



Issue Date: 20 April 2015

Case Number: 2015-FRS-00028

In the Matter of

**Rosemary Miller
Complainant**

v.

**Burlington Northern Santa Fe Railway Company (BNSF)
Respondent**

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Federal Rail Safety Act of 2007 (“FRSA”), Title 49 United States Code Section 20109 and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on or about July 18, 2014 alleging Respondent discharged her in retaliation for following her physician’s treatment plan. On January 12, 2015, the Secretary of Labor, acting through his agent, the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”) found no reasonable cause to believe Respondent violated the FRSA and dismissed the complaint. On February 20, 2015, Complainant filed objections to the Secretary’s Findings and requested a hearing before an administrative law judge, which has not yet been scheduled.

On March 12, 2015, Complainant filed a “Notice of Complainant’s Intent to File Suit in Federal District Court”¹ after the passage of fifteen days in accordance with 18 U.S.C. 1514A(b)(1)(B). By letter dated April 10, 2015, Complainant confirmed she exercised her right to pursue her claim in federal district court and attached a copy of the complaint filed in the United States District Court for the District of Kansas, with confirmation of service on the Respondent. Under 49 U.S.C. § 20101(d)(3), the United States District Court has assumed jurisdiction of this matter.²

¹ Under the enforcement provisions of the Act, 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. 49 U.S.C. 31105(c). In this matter, more than 210 days have passed since Complainant originally filed his complaint and there is no indication of bad faith on the part of Complainant.

² See *Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)

Order

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Rosemary Miller on July 18, 2014 under the Federal Rail Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge