

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 July 2016

Case Number: 2014-FRS-00101
OSHA No.: 5-2330-13-086

In the Matter of

MARIO JACKSON
Complainant

v.

UNION PACIFIC RAILROAD COMPANY
Respondent

ORDER

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act and originally scheduled for hearing before Judge Kirby on November 25, 2014, rescheduled to March 3, 2015 and subsequently cancelled to allow the parties sufficient time to complete discovery. On February 10, 2016, Judge Kirby issued an *Order Returning Case to Docket and Requiring Status Update*, upon Complainant's request for a continuance to allow the parties an opportunity to pursue settlement negotiations.¹

On June 24, 2016, Complainant notified the Court of his intent to file an original action at law in United States district court.² However, as Complainant had not yet filed his 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 court.³ On July 12, 2016, Complainant advised this Court that he has filed an action in the United States District Court for the Northern District of Illinois, attaching a copy of the complaint.

¹ Given Judge Kirby's departure from the Office of Administrative Law Judges, the matter was reassigned to me in my capacity as Chief Administrative Law Judge. See 29 C.F.R. § 18.15.

² 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).

³ 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).

Order

Accordingly, it is hereby ORDERED that the complaint pending before the Office of Administrative Law Judges filed by Mario Jackson under the Federal Railroad Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge