

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 22 October 2014

Case Nos.: 2014-FRS-00130
2014-FRS-00131

In the Matters of

TIMOTHY DENDY
JASON POLK

Complainants

v.

NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)

Respondent

ORDER GRANTING COMPLAINANTS' MOTION TO DISMISS

These cases arise 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 matters, Timothy Dendy and Jason Polk (“Complainants”) filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on November 23, 2013. The Secretary’s Findings were outlined in a final determination letter issued by OSHA dismissing the complaint for lack of cooperation on June 30, 2014. Complainants submitted their objections to the Secretary’s Findings on July 7, 2014, and requested a hearing before an administrative law judge.

On August 7, 2014, Complainants filed a “Notice Of Intention To File Original Action In United States District Court” (“Notice”), but failed to send a copy of the Notice to this office. Employer’s counsel forwarded a copy of the Notice to this office on October 14, 2014

Complainants filed a complaint with the United States District Court for the Southern District of New York on October 22, 2014 and have forwarded a copy of that complaint 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 matters for lack of jurisdiction. The hearing scheduled for November 4, 2014 is CANCELED.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey