

**U.S. Department of Labor**

Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

(856) 486-3800  
(856) 486-3806 (FAX)



**Issue Date: 22 February 2018**

Case No.: 2017-FRS-00091

In the Matter of

**ERIC MELENDEZ**  
Complainant

v.

**NEW JERSEY TRANSIT**  
Respondent

**ORDER OF DISMISSAL**

This matter has been scheduled for a hearing on February 26, 2018 in New York, New York before the undersigned pursuant to the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109. Applicable regulations are set forth at 29 C.F.R. Part 1982.

The governing law provides that

[I]f the Secretary of Labor has not issued a final decision within 210 days after filing of a complaint, and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

Pub. L. No. 110-53, § 1413 (c)(7); *See also* 29 C.F.R. § 1982.114.

On February 21, 2018, Complainant's counsel filed a complaint with the United States District Court for the District of New Jersey and has forwarded a copy to this office. On September 5, 2017, the undersigned issued an Initial Notice of Hearing and Pre Hearing Order scheduling this matter for Monday, February 26, 2018 at 10:30 a.m. in New York, New York. The hearing scheduled for Monday, February 26, 2018 and all other requirements are hereby **CANCELED**.

The filing of an action in United States District Court deprives the Office of Administrative Law Judges of jurisdiction. See Stone v. Duke Energy Corp., 432 F.3d 320 (5<sup>th</sup> Cir. 2005; see also Kelly v. Sonic Automotive, Inc., ARB No. 08-027 (Dec. 17, 2008). I therefore order the instant matter DISMISSED.

SO ORDERED.

**THERESA C. TIMLIN**  
Administrative Law Judges

Cherry Hill, New Jersey