

**U.S. Department of Labor**

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



**IN THE MATTER OF:**

**TRISTAIN K. COLE,**

**ARB CASE NO. 2024-0030**

**COMPLAINANT,**

**ALJ CASE NO. 2023-FRS-00071**

**ALJ JOHN P. SELLERS, III**

**v.**

**DATE: May 28, 2024**

**CSX TRANSPORTATION,**

**and**

**WHEELING & LAKE ERIE  
RAILWAY CO.,**

**RESPONDENTS.**

**Before HARTHILL, Chief Administrative Appeals Judge, and THOMPSON,  
Administrative Appeals Judge**

**DECISION AND ORDER DISMISSING PETITION FOR REVIEW**

**PER CURIAM:**

This case arises under the Federal Rail Safety Act of 1982 (FRSA), as amended, and its implementing regulations.<sup>1</sup> Complainant Tristain K. Cole (Complainant) alleges that Respondents CSX Transportation (CSX) and Wheeling & Lake Erie Railway Company (Wheeling) (collectively, Respondents) violated the FRSA by retaliating against him for engaging in protected activity. On February 29, 2024, a United States Department of Labor Administrative Law Judge (ALJ) dismissed Complainant's complaint because it was not timely filed with the Occupational Safety and Health Administration (OSHA).

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<sup>1</sup> 49 U.S.C. § 20109; 29 C.F.R. Part 1982 (2023).

On March 13, 2024, Complainant petitioned the Administrative Review Board (ARB or Board) for review of the ALJ's decision. On March 25, 2024, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order). Under the terms of the Briefing Order, Complainant was ordered to file his Opening Brief by April 22, 2024. Complainant did not file an Opening Brief.

Consequently, on May 7, 2024, the Board issued an Order to Show Cause and Clarify Filing (Order to Show Cause) ordering Complainant to explain why the Board should not dismiss the appeal for failure to comply with the Board's orders and briefing requirements.<sup>2</sup> The Board cautioned Complainant that if the Board did not receive a response and opening brief within ten business days of the Board's Order to Show Cause, the Board may dismiss the appeal without further notice.<sup>3</sup> Nevertheless, Complainant did not file a response or an opening brief as ordered.<sup>4</sup>

The Board has the inherent power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.<sup>5</sup> Pursuant to this authority, the Board may dismiss an appeal in a case in which the petitioner fails to adequately explain their failure to comply with the Board's orders, including the briefing schedule.<sup>6</sup>

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<sup>2</sup> Order to Show Cause at 1-2.

<sup>3</sup> *Id.* at 2.

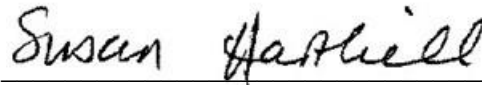
<sup>4</sup> On March 21, 2024, Complainant filed a complaint in the United States District Court for the Northern District of Ohio (Federal Complaint), which included a count for "Violation of Federal Rail Safety Act." Complainant filed a file-stamped copy of the Federal Complaint with the Board on April 2, 2024. It was unclear whether the Complainant intended to invoke his right to pursue his FRSA claim against Respondents de novo in federal district court in lieu of these administrative proceedings. *See* 29 C.F.R. § 1982.114(a). Consequently, in the Order to Show Cause, the Board ordered Complainant to notify the Board within ten business days if he intended to pursue his claim de novo in federal district court. Order to Show Cause at 2-3. Complainant did not respond.

<sup>5</sup> *Lewman v. Ken Brick Masonry Supply*, ARB No. 2007-0015, ALJ No. 2006-STA-00018, slip op. at 3 (ARB Oct. 31, 2007) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)).

<sup>6</sup> *Boch v. J.P. Morgan Secs.*, ARB No. 2022-0029, ALJ Nos. 2020-CFP-00002, 2020-SOX-00004, slip op. at 2 (ARB June 15, 2022) (citation omitted) (dismissing the appeal where the appealing party failed to respond to, and comply with, the Board's orders).

Complainant failed to file an opening brief as ordered by the Board. The Board then gave Complainant the opportunity to explain why Complainant failed to file an opening brief, and explicitly warned that failure to do so could result in dismissal of this appeal. Again, Complainant did not file a response. Given Complainant's failure to respond to, and comply with, the Board's orders, we **DISMISS** the appeal.<sup>7</sup>

**SO ORDERED.**



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**SUSAN HARTHILL**  
**Chief Administrative Appeals Judge**



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**ANGELA W. THOMPSON**  
**Administrative Appeals Judge**

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<sup>7</sup> In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the ARB.