



Issue Date: 23 November 2015

Case Number: 2016-FRS-00007

In the Matter of

PAUL EDWARD DAVIDSON
Complainant

v.

UNION PACIFIC RAILROAD COMPANY
Respondent

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Federal Rail Safety Act (“FRSA” or “the Act”), and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on March 6, 2015, alleging Respondent retaliated against him for reporting a work place injury. On September 30, 2015, the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”) found no violation of the Act and dismissed the complaint. The matter was then docketed in the Office of Administrative Law Judges on October 29, 2015.

On October 30, 2015, Complainant filed a letter notifying this tribunal of Complainant’s Intent to File Suit in Federal District Court¹ after the passage of fifteen days in accordance with 29 C.F.R. § 1982.114. By facsimile received November 20, 2015, Complainant confirmed he exercised his right to pursue his claim in federal district court and attached a copy of the complaint filed in the United States District Court for the Eastern District of Arkansas, with confirmation of service on Respondent. Under 49 U.S.C. § 20109, the United States District Court has assumed jurisdiction of this matter.²

¹ Under the enforcement provisions of the Act, 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(d)(3). In this matter, more than 210 days have passed since Complainant originally filed his complaint and there is no indication of bad faith on the part of Complainant.

² See *Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)

Order

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Paul Davidson on March 6, 2015 under the Federal Rail Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge