

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 September 2014

Case No.: 2014-FRS-00042

In the Matter of

DAVID FAITH

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 August 26, 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 September 5, 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 (5th 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 September 23-26, 2014 is hereby CANCELLED.

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey