U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 March 2020

CASE NO.: 2019-FRS-100

In the Matter of:

RONALD J. JOHNSON,
Complainant,
v.

THE ALABAMA GREAT SOUTHERN RAILROAD CO.,
NORFOLK SOUTHERN RAILWAY CO.,
and **J. A. AULT,**
Respondents.

ORDER OF DISMISSAL

This case comes under the Federal Rail Safety Act (FRSA),[1] as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007.[2] 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 4 Mar 19. The complaint was considered by OSHA and dismissed on 19 Aug 19. He filed his objections and the case was referred to the Office of Administrative Law Judges for a de novo hearing. During an initial scheduling conference call on 20 Sep 19, both parties indicated that Complainant remained medically unable to return to his original job and Respondent had not determined whether it would proceed with any disciplinary action. Therefore, Respondent had not taken any adverse action against Complainant. The parties requested time to attempt to resolve the case. On 13 Dec 19, the parties provided a Joint Status Report noting that Complainant's doctor had not yet released him to return to work from a physical standpoint.

On 6 Mar 20, the parties filed a Joint Stipulation of Dismissal Without Prejudice, noting that if warranted, a new Complaint under the Federal Railway Safety Act (FRSA) with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), would still be available in the event that Respondents ever impose any discipline on Complainant for causing the 8 Feb 19 derailment incident, or otherwise take any new adverse personnel action against Complainant.

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[1] 49 U.S.C. § 20109.
[2] Pub. L. No. 110-53 (Aug. 3, 2007).

At this point, there is no ripe, actionable adverse action for adjudication under the Act. The motion is granted without prejudice to bring any new claims of adverse action under the Act.[3] The complaint is denied.

SO ORDERED.

PATRICK M. ROSENOW
Administrative Law Judge

[3] *See* Fed. R. Civ. Pro. 41(a)1(A)(ii).