

U.S. Department of Labor

Office of Administrative Law Judges
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Covington, LA 70433



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Issue Date: 10 December 2013

CASE NO.: 2012-FRS-86

IN THE MATTER OF

SERENA HOWELL

Complainant

v.

BNSF RAILWAY COMPANY

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 1979. See 49 U.S.C. §20109(c)(2)(A).

On August 2, 2013, through Counsel, Complainant notified that she intended to file an original action in United States District Court, as authorized in the governing statute.

On December 2, 2013, Complainant's Counsel submitted a notice of filing in the United States District Court for the Southern District of Texas.

As the Complainant has filed a complaint in District Court based on the same facts that constituted her 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

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

ORDERED this 10th day of December, 2013, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

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.

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 issuance of the administrative law judge's decision. 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. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1982.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one 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 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the 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 copies), not to exceed ten double-spaced

typed pages, within such time period as may be ordered by the Board.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(a).

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. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, 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 of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1982.110(a) and (b).