

**U.S. Department of Labor**

Office of Administrative Law Judges  
William S. Moorhead Federal Office Building  
1000 Liberty Avenue, Suite 1800  
Pittsburgh, PA 15222

(412) 644-5754  
(412) 644-5005 (FAX)



**Issue Date: 15 May 2019**

CASE NO. 2019-FRS-00024

*In the Matter of:*

**JASON CARLSON,**  
Complainant,

v.

**BNSF RAILWAY COMPANY,**  
Respondent

**ORDER OF DISMISSAL**

On December 12, 2018, Complainant, Jason Carlson filed with the Office of Administrative Law Judges a request for hearing and objections to the findings of the Secretary of Labor under the Federal Railway Safety Act, 49 U.S.C. §20109 (FRSA), as amended.

On May 14, 2019, Complainant, by and through his Counsel, notified this office that on May 8, 2019, he filed a Complaint in the United States District Court for the District of Minnesota at Case Number 19-CV-01232 asserting his FRSA claims against the Respondent herein. A copy of the time stamped District Court Complaint was attached to Complainant's notice of filing as Exhibit A.

29 C.F.R. §1982.114 provides that if two hundred ten (210) days have passed since the filing of a Complaint with the Secretary, and there is no showing of delay due to the bad faith of the Complainant, a Complainant may bring an action in an appropriate Federal District Court. Turning to the instant matter, despite some limited delays due to discovery disputes, it does not appear that such disputes were solely motivated by a bad faith effort to delay proceedings before the Office of Administrative Law Judges. Additionally, more than two hundred ten (210) days have passed since the Complainant filed his Complaint with the Secretary and no final decision has issued. Accordingly, I find that Complainant has met the prerequisites for invoking his right to bring an action in Federal District Court seeking a de novo review.

As the Complainant has elected to proceed with his claim under FRS in the U.S. District Court, the Office of Administrative Law Judges no longer has jurisdiction over the claims.

**ORDER**

Accordingly, it is Ordered that the hearing presently scheduled to begin on **July 16, 2019** in Minneapolis, Minnesota is hereby **CANCELLED** and the Complaint filed by Jason Carlson

under the Federal Railway Safety Act, 49 U.S.C. §20109, as amended, is **DISMISSED** with prejudice.

**PATRICIA J. DAUM**  
Administrative Law Judge