

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 July 2013

CASE NOS.: 2013-FRS-45
2013-FRS-46

In the Matter of:

WILLIAM ORR and DONALD GLISTA,
Complainants

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent

ORDER DISMISSING COMPLAINTS WITH PREJUDICE

These cases arise 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 (“9/11 Act”), Pub. L. No. 110-53 (Aug. 3, 2007). On April 24, 2013, I granted the joint motion from the parties requesting a stay of proceedings pending private mediation and cancelled the hearing scheduled for July 9, 2013. On June 3, 2013, Claimants submitted a Notice of Intention to File Original Action in United States District Court citing 49 U.S.C. § 20109(d)(3). Complainants stated that they filed their complaints more than 210 days ago; they have fully participated, cooperated, and furthered their complaints in good faith; and as of this date, the Secretary of Labor has not issued final decisions.

Twenty-nine C.F.R. § 1982.114(a) provides:

If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

Complainants filed their complaints on September 27, 2010. I was assigned these cases on April 8, 2013.

In response to complainants’ notice of intention to file a claim in district court, I ordered the parties to show cause why the claims should not be dismissed with prejudice pursuant to 29 C.F.R. § 1982.114(a), and I cautioned the parties that should either party fail to timely reply to that order, I may dismiss these claim with prejudice without further notice. Complainants did

not respond to the order to show cause. Norfolk Southern responded stating that it did not object to the dismissal with prejudice of the complaints pending before the U.S. Department of Labor. It advised that it reserves its right to raise in district court any and all available defenses to those claims, including, without limitation, the defense that the court lacks subject matter jurisdiction over them. Accordingly, in accordance with 29 C.F.R. § 1982.114 and complainants' notification of their intent to proceed in district court and given their failure to respond to the order to show cause,

IT IS ORDERED that the complaints in the above-captioned matter are DISMISSED with prejudice.

RICHARD A. MORGAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in

opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1982.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).