



Issue Date: 08 January 2014

Case No.: **2013-FRS-38**

In the Matter of:

CHAD BERTRANG,
Complainant,

v.

WISCONSIN CENTRAL, LTD.,
Respondent.

**ORDER DISMISSING CLAIM BECAUSE THE COMPLAINANT
HAS FILED A COMPLAINT IN FEDERAL DISTRICT COURT
AND CANCELLING HEARING**

This matter arises out of a complaint filed by Chad Bertrang (“Complainant”) against Wisconsin Central, Ltd. (“Respondent”) pursuant to Section 419 of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended. The FRSA and its implementing regulations allow the Complainant to file an action in United States District Court if the Department of Labor has not issued a final decision within 210 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant.¹

On January 25, 2012, Complainant filed his complaint with the Occupational Safety and Health Administration (“OSHA”) division of the Department of Labor, alleging he was discharged from his employment with Respondent for filing an injury report in violation of the FRSA. OSHA issued its findings on February 13, 2013, finding “[t]he evidence is insufficient to establish that Complainant’s reporting a work injury contributed to Respondent’s decision to terminate [his] employment.” Complainant served his objections to OSHA’s findings on the Chief Administrative Law Judge by notice on February 25, 2013. The 210 day period tolling Claimant’s ability to file the case in District Court elapsed on August 22, 2012.

On November 18, 2013, the Complainant filed a “Notice of Intention to File Original Action in United States District Court.”² On November 26, 2013, I issued an Order to Show Cause why the administrative claim should not be dismissed.

¹ 49 U.S.C. § 20109(d)(3) (2011); 29 C.F.R. Part 1982 (2013).

² Which I construe herein as a “Motion Requesting Removal” of the claim to the United States District Court.

Respondent objects to the Complainant's attempt at removal to District Court, stating that, due to prior delays occasioned by the Complainant's non-cooperation with the discovery process, the portion of the regulation barring removal if I find "delay due to the bad faith of the complainant" should apply. While Complainant's conduct certainly has not been above reproach, it should be noted that the delays in discovery which Complainant caused occurred more than 9 months *after* the 210 day waiting period had elapsed. Consequently, it would be inappropriate to consider any later occurring dilatory conduct as a bar to the statutorily established right of removal of the claim to the District Court.³

In conclusion, as 210 days has passed since the original Complaint was filed and I do not find any subsequent delays during this period of time amount to "bad faith" on the part of the Complainant:

I **GRANT** the Complainant's Motion Requesting Removal to the United States District Court and find that the administrative claim before the Office of Administrative Law Judges should be, and hereby is, **DISMISSED**.

FURTHER, the hearing scheduled for February 4, 2014, in Minneapolis, Minnesota, is hereby **CANCELLED**.

SO ORDERED.

PETER B. SILVAIN, JR.
Administrative Law Judge

³ It should also be noted that I did not find Complainant's delays in compliance with discovery substantial enough to warrant dismissal of the case. - See my November 19, 2013 "*Order Denying Respondent's Motion to Dismiss and Granting, In Part, Respondent's Second Motion to Compel.*"