



Issue Date: 17 May 2019

CASE NO.: 2019-STA-00002

In the Matter of:

JASON GONZALES,
Complainants,

v.

PORTAGE, A NORTH WIND COMPANY,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105, and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. Complainant is a self-represented litigant. Respondent is represented by attorneys Chelsea Hayes and Steven Trent. A hearing is set for September 24 and 25, 2019, in Grand Junction, Colorado.

On May 2, 2019, Complainant filed a Motion for De Novo Review in District Court by Jury (“Motion”). If 210 days have passed since the filing of the complaint and there is no final decision of the Secretary, and there has been 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. 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a). Within seven days after filing a complaint in federal court, a complainant must file with the ALJ a copy of the file-stamped complaint that was filed in district court. 29 C.F.R. § 1978.114(c).

On May 16, 2019, I held a conference call with the parties to address the Motion. Complainant appeared on his own behalf. Ms. Hayes and Mr. Trent appeared on behalf of Respondent. The call was on the record. During the call, Complainant stated that he wished to proceed by a jury trial in federal court because he perceived the process as unfair to him in this forum. He said that he did not believe he got all the information that Respondent shared with the Occupational Safety and Health Administrative (“OSHA”) when OSHA investigated his claim. I explained that I could not review what occurred at OSHA, but everything that Respondent had filed with this court included a proof of service on him and that I would review and consider all the evidence anew regardless of what OSHA found. Complainant again reiterated his intention to seek a jury trial in district court. Respondent did not object to the Motion. Based upon Complainant’s request, I granted his motion to dismiss during the call and vacated all dates. There were a number of motions pending, which I denied as moot based upon the dismissal.

Complainant filed his complaint with the OSHA on July 25, 2017, contesting his July 24, 2017, termination. OSHA denied the complaint on September 20, 2018. Complainant requested a hearing at this Office on October 30, 2018. The 210 days for issuance of a final decision expired on February 20, 2018. There has been no final order entered by the Secretary, and there has been no showing that the delay was due in any part to bad faith by Complainant. 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a).

Therefore, Complainant having stated his intention to file this matter in federal district court, this matter is dismissed.¹ Respondent filed two motions that were still pending ruling.² Both are denied as moot based upon the dismissal. All dates are vacated.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge

¹ I do not read the actual filing of the federal court complaint as a prerequisite to dismissal of this case.

² On May 15, 2019, Respondent's Rule 41(b) Motion to Dismiss Action for Complainant's Failure to Prosecute and Supporting Memorandum of Law; on April 17, 2019, Respondent's Motion to Strike Complainant's initial Disclosures and Supporting Memorandum of Law.