



**Issue Date: 11 January 2013**

Case No.: 2013-FRS-00004

In the Matter of:

CHARLES T. LEE,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

**ORDER OF DISMISSAL  
AND  
ORDER CANCELLING SCHEDULED HEARING**

This matter arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (FRSA) and its implementing regulations at 29 CFR, Part 1982.<sup>1</sup> A formal hearing is scheduled to commence at 9:00 AM, Wednesday, March 27, 2013, in Asheville, North Carolina.

The Complainant filed a complaint on November 14, 2011, alleging that the Respondent retaliated against him in violation of the FRSA by suspending his employment on July 6, 2011 for a period of six months. During a prehearing conference, Complainant's counsel also reported that a failure to provide training and a failure to pay properly were also adverse acts of retaliation. The complaint was investigated and on September 21, 2012, the Area Director, OSHA, Raleigh Area Office, dismissed the complaint when she issued the Secretary Findings that "there is no reasonable cause to believe that Respondent violated 49 U.S.C. §20109." On October 11, 2012, the Complainant filed timely objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

On November 20, 2012 Complainant's counsel filed "Complainant's Notice of Intent to File Lawsuit in the U.S. District Court." The documents stated that the Complainant "gives notice that in fifteen days he will file a lawsuit with the U.S. District Court pursuant to 49 U.S.C. §20109(d)(3) and 29 CFR §1982.114(a)."

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<sup>1</sup> Federal Register, Volume 75, pages 53522 to 53533 (August 31, 2010)

On January 10, 2013 Complainant's counsel filed a copy of the Complaint filed in the U.S. District Court for the Western District of North Carolina in Civil Action No. 1:13-cv-00004. The complainant in U.S. District Court was filed on January 8, 2013 and involves the same issues in the above captioned matter.

Under §20109(d)(3) of the FRSA a de novo review of the complaint is permitted in the appropriate U.S. District Court if a final decision on the filed complaint has not been issued within 210 days after the complaint was filed, provided delay is not the result of bad faith of the complainant. Pursuant to implementing Federal regulations at 29 CFR §1982.114(b), a complainant is required to file notice of intention to file the complaint in U.S. District Court 15 days in advance of filing with the U.S. District Court. The regulations also require that complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while before the U.S. Department of Labor.

In this case Complainant's counsel filed his notice of intent to file a complaint in U.S. District Court on November 20, 2012 and filed a copy of such filed complaint on January 10, 2013. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the U.S. District Court for the Western District of North Carolina and the current cause of action must be dismissed and the scheduled hearing cancelled.

**It is hereby ORDERED that the complaint** filed with the U.S. Department of Labor on November 14, 2011 **is DISMISSED and the formal hearing** scheduled to commence on March 27, 2013 **is CANCELLED.**

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia