

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	)	
<b>COMMISSION,</b>	)	
	)	<b>CIVIL ACTION NO.</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>COMPLAINT</b>
<b>BURLINGTON NORTHERN &amp;</b>	)	
<b>SANTE FE RAILWAY COMPANY</b>	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

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NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 (“ADA”) and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Thomas Freeman (“Freeman”) who was adversely affected by such practices. The Commission alleges that the Defendant failed to hire Freeman because it regarded him as disabled.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by

reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Oklahoma.

### PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Burlington Northern and Santa Fe Railway Company ("BNSF"), a Texas corporation, has continuously been doing business in the State of Oklahoma and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Thomas Freeman filed a charge with the Commission alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least on or about December 5, 2002, Defendant has engaged in unlawful employment practices in violation of Section 102 of Title I of the ADA, 42 U.S.C. § 12112 by denying Thomas Freeman employment because it regarded him as disabled.

9. The effect of the practice complained of in paragraph 8 above has been to deprive Thomas Freeman of equal employment opportunities and otherwise adversely affect his status as an employee based upon his perceived disability.

10. The unlawful employment practice complained of in paragraph 8 above was intentional.

11. The unlawful employment practice complained of in paragraph 8 above was done with malice or with reckless indifference to the federally protected rights of Thomas Freeman.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any unlawful employment practice which discriminates on the basis of disability or perceived disability.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities which eradicate the effects of its past and present

unlawful employment practices.

C. Order Defendant to make whole Thomas Freeman by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place reinstatement and/or front pay.

D. Order the Defendant to make whole Thomas Freeman by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practice described in paragraph 8 above, including but not limited to emotional pain, suffering, inconvenience, humiliation, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

E. Order the Defendant to pay Thomas Freeman punitive damages for its malicious conduct or reckless indifference described in paragraph 8, above, in an amount to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs in this action.

#### JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

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JURY TRIAL DEMANDED