



Issue Date: 30 June 2017

Case No.: 2017-FRS-00016

In the Matter of:

ANTONIO GUERRA,
Complainant,

v.

CSX TRANSPORTATION, INC.,
Respondent.

**ORDER GRANTING MOTION TO WITHDRAW
COMPLAINT AND CANCELING HEARING**

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act (FRSA), as amended.¹ The statute and implementing regulations² prohibit retaliatory or discriminatory actions by railroad carriers against their employees who engage in activity protected by the Act. The complaint alleged that Complainant was disciplined for reporting unsafe working conditions and safety violations of federal law to Respondent. The Occupational Safety and Health Administration (“OSHA”), as the agent of the Secretary of Labor, investigated the complaint and reported its findings on December 8, 2016. OSHA found there was no reasonable cause to believe Respondent violated the FRSA when it disciplined Complainant. On December 21, 2016, Complainant appealed those findings to the Office of Administrative Law Judges (“OALJ”). The case is scheduled for hearing on December 5, 2017, in Detroit, Michigan.

On June 19, 2017, Complainant filed a motion to withdraw complaint. Complainant advised the Court that he has resolved his pending claim pursuant to the Railway Labor Act with Respondent Company. No response to the motion has been filed by Respondent. Under 29 C.F.R. §1982.111(c), a party may withdraw its objections at any time before the OSHA findings become final if the Administrative Law Judge approves the withdrawal. Both parties are ably represented by counsel. Being duly advised, I find that the motion should be **GRANTED**.

¹ 49 U.S.C. § 20109 (2013).

² 29 C.F.R. Part 1982 (2013).

IT IS THEREFORE ORDERED that the motion to withdraw complaint is **GRANTED**, the appeal is **DISMISSED** and the hearing scheduled for December 5, 2017, in Detroit, Michigan, is **CANCELLED**. The findings issued by OSHA on December 8, 2016, shall be the final order of the Secretary of Labor, as provided by 29 C.F.R. § 1982.111(c).

JOSEPH E. KANE
Administrative Law Judge

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).