

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 June 2016

Case No.: 2016-FRS-00015

In the Matter of:

GREGORY JACKSON,
Complainant,

v.

BSNF RAILWAY CO.,
Respondent.

Appearances:

John S. Bishof, Jr., *Esq.*
John Bishof, PC
Chicago, Illinois
For the Complainant

Noah K. Garica, *Esq.*
Jacob Godard, *Esq.*
Paul S. Balanon, *Esq.*
BSNF Railway Co.
Fort Worth, Texas
For the Respondent

Before: John P. Sellers, III
Administrative Law Judge

ORDER DISMISSING COMPLAINT
AND CANCELLING HEARING

The above-captioned claim is currently pending before the undersigned for hearing and decision. This proceeding arises from a claim of whistleblower-protection under the Federal Rail Safety Act, as amended ("FRSA"). 49 U.S.C. § 20109. The statute and implementing regulations, at 29 C.F.R. § 1982.114, provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 210 days of when the complaint was filed with the Occupational Safety and Health Administration, and there is no showing that such delay is due to the complainant's bad faith.

On May 13, 2016, counsel for the Complainant notified the undersigned in writing that the Complainant intended to file an action for retaliation in the U.S. District Court for the Northern District of Illinois. The Respondent did not respond to the Complainant's notice. On May 26, 2016, in compliance with 29 C.F.R. § 1982.114, counsel for the Complainant filed with the undersigned a copy of the complaint filed in Federal District Court for the Northern District of Illinois Eastern Division.

The Complainant filed his complaint with the Occupational Safety and Health Administration on August 24, 2015. More than 210 days have passed since then, and no final order has been issued in this case. Moreover, there is no showing that the delay is due to the Complainant's bad faith.

Based on the foregoing, it is hereby **ORDERED** that the Complainant's claim pending before the Office of Administrative Law Judges is **DISMISSED**. The dismissal, however, is without prejudice due to the Complainant's complaint currently pending in federal district court.

It is further **ORDERED** that the hearing scheduled to occur on August 4, 2016 in the Chicago, Illinois area is **CANCELLED**.

JOHN P. SELLERS, III
Administrative Law Judge