



Issue Date: 02 November 2012

Case No.: **2012-FRS-00045**

In the Matter of:

DARIAN COLEMAN,
Complainant

v.

BNSF RAILWAY, CO.,
Respondent

**ORDER DISMISSING CLAIM BECAUSE THE COMPLAINANT
HAS FILED A COMPLAINT IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act (FRSA), as amended.¹ The statute and implementing regulations provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 210 days of the filing of a complaint with OSHA, and there is no showing that such delay is due to the bad faith of the complainant.² More than 210 days have elapsed since the complaint was filed with the Department of Labor in this case. On June 27, 2012, the Complainant filed a Complaint in the United States District Court for the Western District of Tennessee based on his FRSA claim against the Respondent. On July 9, 2012, I issued an order to the parties to show cause within 15 days why the claim before the Department of Labor should not be dismissed. No party having responded within the allotted time, I find that the claim should be, and hereby is, DISMISSED.

SO ORDERED.

Alice M. Craft
Administrative Law Judge

¹ 49 U.S.C. § 20109 (2011).

² See 49 U.S.C. § 20109(d)(3); 29 CFR § 1982.114 (2011).