



Issue Date: 12 December 2018

CASE NO.: 2017-FRS-00074

*In the Matter of:*

STEVEN E. DENT,  
*Complainant,*

v.

CSX TRANSPORTATION, INC.,  
*Respondent.*

**ORDER DENYING COMPLAINANT’S MOTION FOR SUMMARY DECISION AND  
GRANTING RESPONDENT’S MOTION FOR SUMMARY DECISION**

This matter arises under the employee protection provision of the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by the Rail Safety Improvement Act of 2008, Pub. L. 110-432 (2008), and its implementing regulations at 29 C.F.R. Part 1982 (“FRSA” or “the Act”). Complainant Steven E. Dent (“Complainant” or “Dent”) alleges that Respondent CSX Transportation, Inc. (“Respondent” or “CSXT”) fired him in violation of the whistleblower protections of the Act.

**Procedural History**

On August 11, 2015, Dent filed a retaliation complaint against CSXT under the FRSA.<sup>1</sup> The Occupational Safety and Health Administration (“OSHA”) investigated the complaint and on May 30, 2017 issued a determination letter finding no reasonable cause to believe Respondent violated the FRSA.<sup>2</sup> On June 26, 2017, Complainant filed an objection to OSHA’s determination and requested a formal hearing before the Office of Administrative Law Judges.<sup>3</sup> The case was docketed with the Office of Administrative Law Judges on June 29, 2017, and was assigned to me on July 11, 2017. The case was originally scheduled for hearing on February 1, 2018. The case was continued twice and eventually canceled by order dated April 25, 2018. In addition to canceling the hearing, I set a schedule for the submission of dispositive motions, and advised the parties a new hearing date would not be set until I ruled on those motions. On May, 18, 2018, both Complainant and Respondent filed their motions for summary decision. Complainant filed his response on June 8, 2018, and Respondent filed its response on June 12, 2018.

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<sup>1</sup> Complainant’s Motion for Summary Decision Exhibit (“CMSD Ex.”) M.

<sup>2</sup> CMSD Ex. W.

<sup>3</sup> CMSD Ex. XYZ.

## Statement of Undisputed Facts <sup>4</sup>

Steven Dent started working as a freight conductor for CSXT in November 2006.<sup>5</sup> He was responsible for assembling rail cars to build trains and facilitating the efficient movement of trains between CSXT rail yards and customers' sites.<sup>6</sup> As a CSXT employee, Dent was subject to CSXT's Individual Development & Personal Accountability Policy (IDPAP), its Operating Rules, and its Code of Ethics.<sup>7</sup> The IDPAP defines three classifications of offenses – minor, serious, and major – and prescribes the appropriate punishment if the employee is found culpable.<sup>8</sup> However, pursuant to the IDPAP, CSXT may not punish an employee for a serious or major offense without first conducting a “fair and impartial hearing under the terms of the applicable labor agreement.”<sup>9</sup> From May 2015 to June 2015, Dent was subject to three separate hearings to investigate charges that: (1) he “accepted hazardous materials for transportation and transported said hazardous material by rail without receiving a shipping paper prepared in accordance with [Federal regulations];”<sup>10</sup> (2) he behaved in a disrespectful and quarrelsome manner and used profane language when interacting with DuPont employees;<sup>11</sup> and (3) he was disrespectful, discourteous, and used profane language when interacting with Trainee Beach.<sup>12</sup>

### Investigation 1: Hazardous Waste

On April 23, 2015, CSXT sent a letter to Dent notifying him the time and date of the investigatory hearing.<sup>13</sup> Trainmaster Brian Neace presided over the hearing on May 11, 2015 in Richmond, Virginia.<sup>14</sup> Dexter Sallet, Trainmaster for the Hopewell Collier Yard, and Steven Dent were the only witnesses to testify at the hearing. Trainmaster Sallet testified he received an Inspection Report from Federal Railroad Administration (FRA) Inspector Tim Brown.<sup>15</sup> The Inspection Report provided:

**Item 1:** MUST RECEIVE A SHIPPING PAPER. The train crew accepted a hazardous material for transportation and transported said hazardous material by rail without receiving a shipping paper prepared in accordance with the 49 CFR applicable parts.

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<sup>4</sup> It is important to note that I am not making any specific findings of fact as to what actually transpired. It is an undisputed fact that Dent was subject to three disciplinary hearings, and no party is disputing the authenticity or accuracy of the hearing transcripts.

<sup>5</sup> Respondent Motion for Summary Decision, Steven Dent Deposition Transcript (“Dent Dep. Tr.”) at 13.

<sup>6</sup> *Id.* at 13, 92.

<sup>7</sup> Respondent Motion for Summary Decision, Declaration of Larry Koster (“Koster Decl.”) ¶¶ 5-7; Ex. A (Individual Development & Personal Accountability Policy); Ex. B (CSXT Operating Rules); and Ex. C (Code of Ethics).

<sup>8</sup> Minor offenses are defined as rule violations that do not result in derailment or damages to equipment and that are not otherwise identified as Serious or Major. Koster Decl. Ex. A at 1. Minor offenses are addressed through informal corrective instruction based upon individual circumstances, but management will utilize progressive discipline for repeat offenders. *Id.* Serious offenses are defined as all rule violations resulting in a derailment or damages to equipment. *Id.* at 2. An employee may be dismissed from employment if he commits three serious offenses within a three-year period. *Id.* Major offenses are defined as offenses that warrant removal from service pending a formal hearing and possible dismissal from service for a single occurrence if proven responsible. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Respondent's Opposition to Complainant's Motion for Summary Decision, Declaration of Mason Jones (“Jones Decl.”) Ex. A at 30 (April 23, 2015 charge letter).

<sup>11</sup> Koster Decl. Ex. D at 53 (May 28, 2015 charge letter).

<sup>12</sup> Koster Decl. Ex. E at 79 (June 9, 2015 charge letter).

<sup>13</sup> Jones Decl. Ex. A at 30.

<sup>14</sup> The hearing was originally scheduled for April 30, 2015, but was postponed until May 11, 2015. *Id.* at 31.

<sup>15</sup> *Id.* at 11.

Upon arrival of train Y12114 at Hopewell Yard in Hopewell, VA, the train crew did not have any documentation or receive any shipping papers for one hazardous tank car in the train for tank car. ACFX 77751 placarded 1915 class 3, the crew was unable to show any shipping papers prepared in accordance with the 49 CFR or on their “on board work order” (electronic device).

**Item 2:** COPY OF A DOCUMENT FOR THE HAZARDOUS MATERIAL. Train CSX Y12114 was transporting a hazardous material and did not have a copy of a document for the hazardous material being transported showing the information required by the 49 CFR including the requirements in § 172.604(b) applicable to emergency response information (hazardous material description and or emergency response telephone numbers) for tank car ACFX 77751 in position # 10 placarded 1915 class 3 on both sides and both ends.

**Item 3:** [\*\*Comment to Railroad/Company\*\*] Above line defects was discussed with the crew of Y12114. Also, we discussed the importance of the crew relinquishing the correct and all completed paperwork when it is requested instead of piecemealing it in a disorganized manner. Copy of the report emailed to Mr. Dexter Sallet as information only.<sup>16</sup>

In his report, FRA Inspector Brown did not recommend a violation and indicated written notification to FRA of remedial action was optional.<sup>17</sup> Based on the information in the Inspection Report, Trainmaster Sallet opined Dent was not in compliance with CSX Transportation Hazardous Material Systems Rule 6105.<sup>18</sup> Dent disagreed with Trainmaster Sallet’s assessment, testifying that he provided FRA Inspector Brown with the proper paperwork but had used the wrong date.<sup>19</sup>

On June 10, 2015, CSXT sent a letter to Dent, informing him of its determination that he violated CSX Transportation Hazardous Material System Rules 6102<sup>20</sup> and 6105, and its

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<sup>16</sup> *Id.* at 33-34.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 13. CSX Transportation Hazardous Material Systems Rule 6105 reads:

**6105 Checking for Shipping Papers**

Make sure that a member of the crew has a paper copy of acceptable shipping papers, with the required entries, for each hazardous material when:

- a. accepting hazardous material shipments at a customer’s facility, interchange point, or other location
- b. moving hazardous material shipments in a train
- c. delivering hazardous material shipments to a customer’s facility, interchange point, or other setout point
- d. switching hazardous material shipments outside a yard.

*Id.* at 36.

<sup>19</sup> *Id.* at 26. However, at an earlier point in the hearing, Dent testified, “The paperwork I gave him was paperwork that I had from the previous day trying to hurry up and expedite what he asked for it to get off of the crossing.” *Id.* at 7.

<sup>20</sup> CSX Transportation Hazardous Material System Rule 6102 reads:

**6102 Acceptable Shipping Papers**

Any one of the following documents is an acceptable shipping paper for hazardous material shipments, as long as it includes the required shipping description entries (see Rule 6106 of this section), is legible, and is printed (manually or mechanically in English).

- a. **Railroad-produced documents** – for example, train consists, train lists, wheel reports, waybills, industry work orders, or other similar documents

decision to impose as punishment a 7-day actual suspension.<sup>21</sup> The United Transportation Union unsuccessfully appealed the suspension to Public Law Board 7614.<sup>22</sup>

### Investigation 2: DuPont Misconduct

On May 28, 2015, CSXT sent a letter to Dent notifying him the time and date of the investigatory hearing and advising him that he would be placed on administrative leave pending the investigation.<sup>23</sup> Terminal Manager Ted Hensley presided over the hearing on June 23, 2015 in Richmond, Virginia.<sup>24</sup> The witnesses included: (1) Trainmaster Brian Neace, (2) Dennis Jones, DuPont Spruance Site Transportation Services Manager and Contract Administrator, (3) Trainman Trainee Keith Best, (4) CSX Engineer Danny Dunford, and (5) Steven Dent.

Trainmaster Brian Neace testified that on May 22, 2015, he and Trainmaster Dexter Sallet received an emailed from DuPont Manager Dennis Jones.<sup>25</sup> In that email, Mr. Jones requested that Dent “not be allowed back on [the DuPont] site again” and provided summaries of two incidents that occurred on May 19, 2015, involving Dent and DuPont employees and contractors:

#### First Encounter:

CSX operator came into L&T shop to ask where track #9 was. L&T operator stated he hadn't seen him before and he must be new. L&T operator explained and showed him where track 9 was. CSX operator sat down and was talking to L&T operator and during the course of the conversation stated he didn't understand why he had to spot all these cars in different places, since we have a shuttle wage he should just drop cars inside fence and we (DuPont) place them where they need to go. Then he started talking about why he had to wait outside the gate, L&T operator explained that if Zytel or L&T is on tracks we don't allow nothing else on tracks for safety reasons. He continued to complain about that repeating about how DuPont should move the cars. L&T operator said it wasn't their job to do that and that they have to go in now and move them around because they are being left in the wrong places. Then they starting talking about delay getting into the gate. Then the CSX operator made the comment “to hell with it, I'll just leave them outside the gate.” At that point the L&T operator was getting frustrated and got up and walked out.

#### Second Encounter:

A Tyvek Line 4 operator observed someone in the blast zone (No Mans Land) with a flashlight, he went over and called him out. Tyvek operator told CSX operator that he

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- b. **Customer-produced documents** – for example, bills of lading [including United Parcel Services (UPS) hazardous material packets], or switch lists
  - c. A **connecting carrier's documents**
  - d. A **hand-printed document** (printed, not cursive letters) – for example, radio waybills
  - e. A **hazardous waste manifest**.

Jones Decl. Ex. A at 36, 46.

<sup>21</sup> *Id.* at 57.

<sup>22</sup> Jones Decl. Ex. B.

<sup>23</sup> Koster Decl. Ex. D at 53.

<sup>24</sup> The hearing was originally scheduled for June 2, 2015, but was postponed until June 23, 2015. *Id.* at 54-55.

<sup>25</sup> *Id.* at 7.

couldn't be in blast zone. CSX operator said "Who are you?" Tyvek operator told him his name and where he worked. CSX operator told Tyvek operator that might be the rules for them, that CSX doesn't have the same rules and they can go inside the zone. Operator stated he didn't think so but would contact his management. When he saw his area manager on Thursday morning, he asked that question and was told no there aren't two sets of rules. Area Manager contacted me and made me aware of situation.<sup>26</sup>

Trainmaster Brian Neace testified after receiving the complaint, he traveled to DuPont on May 26, 2015, to meet with Dennis Jones and the two complaining witnesses, Mark W. Bower and Michael Seabrook.<sup>27</sup> At that meeting, Mr. Bower and Mr. Seabrook provided handwritten statements to Trainmaster Neace, describing their interactions with Dent on May 19, 2015. Those statements were admitted into evidence at the hearing. Mr. Bower wrote:

CSX personnel came into the L&T shop at 11 to midnight shift on 5-19-15 complaining at 1st about having to stop movement during shift change. He argued about having to put cars on certain tracks and empties left on tracks as they came in. He made the statement about the main gate guards not letting them in when they first arrive to do deliveries. I explained to him that until the main gate gets an OK from L&T they cannot enter due to I/we may be on tracks making moves and I am not trying to have a run in with them. He then said "Well I'll just leave them outside the gate and screw 'em, See how they like it then, 'cause I just don't care." We asked him how we could make their jobs better and he said he just wants to push the cars inside the gate and let L&T put them where they should go. He made the statement that he told someone over at Kevlar tried to get him to do something and he said he told the person not to chase him down and that it wasn't his job. By this time I had had enough and I walked out of the shop before I lost my temper.

In my opinion, I feel that the CSX employee was out of line and disrespectful towards DuPont and L&T employees, even after we had tried to work things out with that person. His bad attitude started to give me a bad feeling.<sup>28</sup>

And Mr. Seabrook wrote:

Steve came into the L.T. shop to inquire about L.T. employee job duties and to ask what his job duties were. My partner and I told Steve we don't know all of his job description but we know that empty rail cars go offsite and full cars go to whatever designated track. Steve was belligerent and profane to me and my partner concerning what his job requirements are. I asked Steve what L.T. could do to help with whatever he needed to help resolve any issues, but Steve basically said "f\*\*k it" in many ways, and left the shop. The issues he brought up about the job was everyday regular work that CSX is supposed to do. I have nothing against the guy but his work has left myself and every other L.T. employee in a position where we are forced to move railcars at unsafe times, and do our job duties and CSX's job duties. It's my understanding that because L.T. is contracted, Steve thinks he can leave work behind.<sup>29</sup>

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<sup>26</sup> *Id.* at 71.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.* at 56.

<sup>29</sup> *Id.* at 57.

Trainmaster Neace testified based on his interviews with Mr. Bower and Mr. Seabrook, he believed Dent violated CSX Operating Rules 104.2(d) and 104.3(a).<sup>30</sup> Rule 104.2(d) prohibits an employee from behaving in a “quarrelsome” manner, and Rule 104.3(a) prohibits an employee from using “boisterous, profane, or vulgar language.”<sup>31</sup>

DuPont Manager Dennis Jones was the second witness to testify. Mr. Jones testified he met with Mr. Bower and Mr. Seabrook after receiving complaints from an area manager.<sup>32</sup> Based on the information provided to him, Mr. Jones similarly opined Dent violated CSX Operating Rules 104.2(d) and 104.3(a).<sup>33</sup> Dent and his representative objected to Mr. Jones’s testimony, complaining it was hearsay as neither Mr. Bower nor Mr. Seabrook were available as witnesses.<sup>34</sup>

CSX Trainman Trainee Keith Best, present during the alleged interactions with DuPont employees and contractors, testified Dent was not argumentative or quarrelsome with any DuPont employees or contractors and that he did not remember Dent using any profane language.<sup>35</sup>

CSX Engineer Danny Dunford testified he saw the interaction between Dent and the DuPont employee at switch # 9. Because Mr. Dunford was on the engine, he could not hear their conversation on the ground but inferred from Dent’s arm gestures, “that it was more than a simple conversation.”<sup>36</sup> When Trainee Best returned to the engine, Mr. Dunford asked what the confrontation was about and what was said. Trainee Best stated he did not know and was staying out of it. Mr. Dunford testified he was not present for the alleged interaction inside the L&T office.<sup>37</sup>

On cross-examination, Mr. Dunford testified the phones at the DuPont gate do not work, and this has been reported over five times in the past year.<sup>38</sup> Trainee Best was recalled as a witness, and testified that Mr. Dunford called the guard at the DuPont yard, who then let Dent, Dunford, and Best into the DuPont facility.<sup>39</sup>

Dent testified on his own behalf. He testified on May 19, 2015, around 11:30 p.m., he was with Trainee Best when an engineer asked if they “could ... pull up to clear a crossing.”<sup>40</sup> Dent responded, “This is curfew. We’re not supposed to move. You know we have people

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<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 59-60.

<sup>32</sup> *Id.* at 21-22.

<sup>33</sup> *Id.* at 24-25.

<sup>34</sup> *Id.* at 27.

<sup>35</sup> *Id.* at 35.

<sup>36</sup> *Id.* at 38.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 44-45.

Consistent with Mr. Dunford’s testimony, Dent states he reported to his supervisors that the DuPont gate phones were inoperative and as a result, CSX employees were using their phones in violation of CSX rules and federal regulations, on multiple occasions, including in January 2015 and April 2015. *See* Dent Dep. Tr. at 32-33 (report to Mr. Swafford); 74-76, 80-84, 308, 316, 329-30 (report to Mr. Neace); 84, 149-50 (report to Mr. Koster); 248 (report to Mr. Hawkins).

<sup>39</sup> Koster Decl. Ex. D at 45.

<sup>40</sup> *Id.* at 47.

heading out.”<sup>41</sup> Dent testified the engineer directed Dent and Best through a building, eventually ending up at the L&T building, where two men were relaxing. Dent testified they were talking and at one point in the conversation, Dent asked, “Is there anyway y’all can help us to get those phones fixed at the gate?” The DuPont employees’ response is not clear from the hearing transcript, but the transcript reflects Dent responded that railway workers are not supposed to use their phones while on duty.<sup>42</sup>

Then, Dent asked, “Does anyone know who’s asking us to place cars in Track 8 and Track 9?”<sup>43</sup> Some DuPont employees indicated they did not know, but one DuPont employee stated his understanding was that Dent and Best were supposed to “put cars in tracks 1 through 10.”<sup>44</sup> Dent responded, “I’ll check. I mean, if they give me the time I’ll switch the cars out for you. But you know I don’t think my boss is going to look at the time like that but I’ll ask him.”<sup>45</sup> Dent testified “nothing was ever boisterous,” and “there was never any profane language,” during his interactions with DuPont employees.<sup>46</sup>

Presiding Officer Ted Hensley asked Dent to explain Mr. Dunford’s testimony that Dent used aggressive body language with the DuPont employee at switch #9. Dent testified, “I may have jumped when the man walked up behind me because he startled me because Best was on the switch side which was the 9 side switch. It’s on the conductor’s side. When the man walked up to me, he walked up and hollered and I mean it startled me. But there was nothing aggressive to the gentleman.”<sup>47</sup>

On July 21, 2015, CSXT sent a letter to Dent, informing him its determination that he was disrespectful, quarrelsome, and used profane language when interacting with DuPont employees, in violation of CSX Operating Rules 104.2 and Rule 104.3.<sup>48</sup> CSXT decided “due to the serious nature of the infraction” that Dent should be “dismissed in all capacities from the service of CSX Transportation effective immediately.”<sup>49</sup> The United Transportation Union unsuccessfully appealed the decision to Public Law Board No. 1745.<sup>50</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> “And then we got to talking I said well is there anyway y’all can help us to get those phones fixed at the gate. He replied quote well y’all need to phone \_\_\_\_\_ to the gate we got the engineer’s cell phone not only we call him he calls us. I said hold on I said that is cardinal rule # 1 for us on the railroad with the trainee right there I said we are not supposed to use our phones. He’s not supposed to use his phone when we’re on the ground. That is a no, no. He said well I got his number he got ours and we call each other we’ll I’m just letting you know from now on. Is there any way y’all can help us get the phones fixed? He said well we’ll look into it.” *Id.* at 47-48.

At his deposition, Dent re-told his account of the interaction: “I said, ‘Is there any way you can help us get the phone fixed?’ ... He responds back in front of the trainee, ‘Why we got to get the phones fixed when your engineer calls us every night on y’all way up the tracks?’ I said, ‘He ain’t supposed to do that. That’s against the law.’” Dent Dep. Tr. at 98.

<sup>43</sup> Koster Decl. Ex. D at 48.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 49.

<sup>48</sup> Koster Decl. Ex G at 2.

<sup>49</sup> *Id.* The authority to impose discipline rests with the Division Manager. Koster Decl. ¶ 10. In this case, CSXT’s Field Administration department reviewed the allegation and determined it was a major offense, for which dismissal is warranted if the charge is proven. *Id.* at ¶ 14. Division Manager Larry Koster reviewed the transcripts and evidence submitted at the hearing and determined Dent engaged in the conduct for which he was charged. *Id.* at ¶ 15. Because it was considered a major offense, Mr. Koster decided he should be dismissed from employment. *Id.* at ¶ 16. Mr. Koster stated that “[d]ismissal is the only appropriate course where the evidence shows ... that a CSXT

### Investigation 3: Trainee Beach Misconduct

On June 9, 2015, CSXT sent a letter to Dent notifying him the time and date of the investigatory hearing and advising him that he would be placed on administrative leave pending the investigation.<sup>51</sup> Terminal Manager Ted Hensley presided over the hearing on June 23, 2015 in Richmond, Virginia, on the same day as Investigation 2.<sup>52</sup> The witnesses included: (1) Trainmaster Brian Neace, (2) CSX Engineer Danny Dunford, (3) Trainman Trainee Daniel Beach, (4) Locomotive Engineer George Williams, and (5) Steven Dent.

Trainmaster Brian Neace testified he received a phone call from Steven Washington, a conductor-mentor in the trainman trainee program, who reported that Trainman Trainee Daniel Beach made a complaint against Steven Dent for his behavior during training.<sup>53</sup> Mr. Washington obtained a handwritten statement from Trainee Beach, and emailed the statement to Trainmaster Neace. That statement was admitted into evidence at the hearing. In the statement, Trainee Beach wrote, “I felt like I was totally disrespected. I was spoken to like I was a dog. I could not ask a question about any training, nor was I able to engage in any of the training.”<sup>54</sup>

Trainmaster Neace followed up with Trainee Beach on June 1, 2015, to discuss the complaint. At that meeting, Trainmaster Neace had Trainee Beach write a more detailed statement, which was also admitted into evidence at the hearing. In his follow-up statement, Trainee Beach describes several incidents which led him to feel disrespected while training with Dent during the week of May 12-15, 2015.

During the training with Dent, Trainee Beach was asked to “line a switch.”<sup>55</sup> After doing so, Trainee Beach let Dent know that “the switch point was not flush and looked as if it had a gap.”<sup>56</sup> According to Trainee Beach, “Mr. Dent got loud...acting as if it was the wrong thing to do by bringing this to his attention.”<sup>57</sup> Trainee Beach stated after that interaction, Dent began belittling and talking down to him.

Later that week, Trainee Beach was “calling signals,” when the two got into an argument about the proper way to end radio transmissions.<sup>58</sup> Dent commanded Trainee Beach to say “locomotive” at the end of the transmission.<sup>59</sup> Trainee Beach followed the instruction, but stated Dent was rude, loud, and talked down to Beach whenever Dent spoke to him. Later that evening, when another train passed by and used the job number at the end of its transmission, Trainee Beach asked Dent whether it was okay to say the job number. According to Trainee Beach, Dent

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employee behaved so disrespectfully at a customer site that multiple of the customer’s employees and contractors felt the need to complain.” *Id.* at ¶ 18. Mr. Koster stated he understood “Mr. Dent claims in his case that he reported that the phones were broken at the gate to the customer site for DuPont,” but denied that the reports played any role in his decision to fire Dent. *Id.* at ¶ 19. Mr. Koster stated he “would have made the same decision to dismiss him even if he had not made those reports.” *Id.*

<sup>50</sup> Koster Decl. Ex. H at 1-2.

<sup>51</sup> Koster Decl. Ex. E at 79.

<sup>52</sup> The hearing was originally scheduled for June 18, 2015, but was postponed until June 23, 2015. *Id.* at 80-81.

<sup>53</sup> *Id.* at 6.

<sup>54</sup> *Id.* at 82.

<sup>55</sup> *Id.* at 83.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 84.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

“flipped out” and told Beach that he “was getting on his f\*\*king nerves” in a threatening way, so Beach was discouraged from asking any other questions.<sup>60</sup>

Later that shift, Dent and Beach returned to the engine for curfew, which is from 11:30 p.m. to 12:15 a.m. Dent decided to use that time to take a nap. At the end of curfew, Trainee Beach told Dent the time. Dent looked at Trainee Beach, turned his head, and went back to sleep. At 12:30 a.m., again, Trainee Beach advised Dent the time, and again, Dent went back to sleep. At 1:00 a.m., Dent finally woke up and asked why Trainee Beach did not wake him up. Trainee Beach explained the company’s rules about napping. Dent proceeded to get loud with Trainee Beach, refusing to let him talk and being generally disrespectful. During the course of the argument, Dent got into Trainee Beach’s face. Trainee Beach told Dent to get out of his face and that he “did not appreciate the way he had been talking to [him] like a dog every time he spoke to [him].”<sup>61</sup> Then, Trainee Beach “backed out of the door of the locomotive to create distance.”<sup>62</sup> Dent then instructed Trainee Beach to stay on the engine for the remainder of the night, refusing to allow him to participate in any training on the ground.

Trainmaster Neace testified he also spoke to and received a statement from CSX Engineer Danny Dunford on June 2, 2015.<sup>63</sup> Mr. Dunford wrote that Dent instructed Trainee Beach “to get down off of the engine and line the old-side switch.”<sup>64</sup> After Trainee Beach completed the task, Trainee Beach thought he observed a gap in the switch and reported it to Dent; Dent got off the engine to observe the switch. When Dent and Trainee Beach returned to the engine, “Mr. Dent appeared to continuing a verbal berating that had started on the ground when observing the switch.”<sup>65</sup> Mr. Dunford explained to Trainee Beach “what he was looking at (thinking it was a gap, but was really not) by folding a piece of paper in a way to explain what would constitute the space of a gap.”<sup>66</sup> Then, Dent folded a piece of a paper and asked Trainee Beach to return to the ground to observe the switch once more. After demonstrating there was no gap, Dent and Trainee Beach returned to the engine. Dent continued the conversation “in an even more aggressive tone than the confrontation before.”<sup>67</sup> Mr. Dunford stated Dent’s “tone and continued aggression humiliated” Trainee Beach.<sup>68</sup>

Trainmaster Neace testified based upon his interviews with George Williams, Daniel Beach, and Danny Dunford, Dent violated CSX Operating Rules 104.2 and 104.3.<sup>69</sup>

Trainman Trainee Daniel Beach testified at the hearing; his testimony generally tracked his written statement, describing the incidents and the reasons he felt disrespected by Dent.<sup>70</sup> Trainee Beach opined Dent violated CSX Operating Rules 104.2 and 104.3.<sup>71</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 85.

<sup>62</sup> *Id.* at 86.

<sup>63</sup> *Id.* at 13.

<sup>64</sup> *Id.* at 92.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 17-18.

<sup>70</sup> *Id.* at 24-39, 58-65.

<sup>71</sup> *Id.* at 31-32.

Dent testified he wrote a statement, which was notarized and faxed to Trainmaster Neace on June 10, 2015, and that statement was admitted into evidence at the hearing. The statement reads:

On May 14 and 15 of 2015, trainee Beach was inattentive, quarrelsome, insubordinate, unsafe, and used profane language while working the F-71213, F-71214 and F-71215. He was instructed not to walk no more than two feet or arm's length away from me unless instructed or if we were riding a cut of cars. He walked off while in the Sodium Hydroxide unloading track. I instructed him to bring specific equipment on his person, his air gauge. He was instructed several times on the proper use of the radio and the proper way of using positive identification and consistently debated that "other conductors say it was not required," even after being read the rule word for word. He was instructed the stay on the engine with the engineer in a place of safety. Without being instructed to dismount the engine, he dismounted while I was making shoving moves to smoke and also smoking in customers industry. He went on to further say, "F\*\*k it!" he didn't want to explain why he was not focused and his attitude was it was. I'm making this statement because I went on the Law on May 16, 2015 at 0600. EOS<sup>72</sup>

CSX Engineer Danny Dunford testified at the second hearing as well; his testimony generally tracked his written statement.<sup>73</sup> Mr. Dunford opined that Dent violated CSX Operating Rule 104.2.<sup>74</sup> Mr. Dunford testified he did not remember hearing Dent use profane language. Mr. Dunford opined that Dent failed to live up to CSX's Code of Ethics,<sup>75</sup> which requires CSX employees to treat everyone, including coworkers, with "dignity and respect," and prohibits employees from engaging in "any activity that creates intimidating, hostile, or offensive working conditions."<sup>76</sup>

Locomotive Engineer George Williams testified he was present for the interaction between Dent and Trainee Beach on May 15, 2015. He testified there was tension between the two from the previous night. According to Mr. Williams, Dent said Trainee Beach called a signal wrong, which caused an altercation that carried over to next day. Mr. Williams stated Dent "was a little aggressive" in his tone with Trainee Beach.<sup>77</sup> Mr. Williams testified that Dent made Trainee Beach stay on the locomotive for the remainder of the night, but did not know Dent's reason for doing so. Mr. Williams opined Dent did not treat Trainee Beach with dignity and respect, as required by the CSX Code of Ethics, and that he violated CSX Operating Rule 104.2.<sup>78</sup> Mr. Williams testified he never heard Dent use profanity.

Dent testified on his own behalf at the hearing. He denied he was disrespectful, discourteous, quarrelsome, or offensive in his interactions with Trainee Beach or ever using profanity or creating a hostile work environment.<sup>79</sup> Dent gave his version of the events, generally denying any misconduct and refuting the other witnesses' statements. He admitted Trainee

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<sup>72</sup> *Id.* at 105.

<sup>73</sup> *Id.* at 40-50, 65-66.

<sup>74</sup> *Id.* at 43.

<sup>75</sup> *Id.* at 44.

<sup>76</sup> *Id.* at 97, 99.

<sup>77</sup> *Id.* at 51.

<sup>78</sup> *Id.* at 53-54.

<sup>79</sup> *Id.* at 67-69.

Beach “might have felt belittled” because Dent “broke out the rule book and read the rule to him word for word” when they were discussing radio transmission protocol.<sup>80</sup>

On July 21, 2015, CSXT sent a letter to Dent, informing him its determination that he was disrespectful, quarrelsome, and used profane language when interacting with Trainee Beach, in violation of CSX Operating Rules 104.2 and Rule 104.3.<sup>81</sup> CSXT decided “due to the serious nature of the infraction” that Dent should be “dismissed in all capacities from the service of CSX Transportation effective immediately.”<sup>82</sup> The United Transportation Union unsuccessfully appealed the decision to Public Law Board No. 1745.<sup>83</sup>

### Standard for Motion for Summary Decision

To succeed on a motion for summary decision, the moving party must show “there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.” 29 C.F.R. § 18.72(a). In deciding whether there is a genuine dispute as to any material fact, the administrative law judge must resolve any ambiguities and factual inferences in favor of the non-moving party. *Cobb v. FedEx Corp. Serv.*, ARB No. 16-030, ALJ No. 2010-AIR-024, slip op. at 4 (Sept. 29, 2017) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

The FRSA prohibits a railroad carrier engaged in interstate or foreign commerce from discharging, demoting, suspending, reprimanding, or in any other way discriminating against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith protected activity. 49 U.S.C. § 20109(a), (b); 29 C.F.R. § 1982.102(b).

To prevail on his FRSA whistleblower complaint, Complainant must demonstrate by a preponderance of the evidence that (1) he engaged in protected activity, as defined by the FRSA; (2) he suffered an adverse employment action; and (3) the protected activity was a contributing factor, in whole or in part, in the adverse employment action. *Stallard v. Norfolk So. Ry.*, ARB No. 16-028, ALJ No. 2014-FRS-149, slip op. at 5 (Sept. 29, 2017). If Complainant meets his burden of proof, Respondent may nevertheless avoid liability if it proves by clear and convincing evidence that it would have taken the same adverse employment action in the absence of protected activity. 49 U.S.C. § 20109(d)(2)(A)(i) (incorporating the legal burdens of proof set forth under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century).

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<sup>80</sup> *Id.* at 70.

<sup>81</sup> Koster Decl. Ex G at 1.

<sup>82</sup> *Id.* The authority to impose discipline rests with the Division Manager. Koster Decl. ¶ 10. In this case, CSXT's Field Administration department reviewed the allegation and determined it was a major offense, for which dismissal is warranted if the charge is proven. *Id.* at ¶ 14. Division Manager Larry Koster reviewed the transcripts and evidence submitted at the hearing and determined Dent engaged in the conduct for which he was charged. *Id.* at ¶ 15. Because it was considered a major offense, Mr. Koster decided he should be dismissed from employment. *Id.* at ¶ 16. Mr. Koster stated that “[o]n-the-job training is a critical part of the education of CSXT's conductors because it is their only supervised opportunity to learn their jobs before they begin working alone as conductors on a train crew. Mr. Dent's treatment of Mr. Beach interfered with his ability to learn and could have had a negative impact on Mr. Beach's proper development as an independent crew member.” *Id.* at ¶ 17. Mr. Koster stated he understood “Mr. Dent claims in his case that he reported that the phones were broken at the gate to the customer site for DuPont,” but denied that the reports played any role in his decision to fire Dent. *Id.* at ¶ 19. Mr. Koster stated he “would have made the same decision to dismiss him even if he had not made those reports.” *Id.*

<sup>83</sup> Koster Decl. Ex. H at 3-4.

## Legal Analysis <sup>84</sup>

### I. Complainant's Procedural Argument: Violation of Collective Bargaining Agreement

Complainant devotes most of his motion to arguing he is entitled to summary decision because Respondent failed to comply with the Collective Bargaining Agreement. Under Article 10, Section 2 of the Collective Bargain Agreement, "Trainmen directed to attend a formal hearing ... shall be notified in writing ... within ... ten (10) days from the date of occurrence or first knowledge thereof."<sup>85</sup> Complainant states that all three charge letters were mailed on the tenth day; he therefore argues each is invalid under the contract.<sup>86</sup>

In support of this argument, Complainant submitted three versions of his Employee History. The first is dated June 23, 2015;<sup>87</sup> the second is dated September 16, 2015;<sup>88</sup> and the third is dated March 24, 2018.<sup>89</sup> The only discrepancies between the three Employee Histories is: (1) the June 23, 2015 Employee History states the notice regarding Investigation 2 was mailed on May 27, 2015, whereas the September 16, 2015 and March 24, 2018 Employee Histories state the notice regarding Investigation 2 was mailed on May 28, 2015; and (2) the June 23, 2015 Employee History states the notice regarding Investigation 3 was mailed on June 8, 2015, whereas the September 16, 2015 and March 24, 2018 Employee Histories state the notice regarding Investigation 3 was mailed on June 9, 2015.

Complainant also submitted copies of the USPS Priority Mail Express envelopes Respondent used to send the charge letters. The envelopes indicate the date in which USPS accepted it for delivery. Each envelope indicates USPS accepted the parcel on the same date as the date appearing on the charge letter. In other words, the April 24, 2015 charge letter was accepted by USPS on April 24, 2015;<sup>90</sup> the May 28, 2015 charge letter was accepted by USPS on May 28, 2015;<sup>91</sup> and the June 9, 2015 charge letter was accepted by USPS on June 9, 2015.<sup>92</sup>

Although Complainant argues, "[b]y altering the date Respondent covers up the undisputed fact that the Complainant was wrongfully charged for any offense because the Carrier failed to comply with Collective Bargaining Agreement,"<sup>93</sup> none of the evidence he

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<sup>84</sup> Principles of fairness dictate that briefs filed by pro se litigants should be construed "liberally in deference to their lack of training in the law." *Mawhinney v. Transportation Workers Union*, ARB No. 12-108, ALJ No. 2012-AIR-014, slip op. at 4 n.9 (Sept. 18, 2014). "While such a pro se litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden of litigating his case to the [administrative law judge], nor to void the risks of failure that attend his decision to forgo expert assistance." *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983)). I analyze Complainant's claim he was terminated in violation of the whistleblower protections of the FRSA with this understanding in mind.

<sup>85</sup> Koster Decl. Ex. D at 75.

<sup>86</sup> CMSD at 2.

<sup>87</sup> CMSD Ex. P.

<sup>88</sup> CMSD Ex. O

<sup>89</sup> CMSD Ex. Q.

<sup>90</sup> CMSD, Ex. S.

<sup>91</sup> CMSD, Ex. T.

<sup>92</sup> CMSD, Ex. U.

<sup>93</sup> CMSD at 1 (emphasis in the original).

submitted supports his position. The Collective Bargaining Agreement requires the charge letters be sent within 10 days of either the date of incident or the company's first knowledge of the incident, and according to these records, all charge letters were sent within 10 days of the company's first knowledge of each incident.<sup>94</sup>

Assuming Complainant was correct, that Respondent had in fact conducted the hearings in violation of the Collective Bargaining Agreement, it is of no relevance to this proceeding, as I do not have the power to adjudicate that claim. Under the Railway Labor Act, minor disputes arising out of the interpretation or application of the Collective Bargaining Agreement must be resolved via compulsory and binding arbitration before the National Railroad Adjustment Board (or an adjustment board established by the employer and the unions representing the employees); the board has exclusive jurisdiction over such disputes. 45 U.S.C. § 153; *Consolidated Rail Corp. v. Railway Labor Executives Ass'n*, 491 U.S. 299, 303-04 (1989). Complainant raised this argument at his hearings and in his appeals to the Public Law Board, to no avail.

Given that I do not have power to rule on this claim, and an adjudicative body properly exercising its jurisdiction rejected this argument, it will not be considered. And because Complainant has failed to identify any instance in which he engaged in protected activity, failed to prove that he suffered an adverse employment action, and failed to prove that such protected activity was a contributing factor to the adverse employment action, Complainant's motion for summary decision with respect to this theory is denied.

## **II. Investigation 1: Hazardous Waste**

As a result of the first investigation, Respondent determined Complainant accepted hazardous material without receiving a shipping paper prepared in accordance with Federal regulations, in violation of CSXT Transportation Hazardous Material System Rules 6102 and 6105, and imposed a 7-day suspension as punishment. Although a 7-day suspension would qualify as an adverse employment action, there is no evidence to suggest Dent's reports of illicit cell phone use (discussed in more detail below), or any other FRSA-protected activity in which he may have engaged, was a contributing factor in Respondent's decision to suspend Complainant. I therefore conclude with respect to the first investigation there is no genuine dispute of material fact and Respondent is entitled to a decision as a matter of law.

## **III. Investigation 2: DuPont Misconduct**

As a result of the second investigation, Respondent determined Complainant was disrespectful, quarrelsome, and used profane language when interacting with DuPont employees, in violation of CSX Operating Rules 104.2 and Rule 104.3. Division Manager Larry Koster determined that termination from employment was appropriate, noting that "[d]ismissal is the only appropriate course where the evidence shows ... that a CSXT employee behaved so disrespectfully at a customer site that multiple of the customer's employees and contractors felt the need to complain."

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<sup>94</sup> With respect to Investigation 2, each Employee History indicates Respondent first learned about the alleged misconduct on May 22, 2015. With respect to Investigation 3, each Employee History indicates Respondent first learned about the alleged misconduct on May 31, 2015. CSMD Ex. P, O, Q.

Under the FRSA, an employee engages in protected activity if he “provide[s] information ... the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety ... if the information ... is provided to ... [a] person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the conduct.” 49 U.S.C. § 20109(a)(1)(C); 29 C.F.R. § 1982(b)(1)(i).

At his deposition, Complainant testified he reported to multiple supervisors (Mr. Swafford, Mr. Neace, Mr. Koster, Mr. Hawkins), on multiple occasions, including in January 2015 and April 2015, that the DuPont gate phones were inoperative and as a result, CSX employees were using their phones in violation of federal regulations.<sup>95</sup> *See* 49 C.F.R. § 220.303 (“A railroad operating employee shall not use an electronic device if that use would interfere with the employee's or another railroad operating employee's performance of safety-related duties. No individual in the cab of a controlling locomotive shall use an electronic device if that use would interfere with a railroad operating employee's performance of safety-related duties.”). Because Respondent has not put forth any evidence refuting Complainant’s testimony, I conclude there is sufficient evidence to find Complainant engaged in FRSA-protected activity. However, there is no evidence connecting Complainant’s reports of illicit cell phone use to the decision to terminate.<sup>96</sup> In his declaration, Mr. Koster denied Complainant’s reports about the broken gate phones played a role in his decision to fire Complainant, and stated he “would have made the same decision to dismiss him even if he had not made those reports.” At his deposition, Complainant admitted he did not think that his reports of illicit cell phone use played a role in the decision to terminate him:

Q: .... Do you think Mr. Neace pursued charges against you because you had told him about Mr. Dunford’s cell phone use?

A: No. Because he could have did it long before then. I told him in January. They needed something else. They needed something else. Danny Dunford using his cell phone wasn’t enough. They needed outsiders. They couldn’t use somebody from the railroad so they used the contractors at DuPont....<sup>97</sup>

Because there is no evidence linking Complainant’s protected activity to Respondent’s decision to terminate, and there is substantial evidence showing his protected activity was not a factor in the decision to terminate, I find Complainant’s reports of illicit cell phone to his supervisors was not a contributing factor in the adverse employment action.

Complainant’s deposition testimony suggests his argument with DuPont employees/contractors was related, at least in part, to his complaints about the inoperative gate phones (which led to illicit cell phone use by CSXT employees).<sup>98</sup> If considered protected activity, Complainant would likely meet his burden of proving his complaints was a contributing factor in the decision to terminate. However, his complaints to DuPont employees/contractors do not qualify as protected activity as there is no evidence in the record to suggest DuPont employees/contractors had “the authority to investigate, discover, or terminate” illicit cell phone

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<sup>95</sup> Dent Dep. Tr. at 32-33 (report to Mr. Swafford); 74-76, 80-84, 308, 316, 329-30 (report to Mr. Neace); 84, 149-50 (report to Mr. Koster); 248 (report to Mr. Hawkins).

<sup>96</sup> The parties do not dispute that Complainant suffered an adverse employment action when he was fired on July 21, 2015.

<sup>97</sup> Dent Dep. Tr. at 308.

<sup>98</sup> *See* Dent Dep. Tr. at 98.

use by CSXT employees. 49 U.S.C. § 20109(a)(1)(C); 29 C.F.R. § 1982(b)(1)(i); *Kuduk v. BNSF Ry. Co.*, 980 F.Supp.2d 1092, 1099 (D. Minn. 2013).<sup>99</sup>

Accordingly, I conclude with respect to Investigation 2 there is no genuine dispute of material fact whether Dent's complaints about the inoperative phones at the DuPont facility contributed to the decision to terminate him – they did not – and Respondent is therefore entitled to a decision as a matter of law.

#### **IV. Investigation 3: Trainee Beach Misconduct**

As a result of the third investigation, Respondent determined Complainant was disrespectful, quarrelsome, and used profane language when interacting with Trainee Beach, in violation of CSX Operating Rules 104.2 and Rule 104.3. Division Manager Larry Koster determined that termination from employment was appropriate, noting that “Mr. Dent’s treatment of Mr. Beach interfered with his ability to learn and could have had a negative impact on Mr. Beach’s proper development as an independent crew member.” As mentioned above, the parties do not dispute that Complainant suffered an adverse employment action. However, there is no evidence to suggest Complainant’s reports of illicit cell phone use to his supervisors, or any other FRSA-protected activity in which he may have engaged, was a contributing factor in Respondent’s decision to fire Complainant. I therefore conclude with respect to the third investigation there is no genuine dispute of material fact and Respondent is entitled to a decision as a matter of law.

#### **V. Conclusion**

The undisputed evidence shows Respondent suspended Complainant for accepting hazardous waste without receiving the proper paperwork, and terminated him for engaging in misconduct when interacting with DuPont employees/contractors and a trainman trainee. Although Complainant engaged in protected activity by reporting to his supervisors that CSXT employees were using their cell phones while operating rail equipment because of broken gate phones at the DuPont facility, the undisputed facts establish that such reports did not contribute in any way to the decision to suspend or terminate Complainant. Accordingly, I grant Respondent’s motion for summary decision and deny Complainant’s motion for summary decision.

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<sup>99</sup> The United States Court of Appeal for the Eighth Circuit, affirming the district court’s judgment, declined to consider this issue. *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 790 (8th Cir. 2014).

## ORDER

In light of the foregoing, IT IS ORDERED:

1. Complainant's motion for summary decision is DENIED;
2. Respondent's motion for summary decision is GRANTED; and
3. The complaint of Complainant Steven Dent under the FRSA is DENIED.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

PCJ, Jr./PML/ksw  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it.

*See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).