



Issue Date: 01 August 2017

Case No.: 2017-FRS-00046

In the Matter of

DAVID THOMPSON
Complainant

v.

CONSOLIDATED RAIL CORPORATION
Respondent

ORDER OF DISMISSAL AND HEARING CANCELLATION

The above-captioned matter, based on a complaint filed by David Thompson (“Complainant”) against Consolidated Rail Corporation (“Respondent” or “Conrail”), arises 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. A formal hearing has been scheduled to commence at 9:30 a.m., November 1, 2017, 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.

The notice of determination issued by OSHA by letter dated March 1, 2017 states that the complaint was filed on November 21, 2016. The existing record reflects DOL has not issued a final decision since that date.

Enclosed with a letter to this office from Complainant’s counsel dated June 26, 2017, was a document entitled “Notice Of Intention To File Original Action In United States District Court,” stating Complainant intends to file a civil action in the above-captioned matter.

By facsimile transmission received on July 27, 2017, Complainant’s counsel submitted a copy of the complaint filed in the United States District Court for the Eastern District of Pennsylvania which is date stamped as filed on July 24, 2017. That complaint brings an action against Respondent for the same violations under the FRSA as are alleged in the instant matter before the OALJ.

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 this case, Complainant's counsel filed notice of Complainant's intent to file a complaint in federal District Court on June 26, 2017, and submitted a copy of a complaint alleging FRSA violation filed with a federal District Court on July 27, 2017. There has been no showing of any delay due to Complainant's bad faith. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the United States District Court for the Eastern District of Pennsylvania. The current cause of action must be dismissed before this office and the hearing scheduled for November 1, 2017 must be canceled.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey