

**U.S. Department of Labor**

Office of Administrative Law Judges  
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Covington, LA 70433



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**Issue Date: 10 April 2018**

**Case No.: 2018-FRS-00002**

**In the Matter of**

**JOHNNY S. PEREZ**  
**Complainant**

**v.**

**BNSF RAILWAY COMPANY**  
**Respondent**

**ORDER OF DISMISSAL**

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act of 2007 (FRSA), Title 49 United States Code Section 20109 and its implementing regulations at 29 C.F.R. § 1982. Complainant filed a complaint with the Secretary of Labor on or about November 22, 2016 alleging Respondent discharged him in retaliation for engaging in activity protected under the FRSA. On September 8, 2017, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), issued a letter dismissing the OSHA complaint because there was no reasonable cause to believe Respondent violated the FRSA.

Under the employee protection provision of the FRSA, 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. 49 U.S.C. § 20109(d)(3). In this matter, more than 210 days have passed since Complainant originally filed his complaint and there is no indication the delay is due to bad faith on the part of Complainant.

On April 2, 2018, Complainant filed a "Notice of Intention to File Original Action in United States District Court." On April 9, 2018, Complainant filed a "Notice of Filing District Court Complaint with ALJ," and attached a copy of a March 28, 2018 complaint filed in the United States District Court for Western District of Missouri, with confirmation of service on Respondent, confirming he exercised his right to pursue his claim in federal district court. Under 49 U.S.C. § 20109, the United States District Court for the Western District of Missouri has assumed jurisdiction of this matter.

Accordingly, the above-captioned complaint filed before the Office of Administrative Law Judges is **DISMISSED** and the hearing scheduled for July 31-August 2, 2018 is **CANCELLED**.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY**  
**ADMINISTRATIVE LAW JUDGE**