



Issue Date: 07 September 2018

CASE NO.: 2018-FRS-00022

In the Matter of:

LAWRENCE MOLDER,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, and the implementing regulations found at 29 C.F.R. Part 1982. Attorney Nicholas Thompson represents Complainant. Attorneys Paul Balanon and Michael Chait represent Respondent.

On July 27, 2018, I issued an Order Vacating Hearing after Complainant advised that he was dismissing his case and proceeding with this matter in federal court pursuant to 29 C.F.R. § 1982.114(a). In the Order, I granted Complainant’s request to keep the matter open until he filed his complaint in federal court and ordered the matter to remain pending for 30 days for Complainant to file a copy of his federal court complaint. *See* 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(a).

Under the FRSA, “Within 7 days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a copy of the file-stamped complaint.” 29 C.F.R. § 1982.114(c). However, the FRSA’s regulations provide no sanction for a party’s failure to comply with the service requirements. *Pfeiffer v. Union Pacific Railroad Co.*, ARB No. 12-087, slip op. at 2 (Nov. 19, 2012); *see also* 49 U.S.C. § 20109; 29 C.F.R. § 1982.114(c).

Complainant has not filed a copy of his federal court complaint and has not otherwise communicated any reason for the delay. In the Order Vacating Hearing, I granted Complainant's request to dismiss the complaint after finding that 210 days had passed since Complainant filed his complaint with OSHA and that there had been no showing the delay was due in any part to bad faith by Complainant. 29 C.F.R. § 1982.114(a). The statute and regulation do not provide a sanction for failing to file the complaint, and I do not find any reason to keep the matter pending any longer. Accordingly, the matter is dismissed. This case is closed.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge