



Issue Date: 12 September 2019

CASE NO. 2019-FRS-66

In the Matter of:

JEFFREY MILLER,
Complainant

v.

CSX TRANSPORTATION, INC.,
Respondent

ORDER LIFTING STAY AND DISMISSING COMPLAINT

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 July 10, 2019, I issued an “Order Granting Joint Motion To Stay,” by which the proceedings were stayed based on complainant, Jeffrey Miller’s (“Complainant” or “Miller”) representation that he intended to file a complaint in this matter in federal court. On September 11, 2019, I received a copy of the Complaint filed by Complainant in the United States District Court, Middle District of Florida, Jacksonville Division, on July 23, 2019. Accordingly, as the matter has been filed in Federal Court, the stay is lifted and for the reasons below, the instant Complaint dismissed with prejudice.

Jeffrey Miller filed his complaint of retaliation with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) on April 18, 2018. After completing its investigation, on April 4, 2019, OSHA found the complaint was not timely filed and it was therefore dismissed. On April 30, 2019, Miller, through counsel, filed his objections to OSHA’s findings and timely requested a hearing on his Complaint before a Department of Labor Administrative Law Judge (“ALJ”). After the matter was assigned to me, on July 10, 2019, it was stayed pending the anticipated filing of a Complaint by Miller regarding this matter in federal court.

On September 11, 2019, I received a copy of the Complaint filed by Miller in the United States District Court, Middle District of Florida, Jacksonville Division, on July 23, 2019, in accordance with 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114. Generally, 49 U.S.C. § 20109(d) (3) and 29 C.F.R. § 1982.114 permit 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) and 29 C.F.R. § 1982.114 have been satisfied here. 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 April 18, 2018; and there is no evidence of delay due to bad faith of Complainant.

As Miller filed his complaint in federal district court and for the reasons stated above, his complaint in the above captioned matter is **DISMISSED WITH PREJUDICE**.

ORDER

For the reasons stated above, it is **ORDERED**:

1. That the stay of these proceedings is **LIFTED**;
2. Any pending motions and pre-hearing deadlines, are moot¹; and
3. The Complaint by Jeffrey Miller, filed under the FRSA in this matter, is **DISMISSED WITH PREJUDICE** since the action has been filed in federal district court.

NATALIE A. APPETTA
Administrative Law Judge

¹ Although a Notice of Hearing and Pre-hearing Order were issued in this case, a hearing date was not yet scheduled.