



Issue Date: 12 December 2016

Case No.: **2016-FRS-00059**

In the Matter of:

ZACHARY WOOTEN,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER CANCELLING HEARING AND DISMISSING CASE

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 January 27, 2016, alleging that Respondent retaliated against him by firing him after he reported a work-related injury. On April 27, 2016, the Regional Administrator of the Occupational Safety and Health Administration notified Complainant that an investigation showed that there was reasonable cause to believe that Respondent violated 49 U.S.C. § 20109(c)(4).

On May 18, 2016, Respondent filed its objections to the findings and requested a hearing before an administrative law judge. The case was docketed on May 24, 2016, and assigned to me on July 13, 2016. On July 26, 2016, I issued a Notice of Hearing and Prehearing Order directing the parties to submit mutually agreeable dates for the hearing. On October 6, 2016, I issued a Notice of Hearing scheduling the hearing for February 8, 2016, in Kalispell, Montana.

By letter dated October 25, 2016, Complainant notified me that he filed suit against Respondent in United States District Court for the District of Montana (Case Number 9:16-cv-00139-DLC-JCL), pursuant to 49 U.S.C. § 20109(d)(3), which allows a Complainant to bring action in federal court if the Secretary of Labor has not issued a final decision within 210 days of filing the complaint. Accordingly, the hearing scheduled for February 8, 2016, is cancelled and the case filed with the Office of Administrative Law Judges is dismissed.

SO ORDERED.

MORRIS D. DAVIS
Administrative Law Judge