



**Issue Date: 16 January 2019**

CASE NO.: 2018-FRS-00023

*In the Matter of:*

SCOTT COLE,  
*Complainant,*

v.

NORFOLK SOUTHERN RAILWAY,  
*Respondent.*

**ORDER GRANTING SUMMARY DECISION and DENYING COMPLAINT**

This matter 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 C.F.R. Part 1982. Complainant Scott Cole alleges that he was terminated from employment with Respondent Norfolk Southern Railway because he raised safety concerns over Respondent’s intent to use unqualified railroad crews on a contract with Detroit-Edison (DTE), a new customer of Respondent.

On October 29, 2018, Respondent Norfolk Southern Railway filed a motion for summary decision, conceding (for purposes of the motion only) that Mr. Cole engaged in protected activity when he protested to managers of Norfolk Southern the decision to use unqualified crew in support of the DTE contract. Respondent argued, however, that that protected activity played no role in the decision to terminate him; according to Respondent, Complainant was terminated for a December 19, 2016 telephone call with a representative of DTE. Respondent argued that it had determined that the discussion constituted unprofessional interference with Respondent’s business relationship with DTE, and that it involved DTE in an internal Norfolk Southern labor dispute.

Mr. Cole filed a timely opposition to Respondent’s motion, arguing that his internal protests are not the protected activity on which he bases his claim, but the December 19 phone call is. After reviewing Mr. Cole’s response, I ordered additional briefing on the issue whether the December 19 phone call constitutes protected activity. The parties filed timely briefs.

For the reasons set forth below, I conclude that there is no dispute of material fact that the telephone call made by Mr. Cole to a DTE representative on December 19, 2016 did not constitute protected activity under the FRSA, and therefore his complaint must be denied.

## Summary Decision

An administrative law judge may grant summary decision if the pleadings, affidavits, and other evidence show that there is no genuine issue as to any material fact, and the moving party is entitled to prevail as a matter of law. 29 C.F.R. § 18.72. If the moving party demonstrates an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to establish a genuine issue of material fact that could affect the outcome of the litigation. *Allison v. Delta Air Lines, Inc.*, ARB No. 03-150, ALJ Case No. 2003-AIR-00014 (ARB Sept. 30, 2004), citing *Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 158 (1st Cir. 1998).

The non-moving party may not rely on allegations, speculation, or denials of the moving party's pleadings, but rather must identify specific facts on each issue for which he bears the ultimate burden of proof. *Id.*, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). If the non-moving party fails to establish a genuine issue of material fact, dismissal is appropriate as “a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” *Id.*, quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

To prevail on his claim under the FRSA, Complainant must show (1) that he engaged in protected activity; (2) that he suffered an adverse employment action; and (3) that his protected activity contributed to the adverse employment action taken against him. *Palmer v. Canadian National Railway*, ARB No. 16-035, ALJ No. 2014-FRS-00154 (ARB Sep. 30, 2016); 42 U.S.C. § 42121(b)(2)(B)(iii). Failure to prove any of the elements is fatal to the claim.

## Discussion

### Summary of Relevant Evidence

In December of 2016, Mike Grace, then the Division Superintendent of Respondent's Dearborn Division, learned that Complainant had spoken on December 19 with Brian Corbett, a DTE communications manager. Mr. Grace contacted Mr. Corbett, who informed him of the substance of the conversation. According to Mr. Grace:

Mr. Corbett told me that Mr. Cole wanted him to comment on union jobs being moved from Michigan to Ohio in connection with Norfolk Southern's contract to provide service to the Monroe, Trenton and River Rouge power plants. Mr. Corbett told me that Mr. Cole said that he had been told that DTE was requiring Norfolk Southern to use Toledo crews to provide the new service to DTE, and that [SMART] was pursuing legal action against Norfolk Southern to stop it. He also told me that Mr. Cole had threatened that the union would be buying billboards blaming DTE for job losses in Michigan.

Mr. Grace then removed Mr. Cole from service pending an investigation, believing that Mr. Cole's conversation with Mr. Corbett was a direct attempt to undermine Respondent's

business relationship with an important new customer. On December 21, Mr. Grace issued a notice of investigation to Mr. Cole, scheduling an investigative hearing for December 28. Mr. Grace also contacted Mr. Corbett on December 21 to request that Mr. Corbett attend the December 28 hearing. Mr. Corbett declined, and sent Mr. Grace the following email on December 22:

Dear Mike Grace, Division Superintendent with Norfolk Southern:

Per your request, since I'm not able to attend the meeting on Dec. 28, I'm sharing with you via this email my recent phone conversations (sic) with Scott Cole, which occurred on Dec. 19 and Dec. 21, 2016.

He initially contacted DTE on the morning Dec. 19 by calling our media hotline, which is staffed by an answering service. The message indicated Scott was from the "SMART<sup>1</sup> Union Paper" and was calling about the "Norfolk Southern Railroad being moved to Ohio. Wanting to speak to someone with knowledge of the situation."

Scott left his phone number [redacted] and his email [redacted] as contact info. As Manager of DTE Fossil Generation Communications, the call was directed to me at 8:42 am EST on Dec. 19. I returned his phone call at 10:03 am and we spoke for 9 minutes.

Scott told me he was a union official for SMART, the International Association of Sheet Metal, Air, Rail and Transportation Workers.

Scott said he was calling to ask DTE for comments about union jobs in Michigan being relocated to staff Norfolk Southern's new rail yard in Swanton, Ohio to support a change by DTE's fuel supply logistics for the River Rouge, Trenton Channel and Monroe power plants.

I asked if these people being impacted were DTE employees and if the new rail yard was a DTE project? He said, "No."

I said that since this was regarding employees who work for Norfolk Southern (NS) and the rail yard was a NS project I suggest that he should call NS.

He declined and said he knows "how to get a hold of Norfolk Southern."

Scott continued by saying he wanted to give DTE a chance to respond, because he had affidavits from people who had heard NS say that DTE was instructing NS to move NS jobs to Ohio for the Swanton rail yard project. He asked if he could send me these documents. I refused. He asked for contact information for DTE's fuel supply office. "It's in Ann Arbor, isn't it?" I confirmed that DTE does have a

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<sup>1</sup> SMART is an acronym for the International Association of Sheet Metal, Air, Rail and Transportation Workers; it is the union that represents Norfolk Southern conductors, including Mr. Cole.

fuel supply office in Ann Arbor but that I did not have any details regarding DTE-NS fuel supply contracts.

He said the union was pursuing legal action against NS, and that the union will be “buying billboards” blaming DTE for the job losses. I cautioned DTE could pursue libel if false information was published. He said, “Oh, we have our lawyers too.”

He asked again if I wanted to respond to his claims about jobs being affected. I declined, again referring him to NS.

Disappointed by my lack of comments, Scott said “I thought I was going to talk with the Communications department, not the Legal department.”

That concluded our conversation. I then informed Norfolk Southern and DTE Legal, Fuel Supply and HR of Scott’s comments.

Scott called me again on Dec. 21 at 11:19 am EST. I recognized the number and did not answer.

He left a voice mail which said: “This is Scott Cole, we spoke the other day, from the SMART union. As I stated, I’m a SMART union officer. And I was looking to get an email or fax number so that I could forward you some documents for you to comment on. They are a copy of a lawsuit filed by Norfolk Southern stating what I spoke to you about the other day, so that you can fashion a response. Thank you.”

I did not return his call.

Mr. Cole disputes the substance of the telephone conversation as summarized by Mr. Corbett. He has testified twice regarding his recollection of that conversation: at the December 28, 2016 investigative hearing and at a deposition taken during discovery in this case. In addition, he responded to Mr. Corbett’s December 22 email with an email of his own on January 4, 2017, and submitted information regarding the telephone call in various forms appealing his termination under the SMART-Norfolk Southern collective bargaining agreement.

### *Hearing Testimony*

At the hearing on December 28, 2016, Mr. Cole was asked about the telephone conversation he had with Mr. Corbett. The transcript of that hearing is attached as Exhibit 3 to the Declaration of Carl Wilson in support of Respondent’s motion for summary decision; Mr. Cole’s testimony is transcribed at pages 30-40 thereof. A summary of his testimony follows:

Mr. Cole called DTE on the morning of December 19, 2016 and spoke to someone who told him that another DTE representative would call him back. Mr. Corbett called him back, and Mr. Cole informed Mr. Corbett that he was a SMART union official looking into Respondent’s

claim that DTE was requiring Respondent to move jobs that were traditionally performed by Detroit-based personnel to Ohio, to increase the tax base in Swanton. Mr. Cole told Mr. Corbett that he was doing his due diligence with respect to the lawsuit that Respondent had filed in federal court. Mr. Corbett referred Mr. Cole back to Respondent, and Mr. Cole said that he had already spoken with Respondent and needed DTE to confirm or deny his understanding. They went back and forth several times, and Mr. Cole finally said they weren't getting anywhere and he would try another department. With respect to the jobs being moved from Detroit to Ohio, Mr. Cole was relaying the information that Mr. Grace had given him – that DTE required the use of Ohio-based<sup>2</sup> crews. Mr. Cole did not blame DTE; he simply asked the question as part of his due diligence. He explained that he and the union were named in a lawsuit, that Mr. Grace had made the statements about the jobs, and that he was trying to do his due diligence by having DTE confirm or deny that they were requiring Respondent to move the jobs.

Mr. Cole was not acting as a conductor when he spoke with Mr. Corbett. He was being sued by Respondent individually and as a General Committee member. His attorney had advised him that the judge in the federal court action had ordered the parties to provide witness names by December 30. He called DTE to have them confirm or deny what Mr. Grace had said, and did so as a union official, not as a Norfolk Southern employee. He did not interfere with the business relationship between Respondent and DTE in any way.

Mr. Cole did not contact DTE as an employee of Respondent, but as an officer of SMART. He did so to protect his membership and the collective bargaining agreement. He believed that his conversation with Mr. Corbett was protected under the RLA as protecting the union membership, and also under the rules regarding the federal court action.

The conversation that Mr. Cole had with Mr. Corbett was professional, as required by General Conduct Regulations 900. He used no offensive language, and made no accusations. He only asked questions that were raised by Respondent. He told Mr. Corbett that a court case had been filed, and asked him to confirm or deny.

### *Deposition Testimony<sup>3</sup>*

Mr. Cole testified at a deposition on August 29, 2018. A summary of his testimony related to the conversation he had with Mr. Corbett follows:

Mr. Cole told Mr. Corbett that he was an officer with SMART, but doesn't recall whether he told Mr. Corbett he was an employee of Norfolk Southern. He asked Mr. Corbett to comment on "this"<sup>4</sup> but Mr. Corbett referred him to Respondent. He told Mr. Corbett that Respondent was saying that DTE was requiring the use of Ohio-based crews, and Mr. Corbett again referred him to Norfolk Southern. Mr. Cole then asked Mr. Corbett whether it would be true that DTE was requiring Respondent to use crews based in Toledo if he made that allegation on a billboard. Mr.

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<sup>2</sup> The crews are variously described as Toledo-based or Swanton-based. Regardless which city is named, the crews were to be based in Ohio.

<sup>3</sup> Exhibit 1 to Claimant's supplemental brief in support of protected activity, dated December 7, 2018.

<sup>4</sup> From the context, I find that "this" referred to the requirement that Mr. Cole had been told was imposed by DTE to use Ohio-based crews for the new DTE business.

Corbett starting talking about lawyers, and Mr. Cole repeated that he was only trying to confirm or deny what Mr. Grace had told him.

*January 4, 2017 Email*

On January 4, 2017, Mr. Cole emailed Mr. Corbett with his own characterization of the December 19 telephone conversation. The email reads as follows:

I would like to set the record straight in print and also give DTE the same opportunity. I would like to state for the record that I am an elected Officer of the SMART Union Local 278 and a Member of the 687 General Committee of Adjustment. I am in possession of your Email sent to Mike J. Grace on December 22, 2016. After reading it is apparent that as the Manager of DTE Fossil Generation Communications the best form of communication with you is the written form.

That said let me start with the so called meeting you were [invited] to attend on December 28th. Sir the meeting in fact was a disciplinary hearing not a meeting. Your Email as used as the basis for the hearing and in you state that I blamed DTE for the NS moving jobs. Sir at no time did I blame DTE I stated that Union Officials were told by the NS that was the reason. I also told you that the NS was using the movement of the jobs as an enticement to the Village of Swanton Ohio to sell them on closing a crossing and acquiring some property to complete the new yard. You did ask if this was a DTE project and I did say no. However it has come to light that in fact DTE is paying a substantial amount for the new yard construction.

Mr. Corbett you did correctly state that I wanted to give DTE a chance to respond. You stated that you were not aware of any information that I was speaking of and if I could send you a copy of the release. I replied that the statement was made by the NS in the meeting with Union Officials and [again] you repeated yourself. I asked if you would like me to send affidavits to that effect you declined.

All this information was stated to the Union by Mike J Grace of the Norfolk Southern. As I stated to you during our phone conversation I am trying to do my due diligence and give DTE the chance to respond to what was said by the NS.

*Appeal of Termination under Collective Bargaining Agreement*

Under the collective bargaining agreement between SMART and Norfolk Southern, an employee may appeal disciplinary actions taken after a formal investigation. The employee first appeals to local management where the employee works and if that appeal is denied, the employee can appeal to Respondent's Labor Relations department. If that appeal is denied, the employee must conference with the Labor Relations department and thereafter may appeal to

arbitration before the National Railroad Adjustment Board.<sup>5</sup> Mr. Cole appealed to local management, to the Labor Relations department, and to the NRAB, The appeals to local management and to the Labor Relations department addressed only deficiencies in the December 28 investigation and did not include Mr. Cole's version of the telephone conversation with Mr. Corbett, although the appeal to local management did state that he spoke with Mr. Corbett to gather information "pursuant to a lawsuit filed by the Norfolk Southern." The appeal to the NRAB did include Mr. Cole's version of the telephone conversation, and that version is set forth below:

Local Chairman Cole contacted the DTE communications dept. – (see *hearing transcript Q/A 209*). Local Chairman Cole repeatedly identified himself as a SMART Union Officer and explained why he was calling. Local Chairman Cole asked DTE Mr. Corbett to either confirm or deny the statements made by NSR Superintendent Grace. DTE Mr. Corbett repeatedly avoided answering, trying to steer Local Chairman Cole to contact the NSR. Local Chairman Cole stated that he was aware as he stated what the NSR position was. The conversation continued with DTE Mr. Corbett about what additional comments that NSR Superintendent Grace had made and actions the NSR had taken against its Union Employees.

#### Undisputed Facts<sup>6</sup>

Respondent Norfolk Southern Railway Company is a national rail carrier subject to the provisions of the FRSA; as part of its business, it provides rail service to customers in the Detroit, Michigan area through its Dearborn Division. Complainant Scott Cole is a conductor, who at all relevant times was employed by Respondent as a conductor in the Dearborn Division. In 2016, Respondent entered into an agreement with DTE to provide rail service to various coal-fired power plants around Detroit. In the summer of 2016, Mr. Grace told Mr. Cole, who was local chairman of SMART, that Norfolk Southern was considering using Ohio-based crews to provide those rail services, and Mr. Cole objected, partly on the basis that Ohio-based crews were not qualified to work in the Detroit service area. In early December, Mr. Grace informed SMART and the Brotherhood of Locomotive Engineers and Trainmen (BLET) that the DTE services would be performed by Ohio-based crews. Mr. Grace said that the decision to do so was DTE's.

Both SMART and BLET opposed the use of Ohio-based crews for the DTE business. The unions considered the plan to be a "major dispute" under the Railway Labor Act, and discussed the possibility of striking or taking other collective action against Respondent. In response, Respondent filed a federal court action on December 7, 2016 against SMART and BLET, as well as the union's local chairmen, including Mr. Cole. Respondent sought declaratory and injunctive relief that would require the decision to use Ohio-based crews to be resolved through mandatory arbitration under the RLA as "minor dispute." On December 14, 2016, Respondent dismissed the federal court action as against Mr. Cole.

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<sup>5</sup> Mr. Cole apparently failed to conference with the Labor Relations department before appealing to the NRAB, but that is of no moment in this decision.

<sup>6</sup> The parties dispute some of the specifics of the events recounted here. Where such disputes exist, I will accept Mr. Cole's version of the events for purposes of this Order.

On December 19, 2016, Mr. Cole marked off on union time and spoke by telephone with Brian Corbett, DTE's manager of communications, regarding the decision to use Ohio-based crews. Mr. Cole told Mr. Corbett that he was a SMART union official looking into Respondent's claim that DTE was requiring Respondent to move Detroit-based jobs to Ohio, to increase the tax base in Swanton. Mr. Cole did so as part of his due diligence with respect to the lawsuit that Respondent had filed in federal court. Mr. Corbett referred Mr. Cole back to Respondent, but Mr. Cole said that he already knew what Respondent's position was and had called in order for DTE to confirm or deny his understanding. They went back and forth in this manner several times. Mr. Cole finally decided he wasn't getting anywhere and told Mr. Corbett that he would try another department.

With respect to the jobs being moved from Detroit to Ohio, Mr. Cole was relaying the information that Mr. Grace had given him – that DTE required the use of Ohio-based crews. Mr. Cole did not blame DTE; he simply asked the question as part of his due diligence, having been named in the federal court lawsuit.

Mr. Cole was not acting as a conductor, but as a SMART union officer, when he spoke with Mr. Corbett. He was being sued by Respondent individually and as a General Committee member. His attorney had advised him that the judge in the federal court action had ordered the parties to provide witness names by December 30. Mr. Cole contacted DTE as a union officer to protect his membership and the collective bargaining agreement. At no time did he question the DTE service or make any accusations about it.

Mr. Grace learned of the telephone call between Mr. Cole and Mr. Corbett, contacted Mr. Corbett, and received the email summarized above. He thereafter directed Mr. Cole to attend an investigation, which was held on December 28. After the investigation, Mr. Cole was terminated.

### **Discussion**

The FRSA provides in pertinent part:

(a) In General.-A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done-

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by-

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct....

49 U.S.C. § 20109.

Similarly, the FRSA's implementing regulations provide in pertinent part:

(1) A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way retaliate against, including but not limited to intimidating, threatening, restraining, coercing, blacklisting, or disciplining, an employee if such retaliation is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(i) To provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) A Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452));

(B) Any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) A person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct....

29 C.F.R. § 1982.102(b).

Complainant argues that his telephone call with Mr. Corbett constituted protected activity because he had been informed by Mr. Grace that DTE was requiring the use of Ohio-based crews; consequently, he says, DTE is a person who has the authority to terminate the misconduct. Apparently, the relevant "misconduct" is the decision to use Ohio-based crews who were not qualified to work in the Detroit territory and would not be qualified in time for the January 1, 2017 start of the DTE services. Complainant argues that use of unqualified crews

would violate the provisions of 49 C.F.R. § 242.301 and of Respondent's own rules regarding certification and qualification.

Complainant's argument lacks merit. Assuming that using Ohio-based crews would have violated § 242.301, Mr. Cole did not convey that belief to Mr. Corbett. It makes little sense that his conversation with Mr. Corbett constituted protected activity when he made no reference to that violation at all, let alone characterizing it as a safety violation.

But there is a more fundamental reason for finding that the conversation with Mr. Corbett was not protected activity: Mr. Cole did not "provide information, directly cause information to be provided, or otherwise directly assist in any investigation" by Mr. Corbett or any other DTE representative. Indeed, Mr. Cole repeatedly disclaimed any idea that he provided information to Mr. Corbett; instead he *sought* information *from* Mr. Corbett regarding DTE's position on the use of Ohio-based crews. At the December 28 investigation, in the January 4 email, and in his appeals under the collective bargaining agreement, Mr. Cole consistently said that all he wanted was for Mr. Corbett to "confirm or deny" that DTE was requiring the use of Ohio-based crews. Likewise, he consistently said that his motivations for doing so were (1) to protect jobs in Detroit and (2) to perform due diligence with regard to the federal-court action. Neither Mr. Corbett's description to Mr. Grace of his December 21, 2016 conversation with Mr. Cole, nor Mr. Corbett's email of December 22, 2016, mentioned safety concerns, but recited Mr. Cole's concern about a loss of jobs in the Dearborn Division. Likewise, Mr. Cole's January 4, 2017 email to Mr. Corbett, even after he underwent his disciplinary investigation, did not refer to any safety concerns about use of Ohio-based crews, but referred only to "NS moving jobs" and to "due diligence." Finally, his post-investigation appeals did not characterize his conversation with Mr. Corbett in any way that would show that he provided information, but only that he was trying to "gather information." There is no evidence that Mr. Cole informed Mr. Corbett, or that he asserted in any communications with Respondent prior to his termination, that his motivation for calling Mr. Corbett was to ensure that only qualified crews would perform the DTE contract due to his safety concerns.

Finally, I note that although the record demonstrates that Mr. Cole raised concerns about the use of Ohio-based crews' lack of qualifications to Mr. Grace on a number of occasions, he has disavowed any FRSA claim based on those communications. Thus, my analysis is limited to the claim he asserts: that his conversation with Mr. Corbett was activity protected under the FRSA. It was not, and for that reason his complaint must be denied.

### **ORDER**

For the foregoing reasons, IT IS ORDERED:

1. Respondent's motion for summary decision is GRANTED; and

2. The complaint of Scott Cole under the FRSA is DENIED.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

PCJ, Jr./ksw  
Newport News, Virginia

**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. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(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, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).