

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 September 2018

OALJ Case No.: **2018-FRS-00026**
OSHA Case No.: **8-0100-17-075**

In the Matter of:

KEITH JONES,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER CANCELING HEARING AND DISMISSING CLAIM

This case arose under the employee protection provisions of the Federal Railroad Safety Act (“FRSA”) and its implementing regulations. Complainant filed a complaint with the Secretary of Labor on July 11, 2017, alleging that Respondent retaliated against him in various ways, including investigating, suspending, placing on probation, and noting these events in his employment record—creating a potential for blacklisting—for reporting multiple hazardous safety concerns and conditions, notifying management of a work-related illness, and seeking medical treatment for the illness. On December 14, 2017, the Regional Administrator of the Occupational Safety and Health Administration notified Complainant that an investigation showed there was no reasonable cause to believe a violation of the FRSA occurred. Specifically, the Regional Administrator concluded that Complainant’s protected activity was not a contributing factor in the decision to terminate his employment. Complainant was issued two Level S violations within 36-months which included: (1) being discourteous and quarrelsome with an intent to cause a train delay and (2) failing to control train speed. The Regional Administrator also found Respondent had dismissed other employees for failing to control train speed who had multiple Level S violations within the 36-month review period. On January 18, 2018, Complainant filed objections to the findings and requested a hearing before an administrative law judge.

This case was docketed on January 26, 2018, and assigned to me on March 9, 2018. On March 14, 2018, I issued the initial notice of hearing and prehearing order directing the parties to confer and within 15 days of the order notify the Court of a mutually agreeable proposed date and location for a hearing. On April 20, 2018, I issued a supplemental notice of hearing setting the hearing for the week of November 5, 2018, at a location near Whitefish or Kalispell, Montana.

On August 23, 2018, Complainant notified me of his intent to discontinue this action and to file in United States District Court pursuant to 49 U.S.C. § 20109(d)(3), which allows a Complainant to bring an action in federal court if the Secretary of Labor has not issued a final decision within 210 days of the filing of his complaint. On the same day, Complainant submitted a copy of the complaint he filed, in the United States District Court for the District of Montana, Missoula Division (Civil Case Number 9:18-cv-00146).

ORDER

IT IS HEREBY ORDERED that the complaint filed by Keith Jones, on July 11, 2017, under the Federal Rail Safety Act, and currently pending before the Office of Administrative Law Judges, is **DISMISSED**, without costs awarded to either party. The case is closed and will be returned to the Regional Administrator.

SO ORDERED.

MORRIS D. DAVIS
Administrative Law Judge