

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 April 2014

Case Number: 2013-FRS-00065

In the Matter of

BRETT A. LONGSINE
Complainant

v.

BNSF RAILWAY COMPANY
Respondent

Appearances:

Jeff R. Dingwall, Esq.
Law Offices of Jeff Dingwall
San Diego, California
For the Complainant

Joanne Bush, Esq.
Natalia Oehninger, Esq.
Jones Day
Dallas, Texas
For the Respondent

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act (“FRSA” or “the Act”), and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on November 30, 2010 alleging Respondent retaliated against him for reporting a work place injury. On May 10, 2013, the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”) found that Complainant engaged in protected activity when reporting an on-the-job injury and also suffered an adverse employment action after being charged with various rules violations, resulting in a 30 day suspension and one year period of probation. OSHA also determined that the protected activity was a contributing factor in the adverse action but that Respondent would have taken the same

action absent the protected activity and dismissed the complaint. On June 3, 2013, Complainant filed objections to the findings and requested a hearing before an administrative law judge. By Order issued December 17, 2013, I cancelled a March 11, 2014 hearing after Complainant filed a “Notice of Intention to File Original Action in United States District Court.”¹ However, as Complainant had not yet filed his action, I indicated I would not dismiss this case until receiving notice that Complainant had actually exercised his right to pursue his claim in federal district court.² On April 3, 2014, Complainant advised this Court that he has filed an action in the United States District Court for the District of Nebraska.

Order

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Brett A. Longsine on November 30, 2010 under the Federal Rail Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

¹ Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of the 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. 49 U.S.C. § 20109(d)(3).

² See, e.g., *Stone v. Duke Energy Corp*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)(United States District Court does not assume jurisdiction until a complaint is filed). 29 C.F.R. § 1982.114(b).