

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 05 April 2018**

Case Nos.: 2017-FRS-00106  
2017-FRS-00107

In the Matters of

**LUIS MALDONADO**  
**MICHAEL CHIRACANE**  
Complainants

v.

**PORT AUTHORITY TRANS-HUDSON**  
**CORPORATION (PATH)**  
Respondent

**ORDER OF DISMISSAL**

The above-captioned matters, based on complaints filed by Luis Maldonado and Michael Chiracane (“Complainants”) against Port Authority Trans-Hudson Corporation (PATH) (“Respondent” or “PATH”), arise under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (“FRSA”) and its implementing regulations at 29 CFR, Part 1982. These matters have been consolidated for a formal hearing, scheduled to commence at 9:30 a.m., April 11, 2018 in New York, New York.

The FRSA allows Complainant to file an action in United States District Court if (1) the Department of Labor (“DOL”) has not issued a final decision within 210 days of the filing of the complaint with the Occupational Safety and Health Administration (“OSHA”), and (2) there is no showing that there has been delay due to the bad faith of Complainant.

In the matter referenced by 2017-FRS-00106, OSHA issued a notice of determination by letter dated August 17, 2017, stating that the complaints were timely filed on September 9, 2016; Complainants appealed OSHA’s determination by letter dated September 13, 2017. In the matter referenced by 2017-FRS-00107, OSHA issued a notice of determination by letter dated August 17, 2017, stating that the complaints were timely filed on September 9, 2016; Complainants appealed OSHA’s determination by letter dated September 13, 2017.

The existing record in these consolidated matters reflects DOL has not issued a final decision in any of the complaints since their dates of filing and more than 210 days have elapsed since the filing of those complaints.

By facsimile received on April 5, 2018, Complainant's counsel enclosed a copy of a complaint filed in the United States District Court for the Southern District of New York which is date stamped as filed on April 5, 2018. That complaint brings an action against Respondent for the same violations under the FRSA as are alleged in the instant matters before this Office.

Under §20109(d)(3) of the FRSA, a de novo review of the complaint is permitted in the appropriate United States District Court if a final decision on the filed complaint has not been issued within 210 days after the complaint was filed, provided delay is not the result of bad faith of the complainant. Pursuant to implementing Federal regulations at 29 CFR §1982.114(b), a complainant is required to file notice of intention to file the complaint in U.S. District Court 15 days in advance of such filing with the federal District Court. The regulations also require that the complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while it is before the United States Department of Labor. Under the FRSA, filing a complaint in United States District Court vests jurisdiction in that forum. 49 U.S.C. § 20109(d)(3); *see also* 29 C.F.R. § 1982.114(a).

In these cases, by letter dated and received via facsimile on March 8, 2018, Complainant's counsel provided notice of Complainant's intent to file a complaint in federal District Court. By facsimile on April 5, 2018, Complainant's counsel provided a copy of the complaint (alleging, in part, the FRSA violations raised in these matters) which was filed in federal District Court on that date. There has been no showing of any delay in District Court filing due to Complainant's bad faith. Accordingly, jurisdiction for further action on the complaints filed under the FRSA has been removed to the United States District Court for the Southern District of New York. The current causes of action are therefore dismissed before this Office and the hearing scheduled for April 11, 2018 is canceled.

SO ORDERED.

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill, New Jersey