

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 01 February 2019

CASE NO.: 2019-FRS-00012

In the Matter of:

STEVEN PETRONIO,
Complainant,

v.

NATIONAL PASSENGER RAILROAD CORPORATION dba AMTRAK,
Respondent/Employer.

**ORDER DISMISSING COMPLAINT FOR LACK OF JURISDICTION,
COMPLAINANT HAVING FILED IN U.S. DISTRICT COURT**

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007).

On May 1, 2018, Complainant filed his underlying administrative complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”). On November 1, 2018, OSHA dismissed the complaint, finding “no reasonable cause to believe Respondent violated FRSA.” On or about November 30, 2019, Complainant (through counsel), filed his objection to OSHA’s findings and dismissal, and requested a hearing before an Administrative Law Judge.

On January 14, 2019, Complainant filed a Notice of Filing Original Action in United States District Court (“Notice”). Respondent has not responded to the Notice. On January 29, 2019, Complainant filed a copy of his docketed district court complaint. A review of the district court complaint shows that it is based upon the same facts as the administrative complaint filed with OSHA. *See Petronio v. National Railroad Passenger Corp.*, 1:19-cv-00144-JSR, Dkt. No. 7 (S.D.N.Y. January 9, 2019).

The FRSA permits a complainant to file an action in the appropriate federal district court if (a) the Secretary of Labor has not issued a final decision within 210 days of the date of the complaint, and (b) there is no showing that the complainant has acted in bad faith to delay the proceedings. *See* 49 U.S.C. § 20109(d)(3) (*de novo* review in the appropriate district court); 29

C.F.R. § 1982.114 (“District court jurisdiction of retaliation complaints”). Complainant filed his district court action more than 210 days after he filed his complaint with OSHA, and there has been no showing of bad faith.

Since Complainant has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over this case. *Guerra v. Consolidated Rail Corp. (ConRail)*, ARB No. 2017-069 (June 29, 2018);¹ *see also, Stone v. Duke Energy Corp.*, 432 F.3d 320 (5th Cir. 2005).

For the reasons stated above, I no longer have jurisdiction over this case. Accordingly, **IT IS HEREBY ORDERED** that:

1. The claim is hereby **DISMISSED** for lack of jurisdiction; and
2. The hearing, previously scheduled for May 15-17, 2019, is **CANCELED**.

SO ORDERED.

NORAN J. CAMP
Administrative Law Judge

Boston, Massachusetts

¹ 2018 WL 6978223.