

U.S. Department of Labor

Office of Administrative Law Judges
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Washington, DC 20001-8002

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Issue Date: 05 November 2012

Case Number: 2012-FRS-00065

In the Matter of

**Randy Battenfield
Complainant**

v.

**Burlington Northern Santa Fe Railway Company (BNSF)
Respondent**

Appearances:

**Clint E. McGuire, Esq.
Law Firm of Alton C. Todd
Friendswood, Texas
For the Complainant**

**Andrea Hyatt, Esq.
Jennifer Willingham
Fort Worth, Texas
For the Respondent**

**ORDER OF DISMISSAL AND
CANCELLATION OF FORMAL HEARING**

This proceeding arises under the employee protection provisions of the Federal Rail Safety Act of 2007 ("FRSA" or "Act"), Title 49 United States Code Section 20109 and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on March 6, 2012 alleging Respondent discharged him in retaliation for reporting a work related injury. On July 31, 2012, the Secretary of Labor, acting through her agent, the Regional Administrator

of the Occupational Safety and Health Administration (“OSHA”), found no reasonable cause to believe Respondent violated the FRSA and dismissed the complaint. On August 8, 2012, Complainant filed objections to the Secretary’s Findings and requested a hearing before an administrative law judge. Pursuant to a notice issued by this tribunal on August 16, 2012, a hearing in this case is scheduled for December 13, 2012 in Tulsa, Oklahoma.

Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of a complaint, and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States. The district court shall then have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party, be tried with a jury. 49 U.S.C. § 20109(d)(3). If a Complainant commences an action in federal district court, the Secretary of Labor no longer has jurisdiction over the matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case).

On October 10, 2012, Complainant’s counsel filed with this tribunal a “Notice of Intention to File Original Action in United States District Court.”¹ More than 210 days have passed since Complainant originally filed his complaint with OSHA and there is no indication of bad faith. Therefore, based on counsel’s representations that Complainant intends to file an original action in federal district court, I am dismissing the case.² In the event Complainant fails to file an action in federal district court, any party may move to set aside this order of dismissal and reopen these proceedings.

Accordingly, it is hereby ORDERED that the complaint filed by Randy Battenfield on March 6, 2012 under the Federal Rail Safety Act, currently before the Office of Administrative Law Judges, is DISMISSED, without prejudice to its reinstatement if an action is not filed in federal district court.

IT IS FURTHER ORDERED that the formal hearing scheduled for December 13, 2012 in Tulsa, Oklahoma is hereby CANCELLED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

Washington, DC

Date Signed: November 5, 2012

¹ *See* 18 U.S.C. § 1514A(b)(1)(B).

² To date, this tribunal has not received notice that Complainant has actually filed an action in federal district court. While some administrative law judges require that a Complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action, I do not.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of the administrative law judge’s decision. *See* 29 C.F.R. § 1980.110(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

You must file an original and four (4) copies of the petition for review with the Board, together with one (1) copy of this decision. In addition, within thirty (30) calendar days of filing the petition for review you must file with the Board: (1) an original and four (4) copies of a supporting legal brief of points and authorities, not to exceed thirty (30) double-spaced typed pages, and (2) an appendix (one (1) copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within thirty (30) calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition of to the petition for review must include: (1) an original and four (4) copies of the responding party’s legal brief of points an authorities in opposition to the petition, not to exceed thirty (30) double-spaced typed pages, and (2) an appendix (one (1) copy only) consisting of relevant excerpts of the record of proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four (4) copies), not to exceed ten (10) double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the

administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).