

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 08 April 2019

CASE NO.: 2018-FRS-00149

In the Matter of:

EVAN DAVIS,
Complainant,

v.

LONG ISLAND RAILROAD COMPANY,
Respondent.

ORDER OF DISMISSAL

This proceeding arises from a complaint filed under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007).

On March 25, 2019, the Complainant filed a notice with this Court that he had filed an original action in United States District Court, pursuant to 29 C.F.R. § 1980.114. The Complainant submitted a copy of his docketed District Court complaint as required by 29 C.F.R. § 1980.114(c). *Davis v. Long Island Railroad*, No. 1:19-CV-02270 (S.D.N.Y. Mar. 13, 2019). Because the Complainant has filed a complaint in District Court based on the same facts that constitute his action before the Office of Administrative Law Judges, jurisdiction in this Court has been divested. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (5th Cir. 2005); *see also Kelly v. Sonic Automotive, Inc.*, ARB No. 08-027 (Dec. 17, 2008).

This claim is therefore **DISMISSED** for lack of jurisdiction, and the hearing scheduled for April 11, 2019 is **CANCELLED**.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts