



**Issue Date: 05 October 2018**

CASE NO.: 2018-FRS-00060

*In the Matter of:*

MARK VOELKER,  
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 7 to 11, 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 June 8, 2017, contesting his April 5, 2017, termination. OSHA denied the complaint on March 28, 2018. Complainant timely requested a hearing at this Office on April 25, 2018. The 210 days for issuance of a final decision expired on January 4, 2018. 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