

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MICHAEL E. McKINZY, SR.,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 08-2365-CM
	)	
BURLINGTON NORTHERN SANTA FE	)	
RAILWAY,	)	
	)	
Defendant.	)	

**ORDER**

On March 15, 2010, the undersigned U.S. Magistrate Judge, James P. O'Hara, issued an order (doc. 134) granting the unopposed motion of the defendant, Burlington Northern Santa Fe Railway ("BNSF"), to order the pro se plaintiff, Michael E. McKinzy, Sr., to either comply with the court's December 18, 2009 order awarding fees to BNSF<sup>1</sup> or to show cause why this case should not be dismissed as a sanction for failure to comply with the court's orders. In its motion, BNSF requested the court award its fees and costs incurred in preparing and filing the motion.

Fed. R. Civ. P. 37(b)(2)(C) provides that a court may, as a sanction for failing to comply with a court order, require the disobedient party to pay the "reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Pursuant to this provision, the

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<sup>1</sup>On December 18, 2009, the undersigned awarded BNSF \$700.00 in fees incurred in bringing a motion to compel discovery (doc. 121).

court ordered that BNSF file an affidavit stating the time and related expenses incurred in filing its motion. The court also ordered McKinzy to show cause why the court should not require him to pay BNSF's fees and costs, which were incurred as a result of his failure to comply with the court's December 18, 2009 order.

On March 30, 2010, BNSF timely filed its fee petition and supporting affidavit (doc. 139). BNSF's counsel's affidavit states that BNSF incurred \$987.50 in fees associated with its motion for order. McKinzy has filed no response to the fee application, despite the requirement to do so in the show cause order. Thus, McKinzy has not attempted to demonstrate to the undersigned that his failure to comply with the December 18, 2009 fee award was substantially justified, or to demonstrate that other circumstances make an additional fee award unjust.<sup>2</sup>

The court therefore awards BNSF \$987.50 in fees incurred in filing its motion for an order directing McKinzy to comply with the first fee award or to show cause why the case should not be dismissed. The \$987.50 fee awarded herein is in addition to the \$700.00 fee awarded on December 18, 2009. McKinzy is again admonished that failure to comply with court orders, including show cause orders, may be grounds for dismissal as a sanction pursuant to Fed. R. Civ. P. 37(b)(2) and 41(b).

IT IS SO ORDERED.

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<sup>2</sup>The undersigned notes, however, that on March 16, 2010, McKinzy filed a motion for district court review of the undersigned's March 15, 2010 order (doc. 135). The motion for review is currently pending before U.S. District Judge Carlos Murguia.

Dated this 5th day of April, 2010, at Kansas City, Kansas.

s/James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge