



**Issue Date: 26 July 2017**

OALJ Case No.: **2017-FRS-00015**

OSHA Case No.: **7-3620-16-039**

*In the Matter of:*

**TIMOTHY STEWART,**

*Complainant,*

v.

**BNSF RAILWAY COMPANY,**

*Respondent.*

**ORDER DISMISSING COMPLAINT WITH PREJUDICE**

By order dated July 21, 2017, the hearing scheduled for August 16-17, 2017, in Billings, Montana, was canceled and continued until after a decision was rendered on Respondent's motion for summary decision. On July 25, 2017, Complainant submitted a letter withdrawing his request for a hearing. For the reasons discussed below, Complainant's request is granted.

***Background***

This case was brought under the employee protection provisions of the Federal Rail Safety Act ("FRSA"), 49 U.S.C. § 20109, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007), and Section 419 of the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432 (October 16, 2008), and the FRSA regulations issued at 29 C.F.R. Part 1982.

When a complainant withdraws his objection to the Secretary's findings, 29 C.F.R. § 1982.111(c) is applicable:

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's

findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

### ***Discussion***

On July 25, 2017, Complainant, through counsel, submitted a letter withdrawing his request for a hearing. In the letter, Complainant acknowledges that dismissal is with prejudice and that the parties have agreed to bear their own costs incurred in connection with this matter.

As noted above, the regulations permit a complainant to withdraw a complaint by providing a written request, which has the effect of reinstating the determination of the Assistant Secretary. 29 C.F.R. § 1982.111(c). Here, in a decision dated December 2, 2016, the Secretary of Labor, acting through the Regional Administrator for OSHA, determined that there was no reasonable cause to believe that Respondent violated 49 U.S.C. § 20109, and set forth the "Secretary's Findings." (This determination is tantamount to the Assistant Secretary's findings mentioned in the regulation.) Although Complainant has sought to withdraw his request for a hearing, he is actually withdrawing his objections to those findings, which will now become the final order of the Secretary of Labor.

As a complainant bears the burden of proof in a whistleblower case, and here the complaint was initially determined to lack merit, there is no apparent reason to disapprove the request to withdraw the complaint. Further, Respondent does not oppose the request to withdraw the complaint. Complainant's objections are therefore withdrawn and, as the regulations provide that the Assistant Secretary's findings will constitute the final Order of the Secretary, the case will be dismissed with prejudice. 29 C.F.R. § 1982.111(c).

Complainant's request to withdraw his complaint is **GRANTED**, the objections are **WITHDRAWN**, and the claim is hereby **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**MORRIS D. DAVIS**  
Administrative Law Judge