

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

KENNETH BRANTLEY,	)	
	)	
Plaintiff,	)	4:12CV3215
	)	
v.	)	
	)	<b>MEMORANDUM</b>
BNSF RAILWAY COMPANY,	)	<b>AND ORDER</b>
	)	
Defendant.	)	
_____	)	

Defendant has filed a Motion for Sanctions and Dismissal (Filing [58](#)) based on Plaintiff’s alleged failure to attend an agreed-upon and noticed deposition. Defendant alleges that the Motion for Sanctions and Dismissal is the third motion it has filed in this case due to “plaintiff’s refusal to participate in the discovery process.” (Filing [58](#) ¶ 6.) The motion requests dismissal of Plaintiff’s amended complaint with prejudice as a sanction for Plaintiff’s failure to attend his deposition, as well as \$1,085.00 in costs and fees incurred in scheduling and attending the deposition and \$200.00 in attorneys’ fees for bringing the motion.

IT IS ORDERED that Defendant’s Motion for Sanctions and Dismissal (Filing [58](#)) is referred to Magistrate Judge Zwart for disposition of the requests for costs and fees and for a Findings and Recommendation regarding the motion to dismiss Plaintiff’s amended complaint with prejudice as a sanction for Plaintiff’s failure to attend his deposition.

DATED this 28<sup>th</sup> day of October, 2013.

BY THE COURT:  
*Richard G. Kopf*  
Senior United States District Judge

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