



Issue Date: 18 December 2020

Case No.: 2020-FRS-00095

In the Matter of

ROBERT MITCHELL,
Complainant

v.

NATIONAL PASSENGER RAILROAD (AMTRAK),
Respondent

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter arises under the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. Complainant filed an administrative complaint with the Occupational Safety and Health Administration (“OSHA”) on May 7, 2020. OSHA conducted an investigation and issued a determination on August 24, 2020, concluding that there was no reasonable cause to believe that Respondent violated the FRSA. On September 23, 2020, Complainant sought *de novo* hearing before an Administrative Law Judge. On December 16, 2020, the undersigned issued a Notice of Hearing scheduling a hearing for June 21, 2021.

On December 18, 2020, Complainant provided the undersigned with copies of documents showing that on December 7, 2020, the Complainant filed a Complaint for Damages and Demand for Jury Trial with the U.S. District Court for Eastern District of Pennsylvania.¹ See 49 U.S.C. §20109(d)(3).

As the statute provides:

If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for *de novo* review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

Id.

¹ The matter is identified as Case: 2:20-cv-04975.

More than 210 days have run since Complainant filed the OSHA complaint on May 7, 2020. There is no suggestion of bad faith on Complainant's part or at all.

Accordingly, the hearing set to begin on June 21, 2021 is hereby **CANCELLED**. This matter is **DISMISSED** without prejudice to Complainant's filing a complaint in the appropriate United States District Court. *See* 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114(b).

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey