



Issue Date: 24 November 2010

CASE NO.: 2009-FRS-00012

In the Matter Of:

LARRY W. ELLIS,
Complainant,

v.

METRO-NORTH COMMUTER RAILROAD CO. INC.,
Respondent.

**ORDER DISMISSING COMPLAINT BASED ON LACK OF JURISDICTION,
BECAUSE COMPLAINANT HAS FILED ACTION IN DISTRICT COURT**

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109. Governing regulations are at 29 C.F.R. part 1982.

By submission dated October 18, 2010, through counsel, Complainant notified me that he intended to file an original action in United States District Court, as authorized in the governing statute. By Order dated November 2, 2010, I directed the Complainant to file a copy of his District Court complaint, and informed him that, upon receipt of the docketed complaint, the matter before me would be dismissed.

On November 19, 2010, through counsel, Complainant complied with my Order, and submitted a copy of his docketed District Court complaint. His action was filed in United States District Court, Southern District of New York, on November 10, 2010 (Ellis v. Metro North Railroad Company (No. 10CV8507)).

As the Complainant has filed a complaint in District Court based on the same facts that constituted his action before the Office of Administrative Law Judges, jurisdiction in the latter has been divested. See *Stone v. Duke Energy Corp*, 432 F.3d 320 (5th Cir. 2005)(Sarbanes-Oxley case); see also *Kelly v. Sonic Automotive, Inc.*, ARB No. 08-027 (Dec. 17, 2008)(Sarbanes-Oxley case).¹

¹ Similar to the governing statute in this case, the employee protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A(b)(1)(B), permits an employee to file an action in district court if the Secretary has not rendered a final decision within a specified time period.

Because I no longer have jurisdiction over the instant matter, I dismiss it.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts