

**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: 02 July 2014**

*In the Matter of:*

**JOSEPH JAUHOLA,  
Complainant,**

**Case No.: 2014-FRS-00031**

v.

**CANADIAN NATIONAL RAILWAY,  
Respondent.**

**ORDER OF DISMISSAL**

This matter arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (FRSA) and its implementing regulations at 29 CFR, Part 1982.<sup>1</sup> This case was assigned to me on December 20, 2013.

On March 25, 2014, Complainant's counsel filed a *Notice of Intent to File Original Action in U.S. District Court*. The documents stated that the Complainant "gives notice that he will file a lawsuit with the U.S. District Court pursuant to 49 U.S.C. §20109(d)(3) and 29 CFR §1982.114(a).

On July 1, 2014, I received a copy of Complainant's Original Action Complaint in United States District Court – District of Minnesota Court File No.: 0:14-cv-01433. The complaint in U.S. District Court was filed on May 7, 2014, and involves the same issues in the above captioned matter.

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. Pursuant to implementing Federal regulations at 29 CFR §1982.114(b), a complainant is required to file notice of intention to file the complaint in U.S. District Court 15 days in advance of filing with the U.S. District Court. The regulations also require that complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while before the U.S. Department of Labor.

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<sup>1</sup>Federal Register, Volume 75, pages 53522 to 53533 (August 31, 2010)

In this case Complainant's counsel filed his notice of intent to file a complaint in U.S. District Court on March 25, 2014, filed a complaint in District Court on May 7, 2014, and our office received a copy of such filed complaint on July 1, 2014. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the U.S. District Court for the District of Minnesota and the current cause of action must be dismissed.

**It is hereby ORDERED that the complaint** filed with the U.S. Department of Labor on December 11, 2013 **is DISMISSED.**

CHRISTINE L. KIRBY  
Administrative Law Judge

Washington, D.C.