



Issue Date: 17 May 2013

Case No.: 2013-FRS-24

In the Matter of:

E. SEAN PENMAN,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises out of a complaint filed by E. Sean Penman (“Complainant”) against Norfolk Southern Railway Company (“Respondent”) under Section 419 of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109. The FRSA allows 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

Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on August 9, 2010. A final determination letter was issued by OSHA on November 15, 2012, dismissing the complaint. Complainant submitted his objections to the Secretary’s Findings on December 27, 2012, and requested a hearing before an administrative law judge.

On March 22, 2013, Complainant notified all parties under 49 U.S.C. § 20109(d)(3) and 29 CFR § 1982.114(b) that he intended to file a complaint in United States District Court. This office requested that Complainant submit a signed copy of the District Court complaint. Complainant submitted a signed, proof complaint, on May 13, 2013. The Department of Labor has not issued a final decision within 210 days of the filing of the complaint filed on August 9, 2010. There are no allegations or evidence of record which indicate to me that there has been any delay due to the bad faith of the complainant.

¹ 49 U.S.C. § 20109(d)(3).

Accordingly, **IT IS HEREBY ORDERED** that the complaint in the above-captioned matter be, and the same hereby is, **DISMISSED**.

IT IS FURTHER ORDERED that the hearing scheduled for June 11, 2013, in Knoxville, Tennessee, is **CANCELLED**.

SO ORDERED.

JOSEPH E. KANE
Administrative Law Judge