

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 December 2013

CASE NO. 2014-FRS-00009

In the Matter of

CURTIS ROOKAIRD,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER OF DISMISSAL

On December 19, 2013, Complainant filed notice of his intent to pursue this claim in the United States District Court. *See* 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(b). The record reflects that, under the Federal Railroad Safety Act, Complainant filed an administrative complaint with the Occupational Safety & Health Administration on July 23, 2010; that OSHA did not reach a determination until September 18, 2013; that Complainant objected to the OSHA determination; that the matter is set for a hearing before an administrative law judge to begin on March 24, 2014; and that the Secretary thus has not reached a final decision. In all, more than 210 days have passed since Complainant filed his administrative complaint, and there is no indication that the delay is the result of Complainant's bad faith (or of anything Complainant did or failed to do). As this meets the statutory pre-requisites to the filing of a complaint in the district court, it appears that Complainant may proceed as he intends. Accordingly,

The hearing set to begin on March 24, 2014 in Seattle, Washington is VACATED. This matter is DISMISSED without prejudice to Complainant's filing a complaint in the appropriate United States District Court. *See* 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(b).

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge