

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 10 June 2019**

Case No.: 2019-FRS-00056  
OSHA No.: 6-0330-18-031

*In the Matter of:*

**GARY ALLEN,**  
*Complainant,*

v.

**BNSF RAILWAY COMPANY,**  
*Respondent.*

**ORDER APPROVING WITHDRAWAL OF OBJECTIONS,  
CANCELLING HEARING AND DISMISSING CLAIM**

The above-captioned case arises under the whistleblower protection provisions of the Federal Railroad Safety Act of 2007 (“FRSA”), 49 U.S.C. § 20109, as amended, and implementing regulations found at 29 C.F.R. Part 1982.

On or about December 26, 2017, Gary Allen filed a complaint with the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging his employer, the BNSF Railway Company (“Respondent”), retaliated against by terminating his employment after raising hours of service concerns. On March 22, 2019, the Assistant Secretary of Labor, acting through the Regional Administrator for the Occupational Safety and Health Administration’s Dallas, Texas office, issued a final determination letter (“Findings”) concluding he was unable to determine whether a violation of the FRSA occurred, and dismissed the complaint. On April 16, 2019, Complainant, through counsel, filed objections to the Findings and requested a hearing before the Office of Administrative Law Judges. By notice issued April 25, 2019, this matter is currently scheduled for formal hearing on September 25, 2019 in Waco, Texas.

On May 30, 2019, Complainant filed *Notice of Nonsuit To Dismiss With Prejudice* (“Motion”) advising that he is moving to dismiss the instant whistleblower claim with prejudice.

The rules governing withdrawal of FRSA complaints provide that “at any time before the ... findings and preliminary order become final, a party may withdraw its objections to the ... findings and/or preliminary order by filing a written withdrawal with the administrative law judge,” who shall then determine whether to affirm any portion of the findings or preliminary order or approve the withdrawal. 29 C.F.R. § 1982.111(c). I will treat Complainant’s Motion as

a request to withdraw his April 16, 2019 objections to the Findings.<sup>1</sup> Upon review of the entire record and for good cause shown, said Motion is hereby GRANTED. Accordingly,

**Order**

IT IS HEREBY ORDERED that the hearing in the instant case scheduled for September 25, 2019 in or around Waco, Texas be, and is hereby, CANCELLED.

Consistent with the regulations, the above captioned matter is hereby DISMISSED with prejudice without costs or attorney's fees awarded to either party.

**SO ORDERED:**

STEPHEN R. HENLEY  
Chief Administrative Law Judge

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<sup>1</sup> On June 7, 2019, a member of my staff contacted Respondent's counsel, who indicated no objection to the motion.