U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 March 2016

CASE NO.: 2015-FRS-00038

In the Matter of:

JERRY WILLIAMS,
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

ORDER OF DISMISSAL

The above-captioned matter arises under the employee protection provisions of the Federal Rail Safety Act (FRSA), as amended, 49 U.S.C. §20109. The complaint was filed on or about August 26, 2014; it was found to lack merit by OSHA in a letter of February 13, 2015, setting forth the Secretary's Findings; and Complainant objected to the Secretary's Findings and filed a hearing request on March 16, 2015. By Order of September 25, 2015, a hearing scheduled for October 21 to 23, 2015 was canceled in view of Respondent's motion for summary decision (filed on August 18, 2015) and Complainant's request for additional time to respond in order to conduct discovery prior to responding. The motion for summary decision is still pending.

By letter of February 18, 2016, filed on February 23, 2016, Complainant, through counsel, indicated that he "elected to use the kick-out option" and file a complaint in U.S. District Court. *See* 49 U.S.C. 20109(d)(3) [formerly (c)(3)]. In support, Complainant submitted a copy of a Complaint, docketed on October 21, 2015 in the Eastern District of Arkansas, Western Division, as Case No. 4:15cv654-SWW.

Section 20109(d)(3) provides:

> (3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), 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. §20109(c)(3). *See also* 29 C.F.R. § 1982.114; *Pfeifer v. Union Pacific Railroad Co.*, ARB No. 12-087, ALJ No. 2011-FRS-38 (ARB Nov. 19, 2012). Although the complaint should have been filed with this tribunal within seven days of its filing in district court under 29 C.F.R. § 1982.114(c), no party appears to have been prejudiced by the delay. Inasmuch as there has not been bad faith and no decision was issued within 210 days after the filing of the complaint, and as Complainant has filed an original action in U.S. District Court, this case will be dismissed.

ORDER

IT IS HEREBY ORDERED the complaint filed by Complainant Jerry Williams under the Federal Rail Safety Act be, and hereby is **DISMISSED**.

Digitally signed by Pamela Lakes
DN: CN=Pamela Lakes, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Washington DC

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.