



Issue Date: 10 October 2014

CASE NO.: 2014-FRS-144

IN THE MATTER OF

CHARLES SHAW

Complainant

v.

BNSF RAILWAY COMPANY

Respondent

DECISION AND ORDER DISMISSING COMPLAINT

This matter arises out of a claim filed by the Complainant under the employee protection provisions of the Federal Rail Safety Act ("FRSA"), 49 U.S.C. §20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 ("9/11 Act"), Pub. L. No. 110-53. The 9/11 Act was the result of a Conference Report, H.R. Rep. 110-259 (July 25, 2007) (Conf. Rep.). Section 1521 of the 9/11 Act amends the FRSA by modifying the railroad carrier employee whistleblower provision – both expanding what constitutes protected activity and enhancing administrative and civil remedies for employees to mirror those found in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"), 49 U.S.C. §42121. Additionally, the amended FRSA Section 20109 will follow the AIR21 procedure for adjudication at the U.S. Department of Labor.

Proceedings under the FRSA are governed by the rules and procedures set forth in 49 U.S.C. §42121(b). See 49 U.S.C. §20109(c)(2)(A). Except as provided in the regulations at 29 C.F.R. Part 1979 implementing the provisions of 49 U.S.C. §42121(b), hearing proceedings are conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at 29 C.F.R. Part 18, Subpart A. See 29 C.F.R. §1979.107(a).

29 C.F.R. §1979.111 allows for withdrawal of a complaint when the complainant files a written request asking that the complaint be withdrawn. The regulation states, in relevant part:

(c) At any time before the findings or order [of the Assistant Secretary of Labor for Occupational Health and Safety] become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved.

29 C.F.R. §1979.111(c).

On October 6, 2014, Complainant, by and through Counsel, filed a Motion to Withdraw Objections to OSHA Findings which is construed to be a request for dismissal of his action against Respondent.

In light of Complainant's decision to withdraw his objections, it appears the issues raised in the instant case are now moot. Therefore, Complainant's request for withdrawal of the objections to OSHA's findings filed in the above-captioned matter is hereby **APPROVED** and this claim is **DISMISSED**.

In view of the foregoing, the formal hearing presently scheduled for January 8, 2015, is hereby **CANCELLED**.

ORDERED this 10th day of October, 2014, at Covington, Louisiana.

LEE J. ROMERO, JR.
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 for Occupational Safety and Health. 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).