



Issue Date: 05 October 2018

CASE NO.: 2018-FRS-00027

In the Matter of:

WILLIAM VASQUEZ,
Complainant,

v.

BNSF RAILWAY COMPANY,
Respondent.

ORDER VACATING HEARING
AND
ORDER DISMISSING CASE

This matter arises under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53. (Aug. 3, 2007), and the implementing regulations found at 29 C.F.R. Part 1982. A hearing is scheduled for January 28 to February 1, 2019. Attorney William Jungbauer represents William Vasquez (“Complainant”). Attorney Michelle Friend represents BNSF Railway Company (“Respondent”).

On October 2, 2018, pursuant to 29 C.F.R. § 1982.114(c), Complainant submitted a copy of a complaint filed on September 19, 2018, in the U.S. District Court for the District of Montana, Missoula Division.

If 210 days have passed since the filing of the complaint at this Office and there is no final decision of the Secretary, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States. 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(a). Within seven days after filing a complaint in federal court, a complainant must file with the ALJ a copy of the file-stamped complaint. 29 C.F.R. § 1982.114(c).

Complainant filed his complaint with the Occupational Safety and Health Administrative (“OSHA”) on May 30, 2017, contesting his January 27, 2017, termination. OSHA denied the complaint on December 13, 2017. Complainant timely requested a hearing at this Office on January 26, 2018. The 210 days for issuance of a final decision expired on December 26, 2017. There has been no final order entered by the Secretary, and there has been no showing that the delay was due in any part to bad faith by Complainant. 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(a).

Therefore, Complainant having filed his whistleblower complaint in the U.S. District Court, this matter is hereby dismissed. All dates are vacated.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge