



Issue Date: 23 April 2009

CASE NO: 2008-FRS-00006

In the Matter of:

**CHRISTOPHER A. GLORIA,
Complainant,**

v.

**BNSF RAILWAY CO.,
Respondent.**

DECISION AND ORDER
DISMISSING COMPLAINT

This matter arises out of a claim filed by the Complainant under the employee protection provisions of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53. The 9/11 Act was the result of a Conference Report, H.R. Rep. 110-259 (July 25, 2007) (Conf. Rep.). Section 1521 of the 9/11 Act amends the FRSA by modifying the railroad carrier employee whistleblower provision – both expanding what constitutes protected activity and enhancing administrative and civil remedies for employees to mirror those found in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”), 49 U.S.C. §42121. Additionally, the amended FRSA Section 20109 will follow the AIR21 procedure for adjudication at the Department of Labor.

Complaint proceedings under the FRSA are governed by the rules and procedures set forth in 49 U.S.C. § 42121(b). *See* 49 U.S.C. §20109(c)(2)(A). Except as provided in the regulations at 29 C.F.R. Part 1979 implementing the provisions of 49 U.S.C. § 42121(b), hearing proceedings are conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at 29 C.F.R. Part 18, Subpart A. *See* 29 C.F.R. §1979.107(a).

Section 1979.111 of Title 29, C.F.R. allows for withdrawal of a complaint when the complainant files a written request asking that the complaint be withdrawn. The regulation states, in relevant part:

(c) At any time before the findings or order [of the Assistant Secretary of Labor for Occupational Health and Safety] become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved.

29 C.F.R. § 1979.111 (c).

Complainant, by and through counsel, filed a Motion to Withdraw his Complaint on April 23, 2009. Complainant determined it was in his best interest to pursue his claim under the Railway Labor Act proceeding which is currently pending and voluntarily withdrew his objections to the findings of the OSHA Administrator, dated June 30, 2008.

In light of Complainant's decision to pursue the other pending claim, it appears the issues raised in the instant case are now moot. Therefore, Complainant's request for withdrawal of the complaint filed in the above-captioned matter is **HEREBY APPROVED** and this claim is **DISMISSED**.

IT IS SO ORDERED.

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ROBERT B. RAE

U. S. Administrative Law Judge

Washington, D.C.

NOTICE OF REVIEW: Review of this Decision and Order is by the Administrative Review Board pursuant to ¶¶ 4.c.(43) of Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Regulations, however, have not yet been promulgated by the Department of Labor detailing the process for review by the Administrative Review Board of decisions by Administrative Law Judges under the employee protection provision of the Federal Railroad Safety Act. Accordingly, this Decision and Order and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave, NW, Washington DC 20210. *See generally* 5 U.S.C. § 557(b). However, since procedural regulations have not yet been promulgated, it is suggested that any party wishing to appeal this Decision and Order should also formally submit a Petition for Review with the Administrative Review Board.