

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 February 2013

Case No.: 2012-FRS-00035

In the Matter of

ROBERT ZIMMERMAN
Complainant

v.

LONG ISLAND RAILROAD COMPANY
Respondent

ORDER OF DISMISSAL

This matter arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. (Aug. 3, 2007)

The governing law provides that

[I]f the Secretary of Labor has not issued a final decision within 210 days after filing of a complaint, and if the delay is not due to the bad faith of the employee, the employee 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 regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

Pub. L. No. 110-53, § 1413 (c)(7); *See also* 29 C.F.R. § 1982.114.

On September 13, 2012, Complainant's counsel gave notice of Complainant's intent to file action in the appropriate United States District Court. By order dated October 15, 2010, I held this matter in abeyance pending such a filing, and directed Complainant to provide a copy of the complaint as evidence that the matter has been accepted by the appropriate court. Claimant filed a complaint with the United States District Court for the Eastern District of New York on December 17, 2012 and has forwarded a copy to this office.

The filing of an action in United States District Court deprives the Office of Administrative Law Judges of jurisdiction. See Stone v. Duke Energy Corp., 432 F.3d 320 (5th Cir. 2005); see also Kelly v. Sonic Automotive, Inc., ARB No. 08-027 (Dec. 17, 2008). I therefore order the instant matter DISMISSED.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey