. Referring specifically to that part of Rule 99 which reads, "When it is known by the engineman that his train will be delayed; he must immediately whistle out a flag", Train No. 5 was not delayed at Mile 279. I further state that in my over thirty years with the Alaska Railroad in engine service, I have never seen or known an engineman to whistle out a flag at Mile 279 or at the scenic stop south of Talkeetna. Management was well aware of this practice and procedure of passenger train operations at these scenic stops with no flagman being whistled out, it was accepted as standard past practice. Officials of the railroad including Mr. Weaver Franklin, our Roadforeman-Trainmaster, have ridden trains No. 5 and No. 6 when these scenic stops and passenger stops were made and no criticism or correction was ever made about not whistling out a flagman. This has been the standard procedure and past practice of passenger train operations on the Alaska Railroad, recognized and totally accepted as normal by management throughout the years. To whistle out a flagman everytime a passenger train stopped briefly to pick up or discharge passengers

would cause a delay of several hours. This also applies to the brief scenic stops.

Reference is made to 1 b. of Mr. Allen's letter which reads: "Rule 106 - that part which reads, "The conductor and the engineer, and the pilot if any, are responsible for the safety of the train and the observance of the rules..." This violation occurred when you did not assume the responsibility for the safety of the train when you did not observe and comply with the prescribed procedures as required in Rule 99.

Response to 1 b.: My answer to 1 a. in great part supports my answer to 1 b. There was no delay at Mile 279, no flagman was whistled out. The stop at Mile 279 was less than one minute and Train No. 5 was moving when the rear-end collision occurred. I had no reason to assume that the flagman was not at his post performing his duties in throwing off lighted fuses and being on the ground at stops. I expected the Extra 1502 South to run respecting Rule 91. This gave me further assurance of the safety of the train. At no time did I think that Train No. 5 was in danger of a rear-end collision. The Extra 1502 South violated Rule 91 at Hurricane, not respecting Train No. 5's block which was brought out at the investigation. Also shown at the investigation, the normal running time between Colorado and Mile 279 is 39 min. and 29 sec. The Extra 1502 South made it in 31 min. and 32 sec. In order for the Extra 1502 South to catch up with Train No. 5 at Mile 279, it had to necessarily violate Rule 91 at Colorado, Honolulu and Hurricane. The engineer of a passenger train cannot oversee the flagman's every movement and it is humanly impossible for the engineer to know what the flagman is doing at all times. To place this burden on the engineer is beyond his human capabilities. When Train No. 5 made the brief stop at Mile 279 the engines were stopped just beginning around a left-hand curve placing the entire train and the rear of it out of the sight of the engineer. I had no reason not to assume that the flagman was not performing his duties competently.

Reference is made to 1 c. of Mr. Allen's letter which reads as follows: c. Rule 701 - that part which reads, "Employees must be alert....". You were not alert in the performance of your duties when you were made aware that Extra 1502 South departed Healy with a run-ahead order and that Train No. 5 passed Extra 1502 South at Colorado and was to make a known stop at Hurricane and Mile 279 with such stops requiring that protection be provided Train No. 5.

Response to 1 c.: Again I bring out the fact that I expected the Extra 1502 South to run respecting Rule 91. Had the Extra 1502 South been running respecting Rule 91 between Colorado and Hurricane it would have been impossible for the Extra 1502 to catch No. 5 at Mile 279. Referring specifically to that part of 1 c. which reads "...Train No. 5 passed Extra 1502 South at Colorado and was to make a known stop at Hurrican and Mile 279 with such stops requiring that protection be provided Train No. 5". These stops at Hurricane and Mile 279 were less than one minute each with no flagman being whistled out and were made according to the standard past practice and procedure of passenger train operations on the Alaska Railroad. Management has recognized and accepted this practice as normal passenger train operations through the years. I know of my own personal knowledge that when Mr. W. C. Davidson made a trip on Train No. 6 and I was firing for Mr. Cameron, several stops were made to pick up and discharge passengers without a flagman being whistled out. Mr. Davidson, who was riding in the cab of the engine at the time, made no objection or correction of this train operation because he recognized this was the standard accepted past practice of passenger train operations on the Alaska Railroad. Mr. Weaver Franklin has ridden Trains No. 5 and No. 6 on innumerable occasions without once bringing to our attention or criticizing anyone that we were not whistling out a flag when we stopped to pick up or discharge passengers or when making a brief scenic stop at Mile 279. He also recognized that this was the standard accepted past practice of passenger train operations.

