

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KENNETH TRIMBLE,)	4:08CV3116
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
BNSF RAILWAY COMPANY,)	
)	
Defendant.)	

This matter is before the court on the defendant’s motion to compel discovery ([filing 18](#)). The motion will be granted.

On August 25, 2008, the defendant, BNSF Railway Company (“BNSF”) served the plaintiff, Kenneth Trimble (“Trimble”), with requests for admission, interrogatories, and requests for production of documents. When no responses were made to these discovery requests within the 30-day period prescribed by Federal Rules of Civil Procedure 33, 34, and 36, BNSF’s attorney sent a letter to Trimble’s attorney, on October 2, 2008, requesting responses within the next week. Responses to the requests for admission were provided on October 14, 2008, and Trimble’s attorney, Joy Shiffermiller, stated in an accompanying e-mail that she would “get [BNSF] the other responses soon.” The responses were not forthcoming, however. On October 27, 2008 and November 7, 2008, BNSF’s attorney left phone messages for Ms. Shiffermiller to return her calls so that they could discuss Trimble’s failure to respond to the interrogatories and requests for production. When these phone calls were not returned by November 12, 2008, the motion to compel discovery was filed. No response has been made to the motion, either.¹

¹ The motion’s response deadline was December 1, 2008.

Because BNSF's attorney has attempted to confer with Ms. Shiffermiller, *see* [Fed.R.Civ.P. 37\(a\)\(1\)](#) and [NECivR 7.1\(i\)](#), and because no objections have been interposed to the interrogatories or requests for production of documents, BNSF's motion to compel discovery will be granted, and Trimble will be ordered to answer the interrogatories and to produce the requested documents by December 31, 2008. Failure to comply with this order will result in the imposition of sanctions by the court. *See* [Fed.R.Civ.P. 37\(b\)\(2\)](#).

Also, because the motion to compel discovery is granted, "the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, . . . or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." [Fed.R.Civ.P. 37\(a\)\(5\)\(A\)](#). BNSF therefore will be directed to file an application for such fees and expenses by December 15, 2008, and Trimble and Ms. Shiffermiller will be directed to respond to such application by December 31, 2008.

IT IS ORDERED:

1. The defendant's motion to compel discovery ([filing 18](#)) is granted. The plaintiff shall serve answers to all of the interrogatories and produce all of the requested documents no later than December 31, 2008.
2. On or before December 15, 2008, the defendant shall file an application for an order requiring payment of its reasonable expenses incurred in making the motion, including attorney's fees, by the plaintiff, the plaintiff's attorney, or both. The plaintiff and his attorney shall have until December 31, 2008, to file a response to such application.

December 4, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge