



Issue Date: 11 December 2013

CASE NO.: 2014-FRS-00015

IN THE MATTER OF

**CHARLES E. BANKS,
Complainant**

v.

**CANADIAN NATIONAL RAILROAD,
Respondent**

**DECISION AND ORDER GRANTING COMPLAINANT'S
MOTION TO WITHDRAW COMPLAINT**

This matter arises from a claim filed on August 8, 2013 by the Complainant under the employee protection provisions of the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53. The complaint alleged that the Complainant was discharged in retaliation for reporting a work related injury on January 19, 2013. The Occupational Safety and Health Administration (OSHA), as the agent of the Secretary of Labor, investigated the complaint and reported its findings on August 28, 2013. Those finding dismissed the complaint as untimely. On September 25, 2013 the Complainant appealed those findings to the Office of Administrative Law Judges (OALJ).

On November 6, 2013, this Court issued a Sua Sponte Order to Show Cause as to why the complaint should not be dismissed as untimely.

On December 2, 2013, Complainant filed a motion for voluntary dismissal/withdraw of his claim. The motion is made and granted at the request of Complainant; no determination on the merits of the complaint has been made and none should be inferred from this ruling.

ORDER

Based upon the foregoing, the motion to withdraw is GRANTED and the appeal is DISMISSED. The objections to the Assistant Secretary's findings are WITHDRAWN and the finding stated in the letter of August 28, 2013, shall constitute the Secretary's final order in this matter. See 29 C.F.R. § 1982.111(c).

So ORDERED.

LARRY W. PRICE
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. § 1980.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(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 on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1980.110(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.

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. §§ 1980.109(e) and 1980.110(b). 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. § 1980.110(b).