

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 April 2017

CASE NO. 2017-FRS-00018

In the Matter of

BRANDON FRESQUEZ,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER OF DISMISSAL

This case arises under the Federal Rail Safety Act, 49 U.S.C. 20109, and its implementing regulations, 29 C.F.R. Part 1982. It is set for hearing in Denver on July 24, 2017.

On April 10, 2017, Complainant filed a copy of a complaint he filed with the U.S. District Court in *Fresquez v. BNSF Ry. Co.*, Case No. 1:17-cv-00844 (D. Colo.). In the district court complaint, Plaintiff Brandon Fresquez alleged against Defendant BNSF three violations of the Federal Rail Safety Act. Complainant's counsel's cover letter states that he is providing the federal court complaint "pursuant to 29 C.F.R. § 1982.114."

Consistent with the statute, that regulation allows a complainant to file his claim *de novo* in a federal district court if the administrative complaint has been pending at the Department of Labor at least 210 days, the Secretary of Labor has not issued a final order, and there is no showing that complainant engaged in bad faith delay. 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(a). The regulation requires a complainant who has elected this option to file with the administrative law judge a file-stamped copy of the district court complaint. *Id.* § 1982.114(c).

Complainant filed his administrative complaint with the Occupational Safety & Health Administration on August 25, 2016. He filed the district court complaint on April 5, 2017. He therefore filed the district court complaint 223 days after he filed the OSHA complaint. The Secretary had not issued a final order, and there has been no showing of Complainant's bad faith delay (or delay of any kind).

As Complainant has complied with the statutory and regulatory provisions, his complaint at this

Office is DISMISSED without prejudice to his pursuing his claims in the United States District Court.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge