

U.S. Department of Labor

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



IN THE MATTER OF:

RALPH RICHARDSON,

ARB CASE NO. 2022-0057

COMPLAINANT,

ALJ CASE NO. 2022-FRS-00026

v.

DATE: October 26, 2022

BNSF RAILWAY COMPANY,

RESPONDENT.

Appearances:

For the Complainant:

Ralph Richardson; *pro se*; Fargo, North Dakota

For the Respondent:

Tracey Holmes Donesky, Esq.; *Stinson LLP*; Minneapolis, Minnesota

Before GODEK and PUST, Administrative Appeals Judges

DECISION AND ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM:

This case arises under the employee protection provision of the Federal Railway Safety Act of 1982 (FRSA).¹ Ralph Richardson (Complainant) filed a whistleblower complaint against BNSF Railway Company (Respondent) for alleged retaliation. On July 8, 2022, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) dismissing the complaint

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

based on her finding that Complainant did not timely file his FRSA complaint.²

On July 29, 2022, Complainant appealed the ALJ's decision to the Administrative Review Board (Board).³ On August 12, 2022, the Board issued the Notice of Appeal and Order Establishing Briefing Schedule (Briefing Order). The Briefing Order required Complainant to file an opening brief by September 9, 2022. Complainant did not submit an opening brief as ordered.

Consequently, on September 29, 2022, the Board issued an Order to Show Cause ordering Complainant to explain why the Board should not dismiss his appeal for failing to timely file his opening brief.⁴ The Board cautioned Complainant that if the Board did not receive his response and opening brief on or before October 13, 2022, the Board may dismiss the appeal without further notice.⁵ Nevertheless, Complainant did not file a response or an opening brief as ordered.

The Board has the inherent power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.⁶ Pursuant to this authority, the Board may dismiss a complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board's briefing schedule.⁷

² D. & O. at 9.

³ Complainant's Petition for Review.

⁴ Order to Show Cause.

⁵ *Id.*

⁶ See *Jessen v. BNSF Ry. Co.*, ARB No. 2012-0107, ALJ No. 2010-FRS-00022, slip op. at 2 (ARB July 26, 2013). In *Jessen*, the Board stated "[t]he Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to 'achieve orderly and expeditious disposition of cases.'" *Id.* (quoting *Link v. Wabash R. R. Co.*, 370 U.S. 626, 630-31 (1962)). The Board "has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements." *Id.* (citations omitted).

⁷ See *Dohogne v. Terminal R.R.*, ARB No. 2020-0044, ALJ No. 2018-FRS-00050 (ARB June 11, 2021) (Dismissing the appeal where Complainant failed to respond to, and comply with, the Board's orders).

Complainant failed to file an opening brief as twice ordered by the Board. Because Complainant failed to respond to, and comply with, the Board's orders, we **DISMISS** Complainant's appeal.⁸

SO ORDERED.



STEPHEN M. GODEK
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge

⁸ In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.