



In the Matter of:

ROBERT A. BARBOZA,

ARB CASE NO. 2018-0076

COMPLAINANT,

ALJ CASE NO. 2017-FRS-00111

v.

DATE: December 19, 2019

BNSF RAILWAY
COMPANY,

RESPONDENT.

Appearances:

For the Complainant:

Robert A. Barboza; *pro se*; Corona, California

For the Respondent:

Keith M. Goman, Esq., and Gillian Dale, Esq.; *Hall & Evans, L.L.C.*;
Denver, Colorado; and Paul S. Balanon, Esq.; *BNSF Railway
Company*

Before: James A. Haynes, Thomas H. Burrell, and Heather C. Leslie,
Administrative Appeals Judges

FINAL DECISION AND ORDER

PER CURIAM. This case arises under the Federal Rail Safety Act of 1982 (FRSA). 49 U.S.C. § 20109 (2008), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. 110-53, and as implemented at 29 C.F.R. Part 1982 (2019) and 29 C.F.R. Part 18, Subpart A (2019). Complainant Robert Barboza filed a complaint alleging that the Respondent,

BNSF Railway Company, retaliated against him in violation of the FRSA's whistleblower protection provisions because he engaged in protected activity. Complainant appeals from a Decision and Order of a Department of Labor Administrative Law Judge (ALJ) issued on August 29, 2018, dismissing the complaint and granting summary decision because Complainant failed to prove a genuine issue of material fact existed that any timely adverse action occurred.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board authority to review ALJ decisions in cases arising under the FRSA and issue final agency decisions in these matters. Secretary's Order No. 1-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019); *see* 29 C.F.R. § 1982.110(a).

The Administrative Review Board (Board or ARB) reviews an ALJ's grant of summary decision *de novo*, applying the same standard applicable to the ALJ for granting summary decision under 29 C.F.R. § 18.72. *See* Fed. R. Civ. P. Rule 56. To be entitled to summary decision, the movant must show "that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72(a).

DISCUSSION

On March 16, 2017, Complainant filed the instant complaint alleging that Respondent engaged in adverse action against him because he engaged in FRSA-protected activities. On August 29, 2018, the ALJ issued a Decision and Order Granting Summary Decision because there was a failure of proof that the original complaint had been filed within 180 days after an adverse action by Respondent. 49 U.S.C. § 20109(d)(2)(A)(ii); 29 C.F.R. § 1982.103(d). Complainant filed a petition for review with the Board, which the Board accepted. Both parties filed briefs.

Upon review of the ALJ's grant of summary decision, we conclude that it is a reasoned decision based on the undisputed facts and the applicable law. The ALJ properly concluded that Complainant failed to set forth any genuine issue of material fact that any adverse actions occurred within the 180-day limitations period. For this reason, the ALJ properly concluded that Respondent has established that there is no genuine issue as to any material fact and is entitled to

summary decision as a matter of law.

Accordingly, we **ADOPT** and attach the ALJ's Decision and Order Granting Summary Decision as the final agency decision in this matter. The complaint is hereby **DENIED**.¹

SO ORDERED.

¹ Respondent's Motion to strike Complainant's Reply Brief is denied.