



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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Charge Number: 444-2012-00745

Transportation Communications Union/IAM
3 Research Place
Rockville, MD 20850-3279

v.

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131

ZPK &W

MAR 26 2018

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DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge filed under Title I of the Americans with Disabilities Act of 1990, as amended (ADA); Title VII of the Civil Rights Act of 1964, as amended (Title VII) and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

The Respondent is an employer within the meaning of the ADA, Title VII and GINA and all requirements for coverage have been met. The charge alleged that the rights of BNSF employees represented by the Union were systematically violated with the implementation of Rule 26.3.1 in January 2012. The medical reporting policy required all employees to notify Respondent of medical conditions and/or events that occurred or were diagnosed while the employee was away from work, even if there was no reasonable basis for believing any condition or event impacted the employee's ability to perform his/her job and when the employee's own doctor placed no limitations on the employee's job activities. It also required the employee provide highly personal medical information and information likely to reveal a disability. This requirement was not job-related or consistent with business necessity and such information would likely result in Respondent obtaining genetic information. It was further alleged the policy discriminated against women affected by pregnancy and/or related medical conditions.

I have determined that the evidence obtained during the investigation establishes reasonable cause to believe that Respondent's Medical Requirements Rule from January 2012 through March 30, 2012, violates the ADA. Further, Respondent's return to work from off-duty/non-work related medical conditions process from January 2012 through the present violates the ADA. The process is overly broad and condition/event based, resulting in unlawful medical inquiries and fitness for duty exam requirements for a class of employees without objective medical evidence of direct threat or a reasonable belief of direct threat and/or that are not job related and consistent with business necessity. Respondent has required that employees be financially responsible for medical exam requests made by Respondent for its own fitness for

duty determinations in violation of the ADA. Further, the overly broad process is likely to improperly exclude employees from work during the review process.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution to this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of this determination. The remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent in fourteen (14) days, we may conclude that further conciliation efforts would be futile or nonproductive.

On behalf of the Commission,



Julianne Bowman
District Director

3/21/18

Date

cc: Carolyn Ritchie
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