

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

TIMOTHY HERRING,

ARB CASE NO. 2022-0061

and

**ALJ CASE NOS. 2022-FRS-00029
2022-FRS-00030**

MICHAEL LOCKMILLER,

DATE: September 26, 2022

COMPLAINANTS,

v.

SOUTH CENTRAL FLORIDA EXPRESS

RESPONDENT.

Appearances:

For the Complainants:

James R. Ferguson, Esq.; *Law Office of H. Chris Christy*, North Little Rock, Arkansas

For the Respondent:

Brian McPherson, Esq.; *Gunster, Yoakley & Stewart, P.A.*; West Palm Beach, Florida; Eduardo Suarez-Solar, Esq.; *Gunster, Yoakley & Stewart, P.A.*; Tampa, Florida

Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

ORDER OF DISMISSAL

PER CURIAM. This case arises under the employee protection provision of the Federal Railroad Safety Act of 1982 (FRSA).¹ On August 26, 2022, Complainants

¹ 49 U.S.C. § 20109, as implemented by 29 C.F.R. Part 1982 (2021) and 29 C.F.R. Part 18 (2021), Subpart A.

filed a Petition for Review with the Administrative Review Board (Board). Complainants requested review of the Dismissal Order issued July 28, 2022, by Administrative Law Judge Heather C. Leslie. On August 30, 2022, the Board issued an Order to Show Cause for Complainants to show cause why the Petition for Review should not be dismissed as untimely.

On September 20, 2022, Complainants filed a Notice with the Board indicating that on August 29, 2022, they had filed an original action pursuant to 49 U.S.C. § 20109(d)(3), with the United States District Court for the Southern District of Florida, seeking de novo review. Therefore, Complainants requested that the Board “close the pending action before the United States Department of Labor Administrative Review Board.”²

Accordingly, we **GRANT** Complainants’ request to withdraw the Petition for Review and **DISMISS** this appeal.

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge

² Complainant’s Notice of Federal Court Filing at 1.