

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 02 October 2014

CASE NO.: 2014-FRS-00112

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*In the Matter Of:*

**ALFONZO MAGEE,**  
*Complainant,*

v.

**ILLINOIS CENTRAL RAILROAD COMPANY,**  
*Respondent.*

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**ORDER OF DISMISSAL**

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007). The complaint was investigated by the Occupational Safety and Health Administration (“OSHA”) and the complaint was denied on May 12, 2014. The Complainant, through counsel, requested a hearing before the Office of Administrative Law Judges (“OALJ”) on June 13, 2014. The Revised Pre-Hearing Order issued on July 9, 2014, scheduled the hearing for October 27, 2014, and ordered all discovery to be completed not later than October 10, 2014.

On August 27, 2014, the parties filed a Joint Motion for Amendment of the Scheduling Order. In the Motion, the parties stated that the Complainant had not yet provided Respondent with executed authorizations permitting the release of his relevant medical records, the parties had not yet provided written responses to discovery requests, and the deposition of the Complainant had not yet occurred. A conference call was held on the Motion on September 2, 2014. During the call, Counsel for Complainant indicated that despite diligent efforts to contact his client, he had been unable to reach him for two months.

As a result, on September 12, 2014, Complainant’s counsel, Attorney Ryan Brennan, filed a Motion to Withdraw as counsel on the basis that Complainant was non-responsive despite repetitive attempts to contact him. On September 16, 2014, I granted Attorney Brennan’s Motion to Withdraw as counsel in the matter.

There is also currently pending a Motion to Compel filed by Respondent on September 3, 2014 and Respondent's Motion for Summary Decision filed on September 15, 2014. In the Motion to Compel, the Respondent states that Complainant has failed to provide complete responses to its Interrogatories and Requests for Production served on July 7, 2014, or schedule a date for his deposition. The Complainant has not responded to either Motion.

On September 16, 2014, I issued an Order to Show Cause, requiring the Complainant to show cause in writing within 10 days why the complaint should not be dismissed with prejudice for failure to prosecute his claim. The Complainant was notified in the Order that a failure to timely respond would result in a dismissal of the case. The deadline for a timely response has passed, and to date, Complainant has not responded to the Order to Show Cause.

For the above-stated reasons, I find that the complaint should be dismissed with prejudice pursuant to 29 C.F.R. § 18.39(b) and § 18.29 for abandonment and failure to prosecute. *See also Solnicka v. Wash. Pub. Power Supply Sys.*, ARB No. 00-009, ALJ No. 1999-ERA-19 at 3 (ARB Apr. 25, 2000) (*citing Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962) (courts possess the "inherent power" to dismiss a case for lack of prosecution).

### **ORDER**

It is hereby **ORDERED** that the complaint be **DISMISSED WITH PREJUDICE** on the grounds of abandonment and failure to prosecute, and that the hearing scheduled for October 29, 2014, in Chicago, Illinois is cancelled.

**SO ORDERED.**

**COLLEEN A. GERAGHTY**  
Administrative Law Judge

Boston, Massachusetts

**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).

