

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 January 2017

Case No.: 2016-FRS-00068

In the Matter of

DANIELLE FAY
Complainant

v.

**METRO NORTH RAIL ROAD;
TAKE CARE HEALTH SYSTEMS, INC.;**
MYRNA RE; FONG LIN TJHIA;
DENISE MURPHY; ANTHONY PRUDENCE,
and DANIEL F. MILLER
Respondents

ORDER OF DISMISSAL

This case arose under the employee protection provisions of the Federal Rail Safety Act (“FRSA”) and is scheduled for hearing on January 23, 2017 in New York, New York.

On December 16, 2016, Complainant notified this tribunal that she had filed a complaint in the United States District Court for the District of Connecticut on December 15, 2016.

An Order to Show Cause Why Complaint Should Not Be Dismissed was issued by the undersigned on December 21, 2016. The parties were ordered to show cause within ten (10) days why the undersigned should not dismiss this complaint. To date, and with time for such filing expired, no objection has been received.

Under the Act, a complainant may file an action in District Court if the Department of Labor has not issued a final decision on a complaint within 210 days after the complaint was submitted to the Department, provided the delay was not due to the bad faith of the employee. 49 U.S.C. § 20109(d)(3). Under the Federal Rail Safety Act, filing a complaint in United States District Court vests exclusive jurisdiction in that forum. 49 U.S.C. § 20109(d)(3); see also 29 C.F.R. § 1982.114(a).

Pursuant to 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114, the District Court now has jurisdiction over this action and this tribunal has been divested of jurisdiction. I therefore **ORDER** the instant matter **DISMISSED**.

The hearing scheduled for January 23, 2017 in New York, New York is **CANCELLED**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey