



**Issue Date: 29 May 2020**

Case No.: 2020-FRS-00065  
OSHA No.: 7-3620-19-037

*In the Matter of:*

**ZACKORY RINGER,**  
*Complainant,*

v.

**NEBRASKA, KANSAS & COLORADO RAILWAY, LLC,**  
*Respondent.*

**ORDER OF DISMISSAL**

Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on or about May 8, 2019, alleging, in part, that Respondent retaliated against him in violation of the employee protection provisions of the Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended, and implementing regulations found at 29 C.F.R. Part 1982. On April 22, 2020, the Secretary of Labor, acting through his agent, an Assistant Regional Administrator for OSHA, was “unable to conclude there is reasonable cause to believe a violation of the statute occurred,” and dismissed the complaint. The matter was then docketed by the Office of Administrative Law Judges and assigned to me. It is not yet scheduled for hearing.

By letter dated May 21, 2020, Complainant advises that he exercised his right to pursue his claim in federal district court, in accordance with 29 C.F.R. § 1982.114,<sup>1</sup> and attached a copy of a complaint filed in the United States District Court for the District of Nebraska on May 21, 2020.<sup>2</sup> Under 49 U.S.C. § 20109(d)(3), the United States District Court has assumed jurisdiction of this matter.<sup>3</sup>

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<sup>1</sup> Under the enforcement provisions of the FRSA, 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. 49 U.S.C. § 20109(d)(3). In this matter, more than 210 days has passed since Complainant filed his complaint with OSHA, there is no indication of bad faith, and Complainant appears to have filed his action in federal district court before the Secretary has issued a final decision.

<sup>2</sup> Case 4:20-cv-03056.

Accordingly, it is hereby ORDERED that the above captioned matter pending before the Office of Administrative Law Judges is DISMISSED.

**SO ORDERED:**

STEPHEN R. HENLEY  
Chief Administrative Law Judge

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<sup>3</sup> See, e.g., *Stone v. Duke Energy Corp*, 432 F.3d 320, 322-23 (4th Cir. 2005) (stating that, once a complainant filed a Sarbanes-Oxley complaint in federal district court, the district court assumed jurisdiction from the administrative law judge).