



IN THE MATTER OF:

WILLIAM SUBER,

COMPLAINANT,

v.

CSX TRANSPORTATION, INC.,

RESPONDENT.

and

BRYAN JAMES,

COMPLAINANT,

v.

CSX TRANSPORTATION, INC.,

RESPONDENT.

ARB CASE NOS. 16-015  
16-016

ALJ CASE NO. 2015-FRS-026

ARB CASE NOS. 16-017  
16-018

ALJ CASE NO. 2015-FRS-022

DATE: November 30, 2015

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainants:*

Jefferson C. Callier, Esq.; *The Callier Firm*, Columbus, Georgia

*For the Respondent:*

Joseph C. Devine, Esq.; *Baker & Hostetler LLP*, Columbus, Ohio

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

## FINAL DECISION AND ORDER DISMISSING COMPLAINANTS' COMPLAINTS AND RESPONDENT'S PETITIONS FOR REVIEW

On February 21, 2014, Complainants William Suber and Bryan James filed complaints with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent CSX Transportation, Inc. had retaliated against them in violation of the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA)<sup>1</sup> and its implementing regulations.<sup>2</sup> Following OSHA's dismissal of the complaints, Complainants requested a Department of Labor Administrative Law Judge (ALJ) to review their complaints. The ALJ joined Complainants' complaints for purposes of review. On October 28, 2015, the ALJ issued an Order Denying Complainants' Motion for Partial Summary Decision and Granting Respondent's Motion for Summary Decision.<sup>3</sup>

Suber and James filed Petitions for Review with the Administrative Review Board on November 6, 2015, and CSX filed Petitions for Review with the Board on November 12, 2015. The Secretary of Labor has delegated to the Board the authority to issue final agency decisions under the FRSA.<sup>4</sup>

On November 17, 2015, the Board received a Notice of Intention to File Original Action in United States District Court from both Suber and James in which they notified the Board of their intention to file an action in federal court, as authorized by 49 U.S.C.A. § 20109(d)(3), for de novo review of the complaint currently pending before the Board. Suber and James noted that they filed their FRSA complaints with the Department of Labor more than 210 days prior to filing their Notices and that as of that date, the Secretary of Labor had not issued a final decision in their cases.

If the Board has not issued a final decision within 210 days of the date on which the complainant filed the complaint, and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.<sup>5</sup>

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<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson/West Supp. 2015).

<sup>2</sup> 29 C.F.R. Part 1982 (2014).

<sup>3</sup> *Suber v. CSX Transp.*, ALJ Nos. 2015-FRS-022, -026 (Oct. 28, 2015).

<sup>4</sup> See Secretary's Order 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 222 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

<sup>5</sup> 49 U.S.C.A. § 20109(d)(3); 29 C.F.R. § 1982.114.

Accordingly, in accordance with 29 C.F.R. § 1982.114 and Complainants' notifications of their intent to proceed in district court, we **DISMISS** Complainants' complaints, so that they may proceed de novo in district court. As we have dismissed Complainants' complaints, we also dismiss Respondent's petitions for review as Complainants have chosen to proceed de novo in district court.

**SO ORDERED.**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**