



**Issue Date: 26 June 2017**

Case No.: 2016-FRS-00041

*In the Matter of:*

**TIMOTHY J. COLVETT,**  
*Complainant,*

v.

**CSX TRANSPORTATION INC.,**  
*Respondent.*

**DECISION AND ORDER OF DISMISSAL AND ORDER CANCELLING THE  
HEARING**

This matter arises under the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109 (“FRSA”), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007), and Section 419 of the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432 (October 16, 2008), and the FRSA regulations issued at 29 C.F.R. Part 1982. Pursuant to this Court’s February 1, 2017 Order, this case is scheduled to commence on August 9, 2017, in the Nashville, Tennessee area.

On March 31, 2017, I issued an *Order to Show Cause Why Complainant’s Complaint Should not be Dismissed*. I directed Complainant to explain why I should not dismiss his complaint based on his repeated failure to comply with my Orders and to submit his explanation no later than 30 days from the date of my Order.<sup>1</sup> The Complainant has not responded to my Orders and the time for filing a response has past. 29 C.F.R. § 18.57.

As a result of the foregoing and consistent with my Order dated March 31, 2017, I conclude that the Complainant’s repeated failure to respond to my Orders constitutes an adequate basis for me to impose sanctions on the Complainant. Based on the circumstances, where the

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<sup>1</sup> On May 16, 2017, this Court issued *Order Re-Sending the Order to Show Cause Why Complainant’s Complaint should not be Dismissed to Complainant’s Counsel’s Correct Address* (hereinafter “*Order Re-Sending Order to Show Cause*”); however, this was an administrative error, because Complainant’s counsel, who was not served with the Order issued on March 31, 2017, was allowed to withdraw as counsel pursuant to an Order issued by this Court on June 20, 2016. On May 25, 2017, counsel for Respondent filed a Motion for Reconsideration of the May 16, 2017 Order. This motion will not be further addressed because the *Order Re-Sending the Order to Show Cause* issued on May 16, 2017, by this Court was an administrative error.

Complainant has repeatedly failed to respond to directives set out in my Orders, I find that the appropriate sanction is to dismiss this matter.

**ORDER**

Therefore, this matter is **DISMISSED** and the hearing scheduled for August 9, 2017, in Nashville, Tennessee, is **CANCELLED**.

**SO ORDERED.**

LARRY S. MERCK  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).