



Issue Date: 23 April 2015

Case No.: 2015-FRS-00020

In the Matter of

KENNETH ELLIS
Complainant

v.

NEW JERSEY TRANSIT
Respondent

ORDER OF DISMISSAL

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. A hearing is scheduled to convene on May 7, 2015, in Cherry Hill, New Jersey.

On April 1, 2015, I issued an “Order Directing Complainant to Show Cause Why I Should Not Dismiss his Appeal, Based on his Repeated Failure to Comply with my Orders.” In this Order, I DIRECTED the Complainant to explain why I should not dismiss his appeal, based on his repeated failure to comply with my Orders, and to submit his explanation by April 15, 2015.¹ Order of Apr. 1, 2015, at 2. I informed the Complainant that if he failed to respond to that Order within the time period required (that is, by April 15, 2015), I would presume that he has decided not to pursue this matter. Id.

¹ The Complainant failed to comply with my Orders dated February 26, 2015 and March 23, 2015, which required him to submit various items to me. In addition, the Complainant failed to appear at a telephonic conference, as required by my Order dated March 23, 2015. The record indicates that these orders were delivered to the Complainant’s address of record, and so I infer that he received them. Under the applicable regulation, a party’s failure to adhere to the administrative law judge’s orders may result in sanctions. See, e.g., 29 C.F.R. § 18.29(a). Sanctions may include dismissal of a case, where a party has repeatedly refused to comply with the administrative law judge’s orders. See, e.g., In the Matter of Supervan, Inc., ARB No. 00-008, ALJ No. 94-SCA-14, slip op. at 4-5 (ARB, Sept. 30, 2002). I have repeatedly informed the Complainant of his responsibility to adhere to my Orders, and have also repeatedly informed the Complainant that sanctions may be imposed for his failure to do so. Order of Feb. 26, 2015, at 2; Order of Mar. 23, 2015 at 2; Order of Apr. 1, 2015, at 3.

The Complainant has not responded to my Order, and the time for filing his response has passed. See 29 C.F.R. § 18.6(b). The record indicates that this order was delivered to the Complainant's address of record, and so I will infer he received it.²

Based on the foregoing, consistent with my Order of April 1, 2015, I conclude that the Complainant has decided not to pursue this matter. In the alternative, I find that the Complainant's repeated failure to respond to my Orders constitutes an adequate basis for me to impose sanctions on the Complainant. Based on the circumstances, where the Complainant has repeatedly refused or failed to respond to directives set out in my Orders, I find that the appropriate sanction is to dismiss this matter.

Therefore, this matter is DISMISSED.³

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey

² My Order was delivered to the Complainant by United Parcel Service (UPS). The UPS tracking report indicates the order was received at the Complainant's residence ("front door") at 9:48 a.m. on April 2, 2015.

³ My Order of April 1, 2015 indicated that I would take the Respondent's Motion for Summary Decision under advisement, pending receipt of the Complainant's response to my Order to Show Cause. Because the Complainant's failure to respond to my Order has prompted my dismissal of this matter, I find it is not necessary for me to address the Respondent's Motion for Summary Decision.