

CLOSED

**U.S. District Court  
District of Nebraska (8 Omaha)  
CIVIL DOCKET FOR CASE #: 8:01-cv-00494-JFB-TDT**

EEOC v. Progress Rail  
Assigned to: Chief Judge Joseph F. Bataillon  
Referred to: Magistrate Judge Thomas D. Thalken  
Demand: \$0  
Cause: 28:451 Employment Discrimination

Date Filed: 09/26/2001  
Date Terminated: 10/17/2003  
Jury Demand: Plaintiff  
Nature of Suit: 442 Civil Rights: Jobs  
Jurisdiction: U.S. Government Plaintiff

**Plaintiff**

**Equal Employment Opportunity  
Commission**

represented by **Evangelina F. Hernandez**  
EQUAL EMPLOYMENT  
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*TERMINATED: 07/30/2002*

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**TERMINATED: 01/12/2004**

V.

**Defendant**

**Progress Rail Services**  
*An Alabama Corporation*

represented by **Roger L. Shiffermiller**  
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**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/26/2001	1	COMPLAINT: no Summons issued; jury demand with request for trial at Omaha, NE (JSF) (Entered: 09/26/2001)
02/19/2002	2	WAIVER OF SERVICE (Rule 4 - Summons) upon defendant Progress Rail on 1/15/02 (TJS) (Entered: 02/19/2002)
03/18/2002	3	ANSWER by defendant Progress Rail to complaint [1-1] (JSF) (Entered: 03/19/2002)
03/20/2002	4	SCHEDULING PACKET by Magistrate Judge Thomas D. Thalken - COPIES MAILED (NCD) (Entered: 03/20/2002)
04/26/2002	5	RULE 26(f) PLANNING REPORT (TJS) (Entered: 04/26/2002)
04/26/2002	6	ORDER SETTING SCHEDULE FOR PROGRESSION OF CASE by Magistrate Judge Thomas D. Thalken - deposition ddl set for 5/4/02 - pretrial conference set 2:00 8/12/02 before Magistrate Judge Thomas D. Thalken - COPIES MAILED (TJS) (Entered: 04/26/2002)

05/09/2002	7	CERTIFICATE OF SERVICE by plaintiff EEOC of disclosure statement (JAE) (Entered: 05/09/2002)
07/29/2002	8	MOTION by plaintiff EEOC for substitution of counsel (TJS) (Entered: 07/30/2002)
07/30/2002	9	ORDER by Magistrate Judge Thomas D. Thalken granting motion for substitution of counsel [8-1]; Nelson G. Aslton is substituted for Evangelina Fierro Hernandez as counsel of record for plf as to plaintiff EEOC substituting atty Nelson G. Alston - COPIES MAILED [EOD Date 7/31/02] (TJS) (Entered: 07/31/2002)
08/12/2002	10	FINAL PROGRESSION ORDERby Magistrate Judge Thomas D. Thalken - deposition ddl set for 12/31/02 - pretrial conference set 9:00 2/11/03 before Magistrate Judge Thomas D. Thalken - jury trial set for 8:30 2/24/03 - COPIES MAILED (TJS) (Entered: 08/12/2002)
08/16/2002	<a href="#">14</a>	CERTIFICATE OF SERVICEby Attorney Nancy A. Weeks on behalf of Plaintiff Equal Employment Opportunity Commission of serving its first set of requests for admissions, interrogatories, and production of documents to defendant (Document previously filed in wrong case)(MKR, ) (Entered: 12/03/2002)
11/04/2002	<a href="#">11</a>	MOTION to Compel discovery by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (CJB, ) (Entered: 11/06/2002)
11/22/2002	<a href="#">12</a>	CERTIFICATE of Service of its second Set of Requests for Admissions, Interrogatories and Production of Documentsby Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (TJS, ) (Entered: 11/26/2002)
12/02/2002	<a href="#">13</a>	ORDER granting <a href="#">11</a> Motion to Compel to the extent that the defendant shall have to on or before 12/13/2002 to respond to the plaintiff's First Set of Interrogatories, Requests for Production of Documents, andRequests for Admissions. Signed by Magistrate Judge Thomas D. Thalken on 12/2/2002. (PAV, ) (Entered: 12/02/2002)
12/04/2002	<a href="#">15</a>	MOTION to Extend The Discovery Deadline by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (TJS, ) (Entered: 12/04/2002)
12/05/2002	<a href="#">16</a>	ORDER granting <a href="#">15</a> Motion to Extend discovery deadlines; deposition deadline is 3/31/2003; final pretrial conference is set for 5/12/2003 at 10:00 a.m. before Magistrate Judge Thomas D. Thalken; Jury trial is set for 5/27/2003 before Judge Joseph F. Bataillon. Signed by Magistrate Judge Thomas D. Thalken on 12/5/2002. (PAV, ) (Entered: 12/05/2002)
12/06/2002	<a href="#">17</a>	ATTORNEY Registration Letter Regarding Plaintiff Equal Employment Opportunity Commission ; letter sent to Attorney Nelson G. Alston with registration form. (JAE, ) (Entered: 12/06/2002)
12/06/2002	<a href="#">18</a>	ATTORNEY Registration Letter Regarding Plaintiff Equal Employment Opportunity Commission ; letter sent to Attorney Joseph H. Mitchell with registration form. (JAE, ) (Entered: 12/06/2002)

12/06/2002	<a href="#">19</a>	ATTORNEY Registration Letter Regarding Plaintiff Equal Employment Opportunity Commission ; letter sent to Attorney Gwendolyn Reams with registration form. (JAE, ) (Entered: 12/06/2002)
12/06/2002	<a href="#">20</a>	ATTORNEY Registration Letter Regarding Plaintiff Equal Employment Opportunity Commission ; letter sent to Attorney Nancy A. Weeks with registration form. (JAE, ) (Entered: 12/06/2002)
02/21/2003	<a href="#">21</a>	CERTIFICATE of Service of Plaintiff's Non-Expert Witness List by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 02/21/2003)
04/17/2003	<a href="#">22</a>	EXHIBIT LIST by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 04/17/2003)
04/17/2003	<a href="#">23</a>	CERTIFICATE of Service of List of Trial Exhibits by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 04/17/2003)
04/17/2003	<a href="#">24</a>	DEPOSITION of Testimony and discovery documents for use at Trial by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 04/17/2003)
04/17/2003	<a href="#">25</a>	CERTIFICATE of Service of Deposition Testimony and Discovery Documents for Use at Trial by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 04/17/2003)
05/08/2003	<a href="#">26</a>	EXHIBIT LIST AMENDED by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 05/08/2003)
05/08/2003	<a href="#">27</a>	CERTIFICATE of Service of Plaintiff's Amended List of Trial Exhibits by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 05/08/2003)
05/12/2003	<a href="#">28</a>	PRETRIAL ORDER - estimated length of trial is 3 days; Jury Trial set for 7/21/2003 before Judge Joseph F. Bataillon. Signed by Magistrate Judge Thomas D. Thalken on 5/12/2003. (DKM, ) (Entered: 05/13/2003)
05/13/2003	<a href="#">29</a>	ATTORNEY LETTER by Clerk that Attorney Joseph H. Mitchell has not registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (DKM, ) (Entered: 05/13/2003)
05/13/2003	<a href="#">30</a>	ATTORNEY LETTER by Clerk that Attorney Gwendolyn Reams has not registered for admittance or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (DKM, ) (Entered: 05/13/2003)
07/10/2003	<a href="#">31</a>	Proposed Jury Instructions by Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 07/10/2003)

07/10/2003	<a href="#">32</a>	BRIEF <i>Trial Brief</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 07/10/2003)
07/10/2003	<a href="#">33</a>	Proposed Jury Instructions <i>Proposed Voir Dire Questions</i> by Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 07/10/2003)
07/10/2003	<a href="#">34</a>	CERTIFICATE of <i>Service of Proposed Jury Instructions</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 07/10/2003)
07/10/2003	<a href="#">35</a>	CERTIFICATE of <i>Service of Proposed Voir Dire Questions</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 07/10/2003)
07/10/2003	<a href="#">36</a>	CERTIFICATE of <i>Service of Trial Brief</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 07/10/2003)
07/15/2003	<a href="#">37</a>	TRIAL ORDER; Jury Trial re-set for 9/15/2003 at 08:30 AM before Judge Joseph F. Bataillon. Signed by Magistrate Judge Thomas D. Thalken on 7/15/2003. (PAV, ) (Entered: 07/15/2003)
09/04/2003	<a href="#">38</a>	Proposed Jury Instructions ( <i>Amended</i> ) by Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 09/04/2003)
09/04/2003	<a href="#">39</a>	Certificate of <i>Service of Amended Proposed Jury Instructions</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 09/04/2003)
09/04/2003	<a href="#">40</a>	Proposed Jury Instructions <i>Amended Proposed Voir Dire Questions</i> by Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 09/04/2003)
09/04/2003	<a href="#">41</a>	Certificate of <i>Service of Amended Proposed Voir Dire Questions</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 09/04/2003)
09/04/2003	<a href="#">42</a>	BRIEF <i>Amended Trial Brief</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 09/04/2003)
09/04/2003	<a href="#">43</a>	Certificate of <i>Service of Amended Trial Brief</i> by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission (Alston, Nelson) (Entered: 09/04/2003)
09/11/2003	<a href="#">44</a>	ORDER continuing Jury Trial to 10/14/2003 09:00 AM in Courtroom 3 (Omaha) before Judge Joseph F. Bataillon; attorney to appear in courtroom at 8:30 a.m. that day. Signed by Judge Joseph F. Bataillon on 9/11/2003. (SMS, ) (Entered: 09/11/2003)
10/08/2003	<a href="#">45</a>	PROPOSED JURY INSTRUCTIONS by Progress Rail Services. (Shiffermiller, Roger) (Entered: 10/08/2003)
10/10/2003	<a href="#">46</a>	Mail Returned as Undeliverable addressed to nweeks@eoc.gov regarding Proposed Jury Instructions <a href="#">45</a> . NOT RESENT: attorney's system down; filing faxed to 303-866-1375 per request. (JAE, ) (Entered: 10/10/2003)

10/14/2003	<a href="#">54</a>	Minute Entry for proceedings held before Judge Joseph F. Bataillon Jury Selection held on 10/14/2003. Jury Trial began on 10/14/2003. Jury impaneled. Opening statement. Evidence by Plaintiff. Jury trial continued to 10/15/2003 at 9:00 a.m. Plaintiff's oral motion to sequester witnesses is granted. (Court Reporter - Allan Kuhlman) (KMG) (Entered: 10/14/2003)
10/14/2003	<a href="#">55</a>	JURY PANEL RECORD. (KMG) (Entered: 10/14/2003)
10/15/2003	<a href="#">56</a>	Minute Entry for proceedings held before Judge Joseph F. Bataillon. Jury Trial held on 10/15/2003. Evidence by plaintiff and defendant. Plaintiff rests. Trial continued to 10/16/2003 at 9:00 a.m. Defendant's oral motion for judgment as a matter of law taken under advisement. (Court Reporter - Allan Kuhlman) (KMG) (Entered: 10/15/2003)
10/16/2003	<a href="#">57</a>	PROPOSED JURY INSTRUCTIONS ( <i>Supplemental</i> ) by Progress Rail Services. (Shiffermiller, Roger) (Entered: 10/16/2003)
10/16/2003	<a href="#">58</a>	INITIAL Jury Instructions. (SMS, ) (Entered: 10/16/2003)
10/16/2003	<a href="#">59</a>	CLOSING Jury Instructions. (SMS, ) (Entered: 10/16/2003)
10/16/2003	<a href="#">60</a>	Minute Entry for proceedings held before Judge Joseph F. Bataillon Jury Trial held on 10/16/2003. Evidence by plaintiff and defendant. Defendant rests. Rebuttal by plaintiff. Instruction conference held. Closing arguments. Jury received case at 3:10 p.m. Jury returned at 5:15 p.m. without verdict. Ordered to separate and return and resume deliberations on 10/17/2003 at 9:00 a.m. Defendant renews it's oral motion for judgment as a matter of law. The motion is granted for a directed verdict regarding willfullness. The motion regarding the claims of Arnulfo Mendoza is sustained and those claims are dismissed. The motion regarding the claims of Thomas Abbott for failure to transfer and to rehire is overruled. The claims of Joe Aguallo were not timely presented to the court and therefore will not be submitted to the jury. Written order forthcoming. (Court Reporter - Allan Kuhlman) (KMG) (Entered: 10/16/2003)
10/17/2003	<a href="#">61</a>	FINAL Jury Instructions. (SMS, ) (Entered: 10/17/2003)
10/17/2003	<a href="#">62</a>	Minute Entry for proceedings held before Judge Joseph F. Bataillon Jury Trial ended on 10/17/2003; verdict reached for defendant; clerk to file verdict and enter judgment. Clerk's Use Only: Number of trial days with evidence - 3. (Court Reporter - Allan Kuhlman) (KMG) (Entered: 10/17/2003)
10/17/2003	<a href="#">63</a>	WITNESS LIST from jury trial held on October 14-16, 2003. (KMG) (Entered: 10/17/2003)
10/17/2003	<a href="#">64</a>	EXHIBIT LIST from jury trial held on October 14-16, 2003. (KMG) (Entered: 10/17/2003)
10/17/2003	<a href="#">65</a>	JURY VERDICT and questions from jurors. (KMG) (Entered: 10/17/2003)
10/17/2003	<a href="#">66</a>	JUDGMENT - IT IS ORDERED AND ADJUDGED that judgment is entered in favor ofthe Defendant, Progress Rail Services, and against the Plaintiff,Equal Employment Opportunity Commission, together with taxable costsof this action; IT IS FURTHER ORDERED AND ADJUDGED that Defendant?s renewedmotion for judgment as a matter of law, which was made at the time oftrial, is granted for a directed verdict regarding willfullness. Themotion

		regarding the claims of Arnulfo Mendoza is sustained and those claims are dismissed. The motion regarding the claims of Thomas Abbott for failure to transfer and to rehire is overruled. The claims of Joe Aguillo were not timely presented to the court and therefore will not be submitted to the jury. Signed by Deputy Clerk on 10/17/2003. (TJS, ) (Entered: 10/17/2003)
12/16/2003	<a href="#">67</a>	NOTICE OF APPEAL by Attorney Nelson G. Alston on behalf of Plaintiff Equal Employment Opportunity Commission. (Alston, Nelson) (Entered: 12/16/2003)
12/17/2003	<a href="#">68</a>	Letter By Clerk sending Forms A & B with cover letter to appellant. (TJS, ) (Entered: 12/17/2003)
12/17/2003	<a href="#">69</a>	Letter by Clerk to appellant with request for transcript form regarding Notice of Appeal to USCA <a href="#">67</a> (TJS, ) (Entered: 12/17/2003)
12/17/2003	<a href="#">70</a>	2 COPIES of Notice of Appeal to USCA <a href="#">67</a> ; Judgment <a href="#">66</a> , Jury Verdict <a href="#">65</a> and certified Docket Sheet to Clerk, USCA - 8th Circuit (TJS, ) (Entered: 12/17/2003)
01/09/2004	<a href="#">71</a>	SCHEDULING LETTER from USCA - 8th Circuit as to Notice of Appeal to USCA <a href="#">67</a> ; Appellate Docket Number: 04-1071. Transcript Designation set for 2/18/2004. (Attachments: # <a href="#">1</a> )(TJS, ) (Entered: 01/12/2004)
01/12/2004	<a href="#">72</a>	MOTION to Withdraw as Attorney by Attorney Nancy A. Weeks on behalf of Plaintiff Equal Employment Opportunity Commission (Weeks, Nancy) (Entered: 01/12/2004)
01/14/2004	<a href="#">73</a>	Transmittal Letter forwarding Motion to Withdraw as Attorney to the 8th circuit <a href="#">72</a> (TJS, ) (Entered: 01/14/2004)
01/30/2004	<a href="#">74</a>	COPY of Order from USCA - 8th Circuit that decision of District Court is that the appellant's motion to dismiss is granted; the appeal is hereby dismissed; mandate shall issue forthwith. (Attachments: # <a href="#">1</a> )(MKR, ) (Entered: 01/30/2004)
02/02/2004	<a href="#">75</a>	MANDATE from USCA - 8th Circuit (04-1071) dismissing Notice of Appeal to USCA <a href="#">67</a> (Attachments: # <a href="#">1</a> )(TJS, ) (Entered: 02/03/2004)
07/07/2004	<a href="#">76</a>	MOTION to return sealed documents by Attorney Roger L. Shiffermiller on behalf of Defendant Progress Rail Services (MKR, ) (Entered: 07/07/2004)
07/08/2004	<a href="#">77</a>	ORDER granting <a href="#">76</a> Motion to return sealed documents; the Clerk of Court shall make the documents filed under seal available for retrieval by counsel or representative of the law firm of counsel for the party who filed each document under seal. Signed by Magistrate Judge Thomas D. Thalken on 7/8/2004. (MKR, ) (Entered: 07/09/2004)
08/27/2004	<a href="#">78</a>	NOTICE by Clerk of intent to destroy trial exhibits. (KMG) (Entered: 08/27/2004)
09/28/2004		PLAINTIFF & DEFENDANT TRIAL EXHIBITS destroyed on September 28, 2004 by Clerk of Court. THIS IS A TEXT ONLY ENTRY. A PDF DOCUMENT IS NOT ATTACHED TO THIS ENTRY. (KMG) (Entered: 09/28/2004)

<b>Transaction Receipt</b>			
06/07/2007 10:19:27			
<b>PACER Login:</b>	hs0328	<b>Client Code:</b>	eeoc+++++
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	8:01-cv-00494-JFB-TDT
<b>Billable Pages:</b>	5	<b>Cost:</b>	0.40