



Issue Date: 15 July 2014

CASE NO.: 2014-FRS-00023

In the Matter of:

**DANIEL MONOHON,
Complainant,**

v.

**BNSF RAILWAY COMPANY,
Respondent.**

**ORDER CANCELING HEARING AND
ORDER OF DISMISSAL**

The above-captioned matter arises under the employee protection provisions of the Federal Rail Safety Act (FRSA), as amended, 49 U.S.C. §20109. The complaint in this matter was filed with OSHA on or about October 9, 2012. The Secretary's Findings (dismissing the complaint) were issued on September 26, 2013 and received by Complainant's counsel on October 24, 2013. Complainant's objections to the Secretary's Findings and hearing request were timely filed by facsimile on November 14, 2013, with a hard copy filed on November 21, 2013. *See* 29 C.F.R. § 1982.106 (requiring objections to be filed within 30 days of receipt of the findings and order and deeming the date of postmark, facsimile transmittal, or e-mail communication to be the date of filing). By Notice of January 17, 2014, a hearing was scheduled to be held before the undersigned administrative law judge from June 24 to 26, 2014 in Des Moines, Iowa, at a location to be determined. The matter was continued at Complainant's request for good cause shown and was subsequently rescheduled for October 7 through 10, 2014.

On July 8, 2014, Complainant, through counsel, filed Complainant's Notice of Intention to File Original Action in United States District Court. In support, Complainant stated the following:

The Complainant's FRSA Complaint was filed more than 210 days ago, and as of this date the Secretary of Labor has not issued a final decision.

Complainant cited "49 U.S.C. 20109(d)(3)[sic]." Section 20109(c)(3) provides:

(3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), 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(c)(3). *See also* 29 C.F.R. § 1982.114; *Pfeifer v. Union Pacific Railroad Co.*, ARB No. 12-087, ALJ No. 2011-FRS-38 (ARB Nov. 19, 2012). Inasmuch as there has not been bad faith and no decision was issued within 210 days after the filing of the complaint, and as Complainant has indicated his intention to file an original action in U.S. district court, the scheduled hearing will be canceled and this case will be dismissed without prejudice. In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

ORDER

IT IS HEREBY ORDERED the hearing set for October 7 to 10, 2014 is **CANCELED**;
and

IT IS FURTHER ORDERED that the complaint filed by Complainant Daniel Monohon under the Federal Rail Safety Act is **DISMISSED WITHOUT PREJUDICE** to its reinstatement if an action is not filed in federal district court.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.