

Equal employment opportunity commission

[Sociology](#), [Empowerment](#)



ABSTRACT

With the competitive business environment today, many firms tend to minimize their costs of business operation especially in terms of staff expenses in order to maximize profit. Therefore work place is critical to many employers to the extent that employers use genetic testing to ascertain *genetic characteristics and deficiencies of their employees in many firms today.*

However the unfolding event of the Burlington Northern Santa Fe Railway company settlement to compensate its 36 employees whom it tested without their consent gives a new awakening to examine whether it was fair to settle at \$2.2 million as compensation. This dissertation shall look at the circumstances surrounding the settlement of the law suit prior to trial, in relation to different positions of the various stakeholders pertaining to the lawsuit.

In the business world today there are a number of problems arising from organizational which professionals in the business need to handle ethically (Brian, 2005, p. 92). Business ethics involves examining these emerging problems in the business environment such as, fiduciary responsibility, corporate governance and corporate social responsibilities (CSR) that encompasses shareholders relations, human resource management issues, discrimination at work place.

In this case of Burlington Northern Railway company that surrounds genetic testing of its employees without their consent, CSR is relevant because it deals with ethical duties and rights that exist between the company and society (Brian, 2005, p. 16).

Organizations should take into consideration the societal interests in its operation impacts on the community of shareholders, suppliers, customers and employees. The organization's obligation is more to statutory obligation to comply with the law regarding social responsibilities but take extra steps in to improve the life of employees and their families, local community and society at large where they are located. This gives the role the organization should play in the social welfare of the society.

Equal Employment Opportunity Commission settled the case of Northern Burlington and Santa Fe Railway Company. That ruled 36 workmen who were unknowingly were involved in a genetic test without their knowledge and consent by the company, shall be given \$2.2 million as compensation in 2002. The outstanding question remains to be, what wrong did the NBFR do to be penalized as such (Brian, 2005, p. 52) . In fact the NBFR denied wrong doing nor EEOC did not determine if the act was illegal in its settlement. NBFR admitted to have conducted undisclosed genetic test to their employees together with comprehensive medical check up after they filed a complaint on the CTS (carpal tunnel syndrome) which was resulting from working conditions of the firm (Brian, 2005, p. 123) .

The firm wanted to pilot DNA test to establish the existence of CTS amongst its employees so that it can be a fair beginning for looking into the claims by their employees which they filed against them regarding carpal tunnel syndrome that resulted from firm activities. The shocking aspect is that the settlement was done before trial in a court of law and therefore the question whether the settlement was justified or not, relied extensively on those circumstances.

The major circumstance surrounding the settlement was the fact that during summer that year 2002 democratic legislators together with senator tom Daschle had purpose to co-sponsor Genetic Nondiscrimination in Health Insurance and Employment Act. This bill had provision to bar Insurance companies from using genetic testing information to make decisions on medical coverage policies and premiums determination for their clients. The bill would also prevent employers from using DNA tests to make

decision as salary and wages determination, staff recruitment and promotion declaration.

In addition the bill provided for victims of genetic testing discrimination to sue their employer for uncapped damages that are caused by the insurance company or employer (Brian, 2005, p. 236). The contradiction came in from the opposing force from the republican legislators, health insurance associations of America and employers organization. Secondly was by virtue of the EEOC handling the NBFRC case as the first one contributed to the kind of settlement arrived at (Brian, 2005, p. 87). Despite of these circumstances the justification of the act towards the employees and settlement reached is in doubt.

Legally there are many avenues for the victims of genetic testing discrimination in United States which ranges from the ADA (The Americans with Disability Act.) which is the expansion of the Civil Right Act 1964, fourth amendments constitutional prohibiting on illegal search and seizures, title vii of the civil right act and individual state legislation prohibiting discrimination in the work place on the basis of results of genetic testing. However within law there are loop holes that did not adequately give the directions to address the suit properly.

Because policy framework of ADA focuses on persons with disabilities being safeguarded against discrimination based on gene testing from employer, but does not explicitly address the genetic testing problem rather aims at protecting disabled. Secondly is the scope of its definition of the disabled person being an individual who is mentally or physically impaired that this impairment limits some life activities (Brian, 2005, p. 271).

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Therefore the court at Norman- Bloodsaw in order to arrive at a settlement NBFR classified railway case victims under the definition of ADA (Brian, 2005, p. 193) . ADA does also provide for the business to maintain viable transaction through permitting the business to perform medical examination to its employees that is work related and consistent with business necessity. The railway can base their justification to conducting the DNA test out of business necessity.

The basis of the court settlement stated that railway performed undisclosed for the rare condition which is unrelated to the the work. But NBFR can argue that it performed specific conditions that affects the nature of railway work work, which is the CTS, a musculoskeletal disorder that causes pain and numbness in the hand. While consent of the employees was carted for, from their actions which constituted permission since they filed complain to the railway as their employer and workers organization (Brian, 2005, p. 69).

However scientists disagree to as whether the genetic test which was conducted could give accurate result despite trying to establish an extremely rare conditions. Additionally the DNA tests do not in any way predict the future health of an individual, therefore test is rendered unnecessary and violation of employees right by scientists critics.

The other side of the argument could be the significant of genetic test to the railway company as need to protect itself from the possible tort liability in insurance transactions under the theory of employer negligence therefore likely to face responsibility in respect to third party. The worker cover policy purchased by railway may back fire to the company if it did not have adequate data in insuring its workers. Secondly the railway company might

have feared its workers compensation programs are not fully addressing genetic predispositions that may leave NBFR liable to its employees (Brian, 2005, p. 245).

The reasons however can provide the NBFR with the ground upon which its argument can rest, but like any other businesses its aim is to maximize profit and minimize losses through price containment. Therefore this tests would help to manage human resources well, to cut down costs that are arising from workers compensation and put up with federal regulatory legislation like OSHA that demand work place safety (Brian, 2005, p. 81).

In conclusion the issues a round the settlement of NBFR was settled unfavorably prior to trial to the railway company as it was costly. But the issue is lack of federal prohibition to use of genetic information by the employer. Secondly there was no evidence by EEOC to prove that Burlington Northern Santa Fe Railway company used the test to discriminate against any employee at work and in any way NBFR did not violet ADA law.

In addition employer need to cut down losses that arises from workers absent ism, high insurance costs and retraining workers costs to replace those that have ultimately left the railway company. Basing on a moral perspective the railway company had no right whatsoever to take a DNA test of its employees without their consent because each individuals privacy should be respected and protected. Therefore there is need to balance the competing interests in the society which comes from the egoistic nature of human beings that makes people strive to satisfy there own interests, but balance should come in to have regulation that benefits employer and his employee.

REFERENCE

Solomon B., (2005) *Burlington Northern Santa Fe Railway*; Minneapolis, MBI
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