



**Issue Date: 21 February 2018**

Case No.: 2017-FRS-100

*In the Matter of:*

**DANIELLE SPENCE,**  
Complainant,

v.

**NORFOLK SOUTHERN RAILWAY COMPANY,**  
Respondent.

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

These proceedings arise under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-053 (August 3, 2007). The implementing regulations appear at Part 1982 of Title 29 of the Code of Federal Regulations (“C.F.R.”). The FRSA prohibits an employer from discharging, demoting, suspending, reprimanding, or in any other way discriminating against an employee, if such employee engaged in certain protected activity.

This matter is currently scheduled for hearing on June 19, 2018, in Cleveland, Ohio. On February 15, 2018, counsel for the Complainant filed a Motion to Withdraw Complainant’s Complaint that is pending before me.

On or about February 2, 2016, Respondent disciplined Complainant Spence as a result of conduct on January 9, 2016. The discipline was a 30-day suspension. A complaint was filed with the Department of Labor on or about March 24, 2016 alleging that the discipline arose out of Complainant’s report of an injury on January 9, 2016. On August 24, 2017, the complaint was dismissed by the Department of Labor. On or about August 29, 2017, the Complainant objected to the Secretary of Labor’s findings and requested a hearing. This matter is pending before the undersigned.

The stated basis of the request to withdraw is that Complainant has been continuously absent from work due to her injury sustained on January 9, 2016, and it has become apparent that she will never return to railroad employment. The Complainant stated that, under these circumstances, any remedy which this Court could afford would be largely meaningless since, due to this injury, the suspension will never be served, and this single instance of discipline on her record would likely have little impact on her future employment.

Counsel for the Respondent has been contacted, and he stated that the Respondent did not object to the Motion to Withdraw Complaint.

“[A] party may withdraw its objections to the Assistant Secretary’s findings and/or order by filing a written withdrawal with the ALJ.” 29 C.F.R. § 1982.111(c). In the absence of objection, the Motion to Withdraw Complainant’s Complaint is **GRANTED**, and the hearing currently set for June 19, 2018 is **CANCELLED**. The Assistant Secretary’s findings and order in this matter are now the final order of the Secretary.

**SO ORDERED.**

JOHN P. SELLERS, III  
Administrative Law Judge