



Issue Date: 16 August 2017

Case No.: 2016-FRS-00087

In the Matter of

RYAN MCGOVERN
Complainant

v.

NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)
Respondent

ORDER OF DISMISSAL

This matter arises under the employee protection provisions of the Federal Rail Safety Act (“FRSA” or “the Act”), 49 U.S.C. § 20109, as amended.¹ The employee protection provisions of the Act apply to railroad employees who feel they have been subjected to retaliatory discipline or discrimination from their employer for engaging in protected activities related to railway safety. Procedural regulations concerning the conduct of cases before the Office of Administrative Law Judges are found at Title 29, Part 18, Subpart A (2015) of the Code of Federal Regulations. A hearing in this matter is scheduled to commence on Monday, November 6, 2017 through Tuesday, November 7, 2017 in New York, New York.

On July 31, 2017, Complainant notified this tribunal that he had filed a complaint in the United States District Court for the Southern District of New York on July 28, 2017.

An Order to Show Cause Why Complaint Should Not Be Dismissed was issued by the undersigned on August 3, 2017. The parties were ordered to show cause within ten (10) days why the undersigned should not dismiss this complaint. To date, and with time for such filing expired, no objection has been received.

Under the Act, a complainant may file an action in District Court if the Department of Labor has not issued a final decision on a complaint within 210 days after the complaint was submitted to the Department, provided the delay was not due to the bad faith of the employee. 49 U.S.C. § 20109(d)(3). Under the Federal Rail Safety Act, filing a complaint in United States District Court vests exclusive jurisdiction in that forum. 49 U.S.C. § 20109(d)(3); see also 29 C.F.R. § 1982.114(a).

¹ Pub. L. 110-53, Title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, Div. A, Title IV, § 419, Oct 16, 2008, 122 Stat. 4892.

Pursuant to 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114, the District Court now has jurisdiction over this action and this tribunal has been divested of jurisdiction. I therefore **ORDER** the instant matter **DISMISSED**.

The hearing scheduled for November 6 through November 7, 2017 in New York, New York is **CANCELLED**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey