

**U.S. Department of Labor**

Administrative Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



**IN THE MATTER OF:**

**JUSTIN BERBERICH,**

**ARB CASE NO. 2022-0064**

**COMPLAINANT,**

**ALJ CASE NO. 2020-FRS-00083**

**v.**

**DATE: November 29, 2022**

**KANSAS CITY SOUTHERN  
RAILWAY COMPANY,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Nicholas D. Thompson, Esq.; *Casey Jones Law Firm*; Appleton,  
Wisconsin**

***For the Respondent:***

**Noah K. Garcia, Esq.; *The Kansas City Southern Railway Company*;  
Kansas City, Missouri**

**Before BURRELL and GODEK, Administrative Appeals Judges**

## **ORDER OF DISMISSAL**

**PER CURIAM:**

This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).<sup>1</sup> On September 16, 2022, Complainant filed a Petition for Review with the Administrative Review Board (Board). Complainant

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<sup>1</sup> 49 U.S.C. § 20109, as implemented by 29 C.F.R. Part 1982 and 29 C.F.R. Part 18 (2021), Subpart A.

requested review of the Decision and Order issued September 6, 2022, by a United States Department of Labor Administrative Law Judge.

On November 21, 2022, Complainant informed the Board that he had filed an original action with the United States District Court for the District of Kansas pursuant to 49 U.S.C. § 20109(d)(3), seeking de novo review. Complainant also filed with the Board a file-stamped copy of his district court complaint, dated October 19, 2022.

Since Complainant has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over his case.<sup>2</sup> Accordingly, we **DISMISS** this appeal.

**SO ORDERED.**

  
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**THOMAS H. BURRELL**  
Administrative Appeals Judge

  
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**STEPHEN M. GODEK**  
Administrative Appeals Judge

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<sup>2</sup> See 49 U.S.C. § 20109(d)(3) (“[I]f 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 . . . .”); see also 29 C.F.R. § 1982.114(a).