



Issue Date: 06 October 2020

CASE NO.: 2020-FRS-00064

In the Matter of

TITUS HENRY,
Complainant

v.

NORFOLK SOUTHERN RAILWAY,
Respondent

DISMISSAL ORDER APPROVING COMPLAINANT'S WITHDRAWAL

The above-captioned matter has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges ("OALJ") pursuant to the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. The OALJ Rules of Practice and Procedure for Administrative Hearings, found at 29 C.F.R. Part 18, Subpart A, also apply.

Titus Henry ("Complainant") filed a complaint against Norfolk Southern Railway ("Respondent") with the Occupational Safety and Health Administration ("OSHA") alleging that Respondent had unlawfully retaliated against him in violation of FRSA. On March 20, 2020 OSHA issued the Secretary's findings and dismissed the complaint. On March 25, 2020, Complainant, through counsel, filed his objections to OSHA's dismissal and requested a hearing before the OALJ.

A Notice of Hearing and Initial Prehearing Order ("Hearing Order") was issued on July 15, 2020, scheduling a hearing for December 16-17, 2020 and a telephonic prehearing conference for 10:00 a.m., November 17, 2020. The Hearing Order provided various prehearing directives to the parties, including that they "meet and confer about regarding the matters set forth in 29 C.F.R. § 18.50(b)(2)," i.e., discovery, etc.

On September 18, 2020, this Office received an email addressed to the undersigned from Respondent's counsel (1) indicating that he has been unable to contact Complainant's counsel and (2) requesting the undersigned convene a conference call with the parties. The September 18, 2020 email indicated that Complainant's counsel had been copied on it.

An Order was issued on September 28, 2020, scheduling a telephonic conference with the parties in this matter on October 14, 2020 to discuss the case status.

A letter from Complainant's counsel dated September 28, 2020 was received via email on that date. The letter stated the following:

We represent claimant Titus Henry in the above-claim. We write to advise that Claimant is withdrawing his pending claim pursuant to 49 USC 20109 against Norfolk Southern. Consequently, the pre-hearing conference scheduled for November 17, 2020 as well as the hearing scheduled for December 16, 2020 can be cancelled.

The FRSA regulations provide, in part, that “[a] complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.” 29 C.F.R. § 1982.111(a). Here, Complainant filed objections to the Assistant Secretary's findings OSHA issued, dismissing his complaint which resulted in the referral of this matter to the undersigned for a hearing and decision. Therefore, Complainant cannot withdraw his complaint.

The FRSA regulations however do provide, in part, that “[a]t any time before the Assistant Secretary's findings and/or order become final, *a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ.*” 29 C.F.R. § 1982.111(c). If a party's withdrawal of such objections is approved, “the Assistant Secretary's findings and/or order will become the final order of the Secretary.” *Id.*

The September 28, 2020 letter from Complainant's counsel will therefore be deemed a written withdrawal of Complainant's objections to the Assistant Secretary's findings OSHA issued. Such withdrawal is hereby approved as it appears to be voluntary and informed.

Accordingly, the OSHA determination issued on March 20, 2020 will become the final order of the Secretary. The conference call, prehearing conference and hearing previously scheduled are all canceled. In addition, this matter is dismissed before the OALJ with prejudice.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

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