



Issue Date: 28 May 2013

Case No.: 2012-FRS-00080

In the Matter of:

MITCHELL V. SAUNDERS,

Complainant

v.

NORFOLK SOUTHERN RAILWAY CO.,

Respondent.

**ORDER DENYING EACH PARTY'S MOTION
FOR RECONSIDERATION OF THE ORDER DENYING
EACH PARTY'S MOTION FOR SUMMARY DECISION**

This matter arises out of a claim filed by the Complainant under the employee protection provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109, Governing regulations are at 29 CFR part 1979. See 49 U.S.C. § 20109(c)(2)(A).

Each party had filed a motion summary decision and these were denied in an order issued on April 23, 2013. Each party has filed a motion for reconsideration. The Complainant states that if Mitch Saunders had not reported his injury and/or received medical treatment for that injury, Respondent would not have had any reason to discipline Complainant. What's more, Respondent here acknowledges this as true. There is simply nothing standing in the way of the entry of summary decision and time-recording in favor of the Complainant.

The Respondent states that simply because NSR discovered Mr. Saunders' reporting violations after he sought treatment for his on-duty injury does not mean that NSR was precluded from disciplining Mr. Saunders for violating Rule N or for falsifying his payroll records-or that Rule N, in and of itself, constitutes a violation of the FRSA.

Finally, NSR is confused about which facts, if any, remain in dispute. It appears from the Order that it is undisputed that Complainant falsified his payroll records. If such is the case, the portion of Mr. Saunders' Complaint relating to his discharge is ripe for summary decision in NSR's favor.

In the order issued on April 23, 2013 the undersigned recited the positions of the Parties. 29 C.F.R § 18.41 which deals with summary decision states that when a genuine question of material fact is raised, the ALJ shall, and in any other case may, set the case for an evidentiary hearing.

Once again the undersigned concludes that neither party has resolved all the issues and that this is not a clear cut case where summary decision can be granted to either party.

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/mrc
Newport News, Virginia