

**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: 26 June 2019**

CASE NO. 2019-FRS-00023

In the matter of:

JOSHUA CLAUSING,  
Complainant

v.

NORFOLK SOUTHERN RAILWAY CO.,  
Respondent

**ORDER OF DISMISSAL**

This case arises under the employee protection provisions of 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 at 29 C.F.R. Part 1982. On November 20, 2017, the complainant, Joshua Clausing (“Clausing” or “Complainant”) filed a complaint with the Secretary of Labor alleging that his employer, Norfolk Southern Railway Company, formally disciplined him in retaliation for reporting a work-related injury that occurred on September 25, 2017.

After investigation of Clausing’s complaint, on November 30, 2018, the Occupational Safety and Health Administration (OSHA) was unable to conclude that there was reasonable cause to believe that a violation of the statute occurred and dismissed the complaint. On December 7, 2018, Clausing objected to OSHA’s findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The matter was subsequently assigned to the undersigned ALJ. A hearing in this case is currently scheduled to begin in Huntington, West Virginia on July 23, 2019.

On June 20, 2019, the undersigned received Complainant’s Motion to Withdraw Complainant’s Complaint. In his motion, Complainant’s counsel advises that at the same time this matter has been pending before the Department of Labor, Complainant has also been pursuing a claim under the Federal Employers’ Liability Act (FELA), 45 U.S.C. §51 *et seq.*, with respect to his injury of September 25, 2017. Complainant’s injury claim has been pending in federal court in the Southern District of Ohio, and is scheduled for trial in 2020. Complainant’s counsel further advises that pursuant to negotiations, Respondent and Complainant have agreed to settle this FRSA claim.

Based on Complainant's representations that Respondent and Complainant have agreed to settle this claim, and the separate action is still pending in federal district court, this case is hereby dismissed without prejudice.

**ORDER**

**IT IS ORDERED:**

1. That the hearing scheduled to begin on July 23, 2019, in Huntington, West Virginia, in this matter is **CANCELLED**;
2. That the complaint, filed under the FRSA in this matter, is **DISMISSED WITHOUT PREJUDICE**.
3. Any pending motions and all hearing deadlines are moot.

SEAN M. RAMALEY  
Administrative Law Judge