

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



*Issue Date: 26 September 2016*

*In the Matter of*  
**CHRISTOPHER J. CAIN,**  
Complainant

v.

Case No.: 2012-FRS-00019

**BNSF RAILWAY COMPANY,**  
Respondent

APPEARANCES:           Newton G. McCoy, Esquire  
  For Complainant  
  Michah R. Prude, Esquire and Bryan P. Neal, Esquire  
  For Respondent

BEFORE:                   Daniel F. Solomon  
  Administrative Law Judge

**ORDER OF DISMISSAL**

On April 6, 2016, the Administrative Review Board (“ARB”) issued a Decision and Order of Remand. On April 21, 2016, pursuant to the ARB Order, I entered an Order to Comment which required initial briefs to be filed on May 31, 2016 and rebuttal briefs on June 16 2016. On May 6, 2016, the United States Court of Appeals for the Tenth Circuit issued its mandate in BNSF Railway Company v ARB, DOL, No. 14-9602.

Because the ARB Order and my Order each were entered prior to the issuance of the mandate (i.e., before jurisdiction had returned from the Tenth Circuit to the ARB), the parties filed two joint motions on May 9, 2016. In the first motion (the “May 9 ARB Motion”), the parties asked the ARB to vacate the pre-mandate ARB Order and to then re-enter it post-mandate. In the second motion (the “May 9 ALJ Motion”), the parties asked me to withdraw the may Order to Comment and to enter a new order requiring initial briefs to be filed on July 12, 2016. I granted the motion.

I am now advised that on September 15, 2016 the ARB issued an order of dismissal of this case after approval of a settlement agreement. I do not have jurisdiction and the remand to me has been vacated.

After having been fully advised in this matter,

1. All matters before me are moot.
2. The case before me is **DISMISSED**.

**DANIEL F. SOLOMON**  
**ADMINISTRATIVE LAW JUDGE**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed. An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents. Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29

C.F.R. § 1982.110(a). At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(a). If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded. Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded. Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded. If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1982.110(a) and (b)