

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 January 2017

Case No.: 2016-SOX-00036
OSHA No.: 4-1220-16-055

In the Matter of:

LEFLORIS LYON,
Complainant,

v.

CANADIAN NATIONAL RAILWAY COMPANY,
Respondent.

ORDER OF DISMISSAL

This matter has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges (“OALJ”) pursuant to Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“SOX”), as amended, 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980. On December 27, 2016, the Complainant, LeFloris Lyon, filed a “Notice of Removal,” indicating that he “intends to bring an action in U.S. District Court pursuant to 18 U.S.C. Section 1514(b), and 29 CFR 1980.114, since OSHA has not issued a final decision within 180 days of the filing of the complaint.”

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (the “Act”), 18 U.S.C. § 1514A. The statute provides:

A person who alleges discharge or other discrimination in violation of subsection (a) may seek relief under subsection (c), by –

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an 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.

18 U.S.C. § 1514A(b)(1). The corresponding regulation is found at 29 C.F.R. § 1980.114. The regulation requires that “[w]ithin seven days after filing a complaint in federal court, a

complainant must file with ... the ALJ ... a copy of the file stamped complaint” and the complainant must also serve a copy of the complaint on certain other officials. 29 C.F.R. § 1980.114(c).

Complainant filed his Complaint with OSHA on May 20, 2016, and June 6, 2016. No decision has been issued within 180 days of the filing of the complaint, and the delay was not caused by bad faith of the Complainant. Accordingly, Complainant has a right to file a complaint in federal district court. 18 U.S.C. § 1514A(b)(1); 29 C.F.R. § 1980.114(a). If the Complainant commences an action in federal district court, the Secretary of Labor will no longer have jurisdiction over this matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005) (case below 2003-SOX-12).

To date, I have not received notice that Complainant has filed an action in federal district court. Some administrative law judges have required that a complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action; others have not. *Compare, e.g., Evans v. Liberty Medical Supply, Inc.*, 2007-SOX-22 (ALJ July 2, 2007) with *Miley v. Emerachem, LLC*, 2007-SOX-31 (ALJ June 15, 2007). Others have simply closed the file subject to reopening. *See, e.g., Roberts v. Weatherford Int’l, Ltd.*, 2008-SOX-69 (ALJ Sept. 25, 2008). Based on Complainant’s representations that he intends to file an action in federal district court, this case is being dismissed. In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

ORDER

IT IS HEREBY ORDERED that the complaint filed by Complainant LeFloris Lyon under the Sarbanes-Oxley Act is **DISMISSED WITHOUT PREJUDICE** to its reinstatement if Complainant does not file an action in federal district court.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.