



**Issue Date: 14 January 2015**

Case No.: 2014-FRS-47

In the Matter of:

Thomas L. Cardenas,  
Complainant

v.

Union Pacific  
Railroad Company,  
John Allberry,  
Respondents

**ORDER DISMISSING COMPLAINT**

The hearing in this claim is scheduled to begin on February 17, 2015, in North Platte, Nebraska. By letter dated January 9, 2015, counsel for the Respondents submitted a “Motion to Withdraw Charge.” Counsel stated that the Complainant’s attorney, Mr. Craig W. Church, Esq., contacted Respondents’ outside counsel and informed her that the Complainant wished to withdraw his charge against the Respondents. Counsel attached a copy of the email correspondence from Mr. Church to Ms. Krissa Lubben, Esq., dated January 6, 2015, stating:

With the client’s authorization, we have elected to dismiss the FRSA action. Could you please draft a motion relative to same and advise the ALJ?

Title 29 C.F.R. § 1982.111(c) provides that:

At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because

of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

Although it is customary for the party that wishes to withdraw objections to the Assistant Secretary's findings to submit a written request or motion directly to the Court, I consider Mr. Church's representation to Respondent's counsel to be a "written withdrawal" under the regulations. There is no indication that the request for withdrawal is based on a settlement, which would be required to be submitted to the Court for approval.

Accordingly, the hearing scheduled to begin on February 17, 2015 is cancelled, and the Complainant's appeal of the Secretary's findings in this claim is hereby dismissed with prejudice.

SO ORDERED.

LINDA S. CHAPMAN  
Administrative Law Judge