



Issue Date: 10 January 2014

Case No.: **2013-FRS-40**

In the Matter of:

KELLY HEIM,
Complainant

v.

BNSF RAILWAY CO.,
Respondent

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

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act, as amended.¹ The statute and implementing regulations² provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 210 days of the filing of a complaint with the Occupational Safety and Health Administration, and there is no showing that such delay is due to the bad faith of the complainant. More than 210 days have elapsed since the complaint was filed with the Department of Labor in this case. On September 27, 2013, the Complainant filed a "Notice of Intention to File Original Action in United States District Court." On September 30, 2013, I issued an order to show cause why the claim should not be dismissed once I received a copy of the court complaint. On December 23, 2013, the Complainant filed a "Notice of Complaint Filed in District Court" attaching a copy of the complaint filed in the District of Nebraska on December 12, 2013. No party having responded to the order to show cause within the allotted time, I find that the claim before the Office of Administrative Law Judges should be, and hereby is, **DISMISSED**.

SO ORDERED.

Alice M. Craft
Administrative Law Judge

¹ 49 U.S.C. § 20109 (2011).

² 29 C.F.R. Part 1982 (2013).