

United States Court of Appeals
For the Eighth Circuit

No. 25-1968

Morgan Fitch

Plaintiff - Appellant

v.

BNSF Railway Company, a Delaware Corporation

Defendant - Appellee

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: February 12, 2026

Filed: September 18, 2026

Before LOKEN, L.R. SMITH, and STRAS, Circuit Judges.

LOKEN, Circuit Judge.

On February 28, 2020, brakeman Morgan Fitch was working as a conductor for Defendant BNSF Railway Company in the cab of the lead locomotive in a train traveling between Minot and Rugby, North Dakota. The train made an undesired emergency stop, throwing Fitch down the cab steps into the nose of the locomotive, causing serious injury. Fitch sued BNSF for damages under the Federal Employers'

Liability Act, 45 U.S.C. §§ 51-60, claiming she suffered shoulder injury and mild traumatic brain injury that left her unable to regain meaningful employment.

BNSF admitted liability and offered to speak with Fitch about alternative positions that were not as physically demanding as train conductor. She did not respond and the litigation proceeded to a six-day jury trial on damages. At trial, Fitch presented expert testimony to demonstrate her inability to work and evidence to establish that BNSF would not rehire her. She requested the following damages:

Past earnings and benefits: \$411,811
Future medical expenses: \$1,038,827
Future earnings and benefits: \$3,676,248
Non-economic damages: \$5-10 million
Total: \$10-15 million

BNSF presented evidence to show that Fitch likely had not suffered a head injury, her shoulder injury had healed, and she was medically able to return to work as a train conductor. Its experts criticized Fitch for exaggerating her symptoms to avoid returning to work and opined that she can return to work without restrictions. BNSF urged the jury to award lost earnings for the five years between the injury and trial, but no lost earnings going forward:

Past earnings and benefits: \$450,000
Future medical expenses: \$150,000
Future earnings and benefits: \$0
Non-economic damages: \$200,000
Total: \$800,000

In closing arguments, Fitch framed the debate about her ability to return to work as an “all-or-nothing” issue. The jury returned a special verdict awarding Fitch reduced non-economic damages and no loss of future earnings and benefits:

Past earnings and benefits: \$450,000
Future medical expenses: \$150,000
Future earnings and benefits: \$0
Non-economic damages: \$100,000
Total: \$700,000

Fitch moved for a new trial, arguing the finding of no lost future earnings is unsupported by the evidence. The district court¹ denied the motion. Declining Fitch's invitation to substitute its weighing of the evidence for the jury's, the court concluded there was sufficient evidence to sustain the jury's verdict because it could reasonably have found Fitch permanently disabled but instead reasonably found that she could return to work. Fitch v. BNSF Ry. Co., No. 21-CV-181, 2025 WL 1422717, at *10 (D.N.D. Apr. 23, 2025). Fitch appeals the denial of her motion for a new trial. Reviewing for abuse of discretion, we affirm.

Discussion

"We review the denial of a motion for a new trial for a clear abuse of discretion, with the key question being whether a new trial is necessary to prevent a miscarriage of justice." Acad. Bank, N.A. v. AmGuard Ins. Co., 116 F.4th 768, 776 (8th Cir. 2024). The motion "should only be granted if the verdict is against the weight of the evidence and allowing it to stand would result in a miscarriage of justice." Shaw Grp., Inc. v. Marcum, 516 F.3d 1061, 1067 (8th Cir. 2008) (cleaned up). In conducting this review, "we defer first to the jury, as we start with the assumption jurors fulfilled their obligation to decide the case correctly; and we defer second to the trial court, which has a far better sense of what the jury likely was thinking and also whether there is any injustice in allowing the verdict to stand." Bavlsik v. Gen. Motors, LLC, 870 F.3d 800, 810 (8th Cir. 2017) (cleaned up). Thus,

¹The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.

a district court's denial of a motion for a new trial based on an inadequate damages award "is virtually unassailable" on appeal. White Commc'ns, LLC v. Synergies3 Tec Servs., LLC, 4 F.4th 606, 613 (8th Cir. 2021).

At trial, Fitch argued she is permanently disabled primarily through the testimony of her medical expert, Dr. Steven Lockman. He testified that Fitch sustained a mild traumatic brain injury in addition to her shoulder injury. Based on these injuries, Dr. Lockman opined, Fitch was rendered permanently unable to obtain gainful employment in a competitive job market:

She is unable to reach, lift, bend, crawl, twist, sit for more than 10 minutes, stand for more than 10 minutes, or ambulate for more than 10 minutes. She is unable to use a computer, be asked to make critical decisions, read documents, or problem solve in a work setting.

When asked whether Fitch displayed any signs she was exaggerating her symptoms, he answered no. On cross-examination, BNSF asked Dr. Lockman why his work restrictions said Fitch could not sit for more than ten minutes, yet the jury had watched her sit through trial for days without issue. He responded that work restrictions "are more art than science," admitted that most of Fitch's symptoms were self-reported, and admitted he was aware of Fitch performing leisure activities that greatly exceeded his work restrictions, including rigorous 45-minute workouts six days per week, hunting with a crossbow, fishing, and driving ATVs. He conceded that in a prior case, where he testified for a railroad, he said it was almost unheard of for someone not to return to work after a mild traumatic brain injury, explaining, "I don't think I believed it then, but I did say those words."

Another Fitch medical expert, Nurse Practitioner Brittany Haugtvedt, agreed that Fitch suffered a head injury, was permanently disabled, and was not embellishing her symptoms. She said Fitch could not return to her job as a conductor but could perform light sedentary work. Vocational rehabilitation counselor Jesse Ogren,

relying on Dr. Lockman's medical reports, testified that Fitch would be permanently unable to return to work as a conductor or in any other full-time occupation. Therefore, though she could work part time with accommodations, her lost earnings should be calculated based on total expected earnings from the date of her injury at age 31 until her expected age of retirement at 67. Fitch's economic expert calculated those expected earnings as the \$3.7 million future earnings Fitch requested.

BNSF's trial evidence included expert testimony by Dr. Frederick Strobl, a board-certified neurologist, who testified there was little evidence of a brain injury in Fitch's medical records in the months following the accident. If she did suffer a traumatic brain injury or concussion, Dr. Strobl opined, it was mild and she could return to work in three months, including as a conductor. BNSF's neuropsychologist expert, Melissa Castro, agreed Fitch did not sustain a head injury. The outcome of symptom and performance validity testing she conducted resembled someone who was purposefully underperforming or malingering. As to Fitch's shoulder injury claim, Dr. Timothy Juelson, an orthopedic surgeon who testified as a witness for Fitch by video recorded deposition, testified that when he first saw Fitch at his orthopedic sports surgery clinic in June 2020 she had "a fair amount of discomfort" and pain in her shoulder, that after a shoulder arthroscopy procedure in December 2020 her condition improved, that he placed no shoulder use and ability-to-work restrictions in March and last saw her in May 2021, and that his partner expressed concerns that Fitch was exaggerating her symptoms. Dr. Steven Moen, a retired board-certified orthopedic surgeon testifying for BNSF, agreed with Dr. Juelson and opined that Fitch could return to work in any job without restrictions.

The jury considered this expert testimony and obviously determined, to the extent it was conflicting, that BNSF's witnesses were more credible. "[A] district judge is not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable." Lincoln Composites, Inc. v. Firetrace USA,

LLC, 825 F.3d 453, 465 (8th Cir. 2016). The district court did not abuse its discretion in declining to substitute its factfinding for that of the jury.

On appeal, Fitch seeks to avoid this battle of experts, arguing that even if the jury found her experts not credible, the fact remains that she lost her BNSF job, so she is entitled to compensation for that loss. But that avoids the relevant question in deciding whether a new trial should be granted in this case. The jury awarded her compensation for that loss, but it was also tasked with calculating the amount of damages caused by BNSF's negligence. See 45 U.S.C. § 51. BNSF said it did not rehire Fitch because it did not have available work that would meet the restrictions imposed by Dr. Lockman, her treating physician. If the jury found those work restrictions unreasonable, so that Fitch could have returned to work as a conductor, it could also reasonably find that Fitch's inability to work for BNSF was not caused by her work-related injury while working as a conductor, but was caused by the unreasonable restrictions placed on rehiring her by her treating physician. See Villa v. BNSF Ry. Co., 397 F.3d 1041, 1047 (8th Cir. 2005) ("Juries are capable of finding the facts relevant to causation and of applying in an appropriate manner the liability-limiting principles of law"). Moreover, even if BNSF was unwilling to rehire Fitch, the jury could reasonably find she was able to work at another company, as a conductor or in a similarly lucrative role, justifying its finding of no future earnings loss. Again, we must defer to reasonable jury findings absent a miscarriage of justice.

Fitch further urges us to reach the same result here we reached in Bank of Am., N.A. v. JB Hanna, LLC, 766 F.3d 841, 851 (8th Cir. 2014) -- reverse the district court's denial of a new trial motion because "the jury simply got the key factual questions wrong and was not entitled to reach the conclusion it reached on the evidence in the record." JB Hanna involved a complex contractual dispute involving a bank's claim that borrowers failed to pay the balance due on floating interest rate loans, and borrower counterclaims that the district court dismissed before a jury found for the borrowers on the Bank's breach of contract claim. The district court denied

the Bank's new trial motion; both parties appealed. We remanded for a new trial on the bank's breach of contract claim "because the verdict was against the great weight of the evidence . . . judged in accordance with state substantive law":

Indeed, the district court itself, at the conclusion of the evidence, remarked that "had [it] known that the facts were going to be as they ultimately came out at trial, [it] would have granted summary judgment on the [bank's] case."

The facts and record in this case are far different. Unlike JB Hanna, where we expressly invoked the "manifest miscarriage of justice" exception, here there is abundant evidence supporting the jury verdict. Fitch just disagrees that a reasonable jury could credit BNSF's experts over hers. This is not an exceptional case that overcomes our doubly deferential, "virtually unassailable" standard of review.

The district court's denial of Fitch's motion for a new trial is affirmed.
