

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 11 June 2018

ALJ NO.: 2017-FRS-00084

In the Matter of:

EDWARD NIEDZIEJKO,
Complainant,

v.

DELAWARE & HUDSON RAILWAY COMPANY,
d/b/a CANADIAN PACIFIC RAILWAY,
Respondent.

ORDER DISMISSING CASE AND CANCELLING TRIAL

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007). The formal hearing is scheduled for June 13, 2018 in Albany, New York. On May 31, 2018, the Complainant filed a Notice of Intent to File Original Action. In the Notice, the Complainant states that within fifteen days, he intends to file an original action in U.S. District Court for the Northern District of New York pursuant to 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114. Given the timing of the filing on the eve of trial, on June 5, 2018, I held a final pre-trial conference with the parties on the record. During the conference, counsel for the Complainant confirmed that he will be filing a complaint in U.S. District Court by the end of the week, and he voiced no objection to dismissal of the instant proceeding immediately. Upon conferring with the parties and with their consent, the following order shall enter. It is hereby ORDERED that:

- (1) The Complaint of Edward Niedziejko is DISMISSED WITH PREJUDICE from refiling before the Office of Administrative Law Judges. This ruling shall have no effect on the Complainant’s rights to effectuate the removal of this matter to the district court pursuant to his stated intent. *See generally Stone v. Duke Energy*

Corp., 432 F.3d 320 (5th Cir. 2005); *Kelly v. Sonic Automotive, Inc.* ARB No. 08-027 (Dec. 17, 2008); and

(2) The formal hearing in this matter is CANCELLED.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts