

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JAN 20 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MATT O'DEA,

Plaintiff - Appellee,

v.

BNSF RAILWAY COMPANY,

Defendant - Appellant,

and

MONTANA DEPARTMENT OF LABOR  
AND INDUSTRY; MONTANA HUMAN  
RIGHTS COMMISSION,

Defendants.

No. 08-35525

D.C. No. 6:07-CV-00069-CCL

ORDER\*

Appeal from the United States District Court  
for the District of Montana  
Charles C. Lovell, District Judge, Presiding

Argued and Submitted January 13, 2010  
Seattle, Washington

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: KLEINFELD and TALLMAN, Circuit Judges, and SETTLE,\*\* District Judge.

We lack jurisdiction over an appeal from a remand order entered due to a lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447; *Carlsbad Tech. Inc. v. HIF Bio, Inc.*, --- U.S. --- , 129 S. Ct. 1862, 1865–66 (2009). Costs on appeal are awarded to Appellee. *See* Fed. R. App. P. 39.

**DISMISSED.**

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\*\* Honorable Benjamin Hale Settle, United States District Judge for the Western District of Washington, sitting by designation.