



Issue Date: 06 June 2016

Case Number: 2016-FRS-00048

In the Matter of

SCOTT A. LEMIEUX
Complainant

v.

SOO LINE RAILROAD COMPANY d/b/a
CANADIAN PACIFIC RAILWAY
Respondent

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act of 2007 (“FRSA”), Title 49 United States Code Section 20109 and its implementing regulations at 29 C.F.R. § 1982. Complainant filed a complaint with the Secretary of Labor on or about August 17, 2015 alleging Respondent discharged him in retaliation for engaging in activity protected under the FRSA. On March 29, 2016, the Chicago, Illinois Regional Supervisory Investigator, U.S. Department of Labor, Occupational Safety and Health Administration, issued a letter dismissing the OSHA complaint because Complainant’s attorney had notified that Complainant elected to proceed by filing an action in federal district court.¹ On April 26, 2016, Complainant’s attorney filed a letter with the Office of Administrative Law Judges stating that “[i]n order to prevent [OSHA’s] dismissal from possibly defaulting into a final order, Complainant hereby objects to OSHA’s dismissal.”

On May 3, 2016, I issued a *Notice of Docketing and Order Directing Verification of Filing of Federal District Court Action*.² On June 1, 2016, Complainant filed a *Notice of Filing*

¹ Under the employee protection provision of the FRSA, 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 the delay is due to bad faith on the part of Complainant.

² As of April 26, 2016, Complainant had not yet actually filed an action in federal district court, just provided notice of his intent to do so. Consequently, I notified the parties that I would not dismiss the complaint pending before this

District Court Complaint, and attached a copy of a June 1, 2016 complaint filed in the United States District Court for the District of Minnesota, with confirmation of service on Respondent, confirming he exercised his right to pursue his claim in federal district court. Under 49 U.S.C. § 20109, the United States District Court for the District of Minnesota has assumed jurisdiction of this matter.³

Order

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Scott Lemieux on or about August 17, 2015 under the Federal Railroad Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

Office until I received notice that Complainant had actually exercised his right to pursue his claim in federal district court.

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