



Issue Date: 12 March 2012

CASE NO.: 2011-FRS-00034

In the Matter of

WILLIAM ORDNER
Complainant

v.

**METRO-NORTH COMMUTER
RAILROAD COMPANY**
Respondent

**ORDER DISMISSING CASE, BASED ON COMPLAINANT'S FILING OF
COMPLAINT IN UNITED STATES DISTRICT COURT**

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Railroad Safety Act, 49 U.S.C. § 20109. Governing regulations are at 29 C.F.R. part 1982. See 49 U.S.C. § 20109(c)(2)(A). The Complainant is represented by counsel.

By notice sent by fax on February 9, 2012, through counsel, Complainant notified me that he intended to file an original action in United States District Court, as authorized in the governing statute.

Under 49 U.S.C. § 20109(c)(3), if the Secretary has not issued a final decision within 210 days after the filing of the original complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action for de novo review in the appropriate district court of the United States. The applicable regulation requires that a complainant must give at least 15 days advance notice of the intent to file an action in United States District Court, and must also file and serve a copy of the District Court complaint as soon as possible. 29 C.F.R. § 1982.114(b).

By Order dated February 13, 2012, I directed the Complainant to submit to me a copy of any complaint he filed in District Court.

Under cover of letter dated March 1, 2012, through counsel, the Complainant submitted a copy of his District Court complaint (Ordner v. Metro-North Railroad Co., D. Conn., No 3:12-cv-00306-MRK).¹

¹ I obtained the case number in the Complainant's District Court case from PACER.

Filing an action in District Court deprives the Office of Administrative Law Judges of jurisdiction. See Stone v. Duke Energy Corp, 432 F.3d 320 (5th Cir. 2005)(Sarbanes-Oxley case); see also Kelly v. Sonic Automotive, Inc., ARB No. 08-027 (Dec. 17, 2008)(Sarbanes-Oxley case).² Consequently, I find that I must dismiss the Complainant's instant complaint, based on lack of jurisdiction.

Based on the foregoing, this matter is DISMISSED.

SO ORDERED.

A

Adele H. Odegard
Administrative Law Judge

Cherry Hill, New Jersey

² Similar to the governing statute in this case, the employee protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A(b)(1)(B), permits an employee to file an action in district court if the Secretary has not rendered a final decision within a specified time period.