



IN THE MATTER OF:

KEVIN E. GONDER,

ARB CASE NO. 13-011

COMPLAINANT,

ALJ CASE NO. 2012-FRS-075

v.

DATE: February 26, 2013

NORFOLK SOUTHERN CORP.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge*

FINAL ORDER DISMISSING APPEAL

On November 9, 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 Rail Safety Act of 1982 (FRSA).¹ The terms of the Board's order required the Complainant, Kevin E Gonder, to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before January 7, 2013. The Board further cautioned Gonder that if he failed to timely file his brief, the Board could dismiss his petition for review or impose other sanctions.

¹ 49 U.S.C.A. § 20109 (Thomson/West 2012), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53, and as implemented by federal regulations at 29 C.F.R. Part 1982 and 29 C.F.R. Part 18, Subpart A.

Gonder did not file an opening brief as ordered. Accordingly, we ordered him to show cause no later than February 6, 2013, why we should not dismiss his appeal because he has failed to timely file his opening brief. The Board cautioned Gonder that if it did not receive his response to this order on or before February 6th, the Board may dismiss the appeal without further notice to the parties. Gonder did not respond to the Board's Order to Show Cause.

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, Gonder failed to timely file his opening brief. Further, although the Board cautioned Gonder that failure to respond to the Order to Show Cause could result in dismissal, he filed no response. Gonder 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.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

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

³ *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); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); cf. Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).