U.S. Department of Labor

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

IN THE MATTER OF:

ROBERT BRANCH,

COMPLAINANT,

v.

ILLINOIS CENTRAL RAILROAD CO.,

RESPONDENT.

ARB CASE NO. 2026-0063

ALJ CASE NO. 2023-FRS-00026
ALJ ANGELA F. DONALDSON

DATE: October 15, 2026

Appearances:

For the Complainant:
James R. Ferguson, Esq., and C.E. Sorey, II, Esq.; *Christy & Ferguson*; North Little Rock, Arkansas

Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN, Administrative Appeals Judge

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).[1] Complainant Robert Branch filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that Respondent Illinois Central Railroad Company took adverse action against him because he engaged in activity protected by the FRSA.[2] OSHA dismissed the complaint, finding there was no reasonable cause to believe that Respondent violated the FRSA.[3]

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1 49 U.S.C. § 20109, as implemented by 29 C.F.R. Part 1982 (2026).

2 Decision and Order (D. & O.) at 3.

3 *Id.*

Complainant objected and requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Law Judges.[4] A formal hearing was held on February 13-14, 2024.[5] On July 30, 2026, the ALJ issued a Decision and Order denying Complainant's complaint based on her finding that Respondent did not terminate Complainant's employment because he engaged in protected activity, and because Respondent established by clear and convincing evidence that it would have terminated Complainant's employment even in the absence of his protected activity.[6]

On August 20, 2026, Complainant filed a Petition for Review with the Administrative Review Board (Board) seeking review of the ALJ's D. & O. On August 25, 2026, the Board issued a Notice of Appeal Acceptance and Briefing Order (Briefing Order). In the Briefing Order, the Board ordered Complainant to file an Opening Brief in support of the Petition for Review by September 22, 2026. Complainant did not file an Opening Brief.

On September 23, 2026, Complainant filed a Notice of Kickout to Federal Court. Complainant asserted that, because his case has been pending with the Department of Labor for more than 210 days, he exercised his right to file a complaint in the Northern District of Mississippi. Complainant attached a copy of his federal complaint to his Notice.

The FRSA provides that if the Secretary of Labor has not issued a final decision within 210 days of the filing of a complaint with OSHA, and if the delay is not due to the bad faith of the complainant, the complainant may bring an original action at law or equity in the appropriate district court, which "shall have jurisdiction over such an action."[7]

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4 *Id.*

5 *Id.* at 2.

6 *Id.* at 18-21.

7 49 U.S.C. § 20109(d)(3); *accord* 29 C.F.R. § 1982.114(a).

Since more than 210 days have passed since Complainant filed his complaint and Complainant has now filed an original action in district court, the Department of Labor no longer has jurisdiction over this case. Accordingly, we **DISMISS** the appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge