

IN THE MATTER OF:

CARMELA SIROIS,

ARB CASE NO. 2018-043

COMPLAINANT,

ALJ CASE NO. 2017-FRS-078

v.

DATE: June 26, 2018

LONG ISLAND RAILROAD COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

James R. Ferguson, Esq.; *Law Office of H. Chris Christy*, North Little Rock, Arkansas

For the Respondent:

Brian Saltz, Esq.; *MTA Long Island Rail Road*; Jamaica, New York

BEFORE: Joanne Royce, *Administrative Appeals Judge* and Leonard J. Howie III, *Administrative Appeals Judge*

ORDER DISMISSING COMPLAINT

On January 31, 2017, Carmela Sirois filed a complaint with the Secretary of Labor alleging that Respondent Long Island Railroad Co. (LIRC) violated the Federal Rail Safety Act's whistleblower protection provisions, when it harassed and intimidated her and denied her medical benefits.¹ After investigating Sirois's complaint, the Occupational Safety and Health Administration (OSHA) found that LIRC did not violate the FRSA. Sirois objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The ALJ issued a Decision and Order Granting Respondent's Motion for Summary Decision and Dismissing Complainant's Complaint on May 3, 2018. Sirois filed a timely petition for review

¹ 49 U.S.C.A. § 20109 (Thomson Reuters 2016)(FRSA), and implementing regulations, 29 C.F.R. Part 1982 (2017).

with the Administrative Review Board.²

On June 11, 2018, Sirois filed a Notice with the Board stating that she had filed an original action pursuant to 49 U.S.C.A. § 20109(d)(3), with the United States District Court for the Eastern District of New York, seeking de novo review. Attached to the notice is a copy of a Civil cover Sheet and Summons in a Civil Action in compliance with 29 C.F.R. § 1982.114(c). The FRSA permits a complainant to file an action in the appropriate federal district court if the Secretary of Labor has not issued a final decision within 210 days of the date of the complaint and if there is no showing that the complainant has acted in bad faith to delay the proceedings.³ Sirois filed her action more than 210 days after she filed her complaint with OSHA.

Since Sirois has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over his case. As the statute provides, the “district court of the United States . . . shall

² The Secretary of Labor has delegated authority to issue final agency decisions under the FRSA to the Administrative Review Board. 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); see 29 C.F.R. § 1982.110(a).

³ The FRSA provides for de novo review in an appropriate federal district court under specific circumstances:

De novo review.-With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

49 U.S.C.A. § 20109(d)(3).

have jurisdiction over such an action.”⁴ We therefore **DISMISS** this case on the ground that Sirois has removed it to district court.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

LEONARD J. HOWIE III
Administrative Appeals Judge

⁴ *Stone v. Duke Energy Corp.*, 432 F.3d 320, 322 (4th Cir. 2005) (under the Sarbanes-Oxley Act of 2002 (SOX), “when [complainant] filed his first complaint in federal court . . . jurisdiction became lodged in the district court, depriving the ALJ of jurisdiction”); *Kelly v. Sonic Auto.*, ARB No. 08-027, ALJ No. 2008-SOX-003, slip op. at 4 (ARB Dec. 17, 2008) (the filing of Kelly’s SOX complaint in district court deprived the Department of Labor of jurisdiction over his complaint.); *Powers v. Pinnacle Airlines*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005) (the district court obtained jurisdiction of the complainant’s SOX complaint once she filed suit in district court and thus the ALJ no longer had jurisdiction to enter any order in the case other than one dismissing it on the ground that the complainant had removed the case to district court).