U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 August 2019

Case No.: 2019-FRS-00082
OSHA No.: 5-2210-18-019

In the Matter of:

JOHN JAMES,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

ORDER OF DISMISSAL

Complainant filed a complaint with the United States Department of Labor on or about November 29, 2017 alleging, in part, that Respondent retaliated against him in violation of the employee protection provisions of the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20109, as amended, and implementing regulations found at 29 C.F.R. Part 1982. On May 24, 2019, the Secretary of Labor, acting through his agent, the Regional Administrator of the Occupational Safety and Health Administration, found no reasonable cause to believe Respondent violated the FRSA and dismissed the complaint. On June 19, 2019, Complainant filed objections to the findings and requested a hearing before an administrative law judge. It is not yet scheduled for hearing.

By letter dated July 26, 2019, Complainant notified this Court that he has exercised his right to pursue his claim in federal district court, in accordance with 29 C.F.R. § 1982.114,[1] and attached a copy of a complaint filed in the United States District Court for the Northern District of Ohio on June 28, 2019. Under 49 U.S.C. § 20109(d)(3), the United States District Court has assumed jurisdiction of this matter.[2]

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[1] Under the enforcement provisions of the Act, 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, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 49 U.S.C. 20109(d)(3). In this matter, more than 210 days have passed since Complainant originally filed his complaint with OSHA and there is no indication of bad faith on the part of Complainant.

[2] *See Stone v. Duke Energy Corp*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by John James on or about November 29, 2017 under the Federal Railroad Safety Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge