



In the Matter of:

JUSTIN JOHNSON,

ARB CASE NO. 2019-0003

COMPLAINANT,

ALJ CASE NO. 2018-FRS-00010

v.

DATE: January 31, 2019

GRAND TRUNK WESTERN RAILROAD CO.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Robert B. Thompson, Esq.; *Harrington, Thompson, Acker & Harrington*, Chicago, Illinois

For the Respondent:

Noah G. Lipschultz, Esq.; *Little Mendelson, P.C.*; Kansas City, Missouri

Before: William T. Barto, *Chief Administrative Appeals Judge*

ORDER DISMISSING COMPLAINT

On November 4, 2015, the Complainant, Justin Johnson, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Grand Trunk Western Railroad (GTW), had retaliated against him in violation of the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA)¹

¹ 49 U.S.C.A. § 20109 (Thomson Reuters 2018).

and its implementing regulations.² Upon investigation, OSHA found that there was no reasonable cause to believe that GTW violated the FRSA. Johnson requested review of OSHA's determination before a Department of Labor Administrative Law Judge. On October 23, 2018, the presiding ALJ issued a Decision and Order granting GTW's motion for summary decision and dismissed Johnson's complaint.³

On November 2, 2018, Johnson filed a petition for review with the Administrative Review Board, which the Board accepted for review on November 6, 2018.⁴ While the case was pending with the Board, Johnson informed the Board of his election to file an action in federal court. The Board received a copy of a federal complaint filed in the United States District Court for the Eastern District of Michigan as authorized by 49 U.S.C.A. § 20109(d)(3) for de novo review of the claim currently pending before the Board. If the Board has not issued a final decision within 210 days of the date on which the complainant filed the complaint, and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.⁵ Accordingly, given that Johnson has filed a de novo complaint in this action in federal district court as provided in 49 U.S.C.A. § 20109(d)(3) and 29 C.F.R. § 1982.114, we **DISMISS** Johnson's complaint.

SO ORDERED.

WILLIAM T. BARTO
Chief Administrative Appeals Judge

² 29 C.F.R. Part 1982 (2018).

³ *Johnson v. Grand Trunk Western R.R. Co.*, ALJ No. 2018-FRS-010 (ALJ Oct. 23, 2018).

⁴ The Secretary of Labor has delegated to the Board authority to issue final agency decisions under the FRSA. See Secretary's Order 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

⁵ 49 U.S.C.A. § 20109(d)(3); 29 C.F.R. § 1982.114.