



Issue Date: 13 February 2013

Case No.: 2012-FRS-00072

In the Matter of

JOSEPH F. O'ROURKE
Complainant

v.

**NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)**
Respondent

ORDER OF DISMISSAL AND HEARING CANCELLATION

This matter arises under the employee 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 1982.¹ A formal hearing, scheduled to commence at 10:00 a.m., Friday, February 1, 2013, in Philadelphia, Pennsylvania, was previously postponed until further notice.

The Complainant filed a complaint on December 15, 2012, alleging that the Respondent retaliated against him in violation of the FRSA by issuing a letter of reprimand on or about September 2, 2012 and a negative performance evaluation or review on November 17, 2010; denying him a firearm and removing him from an investigation. In his Initial Submission filed in this matter, the Complainant also asserted that the Respondent's failure to retain him as an employee on June 10, 2011 also violated the FRSA.

On January 11, 2013, Complainant's counsel filed Complainant's "Notice Of Intention To File Original Action In United States District Court." During the January 16, 2013 teleconference I held on the record with the parties, counsel for Respondent indicated that Respondent had no objection to Complainant's intention to file an action in United States district court.

On February 13, 2013, Complainant's counsel submitted a copy of the complaint filed in the United States District Court for the Eastern District of Pennsylvania in Civil Action No. 13-603 which is date stamped as filed on February 1, 2013.² The complaint states, in part, that the

¹ Federal Register, Volume 75, pages 53522 to 53533 (August 31, 2010).

² The copy of the federal District Court complaint which Complainant's counsel submitted on February 12, 2013 was incomplete and was re-submitted in its entirety the following day at the request of this office.

United States District Court has jurisdiction under the FRSA, and involves the same issues in the above-captioned matter.

Under §20109(d)(3) of the FRSA, a de novo review of the complaint is permitted in the appropriate United States District Court if a final decision on the filed complaint has not been issued within 210 days after the complaint was filed, provided delay is not the result of bad faith of the complainant. Pursuant to implementing Federal regulations at 29 CFR §1982.114(b), a complainant is required to file notice of intention to file the complaint in U.S. District Court 15 days in advance of such filing with the federal District Court. The regulations also require that the complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while it is before the United States Department of Labor.

In this case, Complainant's counsel filed his notice of intent to file a complaint in federal District Court on January 11, 2013, and submitted a copy of a complaint filed with a federal District Court on February 13, 2013. Accordingly, I find that jurisdiction for further action on the complaint under the FRSA has been removed to the United States District Court for the Eastern District of Pennsylvania. I find further that the current cause of action must be dismissed and the postponed hearing canceled.

It is hereby ORDERED that the complaint filed with the United States Department of Labor on December 15, 2012 **is DISMISSED and the formal hearing previously postponed is CANCELED.**

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey