

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 April 2015

Case No.: 2012-FRS-00073

In the Matter of:

MICHAEL S. JENKINS,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Respondent.

ORDER ON REMAND DISMISSING COMPLAINT FOR ABANDONMENT

This matter arises from a complaint filed under the employee “whistle blower” protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (“FRSA”), and its implementing regulations at 29 CFR, Part 1982. Pursuant to federal regulations at 29 CFR §1982.107, the proceedings will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR §18.1 to §18.59) and Subpart B (29 CFR §18.101 to §18.1104).

On December 20, 2012, District Chief Judge D.A. Sarno, Jr. issued an “Order Granting Respondent’s Motion for Summary Decision” and dismissed the complaint due to untimely filing. The Complainant appealed the decision on January 7, 2013. By “Decision and Order of Remand” issued May 15, 2014,¹ the Administrative Review Board found that the complaint was timely filed and remanded the case for further proceedings. Following Judge Sarno’s retirement, the case was reassigned to this presiding Judge.

On February 20, 2015 Respondent’s counsel filed “Respondent CSX Transportation, Inc.’s Motion for Summary Decision” in the Office of Administrative Law Judges in Washington, D.C.. The Motion was received in this office on February 25, 2015. He avers that all issues involved in the current complaint were all settled by written agreement on or about June 19,

¹ ARB Case No. 13-029

2013, while an appeal was pending before the Administrative Review Board. He also avers that Complainant's counsel failed to respond to telephone calls in 2014 concerning dismissal of the current complaint and that Complainant's counsel has failed to respond to subsequent written inquiries presented on August 4, 2014 and November 6, 2014. He seeks to have the current complaint dismissed.

It is specifically noted that Complainant's counsel has failed to respond to the Motion for Summary Decision notwithstanding the provisions of 29 CFR §18.40(a) that a response be filed no later than 10 days after service. In this case the date for filing a response was Monday, March 2, 2015. It is also noted that there is no indication that a written settlement agreement was filed for approval with the Administrative Review Board while the case was pending at that level or with this presiding Judge, as provided for in 29 CFR §1982.111(d)(2). Finally, it is noted that Complainant's counsel has been non-responsive to telephonic inquiries from legal staff of this office.

By Order of March 26, 2015, the Complainant was directed to "show cause" why the complainant should not be dismissed for reason of abandonment since there has been no response from Complainant or Complainant's counsel to inquiries for over one year. The March 26, 2015 Order was served on the counsel of record for both Parties on March 26, 2015 by facsimile transmission and was mailed to the Complainant at his address of record on March 26, 2015. The Order directed a response be filed by 2:00 PM, Tuesday, March 31, 2015. All recipients were advised in bold type that failure to respond may result in the request for hearing being dismissed without further proceedings.

No response from any counsel or the Complainant has been received.

After review of the administrative file, **it is hereby ORDERED that the above captioned matter is DISMISSED.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia