

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 26 August 2014

Case Number: 2013-FRS-00087

In the Matter of

DARRELL RODNEY
Complainant

v.

UNION PACIFIC RAILROAD COMPANY
Respondent

Appearances:

George T. Brugess, Esq.
Chicago, Illinois
For the Complainant

Hope K. Abramov, Esq.
St. Louis, Missouri
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 April 12, 2013, alleging Respondent retaliated against him for reporting a work place injury. On September 5, 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 when Respondent issued him a Notice of Investigation and discipline in the form of a First Offense violation but determined the protected activity was not a contributing factor and dismissed the complaint. On September 10, 2013, Complainant filed objections to the findings and requested a hearing before an administrative law judge, which was scheduled for August 26, 2014 in Chicago, Illinois, but cancelled on August 21, 2014 after Complainant notified the Court

of his intent to file an original action in United States District Court.¹ However, as Complainant had not yet filed the action, I informed the parties 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 August 25, 2014, Complainant provided a copy of the action filed in the United States District Court for the Northern District of Illinois.

Order

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Darrell Rodney on April 12, 2013 under the Federal Rail Safety Act is DISMISSED, without costs awarded to either party.³

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). In this matter, more than 210 days have passed since Complainant originally filed his complaint and there is no indication the delay is due to bad faith on the part of Complainant. He filed his complaint with OSHA on April 12, 2013. OSHA did not issue a decision dismissing the complaint until September 5, 2013. Complainant requested a hearing before OALJ 5 days later. By order issued October 28, 2013, the court scheduled this matter for hearing on January 31, 2014, which was continued to August 26, 2014 on Employer's unopposed January 23, 2014 motion. The majority of the delay cannot be attributed to Complainant.

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).

³ On August 21, 2014, Respondent filed a *Motion for Sanctions, Fees and Costs*, asserting that "throughout this entire process, Complainant has demonstrated a lack of good faith with his ongoing disregard for the Rules and this Court's orders, and as a result has caused Union Pacific to incur significant costs and expenses." Respondent requests \$23,894.96 in attorney's fees and \$276.96 in costs which it incurred in preparing for this now cancelled hearing. Federal rules generally permit an award of sanctions against opposing counsel for asserting claims that have no legal or factual merit. An attorney may also be liable for conduct that, when viewed objectively, manifests either intentional or reckless disregard for that attorney's duties as an officer of the court. Under the facts before me, I find neither evident in this case. I acknowledge Respondent's exasperation at Complainant's last minute kick out under § 20109(d)(3). I also recognize that it the district court action could have been filed earlier than the day before the scheduled hearing in this case and Complainant should have timely responded to the deadlines in the court's pre-hearing orders. However, righteous indignation aside, I find nothing in the record establishing an intentional or reckless disregard for duties warranting the imposition of costs or sanctions against Complainant. Accordingly, Respondent's *Motion for Sanctions, Fees and Costs* is hereby DENIED.