

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 04 April 2012**

Case No.: **2012-FRS-00021**

In the matter of

**WILLIAM MCKAY,**  
Complainant

v.

**CSX TRANSPORTATION, 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 CFR part 1979. See 49 U.S.C. § 20109(c)(2)(A).

On February 23, 2012, through counsel, Complainant notified me that he intended to file an original action in United States District Court, as authorized in the governing statute.

On March 7, 2012, Complainant's counsel submitted a notice of a filing in the United States District Court for the Northern District of Georgia.

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 (5<sup>th</sup> Cir. 2005)(Sarbanes-Oxley case); see also Kelly v. Sonic Automotive, Inc. ARB No. 08-027 (Dec. 17, 2008)(Sarbanes-Oxley case).<sup>1</sup>

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

So Ordered.

**A**

RICHARD K. MALAMPHY  
Administrative Law Judge

RKM/ccb  
Newport News, Virginia

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<sup>1</sup> 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 of the Secretary has not rendered a final decision within a specified time period.