



Issue Date: 25 February 2015

Case No.: 2012-FRS-00080

In the Matter of:

MITCHELL V. SAUNDERS,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

**ORDER OF DISMISSAL
AND
ORDER CANCELLING SCHEDULED HEARING**

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. A formal hearing is scheduled to commence at 9:00 AM, Tuesday, March 10, 2015 in Newport News, Virginia.

The Complainant filed a complaint on November 11, 2011, alleging that the Respondent retaliated against him in violation of the FRSA by suspending his employment and subsequently terminating his employment.¹ The complaint was investigated and on August 27, 2012, the Regional Administrator, OSHA, Philadelphia Region, dismissed the complaint when she issued the Secretary Findings that “there is no reasonable cause to believe that Respondent violated Complainant’s rights under the FRSA.” On September 7, 2012, the Complainant filed timely objections to the Secretary’s decision and requested a hearing before an Administrative Law Judge.

On January 22, 2015, Complainant’s counsel filed “Notice of Intention to File Original Action in United States District Court” pursuant to 49 U.S.C. § 20109(d)(3). This section provides that the complainant may “bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without

¹ The Administrator found the suspension began on May 3, 2011 and the termination began June 16, 2011.

regard to the amount in controversy” when a final decision has not been issued within 210 days after the complaint was filed with the Department of Labor.

On February 18, 2015 Complainant’s counsel filed a copy of the Complaint filed in the U.S. District Court for the Western District of Virginia in Civil Action Case No. 7:15CV00070. The complaint was filed in U.S. District Court at Roanoke, Virginia on February 18, 2015 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 U.S. 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 filing with the U.S. District Court. The regulations also require that complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while before the U.S. Department of Labor.

In this case Complainant’s counsel filed his notice of intent to file a complaint in U.S. District Court on January 22, 2015 and filed a copy of such filed complaint on February 18, 2015. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the U.S. District Court for the Western District of Virginia and the current cause of action must be dismissed and the scheduled hearing cancelled.

It is hereby ORDERED that the complaint filed with the U.S. Department of Labor on November 11, 2011 **is DISMISSED and the formal hearing** scheduled to commence on March 10, 2015 **is CANCELLED.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia