



**ISSUE DATE: 28 MAY 2015**

CASE No: 2014-FRS-00106

*In the Matter of:*

**BRANDON AYALA,**  
Complainant,

v.

**UNION PACIFIC RAILWAY COMPANY**  
Respondent.

**Dismissal Order**

The Railway twice moved to dismiss this matter, on October 23, 2014 and March 11, 2015. The most recent motion sets out these facts, which I have found to be accurate:

1. On July 2, 2014, the Court issued an Initial Pretrial Order (the “July 2 Pretrial Order”). The July 2 Pretrial Order required Complainant to provide mandatory disclosures within 28 days, and to file a Pretrial Statement by September 2, 2014. Complainant did not comply with any of the deadlines in the July 2 Pretrial Order.

2. On August 15, 2014, Union Pacific served Complainant with its First Requests for Admissions, First Requests for Production of Documents, and First Interrogatories, responses to which were due on September 19, 2014. Union Pacific further requested a deposition date from Complainant.

3. On September 11, 2014, having not received either Complainant’s Initial Disclosures or a Pretrial Statement as required by the July 2 Pretrial Order, and also not having received a date or dates when Complainant was available to be deposed, Union Pacific’s counsel wrote to Complainant stating that his filings were overdue and asking for available deposition dates within the month of October.

4. Union Pacific’s counsel received a telephone call from Complainant upon his receipt of the September 11, 2014, letter. Due to counsel’s mother’s unexpected hospitalization, she was out of the office and unavailable to answer Complainant’s telephone call. However, Complainant’s telephone call was returned within one day. In addition, on no

less than five occasions, Union Pacific's counsel and her assistant attempted to contact Complainant to arrange his deposition and request that Complainant provide the information required by the July 2 Pretrial Order. Complainant did not answer the telephone calls from Union Pacific or return any of the calls.

5. On October 17, 2014, having still not received Complainant's Initial Disclosures, Pretrial Statement, discovery responses, or dates for a deposition, Union Pacific's counsel sent Complainant another letter. Counsel requested that Complainant contact her by Monday, October 20, 2014, or she would file a motion with the Judge. Complainant failed to respond in any way to this correspondence.

6. On October 22, 2014, Union Pacific filed a Motion to Compel, seeking an Order requiring Complainant to provide Initial Disclosures and a Pretrial Statement in accordance with the Court's July 2 Pretrial Order, as well as to respond to Union Pacific's Interrogatories and Requests to Produce.

7. On November 6, 2014, the Court issued an Order Compelling Discovery Responses and Revising Prehearing Order (the "November 6 Order"), attached hereto as Exhibit 2. [the Exhibit is not attached to this order.] Complainant was ordered to respond to Union Pacific's Interrogatories and Requests to Produce; the Court noted that Union Pacific's Requests for Admissions were deemed admitted due to Complainant's failure to respond thereto. Further, Complainant was ordered to provide Initial Disclosures within 14 days and to serve his Pretrial Statement by December 8, 2014. The pretrial telephone conference was rescheduled for January 23, 2015.

8. The November 6 Order warned Complainant that failure to comply "subjects the offending party to the exclusion of evidence at final hearing, the preclusion of issues, and other appropriate sanctions."

9. Complainant failed to comply with the Court's November 6 Order. He did not provide his Initial Disclosures by November 20, 2014, did not provide his Pretrial Statement by December 8, 2014, and did not respond to Union Pacific's Interrogatories and Requests to Produce. On December 31, 2014, Union Pacific's counsel notified the Court that Complainant had completely failed to comply with the November 6 Order. A copy of this correspondence is attached as Exhibit 3. [the Exhibit is not attached to this order.]

10. On January 6, 2015, the Court issued a Second Order Compelling Discovery Responses and Pretrial Statement ("January 6 Order"), a copy of which is attached as Exhibit 4. [the Exhibit is not attached to this order.] The January 6 Order required Complainant to serve his Pretrial Statement by January 27, 2015, and to comply with the November 6 Order in all respects within 21 days.

11. The January 6 Order for the second time warned Complainant that sanctions could be imposed if he failed to comply with the Court's directives. Specifically, the January 6 Order stated that failure to comply

could result in exclusion of evidence, preclusion of issues, and other appropriate sanctions, including “**entry of an order dismissing the case on the merits with prejudice pursuant to Rule 37.**” (emphasis in original).

12. Complainant did not comply with the January 6 Order. As of this date, Union Pacific’s counsel has not received Complainant’s Initial Disclosures, Complainant’s Pretrial Statement, or Complainant’s responses to Union Pacific’s Interrogatories or Requests to Produce. Complainant has taken no steps to communicate about these failures with Union Pacific’s counsel.

The Claimant was required to file responses within ten (10) days of receipt of the motions. As of May 27, 2015, the Complainant has not complied with discovery nor has he filed any response to the Motions or requested an extension of time to respond to the motions.

The Complainant was warned in two orders (dated January 6, 2014 and October 30, 2014), that if he did take steps to oppose the motion, an order granting a motion for sanctions may be granted and his case will be dismissed.

Accordingly, the Motion to Dismiss is granted and this matter is hereby dismissed with prejudice.

**SO ORDERED.**

William Dorsey  
Administrative Law Judge

San Francisco

**NOTICE:** To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board’s address is:

Administrative Review Board  
United States Department of Labor  
Suite S-5220

200 Constitution Avenue, NW  
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB's Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).