

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 May 2015

Case No.: 2015-FRS-00008

In the Matter of

JOHN MILBAUER
Complainant

v.

NEW JERSEY TRANSIT RAIL OPERATIONS, INC.
Respondent

ORDER DISMISSING MATTER

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. The Complainant is represented by counsel.

By submission dated April 29, 2015, through counsel, Complainant notified me that he had filed an original action in United States District Court, District of New Jersey, and provided a copy of the District Court complaint. Milbauer v. New Jersey Transit Rail Operations, Inc., No. 2:15-cv-02957-WHW-CLW (filed 04/27/2015).

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). 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).

By Order dated May 4, 2015, I directed the parties to show cause, not later than May 11, 2015, why I should not dismiss this matter based on lack of jurisdiction. Further, I informed the parties that, in the event a party did not timely respond, I would presume the party has no objection to a dismissal based on lack of jurisdiction. No party submitted a response to my Order, and the time for filing responses has passed. 29 C.F.R. § 18.6(d). Therefore, I presume that no party has any objection to the dismissal of this matter.

Accordingly, I DISMISS this matter based on lack of jurisdiction in this forum.

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey