

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LOUIS M. MELE,

Charging Party,

-v-

BURLINGTON NORTHERN SANTE FE
RAILROAD,

Respondent.

Case No.: 0051011229

**ORDER AFFIRMING FINAL
AGENCY DECISION**

On January 13, 2006, the Department of Labor and Industry's Hearings Bureau issued a Final Agency Decision in the above-captioned matter. Respondent, Burlington Northern Santa Fe Railroad (BNSF), filed an appeal with the Montana Human Rights Commission (Commission). Charging Party, Louis M. Mele (Mele), filed a cross-appeal. The parties requested oral arguments. Jeff Hedger appeared and argued on behalf of Respondent, BNSF. Brian Bramblett appeared and argued on behalf of Charging Party, Mele. The Commission considered the matter on May 8, 2006.

In briefing, BNSF assigned three errors to the Final Agency Decision. BNSF asserted that the Hearings Officer incorrectly concluded that BNSF regarded Mele as disabled. BNSF noted that Mele does not have lifting restrictions and has continued to perform in his current position. Next, BNSF argued that the Hearings Officer erred in determining BNSF did not appropriately determine that Mele was at an increased risk of harm based on an "individualized assessment." BNSF notes that there is no *per se*

requirement than an employer speak directly with the applicant. Finally, BNSF contends that the damage award was incorrect and speculative.

In Mele's cross-appeal, Mele argued that it was error for the Hearings Officer to limit the amount of front-pay damages. Mele contends the limitation is speculative.

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. The Commission **affirms** the Final Agency Decision. BNSF's appeal is denied and Mele's cross-appeal is denied. The Commission adopts and incorporates the Final Agency Decision issued by the Hearings Bureau.

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.

DATED this ____ day of June 2006.

Chair Franke Wilmer
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 June ____ 2006.

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