



**Issue Date: 23 June 2020**

**Case No.: 2019-FRS-00071**

In the Matter of:

**BRIAN HOLLAND**  
**Complainant**

v.

**UNION PACIFIC RAILROAD**  
**Respondent**

**ORDER OF DISMISSAL**

**1. Nature of Order.** The case arises pursuant to a complaint alleging violations under the employee protective provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109 and the implementing regulations at 29 C.F.R. Part 1982. The undersigned issues this Order *sua sponte* dismissing this claim based on Complainant's abandonment of this case as illustrated by his failure to comply with X

**2. Findings of Fact.**

a. On April 6, 2019, Complainant filed a whistleblower complaint alleging Respondent terminated Complainant's employment.

b. On April 11, 2019, following an investigation by the Occupational Safety and Health Administration (OSHA), the U.S. Secretary of Labor, acting through the OSHA Regional Administrator, concluded Complainant had not engaged in a protected activity under the FRSA and dismissed the complaint.

c. Complainant objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ).

d. On September 11, 2019, the undersigned issued a Notice of Hearing Date and Filing Deadlines. This notice required a party to file a response to a dispositive motion no later than 20 days after the motion was filed with the undersigned.

e. On April 17, 2019, Respondent filed a Motion for Summary Decision. On May 4, 2020, Complainant filed a “Motion for Extension of Time” to file a response to Respondent’s Motion for Summary Decision until May 29, 2020. The undersigned approved Complainant’s motion.

f. On June 5, 2020, the undersigned issued an Order to Show Good Cause Why Claim Should Not Be Dismissed, ordering Complainant to respond within fifteen (15) days. As of the date of this Order, Complainant has not filed a reply to Respondent’s Motion for Summary Decision, nor has he requested an additional extension to file a reply for good cause.

### **3. Applicable Law and Analysis.**

a) *Authority to Dismiss Claim.* In all proceedings, the judge has “all powers necessary to conduct fair and impartial proceedings . . . .” 29 C.F.R. § 18.12(b). This includes the power to “terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.” 29 C.F.R. § 18.12(b)(7). In addition, the Department of Labor’s Administrative Law Judges “must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases.” *Larue v. Kllm Transport, Inc.*, ARB No. 02-024, ALJ No. 01-STA-54, slip op. at 2 (ARB July 22, 2003).

When a complainant substantially fails to participate in discovery or comply with ALJ orders and filing deadlines, the presiding ALJ may take the complainant’s lack of any meaningful participation in the case as evidence on an intent to abandon the claim. Upon notice to the complainant and a finding of lack of good cause, the ALJ may dismiss the matter. *See Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 01-STA-039, slip op. at 4 (ARB July 25, 2003) (finding the ALJ acted within range of his discretion in dismissing STAA complaints after the complainant repeatedly ignored the ALJ’s discovery and other orders). Moreover, “when a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, dismiss the proceeding or enter a decision and order without further proceedings if the party fails to establish good cause for its failure to appear.” 29 C.F.R. § 18.21(c).

b) *Analysis.* In this case, Complainant failed to file a response to Respondent’s Motion for Summary Decision, and then failed to file a response to the undersigned’s Order to Show Cause Why Claim Should Not Be Dismissed in which Complainant was specifically advised that the failure to comply would result in the dismissal of his claim. These failures strongly suggest Complainant abandoned his efforts to prepare for a hearing in this case and that he no longer desires to proceed with this claim.

Consequently, consistent with the authority granted by 29 C.F.R. § 18.12, the undersigned concludes dismissal of this claim is warranted based on Complainant’s failure to: 1) respond to Respondent’s Motion for Summary Decision; and 2) timely file a written reply to the undersigned’s Order to Show Cause Why Claim Should Not Be Dismissed. The undersigned

interprets Complainant's complete failure to take meaningful action in this matter as clearly demonstrating an absence of any objection to the Secretary's conclusions and his desire to abandon this claim.

**4. Order.** This claim is **DISMISSED** with prejudice.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY**  
**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 (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).