BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

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MITCHELL REINHARDT, Charging Party, -v- BNSF RAILWAY COMPANY, Respondent,	Case No. 748-2008 HRB Case No. 0071012381 ORDER TO REMAND

Charging Party, Mitchell Reinhardt (Reinhardt) filed a complaint with the Human Rights Bureau, Department of Labor and Industry (Department) on April 5, 2007, and an amended complaint on September 7, 2007, alleging discrimination in employment by BNSF Railway Company (BNSF) on the bases of disability and age.

Following an informal investigation, the Department determined that a preponderance of the evidence supported Reinhardt's allegations of unlawful discrimination. The matter next went before the Hearings Bureau of the Department of Labor and Industry, which held a hearing pursuant to Mont. Code Ann. § 49-2-505. The hearing was conducted on August 3 and 7, 2009, and the hearing officer issued a decision on November 24, 2009. The hearing officer determined that Reinhardt failed to meet the burden of demonstrating that the adverse employment action against him was pretext for discrimination and, therefore, concluded that BNSF did not illegally discriminate in employment because of disability or age against Reinhardt.

Reinhardt filed an appeal with the Montana Human Rights Commission, which considered the matter on March 17, 2010. The Commission issued an Order on April 27, 2010, which affirmed, adopted and incorporated the decision of the hearing officer in its entirety.

Reinhardt filed a petition for judicial review in the First Judicial District Court, Lewis and Clark County, Montana on April 19, 2010 (BDV-2010-372). BNSF successfully petitioned for removal of the matter to federal court on the basis of diversity jurisdiction. The U.S. District

Court for the Montana District issued an Opinion & Order on February 6, 2012, which reversed the Commission's Order and remanded the matter for further proceedings.

The U.S. District Court determined that the Commission's analysis of BNSF's liability for the allegedly discriminatory acts against Reinhardt was incorrect as a matter of law. Specifically, the District Court determined that the evidence of discrimination presented by Reinhardt at the hearing constituted direct evidence of discrimination, which demanded legal analysis consistent with *Allison v. Town of Clyde Park*, 2000 MT 267, 302 Mont. 55, 11 P.3d 544; *Reeves v. Dairy Queen, Inc*., 1998 MT 13, 287 Mont. 196, 953 P.2d 703; and Admin. Rule Mont. 24.9.610(5).

ORDER

IT IS ORDERED, the Commission REMANDS this matter to the Hearings Bureau of the Department of Labor and Industry for further proceedings consistent with the Opinion & Order of the U.S. District Court of February 6, 2012.

IT IS FURTHER ORDERED, that in remanding this matter, the Commission directs the hearing officer to revisit the issue of liability of BNSF for the alleged unlawful discrimination against Mitchell Reinhardt on the bases of age and disability and, if appropriate, to determine appropriate affirmative relief and monetary damages, pursuant to Mont. Code Ann. §49-2-506. The hearing officer shall have the discretion to conduct any additional fact-finding necessary to determine harm and an appropriate award.

DATED this 27th day of February, 2012.

/lmminich/
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER TO REMAND was mailed to the following by U.S. Mail, postage prepaid, on this 27th day of February 2012.

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