

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 July 2014

Case No.: 2014-FRS-00056

In the Matter of

JOHN BARROW

Complainant

v.

METRO NORTH RAILROAD

Respondent

ORDER OF DISMISSAL

This case arises under the “whistleblower” 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. (Aug. 3, 2007), as further amended by Pub. L. No. 110-452 (Oct.6, 2008).

The FRSA allows the Complainant to file an action in United States District Court if the Department of Labor has not issued a final decision within 210 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant. See 49 U.S.C. § 20109(d)(3).

In the instant matter, Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on September 17, 2013. The Secretary’s Findings were outlined in a final determination letter issued by OSHA dismissing the complaint for failure to prosecute on February 20, 2014. Complainant submitted his objections to the Secretary’s Findings on February 27, 2014, and requested a hearing before an administrative law judge.

Complainant filed a “Notice Of Intention To File Original Action In United States District Court” dated April 22, 2014, which was received by this office on April 25, 2014. In that Notice, Complainant informed all parties that he intended to file a complaint in United States District Court, citing 49 U.S.C. § 20109(d)(3).

By order dated May 14, 2014, I held this matter in abeyance pending such a filing, and directed Complainant to provide a copy of the complaint as evidence that the matter has been accepted by the appropriate court. Complainant filed a complaint with the United States District

Court for the Southern District of New York on July 11, 2014 and has forwarded a copy to this office.

The filing of an action in United States District Court deprives the Office of Administrative Law Judges of jurisdiction. See Stone v. Duke Energy Corp., 432 F.3d 320 (5th Cir. 2005; see also Kelly v. Sonic Automotive, Inc., ARB No. 08-027 (Dec. 17, 2008). I therefore DISMISS the instant matter for lack of jurisdiction.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey