

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 March 2016

Case No.: **2016-FRS-00008**

In the Matter of:

DUSTIN BALL,
Complainant,

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY,
Respondent.

ORDER CANCELLING HEARING AND DISMISSING CLAIM

This case arose under the employee protection provisions of the Federal Railroad Safety Act (“FRSA”) and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on August 6, 2015, alleging that Respondent retaliated against him in various ways by failing to correct his seniority date and not selecting him for open positions he had applied to fill. On October 20, 2015, the Regional Administrator of the Occupational Safety and Health Administration notified Complainant that an investigation showed there was no reasonable cause to believe a violation of the FRSA had occurred. Specifically, the Regional Administrator concluded that several of the complaints were filed beyond the time limit set in the FRSA and, in the case of Complainant’s non-selection for a truck helper job which was timely filed, the evidence showed he had voluntarily withdrawn his bid for the position and, therefore, suffered no adverse action. On November 4, 2015, Complainant filed objections to the findings and requested a hearing before an administrative law judge. The case was docketed and assigned to me on November 16, 2016. On November 30, 2015, I issued a Notice of Hearing and Pre-Hearing Order setting this case for hearing on March 31, 2016 in Oklahoma City, Oklahoma.

On January 27, 2016, Complainant notified the Court of his intent to discontinue this action and to file in U.S. District Court pursuant to 49 U.S.C. § 20109(d)(3), which allows a Complaint to bring an action in federal court if the Secretary of Labor has not issued a final decision within 210 days of the filing of his complaint. On March 14, 2016, Claimant filed suit against Respondent in the U.S. District Court for the Eastern District of Oklahoma (Case Number 6:16-cv-00097-RAW).

ORDER

It is hereby **ORDERED** that the formal hearing scheduled for March 31, 2016, in Oklahoma City, Oklahoma, is **CANCELLED**.

IT IS FURTHER ORDERED that the complaint filed by Dustin Ball on August 6, 2015, under the Federal Rail Safety Act, and currently pending before the Office of Administrative Law Judges, is **DISMISSED**, without costs awarded to either party. The case is closed and will be returned to the Regional Administrator.

SO ORDERED:

MORRIS D. DAVIS
Administrative Law Judge

Washington, D.C.