U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 March 2017

CASE NO.: 2017-FRS-00002

In the Matter of:

FOREST EMBER
FKA ERIKA ELLEFSON,
Complainant,

v.

NATIONAL RAIL PASSENGER CORPORATION
DBA AMTRAK,
Respondent.

ORDER GRANTING WITHDRAWAL OF COMPLAINT
AND DISMISSING CASE

This matter arises under the Federal Rail Safety Act ("FRSA"), 49 U.S.C. § 20109, and the implementing regulations found at 29 C.F.R. Part 1982. A formal hearing is scheduled for March 29 and 30, 2017, in Seattle, Washington. Complainant is represented by attorneys James Ferguson and Scott Kennedy. Employer is represented by attorney Jacob Flesher.

On September 8, 2016, the Secretary of Labor, acting through OSHA, determined that there was insufficient information to find that Complainant timely filed her complaint within 180 days of the adverse action and issued written findings denying the claim. On October 7, 2016, Complainant timely filed a request for hearing ("Complaint").

On February 3, 2017, Employer filed a motion to dismiss this matter under Federal Rule of Civil Procedure 12(b)(6) and 29 C.F.R. § 1982.103(d), asserting that Complainant had failed to state a cause of action upon which relief can be granted and that the complaint was not filed within 180 days of the alleged termination. The matter was duly served, but no opposition was received. However, on March 13, 2017, pursuant to 29 C.F.R. § 1982.111(c), Complainant filed a request to dismiss her complaint.

"If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary." 29 C.F.R. § 1982.111(c).

Here, Employer previously filed a motion to dismiss this case, which was unopposed by Complainant. Complainant subsequently filed a motion to dismiss the complaint stating she "has

made the decision not to pursue her claim against [Respondent] and therefore requests this Court dismiss said complaint." No other objections are pending. Accordingly, Complainant's motion is granted. The complaint is withdrawn and dismissed with prejudice. The September 8, 2016, finding by OSHA acting on behalf of the Secretary of Labor is the final order of the Secretary.

Because Complainant has withdrawn her complaint, the motion to dismiss filed by Employer is moot, and no ruling will be issued.

All dates are vacated. This matter is closed.

SO ORDERED.

Digitally signed by Richard M.Clark
DN: CN=Richard M.Clark,
OU=Administrative Law Judge, O=US
DOL Office of Administrative Law
Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

RICHARD M. CLARK
Administrative Law Judge