Mr. Johnston, you have ridden the railroad in your private car when these same brief stops were made without a flagman being whistled out. You made no objection or gave no criticism to this train operation. I am sure that you were fully cognizant that this was the standard accepted past practice of passenger train operations on the Alaska Railroad. Furthermore, the Alaska Railroad advertises this policy of stopping anywhere along the railroad to pick up or discharge sportsmen. This practice of picking up and discharging of passengers between stations, including scenic stops, without whistling out a flagman has been sanctioned by the Alaska Railroad for more than the 30 years that I have been here. If I am guilty of violating Rule 99 at Hurricane and Mile 279, then all of management, including yourself Mr. Johnston, is guilty with me by virtue of the fact that you and all the present and past officials of the Operating Department of the Alaska Railroad were aware that passenger trains operated in this manner of not whistling out a flagman every time it stopped to pick up or discharge passengers. Never once was it brought to my attention by any official riding the passenger train that I was operating in a wrongful and negligent manner or

violating any rules by not whistling out a flagman at these stops. Is this a case of trying to whitewash management and make me the goat in these circumstances? I ask you, Mr. Johnston, how would you apply Rule 99 when making one or two minute stops when picking up or discharging of passengers? How does Rule 99 adapt to this type of train operations? The passenger train was known to make a record of 60 stops in one day. How would you apply Rule 99 to the 60 stops. I sincerely request your answer to these questions so that I may be properly guided in the future.

It is, also, significant for me to mention at this time something that was not brought out at the investigation. When Train No. 6 of July 4th, the day before the accident, stopped at Wasilla, I commented to fireman Casey that I didn't see Mr. Leyda, our flagman, on the ground on my side and inquired whether the flagman was on the ground on his side and he answered "No". We were ready to leave Wasilla at this time, so I asked the fireman to pay particular attention as to whether the flagman would be on the ground on his side at the next stop. Our next stop was Willow and Mr. Leyda was not on the round. I immediately called baggageman Reekie by radio to have him notify the Conductor that the flagman was not getting down on the ground at the train stops. After we left Willow, the flagman was seen on the ground at stops. Mr. Walters informed me at Healy that evening that he had gone back to Mr. Leyda's station in the rear coach and strongly reprimanded him for his dereliction of duties by not getting on the ground at all stops and briefed him on his responsibilities as a passenger train flagman. The Conductor and I felt that as a result of this reprimand and briefing Mr. Leyda would be performing his duties accordingly.

In conclusion, Mr. Johnston, permit me to say that my time in engine service for the Alaska Railroad has been over thirty years and that is more than half of my life. These years have been spent giving good conscientious service to the railroad starting with the steam engine days until the present time of the diesels. I have never been accused of being lazy or slovenly in my duties, I am too serious and sober minded for that. To this account, I refer you to any official in Transportation or Mechanical or anyone else on the railroad that knows me and ask them personally about my character or qualifications as an engineman. I think the record will speak for itself.

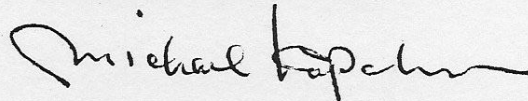
Mr. Johnston, I would appreciate your careful consideration of all that I have stated above and after reviewing the same, it is my hope that the facts I have presented would completely exonerate me from any rule violation, which I sincerely believe they do, and

that you in good conscience would completely drop this proposed removal action against me. On the other hand, if you choose to go ahead with this removal action, you will leave no doubt in my mind and in the mind of every train and engineman on this railroad that I am to be made the goat in this situation for what ever political reasons motivate you to do so. The political reasons are obvious to anyone that is familiar with the circumstances.

I am processing this initial appeal through the civil service procedure as per Mr. Allen's letter. If it is not successful, I reserve the right to take the entire appeal through the entire process guaranteed me by the agreement between the U.T.U. organization and the Alaska Railroad.

Again, I ask you, Mr. Johnston, to please give serious and careful consideration to my letter.

Yours respectfully,

A handwritten signature in cursive script, appearing to read "Michael Kopchur".

Locomotive Engineer,
Alaska Railroad.

MK

cc: Mr. R. L. Shake