U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 21 November 2013

Case Number: 2014-FRS-00019

In the Matter of:

MARK GRIGSBY,

Complainant

v.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

Respondent

ORDER OF DISMISSAL

This matter arises under the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109 ("FRSA"), 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) and Section 419 of the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432 (Oct. 16, 2008), and the FRSA regulations issued under at 29 C.F.R. Part 1982.

On October 25, 2013, counsel for Mark Grigsby ("Grigsby" or "Complainant") filed a letter with the U.S. Department of Labor, Office of Administrative Law Judges ("OALJ" or "Office") "out of an abundance of caution to preserve Mr. Grigsby's rights asserted in his Complaint." Complainant alleged that he and Respondent Kansas City Southern Railway Company ("Respondent") entered into a settlement agreement regarding Grigsby's claim that Respondent violated the Federal Rail Safety Act ("FRSA"), 49 U.S.C. § 20109. Respondent however failed to perform its part of the agreement. Complainant therefore filed his objection with this Office to preserve his appeal rights.

This Office duly sent a Notice of Docketing and Order to Show Cause to the parties on October 31, 2013. Therein, the parties were ordered to file briefs addressing (1) whether Complainant timely filed his objections; (2) if not, whether there exists any basis to equitably toll the statute of limitations; (3) whether the OALJ has the authority to determine the validity of the settlement agreement; and (4) if it does have such authority, "what are the consequences that follow from the agreement's validity or invalidity?"

On November 15, 2013, I received Respondent's brief and Complainant's Notice of Filing of Original Action in United States District Court. In Complainant's Notice, he stated that

210 days had elapsed since he filed his original FRSA complainant with the Secretary of Labor. As such, he filed an original action in U.S. District Court for the Southern District of Texas.

Under §20109(d)(3) of the FRSA a *de novo* review of the complaint is permitted in the appropriate U.S. District Court if a final decision on the filed complaint has not been issued within 210 days after the complaint was filed, provided delay is not the result of bad faith of the complainant. As there is no evidence of bad faith on Complainant's part which would have delayed a final decision, I find that jurisdiction for further action on the complaint under the FRSA has been removed to the U.S. District Court for the Southern District of Texas. I find further that Complainant's complaint must be dismissed.[1]

Based on the foregoing, it is hereby **ORDERED** that Complainant's complaint is **DISMISSED**.

SO ORDERED.

Digitally signed by STEPHEN PURCELL
DN: CN=STEPHEN PURCELL,
OU=ADMINISTRATIVE LAW JUDGE,
O=Office of Administrative Law Judges,
L=Washington, S=DC, C=US
Location: Washington DC

STEPHEN L. PURCELL
Chief Administrative Law Judge

[1] I note that Complainant has failed to file a notice of his intent to file a complaint in Federal court at least 15 days prior to his actual filing. 29 C.F.R. § 1982.114(b). However, there is no penalty provided in the regulations for such failure, and the Administrative Review Board has determined that dismissal is appropriate under these circumstances. *See Pfeifer v. Union Pacific R.R. Co.*, ARB No. 12-087, ALJ No. 2011-FRS-38, at 3 (ARB Nov. 19, 2012) (dismissing complaint despite complainant failing to file notice stating, "the FRSA's regulations provide no sanction for a party's failure to comply with the advance notice and service requirements.").

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).