



**Issue Date: 27 August 2018**

Case No.: 2018-FRS-00094

In the Matter of

**STEVE PRICE**

Complainant

v.

**NATIONAL RAILROAD PASSENGER  
CORPORATION (AMTRAK)**

Respondent

**ORDER OF DISMISSAL AND HEARING CANCELLATION**

The above-captioned matter, based on a complaint filed by Steve Price (“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. A formal hearing has been scheduled to commence at 10:00 a.m., December 10, 2018, in Cherry Hill, New Jersey.

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.

The notice of determination issued by OSHA by letter dated June 19, 2018 states that the complaint was filed on October 31, 2017. The existing record reflects DOL has not issued a final decision since that date.

Under cover letter dated August 22, 2018 and received via facsimile, Complainant’s counsel enclosed a copy of their filing, “Complaint – FRSA” “Jury Trial Demanded”, a civil action in the above-captioned matter.

Under cover letter dated August 23, 2018 and received via facsimile, Complainant’s counsel submitted a copy of the complaint filed in the United States District Court for the Eastern District of Pennsylvania which is date stamped as filed on August 23, 2018. That

complaint brings an action against Respondent for the same violations under the FRSA as are alleged in the instant matter 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).

In this case, Complainant's counsel submitted a copy of a complaint alleging FRSA violation filed with a federal District Court on August 23, 2018. There has been no showing of any delay due to Complainant's bad faith. Accordingly, jurisdiction for further action on the complaint under the FRSA has been removed to the United States District Court for the Eastern District of Pennsylvania. The current cause of action must be dismissed before this office and the hearing scheduled for December 10, 2018 must be canceled.

**SO ORDERED.**

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey