



Issue Date: 16 December 2016

Case No.: 2014-FRS-00024

In the Matter of:

CHARLES LEE,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

DECISION AND ORDER OF DISMISSAL WITH PREJUDICE

This matter arises from a complaint filed under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“FRSA”) and implementing regulations at 29 CFR, Part 1982. The claim was referred to the Office of Administrative Law Judges for formal hearing on November 6, 2013 after the Occupational Safety and Health Administration determination dismissing the complaint. A formal hearing was scheduled to commence at 9:00 a.m., Wednesday, September 17, 2014, in Asheville, North Carolina. A formal hearing was scheduled to commence at 9:00 a.m., Wednesday, September 17, 2014, in Asheville, North Carolina. On July 31, 2014, Complainant’s counsel filed “Complainant’s Motion to Continue Hearing and to Set Case for a Status Conference.” Respondent had no objection. Complainant stated that he was “appealing a ruling by the United States District Court for the Western District of North Carolina on Complainant’s first FRSA Whistleblower claim in the Fourth Circuit. The matter was continued.

On December 23, 2015, the undersigned granted the Respondent’s Motion to Extend the Discovery Schedule and it was extended to February 16, 2016.

On February 16, 2016, Complainant’s counsel submitted a Motion to Withdraw as Counsel for Complainant, Charles Lee. Counsel advised that William C. Tucker, Jr. and Rachel S. Decker, moved to withdraw. They advised that the Complainant had notice and consented to the motion.

By ordered dated February 17, 2016, the undersigned issued an Order Granting Complainant’s Counsel’s Motion To Withdraw and Order To Complainant To Advise Court Regarding

Representation. Complainant was ordered “to advise the court and respondent’s counsel within 14 days of receipt of the order as to whether he will proceed with the claim without a representative. Failure to respond may result in an order to show cause why this matter should not be dismissed.” Complainant did not respond.

On November 30, 2016, the undersigned issued an Order to Show Cause. Complainant was ordered to show cause why this claim should not be dismissed. Complainant did not respond.

ORDER

After review of the administrative file, it is hereby **ORDERED** that the complaint in the above-captioned matter is **DISMISSED WITH PREJUDICE**.

DANA ROSEN
Administrative Law Judge

DR/mjw
Newport News, VA

NOTICE OF APPEAL RIGHTS:

To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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).

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, the Associate Solicitor, Associate Solicitor, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(a).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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. If you e-File your reply brief, only one copy need be uploaded.

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).

The preliminary order of reinstatement is effective immediately upon receipt of the decision by the Respondent and is not stayed by the filing of a petition for review by the Administrative Review Board. 29 C.F.R. § 1982.109(e). If a case is accepted for review, the decision of the administrative law judge is inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board unless the Board grants a motion by the respondent to stay that order based on exceptional circumstances. 29 C.F.R. § 1982.110(b).