

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>EQUAL EMPLOYMENT</b>	)	
<b>OPPORTUNITY COMMISSION,</b>	)	
	)	<b>8:01CV494</b>
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>PROGRESS RAIL SERVICES,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the court on the plaintiff's motion to compel discovery (Filing No. 11). The plaintiff seeks to compel the defendant to respond to the plaintiff's First Set of Interrogatories and Requests for Production of Documents. The plaintiff also seeks to have its First Set of Requests for Admissions deemed admitted. **See** Filing No. 11. The plaintiff attached to the motion a copy of the discovery requests sent to the defendant. The defendant did not submit a response to the plaintiff's motion and has informed the court it does not oppose the motion to compel.

Under Federal Rules of Civil Procedure Rule 36, matters contained in a request for admission may be deemed admitted unless "the party to whom the request is directed serves upon the party requesting the admission[s] a written answer or objection addressed to the matter," within 30 days after service of the request or such shorter or longer time as the court allows. **See** Fed. R. Civ. P. 36(a). However, "the failure to respond in a timely fashion does not require the court automatically to deem all matters admitted." ***Gutting v. Falstaff Brewing Corp.***, 710 F.2d 1309, 1312 (8th Cir. 1983) (citing Finman, **The Request for Admissions in Federal Civil Procedure**, 71 Yale L.J. 371, 432 (1962); ***Luick v. Graybar Elec. Co.***, 473 F.2d 1360, 1362 (8th Cir. 1973)). A copy of the certificate of service regarding the discovery requests at issue was submitted as an attachment to the instant motion. **See** Filing No. 11, Attachment A. The certificate of service shows the plaintiff sent the first set of requests for admissions to the defendant on August 14, 2002. **Id.** However, the plaintiff

placed the incorrect case number on the certificate of service, and it was filed in Case Number 8:01CV462 rather than the instant case. **See id.**; Case Number 8:01CV462, Filing No.21. Pursuant to the court's local rules, a party is required to file a certificate of service with the court after serving requests for admissions. **See** NELR 36.1. The same procedure must be followed when a party serves interrogatories and requests for production of documents. **See** NELR33.1 and 34.1. Due to the incorrect case number being placed on the certificate, the plaintiff's certificate was not filed in this case. However, the court notes the certificate shows the discovery requests were sent to the defendant. **See** Filing No. 11, Attachment A.

The defendant has not presented any objection or response to the plaintiff's motion to compel. "A district court is afforded wide discretion in its handling of discovery matters[.]" **Cook v. Kartridg Pak Co.**, 840 F.2d 602, 604 (8th Cir. 1988). Due to the potential for confusion present in this case because the certificate of service was not filed herein, and because the defendant does not object to the plaintiff's motion to compel, the court will grant the plaintiff's motion to compel. However, the plaintiff's requests for admission will not be deemed admitted based upon the defendant's failure to respond. **See Gutting**, 710 F.2d at 1312. The court will exercise its discretion and require the defendant to answer the plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Upon consideration,

**IT IS ORDERED:**

1. The plaintiff's motion to compel discovery (Filing No. 11) is granted to the extent set forth below.

2. The defendant shall have to **on or before December 13, 2002**, to respond to the plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions.

DATED this 2nd day of December, 2002.

BY THE COURT:

s/Thomas D. Thalken  
THOMAS D. THALKEN  
United States Magistrate Judge