

FILED BY 1/03 D.C.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

04 MAY 12 PM 4: 18

Robert H. Di Trolio
CLERK, U.S. DIST. CT.
W. D. OF TN. MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

CIVIL ACTION NO.

03-2918MA/P

Plaintiff)

v.)

BURLINGTON NORTHERN &)
SANTA FE RAILWAY CO.,)

Defendants.)

SETTLEMENT AGREEMENT

This lawsuit was instituted by the Equal Employment Opportunity Commission (hereinafter the "Commission") against the Defendant The Burlington Northern and Santa Fe Railway Company, (hereinafter the "Defendant"), pursuant to Sections 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et seq.* and the Civil Rights Act of 1991, 42 U.S.C. §1981a, to remedy unlawful practices alleged in the Complaint, filed in this action, on December 8, 2003.

The Complaint alleged that the Defendant retaliated against Charging Party for opposing employment practices made illegal by Title VII when it abolished her track laborer position and took other actions affecting her terms and conditions of

This document entered on the docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 5-13-04

9

employment.

The Defendant denies that it engaged in the unlawful employment practices alleged by the Commission, and maintains that the actions of its officials were proper and lawful in all regards. This Settlement Agreement (hereinafter the "Agreement") does not constitute an admission by the Defendants of the allegations of the Complaint. However, as all parties to this action desire to avoid the additional expense and delay in the litigation of this case, the Commission, the Plaintiff Intervenor and the Defendant have agreed to settle all claims involved in this lawsuit.

In the event this proposed Agreement is not approved or does not become final, then it shall not be admissible in evidence in any subsequent proceeding in this action.

This Agreement constitutes the complete and exclusive agreement between the parties with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Agreement shall be effective unless made in writing. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Agreement.

The court has reviewed the terms of the proposed Agreement in light of the applicable laws and regulations, the statements and representations of counsel for all parties, and hereby approves the Agreement.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

I. JURISDICTION

The United States District Court for the Western District of Tennessee, Western Division, has jurisdiction over the parties and subject matter of this litigation.

II. SCOPE AND DURATION OF AGREEMENT

A. This Agreement resolves all issues and claims arising out of the Complaint of the Commission in this cause, alleging unlawful employment policies and practices maintained by Defendant and arising out of Charge No. 250-A3-00008 filed with the Commission by Sheila D. White. Notwithstanding any provisions contained in this Agreement, this agreement shall not be considered in any manner to be dispositive of any other charges now pending before any office of the Commission, or any other lawsuits pending against Defendant or its parent or its parent's other subsidiaries, other than the above-mentioned charge and this lawsuit.

B. The provisions of this Agreement shall continue to be effective and binding upon the parties to this action for one year.

III. NON-RETALIATION PROVISION

The Defendant, its officers, agents, employees, and all persons acting in concert with the Defendant shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by the Title VII or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

IV. MONETARY RELIEF

A. The total amount of the settlement monies to be paid by Defendant is \$18,500.00.

B. The sum of \$ 13,500.00 is to be paid to Sheila White. The money paid to Ms. White represents non-wage income in the form of compensatory damages.

This amount should be reported to Ms. White on Internal Revenue Service Form W-2 and designated as non-wage income in the form of compensatory damages.

C. The sum of \$5,000.00 is to be paid to Ms. White's attorneys, Donati Law Firm, LLP. The money paid to Donati Law Firm, LLP represents attorney's fees incurred by Donati Law Firm, LLP. This amount should be reported to Donati Law Firm, LLP on Internal Revenue Service Form 1099 and designated as the payment of attorney's fees and expenses.

D. The payments described in this section will be delivered by the Defendant within 7 days after the court approval of this Agreement. The parties also acknowledge that additional agreements between the Defendant and Sheila White are set forth in a separate Agreement, to which the Equal Employment Opportunity Commission is not a party.

V. EXPUNGEMENT

A. The Defendant shall expunge and not include any reference to the charge of discrimination filed by Sheila D. White or this litigation in the personnel files of Sheila D. White.

VI. NOTICE

Defendant shall conspicuously post at its Memphis, Tennessee facility the notice (poster) required to be posted pursuant to Title VII. Furthermore, defendant shall conspicuously post the notice at Appendix A of this Agreement at its Memphis facility for a five year period commencing within ten (10) days after entry of this Agreement by the Court.

VII. TRAINING

Defendant shall provide training in the workplace for its management staff in the Memphis area on the issues of retaliation and compliance with Title VII.

VIII. REPORTING AND ACCESS

A . Within one hundred and twenty (120) days of the entry of this Agreement, Defendant shall prepare and submit to the Commission's Regional Attorney in its Memphis District Office a letter indicating as follows:

- 1 . that the notice has been posted as required by section VI above,
and
- 2 . that the training required by section VIII, above, has been
completed.

The letter shall also set forth the date and place of the required training session, and the names and company affiliations of the trainers.

B . During the term of this Agreement, Defendant shall allow representatives of the Commission to review Defendant's compliance with this Agreement by inspecting and photocopying relevant documents and records, interviewing employees and management officials on their premises, and inspecting their premises. Such review of compliance shall be initiated by written notice to the Defendant's attorney of record at least three (3) business days in advance of any inspection of a Defendant's documents or premises.

XI. COSTS

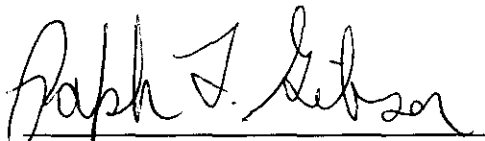
Each of the parties shall bear its own costs, including attorneys' fees.

IT IS SO ORDERED THIS 12th DAY OF May, 2004.



SAMUEL H. MAYS, JR.
U. S. DISTRICT JUDGE

FOR DEFENDANTS:



RALPH T. GIBSON
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Bateman Gibson, L.L.C.
1010 Cotton Exchange Building
Memphis, TN 38103
Attorney for
The Burlington Northern and
Santa Fe Railway Company
(901) 843-2466

FOR THE COMMISSION:

ERIC S. DREIBAND
General Counsel

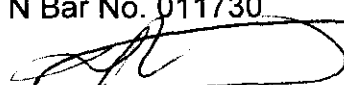
JAMES LEE
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Senior Trial Attorney,
TN Bar No. 018499

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

1407 Union Avenue, Suite 621
Memphis, Tennessee
(901) 544-0140

APPENDIX A

NOTICE

1. This Notice to all employees of Burlington Northern & Santa Fe Railway Co., is being posted as part of the remedy agreed to between Burlington Northern and the Equal Employment Opportunity Commission in resolution of a complaint of employment discrimination filed by Sheila D. White, an employee.
2. Federal law prohibits an employer from discriminating against any employee because she has opposed any practice made an unlawful employment practice, or because she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII of the Civil Rights Act of 1964, as amended.
3. Burlington Northern supports and will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission and/or testified, assisted or participated in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964.
4. This Notice shall be posted by Burlington Northern for one year.

DATED this ____ day of _____, 2004.



Notice of Distribution

This notice confirms a copy of the document docketed as number 9 in case 2:03-CV-02918 was distributed by fax, mail, or direct printing on May 13, 2004 to the parties listed.

Eric S. Dreiband
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1407 Union Avenue
Ste. 621
Memphis, TN 38104

James Lee
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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Tu M. Pham
U.S. MAGISTRATE JUDGE
167 N. Main
Rm. 934
Memphis, TN 38103

Honorable Samuel Mays
US DISTRICT COURT