



Issue Date: 12 June 2019

CASE NO.: 2018-FRS-00141

IN THE MATTER OF

**DAVID SHEARRER,
Complainant**

v.

**NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent**

**ORDER DENYING COMPLAINANT'S MOTIONS TO COMPEL
AND ORDER CANCELLING HEARING BECAUSE COMPLAINANT
INTENDS TO FILE A COMPLAINT IN THE U.S. DISTRICT COURT**

This proceeding arises from a claim of whistleblower protection under the Federal Rail Safety Act (FRSA), as amended.

On June 5, 2019, the Court received Complainant's Motion to Compel and Respondent's Opposition. The Parties request an expedited hearing on the Motion as a deposition was scheduled for June 6, 2019 and a ruling was necessary prior thereto. A conference call was held on June 6, 2019, in which rulings on the motion were announced. Essentially, the Parties were advised that the Court agreed with the argument made by Respondent – that the documents sought have nothing to do with the issues in this case and are unlikely to lead to the discovery of relevant evidence. The Parties were advised that the Court would issue complete findings regarding the motions on the record at the formal hearing.

Following the announcement of these rulings, on June 10, 2019, Complainant advised that he would be filing an action in U.S. District court. The statute and implementing regulations provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 210 days of the filing of a complaint with OSHA, and there is no showing that such delay is due to the bad faith of the complainant. More than 210 days have elapsed since the complaint was filed with the Department of Labor in this case.

Accordingly, Complainant shall file with this Court a copy of the complaint filed in U.S. District Court no later than 30 days from the date of this Order. The hearing scheduled for July 23, 2019, in Birmingham, Alabama is hereby **cancelled**.

SO ORDERED.

LARRY W. PRICE
Administrative Law Judge