



Issue Date: 22 February 2016

Case No.: 2015-FRS-00055

In the Matter of

HENRY L. LOCKHART, JR.
Complainant

v.

THE LONG ISLAND RAIL ROAD COMPANY
Respondent

**ORDER DISMISSING MATTER; AND CANCELLING HEARING AND ALL
ASSOCIATED DEADLINES AND REQUIREMENTS**

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109. Governing regulations are at 29 C.F.R. part 1982. A hearing in this matter is scheduled to commence on February 29, 2016, in New York City. The Complainant is represented by counsel.

By submission dated January 28, 2016, through counsel, Complainant notified me that he intended to file an original action in United States District Court. Under the Act, a complainant may file an action in District Court if the Department of Labor has not issued a final decision on a complaint within 210 days after the complaint was submitted to the Department, provided the delay was not due to the bad faith of the employee. 49 U.S.C. § 20109(d)(3). This matter has been pending before the Department of Labor since October 2013, the date the Complainant filed a complaint with the Department's Occupational Safety and Health Administration.

By Order dated February 3, 2016, I acknowledged receipt of the Complainant's notice, and reminded him that he is required to file a copy of the file-stamped District Court complaint with me. See 29 C.F.R. § 1982.114(c). On February 16, 2016, through Complainant's counsel, I received a copy of the District Court complaint, which had been filed on February 10, 2016. Lockhart v. Long Island Railroad Co., No. 1:16-cv-01035 (S.D. N.Y., filed Feb. 10, 2016).

On my review of the District Court complaint, I find that it addresses substantially the same issues that were the subject of the instant matter before me. Under the Act, filing a complaint in United States District Court vests jurisdiction in that forum. 49 U.S.C. § 20109(d)(3); see also 29 C.F.R. § 1982.114.(a). Accordingly, I DISMISS this matter based on

lack of jurisdiction before me. The hearing, and all associated deadlines and requirements, are CANCELLED.

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey