



Issue Date: 02 December 2014

Case No.: **2014-FRS-151**

In the Matter of:

DANNY RUARK,
Complainant,

v.

UNION PACIFIC RAILROAD,
Respondent.

**ORDER GRANTING MOTION TO WITHDRAW THE
COMPLAINANT'S PROTECTIVE REQUEST FOR A HEARING**

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act (FRSA), as amended.¹ The statute and implementing regulations² prohibit retaliatory or discriminatory actions by railroad carriers against their employees who engage in activity protected by the Act. In this case, the Complainant requested review by the Office of Administrative Law Judges ("OALJ") of a finding by the Occupational Safety and Health Administration ("OSHA") that the Respondent did not violate the FRSA when it terminated his employment.

The claim is now before me on the Complainant's motion to withdraw the protective request for hearing filed on his behalf. The Complainant has informed his counsel that he does not wish to appeal OSHA's findings. The motion to withdraw the request for hearing was served on the Respondent on October 30, 2014. Under 29 CFR §§ 18.4 and 18.6, the Respondent's response was due on November 17, 2014. No response has been filed. Moreover, during a telephone conference held on October 29, 2014, counsel for the Respondent advised me that he would not oppose such a request. Under 29 C.F.R. §1982.111(c), a party may withdraw its objections at any time before the OSHA findings become final if the Administrative Law Judge approves the withdrawal. Being duly advised, I find that the motion should be GRANTED.

¹ 49 U.S.C. § 20109 (2013).

² 29 C.F.R. Part 1982 (2013).

IT IS THEREFORE ORDERED that the “Request for Protective Hearing” filed on August 21, 2014, is **WITHDRAWN**. The findings issued by OSHA on July 23, 2014, shall be the final order of the Secretary of Labor as provided by 29 C.F.R. § 1982.111(c).

Alice M. Craft
Administrative Law Judge

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).