

**U.S. Department of Labor**

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**Issue Date: 04 October 2016**

Case No.: 2016-FRS-00049  
2016-FRS-00050  
2016-FRS-00051

In the Matter of

**DONALD BINGHAM,  
GEOFFREY MIRELOWITZ, and  
JEFFREY FORD**  
Complainants

v.

**BNSF RAILWAY COMPANY**  
Respondent

**ORDER OF DISMISSAL WITHOUT PREJUDICE**

This matter arises under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. Complainants filed administrative complaints with the Occupational Safety and Health Administration (“OSHA”) on December 4, 2012. OSHA completed an investigation and announced a determination on March 31, 2016, concluding that there was no reasonable cause to believe that Respondent violated the FRSA. On April 26, 2016, Complainants sought *de novo* review by this Tribunal. On June 3, 2016, the undersigned notified the parties that the hearing would be held in the Seattle area beginning on November 14, 2016.

On October 3, 2016, Respondent provided this Tribunal with copies of documents it had received from Complainants on September 13, 2016. These documents indicated that on August 31, 2016, the Complainants had filed Complaints for Damages and Demands for Jury Trial with the U.S. District Court for Western Washington.<sup>1</sup> See 49 U.S.C. §20109(d)(3).

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<sup>1</sup> This Tribunal notes that Complainants’ counsel appears not to have complied with 29 C.F.R. § 1982.114(c) which provides:

Within 7 days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a copy of the file-stamped complaint. In all cases, a copy of the complaint must also be served on the OSHA official who issued the findings and/or preliminary order,

As the statute provides:

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.

*Id.*

More than 210 days have run since Complainants filed their OSHA complaints on December 4, 2012. There is no suggestion of bad faith on Complainants' part or at all.

Accordingly, the hearing set to begin on November 14, 2016 in the Seattle, Washington area is VACATED. These matters are **DISMISSED** without prejudice to Complainants' filing a complaint in the appropriate United States District Court.<sup>2</sup> See 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(b).

SO ORDERED.

**SCOTT R. MORRIS**  
Administrative Law Judge

Cherry Hill, New Jersey

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the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards,  
U.S. Department of Labor.

<sup>2</sup> Which it appears the Complainants have already done.