



IN THE MATTER OF:

DAVID GARDNER,

ARB CASE NO. 17-025

COMPLAINANT,

ALJ CASE NO. 2016-FRS-071

v.

DATE: May 24, 2017

UNION PACIFIC RAILROAD COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

David Gardner, *pro se*, Spring, Texas

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

FINAL DECISION AND ORDER DISMISSING APPEAL

On February 22, 2017, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case arising under the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).¹ Under the terms of the Order, Complainant David Gardner's opening brief was due on or

¹ 49 U.S.C.A. § 20109 (Thomson Reuters Supp. 2016), as implemented by 29 C.F.R. Part 1982 (2016) and 29 C.F.R. Part 18, Subpart A (2016). The Secretary of Labor has delegated authority to the Administrative Review Board to render final decisions on administrative appeals under the FRSA. Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

before March 10, 2017. The Board cautioned Gardner that if he failed to timely file his opening brief, the Board could dismiss his petition for review or impose other sanctions.

Gardner did not file an opening brief as ordered. 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

Accordingly, the Board ordered Gardner to Show Cause no later than April 19, 2017, why we should not dismiss his appeal. The Board cautioned Gardner that if the Board did not receive his response to this order on or before April 19th, the Board may dismiss the appeal without further notice to the parties.

Gardner did not respond to the Board's Show Cause Order. Accordingly, because he has failed to show cause why he failed to timely file an opening brief, we **DISMISS** his appeal.⁴

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

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

³ *Jessen v. BNSF Railway Co.*, ARB No. 12-107, ALJ No. 2010-FRS-022 (ARB July 26, 2013). *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).

⁴ Given Gardner's pro se status, we reviewed his petition for review to determine if it raised issues that would justify the requirement of a response from Respondent. The Administrative Law Judge found in his Order Granting Summary Decision and Dismissing Complaint that Gardner failed to timely file his request for a hearing as provided in 29 C.F.R. § 1982.106(a) and that Gardner had failed to establish grounds supporting equitable tolling of the limitations period. In his petition for review, Gardner did not address the basis for the ALJ's decision. He did not specify any facts that the ALJ found, that he believed were not supported by substantial evidence, nor did he state that the ALJ had erred in applying the applicable law to the facts of this case. Accordingly, we find no reason require Respondent to respond to this appeal.