



Issue Date: 17 May 2018

Case No.: 2017-FRS-00065

In the Matter of:

DANIEL LEMON,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

**ORDER DISMISSING COMPLAINT AND ORDER
CANCELING HEARING**

This matter arises out of a complaint filed by Daniel Lemon, (“Complainant”) against Norfolk Southern Railway Company, (“Respondent”) under Section 419 of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109. The FRSA allows a Complainant to file an action in United States District Court if the Department of Labor has not issued a final decision within 210 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant.¹

Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on April 8, 2016. OSHA issued its findings on May 4, 2017; Complainant submitted his objections to the Secretary’s Findings on May 24, 2017, and requested a hearing before an administrative law judge.

By letter dated April 27, 2018, sent via electronic mail, Complainant notified all parties under 49 U.S.C. § 20109(d)(3) and 29 CFR § 1982.114(b), that he intended to file a complaint in United States District Court. This office requested that Complainant submit a signed copy of the District Court complaint. Complainant submitted a signed, proof complaint, filed on May 3, 2018,². The Department of Labor has not issued a final decision within 210 days of the filing of the complaint filed on April 8, 2016. There are no allegations or evidence of record which indicate to me that there has been any delay due to the bad faith of the complainant.

¹ 49 U.S.C. § 20109(d)(3).

² *Daniel Lemon v. Norfolk Southern Railway Company, a/k/a Norfolk Southern Corporation*, Case No.: 3:18-cv-1029, Complaint filed May 3, 2018, United States District Court for the Northern District of Ohio, Western Division).

Accordingly, **IT IS HEREBY ORDERED** that the complaint in the above-captioned matter be, and the same hereby is, **DISMISSED**.

IT IS FURTHER ORDERED that the hearing scheduled for October 2, 2018, in Toledo, Ohio, is **CANCELED**.

JOSEPH E. KANE
Administrative Law Judge