



Issue Date: 02 November 2012

CASE NO.: 2012 FRS 46

In the Matter of

MILES REIMER,
Complainant

v.

**CANADIAN NATIONAL RAILROAD &
DULUTH, MISSABE & IRON RANGE RAILWAY,**
Respondents

Appearances: Mr. Thomas W. Geng, Attorney
Mr. Keith E. Ekstrom, Attorney
Mr. Fredic A. Bremseth, Attorney
For the Complainant

Ms. Holly M. Robins, Attorney
Ms. Kathryn Mrkonich Wilson, Attorney
For the Respondents

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**APPROVAL OF WITHDRAWAL REQUEST &
DISMISSAL OF COMPLAINT**

This case arises under the employee protection provisions of the Federal Rail Safety Act of 2007 (“FRS” and “Act”), Title 49 United States Code Section 20109, as amended,¹ and implemented by 29 C.F.R. Part 1982. In general, Section 20109 provides for employee protection from employer discrimination because an employee has engaged in a protected activity pertaining to railroad safety or security, has requested medical or first aid treatment, or has followed orders or a treatment plan of a treating physician.

¹Pub. L. 103-272, §(e), July 5, 1994, 108 Stat. 867, and amended Pub. L. 110-53, Title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, Div. A, Title IV, § 419, Oct 16, 2008, 122 Stat. 4892.

Background

On April 1, 2011, Mr. Reimer filed a retaliatory discrimination complaint under the Act with the Occupational Safety and Health Administration (“OSHA”), U.S. Department of Labor (“DOL”), alleging that the Respondents terminated his employment as a conductor due to activities protected under the FRS.

On May 14, 2012, following an investigation of Mr. Reimer’s FRS complaint, the OSHA Assistant Regional Administrator, acting on behalf of the DOL Assistant Secretary, determined Mr. Reimer’s alleged protected activities were not contributing factors in the Respondents’ decision to terminate his employment.

In response, on June 13, 2012, through counsel, Mr. Reimer filed an objection to the Assistant Regional Administrator’s determination and requested a hearing.

Pursuant to a Notice of Hearing, dated June 25, 2012, I set a hearing date of March 12, 2013 for the case in Duluth, Minnesota.

On October 10, 2012, I received a stipulation for dismissal from the parties. In an October 16, 2012 conference call with the parties’ representatives, counsel advised that Mr. Reimer intended to withdraw his objection to the Assistant Secretary’s findings. The parties also confirmed that the withdrawal request was not based on a settlement agreement. And, Complainant’s counsel indicated that he would submit a specific withdrawal request signed by Mr. Reimer.

On October 31, 2012, I received Mr. Reimer’s request to withdraw his objection to the Assistant Secretary’s findings and have his case dismissed with prejudice.

Discussion

At this stage of the proceedings, under 29 C.F.R. § 1982.111(c), a party may withdraw his objections to the Assistant Secretary’s findings any time prior to a final order by an administrative law judge. If an administrative law judge approves the request to withdraw objections to the Assistant Secretary’s findings, and there are no other pending objections, the Assistant Secretary’s findings become the final order of the Secretary.

Because no other objections remain pending in Mr. Reimer’s case, and no settlement agreement exists, I find approval of Mr. Reimer’s request to withdraw his objection to the Assistant Secretary’s determination that his alleged protected activities were not contributing factors in the Respondents’ decision to terminate his employment to be appropriate.

ORDER

Accordingly, Mr. Reimer's withdrawal request is **Approved**. In turn, since the Assistant Secretary's determination is now final, Mr. Reimer's April 1, 2011 FRS complaint against the Respondents is **Dismissed with Prejudice**.

SO ORDERED:

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: November 2, 2012
Washington, DC