



IN THE MATTER OF:

MICHAEL JESSEN,

ARB CASE NO. 12-107

COMPLAINANT,

ALJ CASE NO. 2010-FRS-022

v.

DATE: July 26, 2013

BNSF RAILWAY CO.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

E. Cooper Brown, Deputy Chief Administrative Appeals Judge, and Joanne Royce, Administrative Appeals Judge

FINAL DECISION AND ORDER DISMISSING APPEAL

On September 6, 2012, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case arising under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).¹ The Board's order required the Complainant to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before October 1, 2012. The Board further cautioned the Complainant that if he failed to timely file his brief, the Board could dismiss his petition for review or impose other sanctions.

The Complainant did not file an opening brief as ordered. Accordingly, we ordered the Complainant to show cause no later than July 8, 2013, why we should not

¹ 49 U.S.C.A. § 20109 (Thomson/West 2012), as implemented by federal regulations at 29 C.F.R. Part 1982 (2012). The Secretary of Labor has delegated to the Administrative Review Board authority to issue final agency decisions under the FRSA. Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1982.110.

dismiss his appeal because he failed to timely file his opening brief. The show cause order notified the Complainant that if the Board did not receive his response to the order on or before July 8, 2013, the Board could dismiss the appeal without further notice to the parties.

DISCUSSION

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."² This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.³

Although warned that a failure to timely file a brief in compliance with the Board's briefing order could result in dismissal of the Complainant's appeal, Jessen failed to timely file his opening brief. Further, although the Board cautioned Jessen that failure to respond to the Order to Show Cause could result in dismissal, he filed no response. Jessen has failed to file a brief in compliance with the Board's briefing order and has failed to demonstrate why we should excuse such failure. Accordingly, we **DISMISS** his appeal.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

² *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

³ *Gonder v. Norfolk Southern Corp.*, ARB No. 13-011, ALJ No. 2012-FRS-075 (ARB Feb. 26, 2013); *Batton v. Ryan Int'l Airways*, ARB No. 11-085, ALJ No. 2009-AIR-029, slip op. at 2-3 (ARB Mar. 2, 2012). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff'd sub nom. Ellison v. U.S. Dep't of Labor*, 09-13054 (11th Cir. June 17, 2010).