



Issue Date: 04 August 2014

CASE NO.: 2014-FRS-00114

In the Matter of

THOMAS SPERATI
Complainant

v.

CSX TRANSPORTATION, INC.
Respondent

**ORDER DISMISSING CASE, BASED ON COMPLAINANT'S FILING
OF COMPLAINT IN UNITED STATES DISTRICT COURT**

This matter arises under the Federal Railroad Safety Act (the Act), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. (Aug. 3, 2007). Applicable regulations are set forth at 29 C.F.R. Part 1982. The Complainant is represented by counsel.

On July 17, 2014, Respondent's counsel supplied my office with a copy of the Complainant's Notice of Intention to File Original Action in United States District Court dated June 17, 2014.

Under 49 U.S.C. § 20109(d)(3), if the Secretary has not issued a final decision within 210 days after the filing of the original complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action for de novo review in the appropriate district court of the United States. The applicable regulation requires that a complainant must give at least 15 days advance notice of the intent to file an action in United States District Court, and must also file and serve a copy of the District Court complaint as soon as possible. 29 C.F.R. § 1982.114(b).¹

Under cover letter dated July 29, 2014, through counsel, the Complainant submitted a copy of his District Court complaint (Sperati v. CSX Transportation, Inc., 5:2014-cv-00888-TJM-TWD).² (N.D. N.Y.), filed on July 18, 2014.

¹ I note that the Complainant did not file with me a timely notice of intent to file in District Court. However, Complainant orally informed my office of his intent and gave the opposing counsel adequate written notice.

² I obtained the case number in the Complainant's District Court case from PACER.

Filing an action in District Court deprives the Office of Administrative Law Judges of jurisdiction. See Stone v. Duke Energy Corp, 432 F.3d 320 (5th Cir. 2005)(Sarbanes-Oxley case); see also Kelly v. Sonic Automotive, Inc., ARB No. 08-027 (Dec. 17, 2008)(Sarbanes-Oxley case).³ Consequently, I find that I must dismiss the Complainant's instant complaint, based on lack of jurisdiction.

Based on the foregoing, this matter is DISMISSED.

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey

³ Similar to the governing statute in this case, the employee protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A(b)(1)(B), permits an employee to file an action in district court if the Secretary has not rendered a final decision within a specified time period.