U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 July 2015

CASE NO.: 2014-FRS-00061

IN THE MATTER OF

STEPHEN BENTEL
Complainant

v.

NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)
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 prohibits covered employers from discharging, demoting, suspending, reprimanding, or in any other way discriminating against an employee for engaging in certain protected activity related to the terms and conditions of his employment.

On February 10, 2014, Complainant filed a complaint with the Secretary of Labor under the FRSA alleging retaliation by Respondent for reporting a workplace injury.

On March 5, 2014, the Secretary, acting through his agent, the Occupational Safety and Health Administration ("OSHA"), dismissed Complainant's complaint because there was no reasonable cause to believe Respondent violated the FRSA, as Complainant did not suffer any adverse employment action. (OSHA Ltr., pp. 1-2). On March 24, 2014, the matter was referred to the Office of Administrative Law Judges and assigned to the undersigned. A hearing was set for June 6, 2014; the hearing was continued twice at the request of the parties.

On November 3, 2014, Complainant's attorney filed a Motion to Withdraw due to a breakdown in communication and deterioration in the attorney-client relationship. On November 4, 2014, the Court granted the withdrawal motion. Shortly thereafter, Complainant was contacted by the Court and given telephone numbers of potential attorneys and the option to proceed *pro se* in furtherance of this matter. The Court did not hear from Complainant for six months, despite multiple attempts at contact.

On May 22, 2015, the Court reached Complainant by phone and email to further assess his interest in going forward with his case. Complainant stated that he would talk to a family member about whether he should proceed with his claim. Complainant was notified that an Order to Show Cause ("OTSC") was forthcoming in which he would be asked to show why his case should not be dismissed as abandoned.

On May 26, 2015, the undersigned issued the OTSC. Complainant was ordered to show cause, if any there be, by **June 12, 2015** as to why this case should not be dismissed as abandoned. Complainant was notified that "[f]ailure to respond to this Order may result in dismissal of this claim." (OTSC, p. 2). The letter enclosing the OTSC, sent to Complainant via certified mail to the address provided to the Court, was returned unclaimed on June 24, 2015.

As of July 29, 2015, Complainant had not responded to the OTSC, and he had not contacted the Court in writing or by telephone, email, or other means to express an interest in continuing to prosecute his case.

The rules of administrative practice are designed to ensure a "just, speedy, and inexpensive determination" of every ALJ proceeding. 29 C.F.R. § 18.10. In any proceeding under 29 C.F.R. Part 18, the administrative law judge shall have all powers necessary to conduct fair and impartial hearings, and may take measures necessary to enable him to discharge the duties of the office. 29 C.F.R. § 18.12(b). Among them is the power to "[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order." 29 C.F.R. § 18.12(b)(7).

In this matter, Complainant has, since November 2014, twice verbally stated his interest in pursuing adjudication in this forum. However, he has not shown any activity in advancing his case. He has not obtained an attorney or notified the Court that he would like to proceed *pro se*. He then failed to respond to the OTSC by June 12, 2015 and state why the case should not be dismissed as abandoned, despite being notified that failing to respond may result in dismissal of his whistleblower claim. *See McCrumb v. Westinghouse Radiological Svcs., Inc.,* 89-ERA-42 (Sec'y Apr. 9, 1992).

Having abandoned his claim and failed to prosecute the same, Complainant's Complaint is **DISMISSED** under 29 C.F. R. § 18.12(b).

SO ORDERED this 30th day of July, 2015, at Covington, Louisiana.

Digitally signed by Clement Kennington
DN: CN=Clement Kennington, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Covington, S=LA, C=US
Location: Covington LA

CLEMENT J. KENNINGTON
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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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

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, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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).