



Issue Date: 30 August 2017

Case No.: **2015-FRS-00043**

In the Matter of:

FRED C. ROBERTS, III,
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

ORDER CANCELING HEARING AND DISMISSING CLAIM

This case arose under the employee protection provisions of the Federal Railroad Safety Act (“FRSA”) and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on April 21, 2014, alleging that Respondent retaliated against him in various ways, including disciplining him, harassing him and suspending him for reporting a work-related injury that occurred when he backed his locomotive consist into a cut of cars.¹ On March 16, 2015, the Regional Administrator of the Occupational Safety and Health Administration notified Complainant that an investigation showed there was reasonable cause to believe a violation of the FRSA occurred. Specifically, the Regional Administrator concluded that Complainant’s injury report contributed to Respondent’s decision to impose discipline because (1) Respondent’s manager displayed animus towards Complainant’s injury report by discouraging him from reporting and threatening discipline if he sought medical treatment, and (2) Complainant was disciplined more harshly than the conductor, even though both men had clean disciplinary records prior to the incident and, under the rules, the conductor was responsible for protecting the locomotive consist. The Regional Administrator awarded compensatory damages of \$100,000.00 and punitive damages of \$250,000.00. On April 6, 2015, Respondent filed objections to the findings and requested a hearing before an administrative law judge.

This case was docketed on April 7, 2015, and assigned to me on May 12, 2015. On May 15, 2015, I issued the initial notice of hearing and prehearing order setting this case for hearing on September 8, 2015, in North Platte, Nebraska. On June 23, 2015, I continued the case to November 3, 2015, at Respondent’s request. On September 15, 2015, at Complainant’s request, I canceled the hearing and suspended the requirements of the prehearing order pending advice from the parties about how they would like to proceed. On December 16, 2015, I granted

¹ A locomotive consist is two or more locomotives coupled together. See 49 C.F.R. § 218.93.

Complainant's request for an additional 60 day continuance of the hearing. On May 10, 2016, I rescheduled the case for hearing on August 22, 2016. On July 20, 2016, I granted the parties' joint request for continuance of the hearing for an additional 90 days. Because the hearing had been rescheduled multiple times, I ordered counsel to confer and notify me when they determined the case was ready for hearing. On January 5, 2017, I held a conference call with counsel for both parties to discuss the status of this case. Pursuant to those discussions, Complainant was ordered to provide me with a medical report addressing Complainant's competency and capability to proceed with the hearing. The same order set the case for hearing on June 14, 2017. On May 11, 2017, at Claimant's request, I continued the hearing to August 29, 2017.

On July 14, 2017, Complainant notified me of his intent to discontinue this action and to file in United States District Court pursuant to 49 U.S.C. § 20109(d)(3), which allows a Complainant to bring an action in federal court if the Secretary of Labor has not issued a final decision within 210 days of the filing of his complaint. On August 24, 2017, I issued an order canceling the August 29, 2017, hearing and directing Complainant to submit a copy of the complaint he filed in United States District Court. On August 28, 2017, Complainant submitted a copy of the complaint he filed, on August 25, 2017, in the United States District Court for the District of Nebraska (Civil Case Number 8:17-cv-00315).

ORDER

IT IS HEREBY ORDERED that the complaint filed by Fred C. Roberts, III, on April 21, 2014, under the Federal Rail Safety Act, and currently pending before the Office of Administrative Law Judges, is **DISMISSED**, without costs awarded to either party. The case is closed and will be returned to the Regional Administrator.

SO ORDERED.

MORRIS D. DAVIS
Administrative Law Judge

Washington, D.C.