BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Joseph Daniels, Charging Party, v. Champion International Corporation, Respondent.	)))))))	HRC NO. #9201004834 FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

In July 1991, Joseph Daniels filed a complaint with the Montana Human Rights Commission (HRC) and against Champion International Corporation (Champion). The complaint alleged that respondent constructively discharged the charging party because of his disabilities (recovering alcoholic, carpal tunnel syndrome and dust allergies). In the complaint, Joe Daniels claimed that Champion International had violated his rights under §49-2-303, MCA, causing lost wages, lost severance benefits, and emotional harm.

This case was certified for hearing in July 1995. The hearing was held on October 12, 1995, at the Jury Room in the Lincoln County Courthouse in Libby, Montana. The parties did not contest the jurisdiction of the Commission in this matter.

Hearing examiner Tim Kelly presided. Charging party was represented by attorney Heidi Fanslow of Kalispell, Montana. Respondent was represented by attorney Maureen Lennon (nka Maureen L. Hall) of Missoula, Montana.

By request of the respondent, a transcript of the hearing on this matter was prepared for use in the presentation of closing arguments. The transcript was filed with the Commission and copies furnished to the respective parties. Closing arguments were timely filed by November 17, 1995.

At the time that charging party filed his closing argument, he also submitted a motion to reopen the hearing record to submit additional evidence. Respondent opposed the motion on grounds that it violated the final

prehearing order entered in this case and that it would be prejudicial and manifestly unfair. The motion to reopen the hearing record was denied and the matter submitted for decision on December 8, 1995.

A proposed order was issued in favor of Respondent on January 16, 1996. No exceptions have been filed. The Montana Human Rights Commission considered the Proposed Order on February 20, 1996, at Kalispell, Montana. All Commission members were present, and indicated they had reviewed the record, consisting of the Complaint, the Amended Complaint, and the Proposed Order.

Upon its review of the Findings of Fact, Conclusions of Law and Proposed Order as entered by the hearing examiner, the Montana Human Rights Commission now adopts the Findings of Fact, Conclusions of Law, and Proposed Order of the Hearing Examiner as its Final Order, as follows.

I .

WITNESSES AND EXHIBITS

Charging party called three witnesses in support of his case in chief: Neil Nelson, Barry Brown and himself, Joe Daniels. Respondent called a single witness in defense against the charge, Daniel Miller. The charging party was recalled and testified on rebuttal.

Charging party offered a single exhibit, Exhibit 5, for the record. It was admitted. Respondent offered six exhibits for the record. All were admitted. Exhibit C-3, a map of the respondent's railyard in Libby, Montana, was admitted for demonstrative purposes only.

II.

ISSUES

1. While employed by respondent, did charging party have a disability as that term is defined in §49-2-101(15), MCA?

2. Did respondent refuse to return charging party to the position of engineer/brakeman because of a disability and in violation of his rights under §49-2303(1), MCA?

3. In April 1992, did respondent constructively discharge charging party because of a disability and in violation of his rights under §49-2-303(1), M.C.A.?

4. Is charging party entitled to any relief under §49-2-506(1)(b), M.C.A., and if so, in what amount and what form?

5. Is respondent entitled to dismissal of the charge pursuant to X49-2-507, MCA?

6. In the event respondent is found to have engaged in an unlawful discriminatory practice, is any affirmative relief necessary other than an order by the Human Rights Commission that the respondent refrain from engaging in such discriminatory conduct, as required by X49-2-506(1), M.C.A.?

III.

FINDINGS OF FACT

1. The charging party is Joseph Daniels. He is a resident of Libby, Montana.

2. Charging party worked at a sawmill in Libby, Montana, for thirty years, from 1962 until April 1992.

3. The respondent is Champion International Corporation, a corporation licensed to do business in the state of Montana. In 1985, respondent purchased the Libby sawmill where charging party worked': Respondent operated the Libby sawmill during the period from 1985 through October 1993.

4. Charging party's employment with respondent was subject to the terms and conditions of the collective bargaining agreements between Champion and Local Union #2581 of the Lumber, Production and Industrial Workers (the "union") then in effect.

5. During most of the period that Champion operated the Libby sawmill, Dan Miller worked as Human Resource Manager and was responsible for handling day to day personnel matters for respondent, including resolution of issues presented by the employees and their union.

6. From 1988 to April 24, 1991, charging party worked as an engineer/brakeman on the train locomotive at Champion's mill in Libby. He worked forty hours a week on average.

7. The purpose of the rail system at the sawmill was to link its facilities to the lines of the Burlington Northern Railroad. The locomotive would deposit empty rail cars at the log yard, planer area, the plywood plant, the chip-loading area, and other facilities, and then pick up rail cars loaded with lumber, plywood and other products for transportation back to the Burlington Northern lines. The rail system at the sawmill involved approximately seven miles of train track in the plant and out into the switch area where the connection with Burlington Northern was made. At two points along the system, the railroad track crosses a public road in Libby. As a general practice, the locomotive pulled no more than ten rail cars at a time.

8. Operation of the locomotive on the rail system was one of the most safety sensitive positions at the Champion sawmill. With the rail cars fully load at 50 to 60 tons per car, the train would be carrying more than 500 to 600 tons, not including the weight of the engine. Whenever in motion, the train represented a significant potential hazard to any person or object in its path.

9. A two person crew, each an engineer/brakeman, operated the train at the Libby sawmill. Acting as engineer, one would run the locomotive. Acting as a brakeman, the other would be on the ground directing the movement of the train. When he worked on the train at the sawmill as an engineer/brakeman, Joe Daniels performed in a satisfactory manner. Respondent had no complaints about his actual performance of that work.

10. On November 5, 1'990, Joe Daniels was arrested and charged with DUI, i.e., driving under the influence of alcohol. Daniels had been charged and convicted of the same offense on three prior occasions (December 1985, March 1987, and November 1987). At the time of each arrest, Daniels was not at work for respondent.

11. After his arrest, Daniels was released the following day on bail. Dan Miller testified that he learned informally of charging party's arrest but no formal action was taken until his hearing and sentence. Charging party remained in his position as engineer/brakeman until disposition of the charge.

12. On April 26, 1991, charging party was convicted on the November 1990 DUI charge. In connection with the same offense, he was also convicted of being an habitual offender for the second time. The court sentenced

Joe Daniels to 365 days in jail, fined him $1,010, suspended his driving license for one year, and ordered him to undergo in-patient alcoholism treatment. The court permitted charging party to participate in a work release program during his imprisonment. The work release program allowed charging party to go to his place of employment on each working day and then return to the county jail immediately after his work day was completed.

13. On April 29, 1991, Joe Daniels had a phone conversation with Champion's Human Resources Manager, Dan Miller. Daniels was then in jail. Charging party described to Miller the conviction and sentence and asked to make arrangements to return to his job under the terms of the work release program. Miller indicated that the respondent was willing to make arrangements to continue Daniels' employment, but that charging party would not be going back on the train. On that date, charging party was relieved of his duties and responsibilities as an engineer/brakeman.

14. On April 30, 1991, Joe Daniels and his union filed a grievance objecting to respondent's decision taking him off the job on the train.

15. On or about May 7, 1991, respondent reassigned charging party to the position of "pondman", where he worked pulling logs on the "pond" during the graveyard shift (midnight to 7:00 a.m.)

16. On May 18, 1991, Champion responded to Joe Daniels' grievance and refused to return him to work on the locomotive. Respondent advised Daniels and the union in writing as follows: '"

> When Joe Daniels had another conviction, it was because he missed no time from work due to the county jail's work release program that he was not terminated. If we are serious about an alcohol-free workplace and what that means, then we cannot turn our back on Joe's conduct and the effect it has on the rest of our employees if he were allowed to continue on the train.
>
> Presently Joe says he is having difficulty sleeping in the noisy jail and working

graveyard. We would be willing to investigate a job on another shift for him that does not include driving equipment.

His situation will be reviewed when he is released from jail regarding return to the locomotive.

17. Dan Miller testified that respondent's policy at that time was generally to "overlook" the first DUI conviction of an employee. If there was a second DUI conviction, the company would "watch it." If respondent learned of additional DUI convictions, then the company "would take a look at them".

18. At least one employee of the respondent, Neil Nelson, had five DUI convictions and was permitted to continue in his regular job at the Champion sawmill. In December 1990, Nelson received his fifth DUI conviction, was sentenced to jail, permitted to maintain his employment under the work release program, and required to attend an alcoholism treatment program. He retained his job with respondent as a fork lift operator. Nelson obtained assistance in retaining his job with respondent through its Employee Assistance Program (EAP program).

19. Dan Miller testified that he had no knowledge of Neil Nelson's DUI record until the hearing. He further testified that assistance given to employees through the EAP program was confidential and not furnished to the regular personnel office.

20. The union and Joe Daniels did not accept respondent's answer to his grievance. The matter was subsequently sent to arbitration. The arbitrator determined that the decision to remove charging party from his duties as an engineer/brakeman had not been in violation of the collective bargaining agreement, but Champion was required to keep Daniels technically in the position of an engineer/brakeman and maintain his rate of pay ($10.43 per hour). The arbitrator further required respondent to reconsider its reassignment decision within two months after charging party completed his sentence.

21. Two weeks after he started working as a pondman in May 1991, Joe Daniels developed carpal tunnel syndrome. He had worked at the pond for only two weeks. Charging party was surgically treated for the carpal tunnel syndrome. On July 15, 1991, Daniels' physician released him to return to work without restriction.

22. Respondent assigned charging party to the job of sawmill cleanup upon his return to work after July 15, 1991. According to charging party, he told Dan Miller that he had left the sawmill in 1968 because the sawdust there had caused problems with his lungs. Daniels testified that Miller responded by stating that respondent had no other jobs available and that if charging party did not like it, he could quit. At the hearing, Dan Miller denied ever speaking to charging party in that manner.

23. Daniels accepted the assignment to do cleanup in the sawmill. He testified that after he was assigned to the sawmill cleanup job, he experienced respiratory difficulties from the sawdust. He said he informed his supervisor of the problem and was provided with paper masks to use while working there. Daniels further stated that the masks did not relieve his difficulties.

24. Respondent had standard procedures for handling work related medical problems. Upon receiving information about an employee's medical problem at work, the company and the union would jointly make efforts to accommodate medical restrictions, including location of a more suitable position.

25. Although charging party testified at the hearing that he did seek medical treatment from his own physician on two occasions as a result of respiratory problems he was experiencing in the sawmill cleanup job and that he lost two days work as a result, Joe Daniels was unclear about whether he ever informed anyone that the paper masks were ineffective or that he had required medical assistance. He also acknowledged that he did not file a grievance or a worker's compensation claim related to the discomfort he was experiencing in that job.

26. Joe Daniels was not permitted to operate any heavy equipment after he was removed from his work on the train. While working the pond, he was not allowed to run the pond boat. While working cleanup in the sawmill, he was prohibited from driving even a small bobcat and was required to use only a hand shovel.

27. In September 1991, charging party successfully underwent treatment for alcoholism. He requested a 'leave of absence from respondent to attend the treatment and the leave was granted.

28. After undergoing alcoholism treatment, Joe Daniels was placed on house arrest. House arrest required him to remain at his home and to be available to take a breathalyzer test at any time while there. The breathalyzer equipment was placed in his residence. He remained in the work release program and returned to his job in the sawmill cleanup position.

29. On February 13, 1992, charging party was fully released from the terms of the DUI sentence of April 1991. Shortly after the completion of his sentence, he requested that respondent return him to his position on the locomotive.

30. On April 14, 1992, Dan Miller met with Joe Daniels concerning his request to return to work on the yard train. Union representatives, including union president Barry Brown, were present at the meeting. Charging party was advised that there was no opening for him on the locomotive because another employee, Don Rosenquist, had assumed the position on a permanent basis. It was respondent's understanding that Rosenquist had preference for the position under the collective bargaining agreement because of greater departmental seniority, I.e., years of service in a particular department credited to the employee.

31. There was no evidence presented that Don Rosenquist had any disabilities.

32. Joe Daniels had greater company-wide seniority, i.e., duration of total employment at the sawmill, than Don Rosenquist. Under the labor contract in effect in April 1992, Joe Daniels had a right, based on his company-wide seniority, to seek placement in the department of his choice after he was denied the opportunity to return to the locomotive because of Don Rosenquist's greater departmental seniority. It is possible that if Joe Daniels had exercised his company-wide seniority rights for placement, he might have replaced Don Rosenquist as engineer/brakeman on the locomotive on the basis of greater company-wide seniority rights. In any event, he

would have retained a position of employment, if not on the train then in the sawmill or the plywood plant, had he exercised those rights.

33. In order to exercise his company-wide seniority rights, Daniels was required to request a placement from respondent's personnel office within a seven day period after his request to return to the locomotive was denied. Charging party was informed of the placement time limit at the April 14, 1992 meeting. Daniels also had a right to file a grievance through his union objecting to the respondent's failure to return him to the train. Charging party did not make a placement request and did not file a grievance.

34. During the period that Joe Daniels served his sentence on the work release program, he was periodically the subject of jokes and ridicule by other employees concerning his removal from the train, his DUI convictions, the prohibitions on his driving any equipment, his use of a breathalyzer machine while he was on house arrest, and his inability to "have a couple of beers."

35. As a result of his DUI arrest and conviction for the fourth time, his sentence to jail and house arrest in April 1991, his placement on a work release program, his removal from work on the yard train, his affliction with carpal tunnel syndrome, his assignment to the job of sawmill cleanup, and respondent's failure to return him to the job of engineer/brakeman in April 1992, Joe Daniels suffered a serious depression. The depression was characterized by a sense of complete powerlessness, loss of interest in personal and recreational activities, malaise, and loss of self respect and self esteem. He felt angry and humiliated.

36. As a result of respondent's decision refusing to return him to the locomotive, Joe Daniels decided to go on voluntary layoff. He applied for and received unemployment compensation benefits.

37. By letter dated May 29, 1992, respondent advised charging party that its available labor pool was exhausted. Daniels was ordered to return to work for assignment within 10 days of his receipt of the letter and advised that if he did not return, he would be removed from the payroll as a "voluntary quit". Charging party did not

return to work as directed. Joe Daniels testified that he never received the May 29, 1992, letter, and that he was out of town at the time.

38. Respondent subsequently advised charging party by certified letter, dated June 24, 1992, that his name was being removed from the Champion payroll effective on that date. If he had any questions, he was instructed to contact the personnel services supervisor. Joe Daniels recalled at the hearing that he signed for the certified letter. He did not contact the respondent's personnel services supervisor. He testified at the hearing that he did advise his union about the letter, but told them "don't even bother fighting it." Daniels believed respondent did not want him working there any longer and that he "couldn't handle it anymore."

39. On November 1, 1993, Champion closed the Libby sawmill. Employees then working at the sawmill were eligible for severance benefits in accordance with terms negotiated between the company and the union. At the hearing, the terms and conditions of the severance benefits package was not introduced into evidence. IV.

OPINION

The Human Rights Act prohibits an employer from demoting, terminating, or taking other adverse action against an employee because of a disability. X49-2-303(1), M.C.A.; Martinell v. Montana Power Co., 886 P.2d 421 (Mont. 1994). In this case, Joe Daniels claims he was constructively discharged by Champion international because he suffered from alcoholism, from carpal tunnel syndrome, and from dust allergies. The analysis of whether a constructive discharge occurred is based on the "totality of the circumstances" and must be supported by more than the claimant's subjective point of view. Martinell, 886 P.2d at 435, citing Snell v. Montana-Dakota Utilities Co. 643 P.2d 841 (Mont. 1982). A three part review is used to determine whether a disabled individual has been subjected to unlawful, discriminatory treatment. Hearing Aid Institute v. Rasmussen, 852 P.2d 628, 632 (Mont. 1993). In the first stage, there must be proof that the charging party has established a prima facie case of discrimination by showing that: 1. he has a disability, i.e., a physical or mental impairment that substantially limits

one of more of his major life activities, or a record of such of an impairment, or a condition regarded as such an impairment;

2. he is able to perform the essential functions of the job in question, with or without a reasonable accommodation by his employer;

3. he was terminated, demoted or subjected to other adverse employment action; and,

4. he was replaced by ®r treated less favorably than a non-disabled employee, or the circumstances of the adverse action otherwise indicate that the disability was a motivating factor in the challenged employment decision. See, among others: White v. York International Corp., 45 F.3d 357 (10th Cir. 1995); Aikens v. Banana Republic, Inc., 877 F.Supp. 1031 (S.D. Tex. 1995); West v. Russel Corp., 868 F.Supp. 313 (M.D. Ala. 1994). Establishing the prima facie case creates a presumption that the respondent violated the Human Rights Act. Rasmussen, supra, 852 P.2d at 632. In the second stage, the burden shifts to the employer to rebut that presumption of discrimination by producing evidence of a legitimate, nondiscriminatory reason for the adverse action. Id. If the employer meets that burden, which is one of production not persuasion, then the charging party has an opportunity to establish that the nondiscriminatory reason offered by the respondent is only a pretext for discrimination. Id. "Pretext may be proved directly by persuading [the fact finder] that a discriminatory reason more likely motivated the employer, or indirectly, by showing that the employer's proffered explanation is unworthy of credence." Id.

Joe Daniels' claim that his rights under the Human Rights Act were violated is based on a challenge to a number of events occurring from the time he received his fourth DUI conviction in April 1991 through April 1992 when he was denied the opportunity to return to his regular job as an engineer/brakeman. Charging party argues that the chain of events leading to the constructive discharge began with the decision removing him from the locomotive and assigning him to the log pond with restrictions on his operation of equipment. It then continued with the decision to put him in the sawmill cleanup job. There, the restrictions on equipment use continued, and he was

exposed to conditions causing respiratory difficulties and aggravating his ability to heal from carpal tunnel surgery. It culminated in the decision in April 1992 refusing to return him to the locomotive job even though he had fully satisfied the terms of his sentence for the fourth DUI conviction.

The charging party contends that the initial loss of the locomotive job and the continuous restrictions on his operation of equipment were not necessary or job related, but decisions to discriminate against him because he was a recovering alcoholic. He also asserts that the assignment in the sawmill was made in disregard of his dust allergies that respondent knew about and refused to accommodate. Charging party further claims that in the year period after his fourth DUI conviction, Champion permitted other employees to ridicule and harass him because he suffered from alcoholism. Finally, Daniels argues that the April 1992 decision refusing to return him to the train job and giving the position to a nondisabled employee with less seniority was on account of his disabilities, unlawful, and the last act in a successful effort to force him out of the company.

An analysis of each event which charging party cites in support of his constructive discharge theory does not support a conclusion that Joe Daniels was illegally subjected to discrimination because of his disabilities. As discussed below, the evidence at the hearing did establish a prima facie case of discrimination against Daniels because he is a recovering alcoholic, but he did not prove that the reasons for respondent's actions were either illegitimate or a pretext for violating his rights. Charging party did not establish a prima facie case on his claims that he was subject to discrimination because he suffered from carpal tunnel syndrome or from dust allergies.

In April 1991, when the series of actions challenged by charging party began, there is no question that Joe Daniels suffered from alcoholism. Alcoholism is an illness which "produces significant, often acute, adverse physical and mental consequences" and is characterized by a person's habitual lack of self-control in the use of alcoholic beverages or a continuous abuse of alcoholic beverages "to the extent that his health is substantially impaired or endangered or his social and economic function is substantially disrupted." See: In the matter of the

American Indian Action Council, HRC Case #76-288 (Final Order, 10/1/76). It is a disabling condition for purposes of the Human Rights Act. X49-2101(15)(a), MCA.

The fact that charging party was convicted for the fourth time of driving while under the influence of alcohol, that he was classified as an habitual offender of that offense, and that part of his sentence included mandatory treatment for alcoholism was sufficient to establish that Daniels suffered from that disability. Alcoholism, however, did not render Joe Daniels unable to perform the duties and responsibilities of an engineer/brakeman for respondent. He worked on the train without incident throughout the 5'/2 month period after his arrest on the DUI charge until he was removed from the position. All of his arrests had been for conduct outside of work hours. The reassignment to the log pond in April 1991 was a demotion, a loss of prestige and responsibility for charging party even without a cut in pay or benefits. Taken as a whole, the circumstances indicated that charging party was removed from his job on the train because of his disability, i.e., because of respondent's knowledge that Joe Daniels had an habitual lack of self-control in the use of alcoholic beverages and a record of such conduct.

In response to the prima facie case, respondent produced sufficient evidence to show that the engineer/brakeman job was a highly safety sensitive position and that its decision to remove Joe Daniels from the train was legitimate and nondiscriminatory. Champion essentially argued that placement of a person suffering from alcoholism in a position of responsibility for moving 500-600 tons through its railyard and across public streets would present an unreasonable health and safety risk and would be contrary to its policy of an alcohol-free workplace. Such a safety related defense to a disability discrimination claim is permitted by express provisions of the Human Rights Act. X49-2-1 01(15)(b), MCA. See also: Haffner v. Conoco, Inc., 886 P.2d 947 (Mont. 1994) (where employment of disabled individual "may" subject that individual or others to harm, evidence is sufficient to meet burden of proof in responding to prima facie case of discrimination).

The charging party did not prove that the safety related defense offered by respondent was a pretext. When the decision was made to remove Joe Daniels from the train, he had not yet undergone treatment for his disability.

Aware that he had a prior record of lack of self-control in the use of alcoholic beverages and had abused alcohol outside the workplace, respondent had a reasonable basis for being concerned.

Considering that charging party was incarcerated in jail when he was not on the job and that he probably would not have access to any alcoholic beverages except during work hours, the concern remained reasonable even in light of the absence of any alcohol related problems in Daniels' work history. The decision to relieve Joe Daniels of his responsibilities as an engineer/brakeman in April 1992 and transfer him to a less safety sensitive position, subject to reconsideration after he had completed the terms of his sentence for the DUI conviction, was a reasonable accommodation to the charging party's illness.

Workplace harassment based on an employee's disability may constitute an unlawful, discriminatory practice. Cf., Harrison v. Chance, 797 P.2d 200, 204 (Mont. 1990) (recognizing sexual harassment as violative of 49-2-303, MCA). Unwelcome remarks or conduct which are directed against a person because of a disability must be sufficiently severe or pervasive to alter the terms and conditions of employment. In addition, actual or constructive knowledge of the harassment is essential to make the claim actionable against the employer. Id. The evidence presented by charging party in this case was insufficient to satisfy either of those elements in his contention that he was illegally harassed while employed by Champion from April 1991 through April 1992.

At the hearing, Joe Daniels testified that some of his coworkers made jokes about him and ridiculed him because of the restrictions on his operation of company equipment, the requirements imposed by his house arrest, the fact he could not go out after work for a "couple beers", and his loss of the job on the locomotive. Remarks directed to the inconveniences of his criminal sentence were not harassment on account of his disability, but aimed at his conviction. Charging party was unable to identify the harassers, suggesting the conduct was not so severe as to change the terms of his employment. He did not indicate that the comments were so frequent as to accomplish that result by pervasiveness. Daniels' testimony that he likely told his supervisor about some of the

remarks was too vague to put his employer on sufficient notice of the conduct to make the claim actionable against Champion.

In challenging the respondent's decision not to return him to the engineer/brakeman job after he fully satisfied the terms of his sentence, Joe Daniels again established a prima facie case of discrimination with proof that he had successfully undergone alcoholism treatment and that respondent had committed to making a good faith evaluation of his reinstatement request. There was an absence of evidence demonstrating that the prior safety concerns remained viable. The person retained in the position was not disabled and had less company-wide seniority than the charging party.

Champion's response to this aspect of the charge was sufficient to meet its burden of articulating a legitimate, nondiscriminatory reason for the action. According to Dan Miller, the question of whether charging party was qualified to return to the train was never reached because an employee with greater departmental seniority held the job in April 1992. Charging party's own witness, union president Barry Brown, confirmed that a person with greater departmental seniority would be given preference for a particular job in a department.

Joe Daniels might have been able to resume his position on the locomotive had he subsequently sought a placement in that department using his 30 year company wide seniority. He declined to seek the placement, did not file a grievance and took voluntary layoff instead. Charging party did not prove that respondent's reliance on departmental seniority in declining to reinstate him to the engineer/brakeman position was a pretext for disability based discrimination.

The charging party's contentions that respondent discriminated against him because he suffered from carpal tunnel syndrome and had dust allergies were not supported by sufficient evidence to establish a prima facie case of discrimination in either respect. When Joe Daniels experienced a flare up of the carpal tunnel problem after working as a pondman, he received a leave of absence, was treated surgically, and returned for work

on a medical release without restrictions. He was not reassigned to work on the pond. Although he did testify that placement in the sawmill cleanup job impaired the healing process from the surgery, it was unclear that respondent ever was notified of that problem or that it would have declined to accommodate any medical difficulties charging party was having.

The same absence of notice problem applied to Daniels' claim that the sawmill assignment was made without regard to his dust allergies. There was a noticeable lack of evidence that respondent was notified that Joe Daniels had respiratory problems which were not adequately alleviated by use of the paper dust masks. Nor can Champion be charged with knowledge of charging party's adverse reactions to the dust in the sawmill in 1968. Respondent did not own the facilities at that time. Without proof of sufficient notice to respondent that charging party did suffer from those afflictions, the claims that Champion discriminated against Joe Daniels on the basis of those disabilities cannot be sustained.

For the foregoing reason's, charging party failed to prove that he was constructively discharged by respondent because of his disabilities and in violation of his rights under §49-2-303, MCA. His charge against Champion International must be dismissed.

V.

CONCLUSIONS OF LAW

1. While employed by respondent, charging party did suffer from physical and mental disabilities as defined in §49-2-101(15), MCA.

2. Respondent did not refuse to return charging party to the position of engineer/brakeman because of a disability in April 1992 and in violation of his rights under §49-2-303, MCA.

3. Respondent did not constructively discharge charging party because of a disability and in violation of his rights under §49-2-303, MCA.

4. Pursuant to §49-2-507, MCA, respondent is entitled to dismissal of the charge in this case.

VI.

FINAL ORDER

1. Judgment is found in favor of Champion International and against Joe Daniels on the charging party's complaint that respondent denied him employment opportunities and constructively discharged him in violation of his rights under the Human Rights Act.

2. The charge of Joseph Daniels against Champion International in the above entitled case is hereby dismissed.

DATED this 29th day of February, 1996.

S. Jane Lopp, Chair
Montana Human Rights Commission

Commissioners Etchart, Ogren, Stevenson and Svee concur

CERTIFICATE OF SERVICE

The undersigned employee of the Montana Human Rights Commission certifies that a true copy of the foregoing Findings of Fact, Conclusions of Law and Final Order was mailed to the following persons by U.S. Mail, postage prepaid, on this 29th day of February, 1996.

Heidi Fanslow, attorney for charging party, P.O.Box 3038, Kalispell, MT 59903
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Montana Human Rights Commission