



Issue Date: 04 December 2014

Case No.: 2015-FRS-00009

In the Matter of:

ERNEST TOELKES,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises out of a complaint filed by Ernest Toelkes (“Complainant”) against BNSF Railway Company (“Respondent”) under Section 1521 of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109. The FRSA allows the Complainant to file an action in United States District Court if the Department of Labor has not issued a final decision within 210 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant. 49 U.S.C. § 20109(d)(3).

Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on January 15, 2014. The Secretary’s Findings were issued on September 30, 2014, finding for the Complainant. Respondent submitted its objections to the Secretary’s Findings to the Chief Administrative Law Judge on October 23, 2014, and requested a hearing before an administrative law judge. On November 18, 2014, this matter was assigned to the undersigned.

By letter dated November 24, 2014, Complainant through counsel notified all parties under 49 U.S.C. § 20109(d)(3) that he intended to file a complaint in United States District Court. Although the notification did not attach a copy of a filed complaint, the statement of Complainant’s intent to file a complaint in federal district court is accepted under his counsel’s ethical duty not to make false representations in this proceeding. The Department of Labor has not issued a final decision within 210 days of the filing of the administrative complaint on January 15, 2014. Moreover, there are no allegations or evidence of record which indicate to me that there has been any delay due to the bad faith of the Complainant.

Accordingly, **IT IS HEREBY ORDERED** that the complaint in the above-captioned matter be, and the same hereby is, **DISMISSED** without prejudice before the undersigned.

SO ORDERED.

LARRY S. MERCK
Administrative Law Judge