



Issue Date: 16 September 2019

CASE NO.: 2019-FRS-00034

In the Matter of:

SHAWN LAVEING,
Complainant

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
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 September 25, 2018, complainant, Shawn Laveing (“Laveing” or “Complainant”) filed a complaint with the Secretary of Labor alleging that his employer, Norfolk Southern Railway Company, (“Norfolk Southern” or “Respondent”) violated the employee protection provisions of the FRSA.

After investigation of Laveing’s complaint, on January 10, 2019, the Occupational Safety and Health Administration (OSHA) found that Norfolk Southern did not violate the FRSA and dismissed the complaint. On January 15, 2019, Laveing 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 Pittsburgh, Pennsylvania on October 1, 2019, before the undersigned ALJ.

On August 30, 2019, Complainant’s counsel provided this court with Complainant’s Complaint filed with the United States District Court, Western District of Pennsylvania, in accordance with 49 U.S.C. §20109(d)(3). Generally, 49 U.S.C. §20109(d)(3) permits a complainant to bring an action at law or in equity for *de novo review* in the appropriate district court for the United States with jurisdiction, if there is no final order of the Secretary, 210 days have passed since the filing of the complaint and there has been no delay due to the bad faith of the complainant.

The requirements of 49 U.S.C. §20109(d)(3) have been satisfied. Specifically, a hearing has not yet taken place and thus there has been no final order of the Secretary; more than 210 days have passed since the complaint was filed on September 25, 2018; and there is no evidence of delay due to bad faith of Complainant.

Based on Complainant's representations that he filed an action in federal district court, this case is being dismissed without prejudice.

ORDER

IT IS ORDERED:

1. That the hearing scheduled to begin on October 1, 2019, in Pittsburgh, Pennsylvania, 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.

DREW A. SWANK
Administrative Law Judge