



**Issue Date: 29 September 2020**

**CASE NO.: 2019-FRS-53**

In the Matter of:

**RICHARD DELL,**  
Complainant,

v.

**CANADIAN NATIONAL RAILWAY & ILLINOIS CENTRAL RAILWAY CO.,**  
Respondent.

### **ORDER OF DISMISSAL**

This case comes under the Federal Rail Safety Act (FRSA),<sup>1</sup> as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007.<sup>2</sup> The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees who are allegedly discharged or otherwise discriminated against by Employers for taking any action relating to the fulfillment of safety or other requirements established by the above Act.

Complainant filed his initial complaint with the Occupational Safety and Health Administration (OSHA) on 18 Feb 19. The complaint was considered by OSHA and dismissed on 14 Mar 19. He filed his objections on 4 Apr 19 and the case was referred to the Office of Administrative Law Judges for a de novo hearing scheduled for 14 Nov 19. The case was continued to 23 Jan 20 and again to 24 Mar 20, 1 Jun 20, 17 Jul 20, 10 Oct 20, and finally 19 Oct 20. On 22 Sep 20, Complainant’s Counsel filed a copy of a complaint for the same cause of action filed in federal district court on 1 Sep 20.

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<sup>1</sup> 49 U.S.C. § 20109.

<sup>2</sup> Pub. L. No. 110-53 (Aug. 3, 2007).

Employees under the Act may bring an original action at law or equity for de novo review in the appropriate district court of the United States if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee.<sup>3</sup> An employee does not act in bad faith by continuing to participate in the administrative process after acquiring his statutory right to file in district court.<sup>4</sup> The administrative complaint is dismissed.

In view of the foregoing, the hearing scheduled on **19 Oct 20** in **Covington, Louisiana** is hereby **CANCELLED**

**SO ORDERED**

**PATRICK M. ROSENOW**  
**Administrative Law Judge**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service

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<sup>3</sup> 49 U.S.C. § 20109(d)(3).

<sup>4</sup> *Gunderson v. BNSF Railway Company*, 850 F.3d 962 (8th Cir. 2017) (Noting that although the complainant wasted a great deal of scarce resources, the Court was constrained to allow him to file anew).

(eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).