



Issue Date: 14 November 2018

Case No.: 2018-FRS-00148

In the Matter of

NEIL GONZALEZ

Complainant

v.

METRO-NORTH COMMUTER RAILROAD COMPANY

Respondent

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter arises under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. Complainants filed administrative complaints with the Occupational Safety and Health Administration (“OSHA”) on January 14, 2018. OSHA was unable to conduct an investigation because OSHA received no response to the investigator’s inquiries to Complainant, and announced a determination on September 17, 2018, concluding that there was no reasonable cause to believe that Respondent violated the FRSA. On September 20, 2018, Complainant sought *de novo* review by this Tribunal. On October 23, 2018, the undersigned notified the parties that a teleconference with the parties would be held November 13, 2018.

On November 9, 2018, Complainant provided this Tribunal with copies of documents that indicated that on November 5, 2018, the Complainant had filed a Complaint for Damages and Demand for Jury Trial with the U.S. District Court for Southern District of New York.¹ See 49 U.S.C. §20109(d)(3).

As the statute provides:

If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for *de novo* review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

Id.

¹ The matter is identified as Case: 1:18-cv-10270.

More than 210 days have run since Complainants filed their OSHA complaints on January 14, 2018. There is no suggestion of bad faith on Complainants' part or at all.

Accordingly, the teleconference hearing set to begin on November 13, 2016 is hereby **CANCELLED**. This matter is **DISMISSED** without prejudice to Complainant's filing a complaint in the appropriate United States District Court.² See 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(b).

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

² Which it appears the Complainants have already done.