



Issue Date: 20 November 2012

CASE NO.: 2012-FRS-92

IN THE MATTER OF

BOBBY STEVEN TIPTON

Complainant

v.

NORFOLK SOUTHERN CORPORATION

Respondent

**ORDER DISMISSING COMPLAINT
LOSS OF JURISDICTION**

This matter arises under the employee-protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109. After investigation by the Occupational Safety and Health Administration (OSHA) of a complaint filed by Complainant Bobby Steven Tipton, the matter was forwarded to this Office for formal hearing.

On October 29, 2012, Complainant filed a Notice of Intent to File Lawsuit in the U.S. District Court pursuant to 49 U.S.C. §20109(d)(3) and 29 C.F.R. §1982.114(a).

On November 13, 2012, Counsel for Complainant submitted a Notice of The Filing of his Lawsuit in United States District Court which under 49 U.S.C. §20101 (d)(3) now has jurisdiction of this matter. Because 210 days have passed since the filing of the complaint with OSHA, there is no final order of the Secretary, and there is no showing that any delay is owing to the bad faith of the Complainant, this matter will be dismissed under 29 C.F.R. § 1982.114.

Accordingly, **IT IS ORDERED** that the complaint in the above-captioned matter is **DISMISSED** and the formal hearing scheduled for February 6, 2013 be cancelled.

ORDERED this 20th day of November, 2012, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business 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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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.

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 for Occupational Safety and Health. See 29 C.F.R. § 1982.110(a).

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).