



Issue Date: 25 March 2019

Case No.: 2018-FRS-00089

In the Matter of

JACQUELINE MEDINA
Complainant

v.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
Respondent

ORDER OF DISMISSAL

The above-captioned matter, based on a complaint filed by Jacqueline Amtrak (“Complainant”) against National Railroad Passenger Corporation (Amtrak) (“Respondent” or “Amtrak”), 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. It has been scheduled for a formal hearing to commence on June 14, 2019 in New York, New York, as well as for a telephonic prehearing conference on April 16, 2019.

The FRSA allows Complainant to file an action in United States District Court if (1) the Department of Labor (“DOL”) has not issued a final decision within 210 days of the filing of the complaint with the Occupational Safety and Health Administration (“OSHA”), and (2) there is no showing that there has been delay due to the bad faith of Complainant.

In the matter referenced by 2018-FRS-00089, OSHA issued a notice of determination by letter dated May 10, 2018, stating that the complaint was timely filed on May 31, 2017, alleging Respondent terminated Complainant on or around January 24, 2017 due to her prior complaints of unsafe practices by Respondent. Through her counsel, Complainant objected to the OSHA determination and requested a hearing before the OALJ by letter dated June 8, 2018.

The existing record reflects DOL has not issued a final decision in the instant complaint since its date of filing and more than 210 days have elapsed since that filing.

By letter dated March 20, 2019, received on March 22, 2019, Complainant’s counsel enclosed a copy of a complaint filed in the United States District Court for the Southern District of New York which is date stamped as filed on March 13, 2019. That complaint brings an action against Respondent for the same violations under the FRSA as are alleged in the instant matters currently before the OALJ.

Under §20109(d)(3) of the FRSA, a de novo review of the complaint is permitted in the appropriate United States District Court if a final decision on the filed complaint has not been issued within 210 days after the complaint was filed, provided delay is not the result of bad faith of the complainant.

Pursuant to implementing Federal regulations at 29 CFR §1982.114(b), a complainant is required to file notice of intention to file the complaint in U.S. District Court 15 days in advance of such filing with the federal District Court. The regulations also require that the complainant file a copy of the district court complaint with the appropriate official with jurisdiction over the complaint while it is before the United States Department of Labor. Under the FRSA, filing a complaint in United States District Court vests jurisdiction in that forum. 49 U.S.C. § 20109(d)(3); *see also* 29 C.F.R. § 1982.114(a).

By letter dated March 20, 2019 and received on March 22, 2019, Complainant's counsel provided a copy of the complaint (alleging, in part, the FRSA violations raised in this matter) which was filed in federal District Court on March 13, 2019.¹ There has been no showing of any delay in the federal District Court filing due to Complainant's bad faith. Accordingly, jurisdiction for further action in the instant matter (based on a complaint filed under the FRSA) has been removed to the United States District Court for the Southern District of New York. The current cause of action is therefore dismissed before the OALJ. **The hearing scheduled for June 14, 2019, and the telephonic prehearing conference scheduled for April 16, 2019 are canceled.**

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

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

¹ The record does not reflect Complainant filed notice of her intention to file a complaint in federal district court as required under the FRSA's implementing regulations. Such lack of notice be a matter for the federal District Court to address as the OALJ has been divested of jurisdiction with the filing of the complaint filed in federal District Court.

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

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).