

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
FEB 19 2004

MELVIN BARNES and
TRACY STEELE, on
behalf of themselves and all other black
persons similarly situated,

Plaintiffs,

v.

CANADIAN NATIONAL/ILLINOIS
CENTRAL RAILROAD a/k/a
ILLINOIS CENTRAL RAILROAD
COMPANY,

Defendant.

04C 1249
CIVIL ACTION NO.:

CLASS ACTION COMPLAINT

JUDGE ZAGEL

MAGISTRATE JUDGE MASON

JURY TRIAL DEMANDED

COMPLAINT-CLASS ACTION

NATURE OF THIS ACTION

1. This action is brought by Melvin Barnes and Tracy Steele (hereinafter "Barnes" and "Steele" or "Plaintiffs"), two African-American employees of Canadian National/Illinois Central Railroad a/k/a Illinois Central Railroad Company (hereinafter referred to as "CN" or "Defendant"). Barnes and Steele bring this action on behalf of themselves and others similarly situated to them.

2. The plaintiffs seek a declaratory judgment that Defendant has engaged in a systemic pattern and practice of racial discrimination in employment opportunities and that such conduct is unlawful under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq., and the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 & § 1981(A). The Plaintiffs further seek a permanent injunction and other equitable relief necessary to eliminate the effects of the Defendant's past and present racial discrimination and hostile work environment, and prevent such discrimination from continuing to adversely affect their lives and careers in the future, including but

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not limited to, affirmative restructuring of the Defendant's selection and training procedures, elimination of the hostile work environment in which they have been forced to work, implementation of equitable relief to include declaratory and injunctive relief, reimbursement of expenses incurred in prosecuting this action, and attorneys' fees. The Plaintiffs further seek backpay, other equitable remedies and damages necessary to make them and the members of the class whole.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1332, 1343(3) and (4), and 2201 and 2202. This is a suit authorized and instituted pursuant to the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000 et seq., as amended by the "Civil Rights Act of 1991" and the "Civil Rights Act of 1866," 42 U.S.C. § 1981 and 1981(a).

4. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(B) & (C) because CN has offices here, maintains personnel records here, and engages in or ratifies illegal conduct here, adversely affecting the named Plaintiffs and the members of the proposed class.

PROCEDURAL HISTORY

5. Plaintiff Barnes has fulfilled all conditions precedent to the institution of this action under the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000 et seq., as amended by the "Civil Rights Act of 1991" and the "Civil Rights Act of 1866," 42 U.S.C. § 1981 and 1981(a). Barnes filed his charge of discrimination within 300-days of the last discriminatory act. (See Ex. A, Barnes EEOC Charge). Barnes has also filed his lawsuit within 90-days of receiving his notice of right to sue from the Equal Employment Opportunity Commission. (See Ex. B, Barnes' Notice of Right to Sue). Barnes' claims arising under 42 U.S.C. § 1981 do not require administrative exhaustion.

6. Plaintiff Steele has fulfilled all conditions precedent to the institution of this action under the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000 et seq., as amended by the "Civil Rights Act of 1991" and the "Civil Rights Act of 1866," 42 U.S.C. § 1981 and 1981(a). Steele filed his charge of discrimination within 300-days of the last discriminatory act. (See Ex. C, Steele EEOC Charge). Steele has also filed his lawsuit within 90-days of receiving his notice of right to sue from the Equal Employment Opportunity Commission. (See Ex. D, Steele Notice of Right to Sue). Steele's claims arising under 42 U.S.C. § 1981 do not require administrative exhaustion.

PARTIES

A. PLAINTIFFS

7. Plaintiff Barnes is an African-American citizen of the United States and a resident of Cook County, Illinois. Barnes has worked for CN from 1970 to the present. Barnes is currently employed as a Carman. At all times material to this action, Barnes has been employed at the Defendant's facility in Markham, Illinois.

8. Steele is an African-American citizen of the United States and a resident of Cook County Illinois. Steel has worked for CN from 1997 to the present. Steele is currently employed as a Carman. At all time material to this action, Steele has been employed at the Defendant's facility in Chicago, Illinois.

B. Defendant

9. CN is a corporation authorized to do business in the Northern District of Illinois, Eastern Division, and at all times material to this action, has engaged in an industry affecting interstate commerce. The Defendant is an entity subject to suit under Title VII of the "Civil Rights

Act of 1964," as amended, 42 U.S.C. § 2000 et seq., and the Civil Rights Act of 1866, 42 U.S.C. § 1981. At all times material to this action, the Defendant has employed fifteen (15) or more employees for each working day of twenty (20) or more calendar weeks and is an employer within the meaning of Title VII.

CLASS ALLEGATIONS

A. CLASS DEFINITION

10. The named Plaintiffs bring this suit on behalf of themselves and other similarly situated African-American employees of CN. The named Plaintiffs are members of the class they seek to represent. That class consists of current, former, and future African-American employees of CN who, from approximately September 25, 2002 to the present, have been subjected to one or more aspects of the systemic racial discrimination described in this Complaint.

B. COMMON QUESTIONS OF LAW AND FACT

11. The prosecution of the claims of the named Plaintiffs will require adjudication of questions common to the putative class, such as whether the Defendant has engaged in systemic racial discrimination in its selection procedures with regards to promotions, training, hostile work environment and other terms and conditions of employment in a manner made unlawful by the statutes under which this action is brought. The claims of the named Plaintiffs are embedded in common questions of law and fact because the Defendant has: (1) prevented them from learning about or competing for supervisory and/or managerial positions traditionally held by white employees; (2) precluded or delayed their selection for such jobs; (3) channeled and segregated them into jobs traditionally held by African-Americans; (4) denied them training that would have prepared them for these higher and better paying supervisory/managerial positions; and (5) required them to

work in a hostile work environment.

12. The Defendant's procedures challenged herein, as well as the other systemic policies and practices that make up these procedures, are determined at the corporate level of the Defendant's operations and do not vary significantly from one geographical location to another. The employment policies, practices and procedures challenged in this Complaint are not unique or limited to one geographical area, but rather affect the named Plaintiffs and the members of the proposed class in the same way throughout the Defendant's operations.

C. TYPICALITY OF CLAIMS AND RELIEF SOUGHT

13. The systemic racial discrimination challenged in this Complaint has affected, and continues to affect, both the named Plaintiffs and the class they seek to represent in the same way as they have been forced to work in a hostile work environment and have been denied promotions to supervisory and/or managerial positions, training, and other benefits which has, and continues to affect their compensation. Moreover, CN's discriminatory selection policies, practices and procedures have deprived, and continues to deprive, African-American employees of the opportunity to be supervised and work with people of their own race who would have been supervisors in the absence of such discrimination.

14. CN has failed to create adequate incentives for its managerial/supervisory workforce to comply with equal employment opportunity laws regarding each of the policies, practices and procedures described in this Complaint and has failed to discipline adequately its managers and other supervisory employees for violation of these laws.

15. The claims of the named Plaintiffs and the relief necessary to remedy the claims of the named Plaintiffs are the same as the claims of the putative class members and the relief necessary

to remedy these claims. The named Plaintiffs seek the following relief for their individual claims and the claims of the putative class: (1) a declaratory judgment that the Defendant has engaged in systemic racial discrimination by requiring its African-American employees to work in a hostile work environment and limiting the employment opportunities of African-Americans to lower paying and less desirable positions and providing them with unequal training opportunities; (2) a permanent injunction against such continuing discrimination; (3) a restructuring of the Defendant's selection and training procedures so that African-Americans are able to learn about, train for and fairly compete in the future for higher and better paying positions traditionally enjoyed by white employees; (4) a restructuring of the Defendant's workforce so that African-Americans are assigned to the better and higher paying positions, locations and compensation levels that they would have held in the absence of the Defendant's past racial discrimination; (5) elimination of the hostile working environment; (6) the implementation of a non-discriminatory posting and bidding procedure; and (7) damages, back pay and other equitable remedies necessary to make the named Plaintiff's and putative class members whole from Defendant's past discrimination.

D. NUMEROSITY AND IMPRACTICABILITY OF JOINDER

16. The class that the named Plaintiffs seek to represent is too numerous to make joinder practicable. The proposed class consists of hundreds of former, current, and future African-American employees who either have been, or will be, employed by CN.

E. ADEQUACY OF REPRESENTATION

17. The named Plaintiffs will fairly and adequately protect the interests of the class inasmuch as they are broadly representative, as reflected in the preceding paragraphs. There are no conflicts of interest between the named Plaintiffs and the members of the proposed class as each

would benefit similarly from the imposition of a remedy for the discriminatory employment practices challenged in this Complaint. The named Plaintiffs have retained counsel experienced in litigating major class actions in the field of employment discrimination, who are prepared and able to meet the time and fiscal demands of class action litigation of this size and complexity. The combined interests, experience, and resources of the named Plaintiffs and their counsel to litigate competently the individual and class claims of race-based employment discrimination at issue satisfy the adequacy of representation requirement under Fed.R.Civ.P. 23(a)(4).

F. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS

18. Certification of a class of similarly-situated African-American individuals is the most efficient and economical means of resolving the questions of law and fact that are common to the individual claims of the named Plaintiffs and the proposed class. The individual claims of the named Plaintiffs require resolution of the common question of whether Defendant has engaged in a systemic pattern and practice of racial discrimination against African-American individuals. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the class of African-American employees adversely affected by the common questions of law and fact set forth in this Complaint is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for the named Plaintiffs, the class and the Defendant. The named Plaintiffs' individual and class claims are premised upon the traditional bifurcated method of proof and trial for systemic disparate treatment claims of the type at issue in this complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

G. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)(2)

19. CN has acted on grounds generally applicable to the named Plaintiffs and the proposed class by adopting and following systemic practices and procedures that are racially discriminatory. Racial discrimination is CN's standard operating procedure rather than a sporadic occurrence. CN has refused to act on grounds generally applicable to the class by: (1) refusing to adopt or follow selection procedures for promotions and training which do not systemically discriminate against African-American individuals; and (2) refusing to provide a non-discriminatory work environment and other equal terms and conditions of work to African-American employees. CN's systemic discrimination and refusal to act on grounds that are not racially discriminatory have made appropriate final injunctive and declaratory relief with respect to the class as a whole.

20. The injunctive and declaratory relief are the predominate reliefs sought in this case because they are both the culmination of the proof of the Defendant's individual and class-wide liability at the end of Stage I of a bifurcated trial and the essential predicate for the named Plaintiffs' and class members' entitlement to monetary and non-monetary remedies at Stage II of such a trial. Declaratory and injunctive relief flow directly and automatically from proof of the common questions of law and fact regarding the existence of systemic racial discrimination against African-American employees. Such relief is the factual and legal predicate for the named Plaintiffs and the class members' entitlement to monetary and non-monetary remedies for individual losses caused by such systemic discrimination.

H. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)(3)

21. The common issues of fact and law affecting the claims of the named Plaintiffs and proposed class members, including but not limited to, the common issues identified in paragraphs

1-20 above, predominate over any issues affecting only individual claims.

22. A class action is superior to other available means for the fair and efficient adjudication of the claims of the named Plaintiffs and members of the proposed class.

23. The cost of proving the Defendant's pattern and practice of discrimination makes it impracticable for the named Plaintiffs and members of the proposed class to control the prosecution of their claims individually.

24. The named Plaintiffs are unaware of any pending class action race discrimination lawsuit brought against the Defendant and the Northern District of Illinois is the most logical forum in which to litigate the claims of the named Plaintiffs and the proposed class in this case because the Defendant's North American Corporate Office is here.

COMMON ALLEGATIONS

25. Plaintiff Melvin Barnes has been, and continues to be, adversely affected by the challenged systemic pattern and practice of racial discrimination with regards to working in a hostile work environment and selection decisions for promotions, training and other terms and conditions of employment. This pattern and practice of racial discrimination has adversely affected Barnes by requiring him to work in a hostile work environment; by denying him the opportunity to work in an integrated environment in which African-American employees hold supervisory/managerial positions; by not being considered for job classifications traditionally held by white employees at CN; and by being denied training regularly provided to white employees.

26. CN has continually failed to notify, post or make readily accessible to its African-American employees job announcements for all positions that might lead to promotions and/or advancement to higher and better paying positions.

27. In mid-2002, Ron Haney, a white employee with less seniority and qualifications than Barnes was given a Relief Foreman position without any notice being given to Barnes or any other African-American employee. Barnes was better qualified than Haney for this position and had he known of its existence, he would have applied for it. Similarly, in September of 2003, Mike Smith, another less senior and less qualified white employee, was given a Foreman's position without notice being given to Barnes or any other African-American employee. Barnes was also better qualified than Smith for this position and had he known of its existence he would have applied for it. This second position was located in the Defendant's Champagne/Decatur yards which has very few, if any, African-Americans in supervisory.

28. Despite over thirty years of experience, Barnes is not considered for temporary assignments to supervisory positions at CN. In September of 2003, Barnes' foreman was assigned to train Mike Smith, a white employee, for seven weeks at Defendant's Champagne, Illinois yard. This created a vacant foreman position at Defendant's Markham, Illinois yard, where Barnes worked. The general foreman, who is white, placed Greg Pazour, another white male employee, into the position without posting it for bid. Pazour is less senior and less qualified than Barnes. Notice of this temporary vacancy was not given to Barnes or any other African-American employee of CN. Had this position been posted, Barnes would have applied for it, as it would have enhanced his experience and added to his qualifications.

29. CN has additionally denied Barnes and other African-American employees training opportunities regularly afforded to similarly situated white employees. These training opportunities enhance an employee's ability to be considered for positions of greater pay, responsibility and authority.

30. In September of 2003, Tony Switzer, a white supervisor, selected only white employees to attend a training session regarding a new air-brake system. The denial of opportunities to train on all aspects of equipment is detrimental to an employee's prospects for promotion in that an employee must be knowledgeable regarding all equipment in his department to be considered for any supervisory positions that could become available.

31. Barnes has continually experienced racial harassment and/or racial intimidation at CN. During the course of his employment he has heard the words "nigger", "porch monkey" and other racially demeaning language. Barnes has also had to witness other African-Americans being subjected to racial slurs.

32. As a result of CN's hostile environment and discriminatory practices, Barnes has suffered and will continue to suffer extreme harm.

33. Plaintiff Tracy Steele has been, and continues, to be adversely affected by the challenged systemic pattern and practice of racial discrimination, the hostile work environment and discriminatory selection decisions for promotions, training and other terms and conditions of employment. This pattern and practice of racial discrimination has adversely affected Steele by requiring him to work in a hostile environment; by denying him the opportunity to work in an integrated environment in which African-American employees hold supervisory/managerial positions; by not being considered for job classifications traditionally held by white employees at CN; and by being denied training regularly provided to white employees.

34. CN has continually failed to notify, post or make readily accessible to its African-American employees job announcements for all positions that might lead to promotions and/or advancement to higher and better paying positions.

35. In mid-2000, the general foreman of the mechanical department resigned his position and Steele was asked if he was interested in temporarily filling this vacancy. Steele accepted the position and was trained for approximately one-day. Steele performed the duties of this position until he was replaced by Johnny Kovalski, a white male, who was given the position on a permanent basis. Kovalski is less senior and less qualified than Steele. Neither Steele nor any other African-American employees were given notice that the Defendant was looking to fill this position on a permanent basis.

36. In mid 2001, Johnny Kovalski was demoted and, again without notice being given, Tony Switzer, another white employee, was given the general foreman's position. Prior to Switzer receiving this position, Steele had expressed a desire to be made aware of any such vacancies in his department on several occasions. Moreover, when Switzer became general foreman, he immediately awarded the mechanical foreman's position to Billy Baisden, another white employee with less seniority and less qualifications than Steele.

37. Steele complained to management about the abovementioned incidents and was subsequently assigned to another location where he received some foreman's training. In September 2003, Steele was working as a relief foreman, when a foreman's position again became available. The position was not posted. Steele became aware of its existence anyway because he had worked as a relief foreman under the incumbent who was leaving. Steele applied for the position by submitting a resume and speaking with senior management about the position. Steele was informed by senior management that the position would be awarded based on qualifications and not seniority. The position was awarded to Roy Talman, a white employee with no experience as a foreman. Steele was better qualified and had more experience as a foreman than Talman when Talman was

awarded this position. In late September or early October 2003, Talman was demoted for poor performance.

38. In September of 2003, Tony Switzer, a white supervisor, selected only white employees to attend a training session regarding a new air-brake system. The denial of opportunities to train on all aspects of equipment is detrimental to an employee's prospects for promotion in that an employee must be knowledgeable regarding all equipment in his department to be considered for any supervisory positions that could become available.

39. Steele has continually experienced racial harassment and/or racial intimidation at CN. During the course of his employment he has heard the word "nigger" and other racially demeaning language. Steele has also had to witness other African-Americans being subjected to racial slurs. Steele has been subjected to a severe and pervasive hostile work environment.

40. As a result of CN's hostile environment and discriminatory practices, Steele has suffered and will continue to suffer extreme harm.

COUNT ONE

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000 et seq.

41. Plaintiffs restate and incorporate by reference Paragraphs 1 through 40, above as part of this Count of the Complaint.

42. CN has discriminated against the named Plaintiffs and the class they seek to represent with regards to a hostile work environment, promotions, training, and other terms and conditions of employment because of their race, in violation of Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. § 2000 et seq., as amended by the Civil Rights Act of 1991.

43. CN's conduct has been intentional, deliberate, willful and conducted with disregard

of the rights of Plaintiffs and members of the proposed class.

44. By reason of CN's discriminatory employment practices, the named Plaintiffs and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, damages and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under § 2000.

COUNT TWO

DISCRIMINATION ON THE BASIS OF RACE IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981

45. Plaintiffs restate and incorporate by reference Paragraphs 1 through 44, above as part of this Count of the Complaint.

46. CN has discriminated against the named Plaintiffs and the class they seek to represent with regards to a hostile work environment, promotions, training, and other terms and conditions of employment because of their race, in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 and 1981(a).

47. CN's conduct has been intentional, deliberate, willful and conducted with disregard of the rights of Plaintiffs and members of the proposed class.

48. By reason of CN's discriminatory employment practices, the named Plaintiffs and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, damages and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under Section 1981.

PRAYER FOR RELIEF

Wherefore, the named Plaintiffs, on behalf of themselves and the proposed class they seek

to represent, request the following relief:

1. Acceptance of jurisdiction of this cause;
2. Certification of the case as a class action maintainable under Federal Rules of Civil Procedure Rule 23(a), Rule 23(b)(2) and/or Rule 23(b)(3) on behalf of the proposed plaintiff class, and designation of the named Plaintiffs as representatives of the proposed class and their counsel of record as class counsel;
3. A declaratory judgment that the employment practices challenged herein are illegal and a violation of the rights secured to named Plaintiffs and members of the proposed class;
4. A preliminary and permanent injunction against the Defendant and their partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs, usages, and racial discrimination as set forth herein;
5. An Order requiring the Defendant to initiate and implement programs that (i) provide equal employment opportunities and a non-hostile work environment for African-American employees; (ii) remedy the effects of the Defendant's past and present unlawful employment practices; and (iii) eliminate the continuing effects of the discriminatory practices described herein above;
6. An Order requiring the Defendant to initiate and implement systems for the posting and bidding of jobs and for the assigning, training, transferring, and promoting of African American employees to higher and better paying positions in a non-discriminatory manner;
7. An Order placing or restoring the named Plaintiffs and the class they seek to represent into those jobs they should now be occupying but for the Defendant's discriminatory practices;

8. An Order directing the Defendant to adjust the wage rates and benefits for the named Plaintiffs and the class they seek to represent to the level that they should be enjoying but for the Defendant's discriminatory practices;

9. An award of back pay; front pay; lost benefits; preferential rights to jobs; damages for lost compensation and job benefits suffered by the named Plaintiffs and the class they seek to represent;

10. An Order requiring the Defendant to make the named Plaintiffs; and the class they seek to represent whole by awarding them back pay (plus interest), compensatory, punitive, liquidated, and/or nominal damages;

11. An award of litigation costs and expenses, including reasonable attorneys' fees, to the named Plaintiffs and proposed class members;

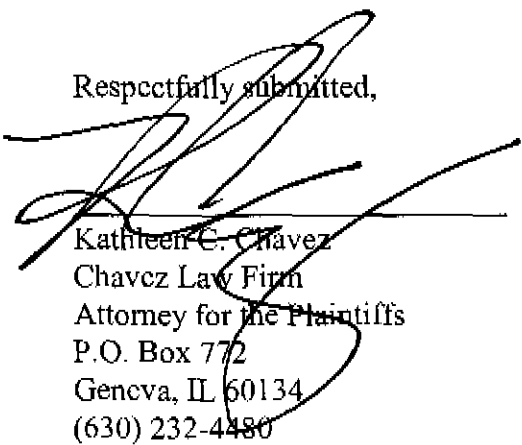
12. Prejudgment interest; and

13. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Respectfully submitted,



Kathleen C. Chavez
Chavez Law Firm
Attorney for the Plaintiffs
P.O. Box 772
Geneva, IL 60134
(630) 232-4480
(630) 232-8265 FAX

Robert M. Foote
Attorney for the Plaintiffs
Foote, Meyers, Mielke & Flowers, LLC
416 S. Second St.
Geneva, IL 60134
(630) 232-6333
(630) 845-8982 FAX

William E. Ready
Attorney for the Plaintiffs
Ready & Associates
P.O. Box 827
517 23rd Ave.
Meridian, MS 39302-0827
(601) 693-8678
(601) 693-1485 FAX

Robert F. Childs
Roderick T. Cooks
Ben Degweck
Attorneys for the Plaintiffs
Wiggins, Childs, Quin & Pantazis
1400 South Trust Tower
420 North 20th Street
Birmingham, AL 35203
(205) 328-0640
(205) 254-1500 FAX

CHARGE DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.		<input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	210-2003-34343
_____ and EEOC			
State or local Agency, if any			
SOCIAL SECURITY #: 587-05-1761		DATE OF BIRTH: 12/07/45 RACE: Black SEX: M	
NAME (Indicate Mr., Ms., Mrs.) Mr. MELVIN BARNES		HOME TELEPHONE (Include Area Code) 708-210-2027	
STREET ADDRESS 16651 SCHOOL 15125 Marshfield		CITY, STATE AND ZIP CODE SOUTH HOLLAND, IL 60425 Harvey	DATE OF BIRTH 12/07/1945
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME IC/CANADIAN NATIONAL RAILROAD		NUMBER OF EMPLOYEES, MEMBERS More than 100	TELEPHONE (Include Area Code) 708-957-6562
STREET ADDRESS		CITY, STATE AND ZIP CODE Markham, IL	COUNTY Cook
NAME		TELEPHONE NUMBER (Include Area Code) 708-957-6562	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE	
<input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		EARLIEST / / LATEST / / <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):			
<p>1. IC/CN has consistently failed to notify and/or make available, by postings in an accessible place for me and other African American employees, any and all positions currently vacant and available.</p> <p>2. IC/CN has denied me and other African Americans opportunities for equal and competent training, such as white employees get for the same jobs. When training is available to black employees, the teachers are disinterested and uncooperative and, after completion, employees are assigned to different job within a short time.</p> <p>3. Since the beginning of my employment with IC/CN, I have been, and continue to be, made subjected to such constant and oppressive supervision that I have to be constantly on guard to avoid the appearance of conduct that could be interpreted as a basis for discipline or discharge, while white employees are allowed to break rules and regulation with no fear of being disciplined or discharged.</p> <p>4. IC/CN has denied me and other African Americans opportunities to transfer to better paying jobs by withholding or failing to advertise jobs with better pay and conditions - these positions are not posted for bid based on seniority but are given to mostly white "new hires", white employees or their family. This practice has been ongoing since I began working for the railroad and continues to this day.</p>			
I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
		SIGNATURE OF COMPLAINANT	
JUL 22 2003		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

EXHIBIT

tabbies

A

5. I charge that IC/CN has discriminated, does now and continues to discriminate against its African American employees in its customary policies and procedures and their application to such employees, individually and as a class generally and particularly with respect to assignments, transfers, promotions and demotions, application, testing and performance standards, evaluation and enforcement, hostile work environment, notice and opportunity for beneficial alterations and changes in employment positions and conditions and other actions and omissions in violation of Title VII of the Civil Rights Act, as amended and other United States Statutes. The discriminatory policies and practice of Respondent have discouraged African Americans from seeking movement to better and higher paying jobs. Respondent's conduct is continuous in nature and is part of the pattern and practices which has resulted in both disparate treatment and impact against me and similarly situated individuals.

6. Also the IC/CN has, by said actions and/or omissions, violated my rights under 42 U.S.C. Section 1981 et seq. I charge that IC/CN has, pursuant to long standing and continuing customary policies and practices, in relation to me and other such employees, denied to me equal rights to and under Contract as held and utilized by white citizens.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(issued on request)

To: Melvin Barnes

15125 Marshfield

Harvey IL 60425

Certified: 7001 0360 0000 0463 2815 CP Atty.

On behalf of a person aggrieved whose identity is CONFIDENTIAL
(29 C.F.R. 1601.7(f))

From:

Equal Employment Opportunity Commission

500 West Madison

Suite 2800

Chicago, Illinois 60661

Charge Number
210-2003-34343EEOC Representative
Jose RomoTelephone Number
(312) 353-8175

(See the additional information attached to this form)

TO THE PERSON AGGRIEVED: This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE. OTHERWISE YOUR RIGHT TO SUE IS LOST.



More than 180 days have expired since the filing of this charge.



Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its process within 180 days from the filing of the charge.



With the issuance of this NOTICE OF RIGHT TO SUE, the Commission is terminating its process with respect to this charge.



It has been determined that the Commission will continue to investigate your charge.



ADEA: While Title VII and the ADA require EEOC to issue this notice of right to sue before you can bring a lawsuit, you may sue under the Age Discrimination in Employment Act (ADEA) any time 60 days after your charge was filed until 90 days after you received notice that EEOC has completed action on your charge.



Because EEOC is closing your case, your lawsuit under the ADEA must be brought within 90 days of your receipt of this notice. Otherwise, your right to sue is lost.



EEOC is continuing its investigation. You will be notified when we have completed action and, if appropriate, our notice will include notice of right to sue under the ADEA.



EPA: While Title VII and the ADA require EEOC to issue this Notice of Right to Sue before you can bring a lawsuit, you already have the right to sue under the Equal Pay Act (EPA) (You are not required to complain to any enforcement agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

On Behalf of the Commission

11-20-03

(Date)



John P. Rowe, District Director

Enclosures

Information Sheet

Copy of Charge

cc: Respondent(s)

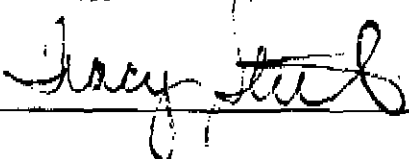
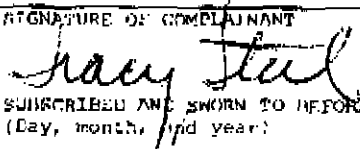
Canadian National Railroad

EEOC Form 1613 (Rev. 10/94)

EXHIBIT

tabbies

B

CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.		<input checked="" type="checkbox"/> FERA <input type="checkbox"/> EEOC	210-2003-37845
_____ and EEOC			
State or local Agency, if any			
SOCIAL SECURITY #: 328-60-7335 DATE OF BIRTH: 2/29/66 RACE: Black SEX: M			
NAME (Indicate Mr., Ms., Mrs.) MR. TRACY STEEL		HOME TELEPHONE (Include Area Code) 773-722-2208	
STREET ADDRESS 514 N. HAMLIN		CITY, STATE AND ZIP CODE CHICAGO, IL 60624	DATE OF BIRTH 03/29/1966
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME ICG/CANADIAN NATIONAL RAILROAD		NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
STREET ADDRESS 17641 S. ASHLAND		CITY, STATE AND ZIP CODE HOMERWOOD, IL 60430	COUNTY COOK
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE	
<input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		EARLIEST 07/17/1997 LATEST / / <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):			
<p>1. ICG (CN) has consistently failed to notify and/or make available, by postings in an accessible place for me and other African American employees, any and all positions currently vacant and available.</p> <p>2. ICG (CN) has denied me the opportunity for training when I trained for a relief foreman's position for one day and then the supervisor Dennis Cowger started training a white employee with less seniority than myself, for the relief foreman's job. The white trainee was given the position.</p> <p>3. Since the beginning of my employment with ICG, I have been and continue to be made to feel inferior to white employees such as when I asked two white lead carmen where a certain piece of equipment was, one of them replied "If I told you that then that would make you smarter than us"</p> <p>4. I charge that ICG has discriminated, does now and continues to discriminate against its African American employees in its customary policies and procedures and their application to such employees, individually and as a class generally and particularly with respect to assignments, transfers, promotions and demotions, application, testing and performance standards, evaluation and enforcement, hostile work environment, notice and opportunity for beneficial alterations and changes in employment positions and conditions and other actions and omissions in violation of Title VII of the Civil Rights Act, as amended and other United States Statutes.</p> <p>5. Also the ICG has, by said actions and/or omissions, violated my rights under 42 U.S.C. Section 1981 et seq. I charge that ICG has, pursuant to long standing and continuing customary policies and practices, in relation to me and other such employees, denied to me equal rights to and under Contract as held and utilized by white citizens.</p>			
<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY (When necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the foregoing is true and correct. 		SIGNATURE OF COMPLAINANT  6/20/03 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

EXHIBIT

C

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Issued on request)

To: Tracy Steel

514 North Hamlin

Chicago, IL 60624

Certified: 7001 0360 0000 0463 2815 CP Atty.

On behalf of a person aggrieved whose identity is CONFIDENTIAL
(29 C.F.R. 1601.7(a))

From:

Equal Employment Opportunity Commission

500 West Madison

Suite 2800

Chicago, Illinois 60661

Charge Number
210-2003-34345EEOC Representative
Jose RomoTelephone Number
(312) 363-8175

(See the additional information attached to this form)

TO THE PERSON AGGRIEVED: This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE. OTHERWISE YOUR RIGHT TO SUE IS LOST.



More than 180 days have expired since the filing of this charge.



Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its process within 180 days from the filing of the charge.



With the issuance of this NOTICE OF RIGHT TO SUE, the Commission is terminating its process with respect to this charge.



It has been determined that the Commission will continue to investigate your charge.



ADEA: While Title VII and the ADA require EEOC to issue this notice of right to sue before you can bring a lawsuit, you may sue under the Age Discrimination in Employment Act (ADEA) any time 60 days after your charge was filed until 90 days after you received notice that EEOC has completed action on your charge.



Because EEOC is closing your case, your lawsuit under the ADEA must be brought within 90 days of your receipt of this notice. Otherwise, your right to sue is lost.



EEOC is continuing its investigation. You will be notified when we have completed action and, if appropriate, our notice will include notice of right to sue under the ADEA.



EPA: While Title VII and the ADA require EEOC to issue this Notice of Right to Sue before you can bring a lawsuit, you already have the right to sue under the Equal Pay Act (EPA) (You are not required to complain to any enforcement agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

On Behalf of the Commission

11-20-03

(Date)



John P. Rowe, District Director

Enclosures

Information Sheet
Copy of Charge

cc: Respondent(s)

Canadian National Railroad

EEOC Form 1A-1-B (Rev. 10-94)

EXHIBIT

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D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOISCivil Cover SheetDOCKETED
FEB 19 2004

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): MELVIN BARNES and TRACY STEELE, on behalf of themselves and all other black persons similarly situated,

County of Residence: Cook

**Plaintiff's Atty: Robert M. Foote
Foote, Meyers, Mielke & Flowers,
LLC
416 S. Second St., Geneva, IL 60134
630-232-6333**

Defendant(s): CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD /ak/a ILLINOIS CENTRAL RAILROAD COMPANY

County of Residence:

Defendant's Atty:

04C 1249

II. Basis of Jurisdiction:

4. Diversity (complete item III)

JUDGE ZAGEL

III. Citizenship of Principal Parties
(Diversity Cases Only)

Plaintiff: - 1 Citizen of This State

Defendant: - 4 IL corp or Principal place of Bus. in IL

MAGISTRATE JUDGE MASON

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

442 Employment

VI. Cause of Action:

The Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. Charge of discrimination

VII. Requested in Complaint

Class Action: Yes

Dollar Demand:

Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature:

Date:

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**

Revised: 06/28/00

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

**RECEIVED
FEB 19 2004**

In the Matter of

EASTERN DIVISION

MELVIN BARNES and TRACY STEELE, on behalf of themselves
and all other black persons similarly situated,

v.

CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD a/k/a
ILLINOIS CENTRAL RAILROAD COMPANY

Case Number:

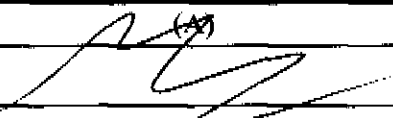
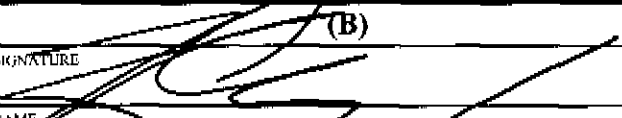
04C 1249

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Melvin Barnes and Tracy Steele, on behalf of themselves and all other black persons similarly situated

JUDGE ZAGEL

MAGISTRATE JUDGE MASON

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Robert M. Foote		NAME Kathleen C. Chavez	
FIRM FOOTE, MEYERS, MIELKE & FLOWER		FIRM CHAVEZ LAW FIRM	
STREET ADDRESS 416 S. Second Street		STREET ADDRESS P.O. Box 772	
CITY/STATE/ZIP Geneva, IL 60134		CITY/STATE/ZIP Geneva, IL 60134	
TELEPHONE NUMBER 630-232-6333	FAX NUMBER 630-845-8982	TELEPHONE NUMBER 630-232-4480	FAX NUMBER 630-232-8265
E-MAIL ADDRESS rmf@foote-meyers.com		E-MAIL ADDRESS gkeg4@aol.com	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3124325		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6255735	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

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