

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

Case No.: 0031010549

CHARLES BILBRUCK,  
Petitioner,

-v-

BURLINGTON NORTHERN SANTA FE  
RAILROAD,

Respondent.

**ORDER AFFIRMING FINAL  
AGENCY DECISION**

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On August 3, 2004, the Hearings Bureau issued a Final Agency Decision in the above-captioned matter. Respondent, Burlington Northern Santa Fe Railroad (BNSF), filed its objections with the Montana Human Rights Commission (Commission). Oral argument was requested. Jeff Hedger appeared and argued on behalf of Respondent, BNSF. Terry Treiweiler appeared and argued on behalf of Charging Party, Charles Bilbruck. The Commission considered the matter on November 19, 2004.

At the hearing before the Commission, BNSF asserted Bilbruck may be qualified to hold this particular entry-level position today, but that in time his position with the railroad and his health condition would evolve. As such, BNSF contends the undisputed health risks that statistically accompany morbid obesity prevent Bilbruck from being qualified for this uniquely safety sensitive position at the railroad. Further, BNSF argued it did not regard or perceive Bilbruck as disabled. BNSF contended it did not consider Bilbruck incapable of performing a 'class of jobs' or in a 'broad range of jobs.'

Additionally, BNSF argued that although the damages are certainly minimal, the amount awarded has no basis in fact.

In response, Bilbruck argued he was qualified for the position. In support of this, Bilbruck noted that BNSF personnel on the ground in Glendive, Montana ranked Bilbruck in the top third of the applicants and Bilbruck was given a conditional offer of employment. Soon thereafter, BNSF retracted its offer, sight unseen, because of his height to weight ratio (Body Mass Index). Later, Bilbruck went through an individualized assessment conducted by a Montana physician. Bilbruck asserted the weight of the evidence shows that he was not at risk and could actually perform the position he applied for with BNSF. Bilbruck contended BNSF failed to present any evidence that Bilbruck was in fact a risk, choosing instead to rely on stereotypes for persons with morbid obesity. Finally, Bilbruck argued that the record clearly established sufficient grounds for the damages were awarded.

After careful and due consideration, the Commission concludes that the Final Agency Decision in this matter is supported by competent substantial evidence and complies with essential requirements of law.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision in the district where the petitioner resides, where petitioner's maintains its principal office, or where the agency maintains its principal office. See Mont. Code Ann. § 2-4-702.

IT IS HEREBY ORDERED, that Charging Party's objection is overruled. The

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Commission adopts the Final Agency Decision issued by the Hearings Bureau.

DATED this \_\_\_\_ day of November 2004.

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Chair Gary Hindoien  
Human Rights Commission

## CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on November \_\_\_\_ 2004.

TERRY TRIEWEILER  
MELOY TRIEWEILER  
PO BOX 1241  
HELENA MT 59624

JEFF HEDGER  
HEDGER MOYERS LLP  
1555 CAMPUS WAY SUITE 201  
BILLINGS MT 59102

MARIEKE BECK  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF LEGAL SERVICES  
PO BOX 1728  
HELENA MT 59624-1728

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Montana Human Rights Bureau