

U.S. Department of Labor

Office of Administrative Law Judges
William S. Moorhead Federal Office Building
1000 Liberty Avenue, Suite 1800
Pittsburgh, PA 15222

(412) 644-5754
(412) 644-5005 (FAX)



Issue Date: 17 July 2017

CASE NO. 2017-FRS-24

In the Matter of:

JASON D. DICKEY,
Complainant

v.

CSX CORPORATION,
Respondent

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53 (Aug. 3, 2007) and the implementing regulations at 29 C.F.R. Part 1982. On September 9, 2015, complainant, Jason Dickey (“Dickey” or “Complainant”) filed a complaint with the Secretary of Labor alleging that his employer, CSX Corporation, (“Employer” or “CSX”) violated the employee protection provisions of the FRSA.

On April 20, 2017, Dickey provided notice of his intent to file a complaint in this matter in federal court, in accordance with 49 U.S.C. §20109(d)(3). For the reasons that follow, this matter is dismissed without prejudice to its reinstatement if Dickey fails to file an action in federal district court.

After investigation of Dickey’s complaint, on September 13, 2016, the Occupational Safety and Health Administration (OSHA) found that CSX did not violate the FRSA and dismissed the complaint. On October 7, 2016, Dickey objected to OSHA’s findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The matter was subsequently assigned to the undersigned ALJ. A hearing in this case is currently scheduled to begin in Pittsburgh, Pennsylvania on August 15, 2017, before the undersigned ALJ.

On April 20, 2017, Dickey provided notice of his intent to file a complaint in this matter, in the applicable United States District Court, in accordance with 49 U.S.C. §20109(d)(3). Generally, 49 U.S.C. §20109(d)(3) permits a complainant to bring an action at law or in equity for *de novo review* in the appropriate district court for the United States with jurisdiction, if there is no final order of the Secretary, 210 days have passed since the filing of the complaint and there has been no delay due to the bad faith of the complainant.

The requirements of 49 U.S.C. §20109(d)(3) have been satisfied. Specifically, a hearing has not yet taken place and thus there has been no final order of the Secretary; more than 210 days have passed since the complaint was filed on September 9, 2015; and there is no evidence of delay due to bad faith of Complainant.

Based on Complainant's representations that he intends to file an action in federal district court, this case is being dismissed.¹ In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

ORDER

IT IS ORDERED:

1. That the hearing scheduled to begin on August 15, 2017, in Pittsburgh, Pennsylvania, in this matter is **CANCELLED**;
2. That the complaint, filed under the FRSA in this matter, is **DISMISSED WITHOUT PREJUDICE** to its reinstatement if an action is not filed in federal district court; and
3. Any pending motions and all hearing deadlines are moot.

NATALIE A. APPETTA
Administrative Law Judge

¹ To date, the undersigned has not received a copy of the complaint filed in federal court, despite efforts to obtain a copy from counsel.