



Issue Date: 18 February 2016

CASE NO. 2015-FRS-00039

In the Matter of

**JULIANNE LEATHERMAN-BERRY,
WIDOW, O/B/O KEVIN BERRY,
DECEASED,**

Complainant,

v.

BNSF RAILWAY CO.,

Respondent.

ORDER OF DISMISSAL

This matter arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. Complainant filed an administrative complaint with the Occupational Safety & Health Administration on May 30, 2014. OSHA completed an investigation and announced a determination on February 20, 2015. On March 13, 2015, Complainant sought *de novo* review at this Office. On April 6, 2015, the undersigned notified the parties that the hearing would begin on November 23, 2015.

Shortly before the scheduled hearing, the parties notified this Office that they had settled. Any settlement in this forum requires the approval of the administrative law judge. 29 C.F.R. § 1982.111(d)(2). The parties submitted a proposed settlement agreement for review and approval on November 10, 2015. On November 27, 2015, the administrative law judge disapproved the proposed agreement without prejudice, giving details of deficiencies that the parties needed to address. The order allowed the parties to submit a revised agreement within 30 days.

The time for the submission of a revised agreement ran, and the parties remained silent. On February 2, 2016, the administrative law judge ordered the parties within 14 days either to submit a revised settlement agreement or to show cause why the case should not be restored to the trial calendar.

On February 16, 2016, Complainant filed a notice of intent to pursue this matter in the district court. *See* 49 U.S.C. §20109(d)(3). As the statute provides:

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.

Id.

More than 210 days have run since Complainant filed his OSHA complaint on May 30, 2014. Though there has been some delay involved in the parties' efforts to finalize their settlement, there is no suggestion of bad faith on Complainant's part or at all. Accordingly,

This matter is DISMISSED without prejudice to Complainant's refiling *de novo* in the appropriate federal district court. 49 U.S.C. §20109(d)(3); 29 C.F.R. § 1982.114.

COMPLAINANT MUST TAKE NOTICE that:

Within 7 days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a copy of the file-stamped complaint. In all cases, a copy of the complaint must also be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

29 C.F.R. § 1982.114(c).

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge