



IN THE MATTER OF:

JAMES GREEN,

ARB CASE NO. 13-100

COMPLAINANT,

ALJ CASE NO. 2013-FRS-051

v.

DATE: February 7, 2014

GRAND TRUNK WESTERN
RAILWAY COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

James Green, *pro se*, Grand Blanc, Michigan

For the Respondent:

Susan K. Fitzke, Esq. and Jodie F. Weinstein, Esq.; *Little Mendelson, P.C.*,
Minneapolis, Minnesota

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown,
Deputy Chief Administrative Appeals Judge; and Luis A. Corchado, *Administrative
Appeals Judge*

ORDER DENYING INTERLOCUTORY REVIEW

Complainant, James Green, has filed an interlocutory appeal of a Department of Labor Administrative Law Judge's Order Granting Respondent's Motion to Compel and Denying Complainant's Motion for Protective Order (Sept. 3, 2013), in which she denied Green's request for a protective order, granted the Railway's motion to compel, and ordered Green to "respond to the Respondent's Interrogatories No. 5 and No. 12 (limited

to treatment by physicians), and its Document Requests No. 9, 10, 11, and 12 (limited to treatment by physicians)”

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the employee protection provisions of the Federal Rail Safety Act of 1982,¹ under which this case arises, to the Administrative Review Board.² The Secretary’s delegated authority to the Board includes, “discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.”³

Where an ALJ has issued an order of which the party seeks interlocutory review, the ARB has elected to look to the certification procedures set forth in 28 U.S.C.A. § 1292(b) to determine whether to accept an interlocutory appeal for review.⁴ Here, Green has neither obtained the ALJ’s certification of the discovery question at issue, nor has he demonstrated exceptional circumstances sufficient to invoke the Board’s interlocutory review of this discovery issue.

Accordingly, we **DENY** Green’s petition for interlocutory review.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

¹ 49 U.S.C.A. § 20109 (Thomson/West Supp. 2013) (FRSA).

² Secretary’s Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,379 (Nov. 16, 2012); 29 C.F.R. Part 1982.

³ *Id.* at § 5(c)(48).

⁴ *Gunther v. Deltek, Inc.*, ARB Nos. 12-097, 12-099, ALJ No. 2010-SOX-049, slip op. at 2 (ARB Sept. 11, 2012).