



**Issue Date: 04 December 2014**

**Case Number: 2014-FRS-00134**

*In the Matter of*

**CORY HENMAN**  
**Complainant**

v.

**INDIANA HARBOR BELT RAILROAD COMPANY**  
**Respondent**

**ORDER OF DISMISSAL**

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act (“FRSA” or “the Act”), and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on or around January 14, 2014, alleging Respondent retaliated against him on October 1, 2013 by “delaying or interfering with requested medical and/or first-aid treatment” after suffering a work place injury. On July 2, 2014, the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”) found that Complainant did not suffer an adverse employment action and dismissed the complaint. On July 15, 2014, Complainant filed objections to the findings and requested a hearing before an administrative law judge, which was scheduled for April 7, 2015 in St. Paul, Minnesota. On September 26, 2014, I granted Respondent’s *Motion to Transfer Location of Hearing* to Hammond, Indiana. On November 3, 2014, I canceled the hearing after Complainant notified the court of his intent to file an original action in United States District Court.<sup>1</sup> However, as Complainant had not yet filed the action, I indicated I would not dismiss this case until receiving notice that Complainant had actually exercised his right to pursue his claim in federal district

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<sup>1</sup> Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of the 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. 49 U.S.C. § 20109(d)(3). In this matter, more than 210 days have passed since Complainant originally filed his complaint and there is no indication the delay is due to bad faith on the part of Complainant. He filed his complaint with OSHA on or around January 14, 2014. OSHA did not issue a decision dismissing the complaint until July 2, 2014. Complainant requested a hearing before OALJ some 13 days later. By order issued August 19, 2014, the court scheduled this matter for hearing on April 7, 2015, the court’s first available hearing date. Thus, the majority of the delay cannot be attributed to Complainant.

court.<sup>2</sup> On December 2, 2014, Complainant provided the court with a copy of an action filed on November 25, 2014, in the United States District Court for the Northern District of Indiana.

**Order**

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Cory Henman under the Federal Rail Safety Act is DISMISSED, without costs awarded to either party.

**SO ORDERED:**

STEPHEN R. HENLEY  
Administrative Law Judge

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<sup>2</sup> See, e.g., *Stone v. Duke Energy Corp*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)(United States District Court does not assume jurisdiction until a complaint is filed). 29 C.F.R. § 1982.114(b).