

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 08 September 2014

Case No.: 2014-FRS-00120

In the Matter of:

STEVEN BARFIELD,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Respondent.

**ORDER OF DISMISSAL
AND
ORDER CANCELLING SCHEDULED HEARING**

This matter arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (FRSA) and its implementing regulations at 29 CFR, Part 1982.

This matter arises from a complaint filed under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, § 20109, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("FRSA") and implementing regulations at 29 CFR, Part 1982. The original complaint filed November 8, 2013 was referred to the Office of Administrative Law Judges for formal hearing upon appeal by Complainant of the May 23, 2014 Occupational Safety and Health Administration determination dismissing the complaint upon finding "that there is no reasonable cause to believe that Respondent violated the FRSA." A formal hearing in this matter is scheduled to commence at 12:30 PM, Tuesday, December 9, 2014, in Atlanta, Georgia.

On August 1, 2014, Claimant's counsel filed "Notice of Intention to File Original Action in United States District Court" pursuant to 49 U.S.C. § 20109(d)(3). This section provides that the complainant may "bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy" when a final decision has not been issued within 210 days after the complaint was filed with the Department of Labor. A complainant removing the complaint to a district court of the United States must file notice of intent to remove the

complaint no later than “fifteen days in advance of filing a complaint in Federal court.” After the complaint is filed in Federal court, the complainant must file copy of the district court complaint with the presiding Administrative Law Judge as soon as possible after the district court complaint has been filed with the court. The complainant must also serve a copy of the district court complaint on all parties to the proceeding, the Regional Administrator who issued the initial determination, the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. 29 CFR § 1982.144(b)

On September 2, 2014 Complainant’s counsel filed a copy of the Complaint filed in the U.S. District Court for the Middle District of Florida, Jacksonville Division. The complainant in U.S. District Court was effectively filed on August 28, 2014 and involves the same issues in the above captioned matter.

In this case Complainant’s counsel filed his notice of intent to file a complaint in U.S. District Court on August 1, 2014 and filed a copy of such filed complaint more than 15 days later. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the U.S. District Court for the Middle District of Florida, Jacksonville Division and the current cause of action must be dismissed.

It is Ordered that the complaint filed with the U.S. Department of Labor on November 8, 2013 **is hereby DISMISSED and the formal hearing** scheduled to commence at 12:30 PM, Tuesday, December 9, 2014, in Atlanta, Georgia, **is CANCELLED.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia