

DJW/bh

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CURTIS SCHIPPER,

Plaintiff,

CIVIL ACTION

v.

No: 07-2249-JWL-DJW

**BNSF RAILWAY COMPANY,
a Railroad Corporation, et al.,**

Defendants.

ORDER

Pending before the Court is the Motion to Deem Objections to Written Discovery Waived (doc. 20) filed by Defendant BNSF Railway Company (BNSF). BNSF requests that the Court deem Plaintiff's objections to BNSF's opening interrogatories and requests for production waived. Plaintiff has filed no opposition to the motion.

BNSF states that Plaintiff served objections to the interrogatories and requests but simultaneously answered them. BNSF indicates that Plaintiff's responses and objections are attached; however, they are not included in the attached exhibits.¹

Rule 37.1 of this Court's Rules of Practice provides that any discovery motion directed at interrogatories or requests for production "shall be accompanied by copies of . . . the portions of the

¹No exhibits are attached to BNSF's motion. Although BNSF does attach exhibits to its supporting memorandum, those exhibits consist of (1) a duplicate copy of BNSF's supporting memorandum, and (2) *Plaintiff's* Opening Interrogatories to *Defendant*. These exhibits appear to be erroneously attached to the memorandum.

interrogatories, requests or responses in dispute.”² As BNSF has failed to comply with this requirement, the Court is unable to consider the merits of the dispute relating to BNSF’s interrogatories and requests. The Court will therefore deny the motion without prejudice to BNSF refiling the motion with the interrogatories and requests, and Plaintiff’s responses and objections thereto, attached to the motion.³ Any such renewed motion shall be filed within **ten (10) days** of the date of filing of this Order.

IT IS THEREFORE ORDERED that BNSF’s Motion to Deem Objections to Written Discovery Waived (doc. 20) is denied without prejudice.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 28th day of November 2007.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and pro se parties

²D. Kan. Rule 37.1(a).

³*See Oxford House, Inc. v. City of Topeka, Kan.*, No. 06-4004-RDR, 2007 WL 1246200, at *7 (D. Kan. Apr. 27, 2007) (denying motion to compel without prejudice for failure to attach copies of requests for production and responses at issue), *aff’d on recons.*, 2007 WL 1302539 (D. Kan. May 3, 2007); *C.T. v. Liberal School Dist.*, No. 06-2093-JWL, 2007 WL 1246219, at *3 (D. Kan. Apr. 27, 2007) (denying motion to compel without prejudice in part for failure to attach copies of requests for production at issue).