

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 03 November 2014**

Case No.: 2014-FRS-00118

In the Matter of

**MICHAEL A. DAVIS**  
Complainant

v.

**BNSF RAILWAY COMPANY**  
Respondent

**ORDER OF DISMISSAL**

This matter arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. (Aug. 3, 2007)

The governing law provides that

[I]f the Secretary of Labor has not issued a final decision within 210 days after filing of a complaint, and if the delay is not due to the bad faith of the employee, the employee 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, and which action shall, at the request of either party to such action, be tried by the court with a jury.

Pub. L. No. 110-53, § 1413 (c)(7); *See also* 29 C.F.R. § 1982.114.

On October 17, 2014, Complainant's counsel gave notice of Complainant's intent to file action in the appropriate United States District Court. Claimant filed a complaint with the United States District Court for the Western District of Washington At Seattle on October 31, 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 (5<sup>th</sup> Cir. 2005; *see also Kelly v. Sonic Automotive, Inc.*, ARB No. 08-027 (Dec. 17, 2008). I therefore order the instant matter DISMISSED. The hearing scheduled for December 8, 2014 is hereby CANCELLED.

SO ORDERED.

**SCOTT R. MORRIS**  
Administrative Law Judge

Cherry Hill, New Jersey