



Issue Date: 13 November 2014

Case No.: **2014-FRS-65**

In the Matter of:

BRIAN CLARK,
Complainant,

v.

CSX TRANSPORTATION,
Respondent.

ORDER GRANTING CLAIMANT'S MOTION TO WITHDRAW CLAIM

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act (FRSA), as amended.¹ This case involves Respondent's challenge to the Occupational Safety and Health Administration's finding that there was not reasonable cause to believe that Respondent had violated the provisions of the FRSA in their termination of Complainant's employment.

I held an initial telephone conference in the claim on June 12, 2014. Ryan Brennan, Esq. represented the Complainant. James Urban, Esq. represented the Respondent. The parties indicated an interest in attempting to resolve the claim pursuant to the Settlement Judge process, and an Order appointing a Settlement Judge was issued by the Chief Judge on June 16, 2014. Additionally, on June 17, 2014, I issued an Order setting preliminary deadlines and requirements for the claim.

On November 3, 2014, I received a Motion for Leave to Withdraw on behalf of Complainant's Counsel Ryan Brennan. Additionally, I received correspondence from Respondent's Counsel acknowledging the request to withdraw and requesting an additional conference call to ascertain Complainant's intentions to proceed with his claim. A conference call was held with the Complainant and Respondent's Counsel on November 10, 2014. I advised the Complainant that I would provide him with additional time and suspend the current case deadlines in order for him to obtain new counsel. Alternatively, I advised him that he could proceed without counsel, or choose to remove the claim to federal district court.² Complainant indicated that, due to unexpressed personal reasons, he no longer wished to pursue the claim. The

¹ 49 U.S.C. § 20109 (2011).

² More than 210 days have passed since the complaint was filed in this case, triggering the Complainant's right to file a complaint in federal district court. 49 U.S.C. § 20109(c)(3).

Respondent presented no objection to the withdrawal. I requested that Complainant consider his decision and put his intention in writing to me. On November, 12, 2014, I received a facsimile from the Claimant stating “I am sending this to withdraw my case against CSXT (CSXT vs Brian Clark).”

29 C.F.R. §1982.111(c) controls the voluntary withdrawal of an FRSA claim. It provides in pertinent part:

At any time before the Assistant Secretary's findings ... become final, a party may withdraw its objections to the Assistant Secretary's findings ... by filing a written withdrawal with the ALJ...The ALJ...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 there are no other pending objections, the Assistant Secretary's findings...will become the final order of the Secretary.

As the Complainant has indicated his intent to withdraw his objections to the Occupational Safety and Health Administration’s findings and in light of the lack of expressed objection from the Respondent, therefore, pursuant to 29 C.F.R. 1982.111(c):

IT IS ORDERED that the Complainant’s objections to the February 21, 2014, findings of the Occupational Safety and Health Administration are withdrawn and this matter is **DISMISSED** with prejudice.

PETER B. SILVAIN, JR.
Administrative Law Judge