



**Issue Date: 06 August 2018**

**CASE NO.: 2017-FRS-00017**

**IN THE MATTER OF**

**JACOB WASHBOURNE**  
**Complainant**

**v.**

**BNSF RAILWAY COMPANY**  
**Respondent**

**ORDER APPROVING COMPLAINANT'S WITHDRAWAL OF OBJECTIONS**  
**AND ORDER OF DISMISSAL**

This case 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. On July 18, 2016, Complainant Jacob Washbourne filed a complaint with the Occupational Safety and Health Administration ("OSHA") alleging that he was terminated by Respondent in violation of the FRSA. OSHA completed its investigation of that complaint and issued notice of the Secretary's findings and dismissal in a letter to Complainant dated December 5, 2016. By letter dated December 21, 2016, Complainant submitted his request for a hearing based on his objections to the OSHA notice of the Secretary's findings and dismissal.

The matter was then referred to the Office of Administrative Law Judges and the undersigned issued a Notice of Hearing and Pre-Hearing Order, setting a formal hearing in this matter for September 24-27, 2018 in Oklahoma City, Oklahoma.

In a letter addressed to the undersigned dated August 2, 2018, Complainant's Counsel stated the following:

[P]ursuant to 29 CFR § 1982.111(c), [Complainant] hereby moves to withdraw his Objections to Secretary's Findings and Request for Hearing Before an Administrative Law Judge.

The regulation at 29 C.F.R. § 1982.111(c) provides, in pertinent part: 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....The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections.... *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.* (Emphasis added).

Based on review of the existing record, Complainant's withdrawal of his objections to the Secretary's findings is **APPROVED** and Complainant's request for a hearing is **WITHDRAWN**. In view of the foregoing, the findings outlined in the OSHA notice dated December 5, 2016 will become the final order of the Secretary in this matter and this case is **DISMISSED** with prejudice, without costs awarded to either party.

**IT IS FURTHER ORDERED** that the formal hearing scheduled on September 24-27, 2018 in Oklahoma City, Oklahoma is hereby **CANCELLED**.

**SO ORDERED** this 6<sup>th</sup> day of August, 2018, at Covington, Louisiana.

**CLEMENT J. KENNINGTON**  
**ADMINISTRATIVE LAW JUDGE**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).