



**IN THE MATTER OF:**

**THOMAS JOHANSEN,**

**ARB CASE NO. 2020-0012**

**COMPLAINANT,**

**ALJ CASE NO. 2019-FRS-00063**

**v.**

**DATE: December 13, 2019**

**ILLINOIS CENTRAL RAILROAD CO.,**

**RESPONDENT.**

**ORDER DISMISSING COMPLAINT**

On December 29, 2017, Thomas Johansen filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent Illinois Central Railroad Company had retaliated against him in violation of the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA)<sup>1</sup> and its implementing regulations.<sup>2</sup> Upon investigation, OSHA found that there was no reasonable cause to believe that Illinois Central Railroad Company violated the FRSA. Johansen objected to OSHA's findings and requested a hearing before the Department of Labor Administrative Law Judges (ALJ). On October 17, 2019, the ALJ issued a Decision and Order Granting Respondent's Motion for Summary Decision and Order Canceling Hearing.<sup>3</sup>

On October 31, 2019, Johansen filed a petition for review with the Administrative Review Board, which the Board accepted for review on November 5, 2019.<sup>4</sup> While the case was pending with the Board, Johansen informed the Board of

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<sup>1</sup> 49 U.S.C. § 20109 (2008).

<sup>2</sup> 29 C.F.R. Part 1982 (2019).

<sup>3</sup> *Johansen v. Illinois Central Railroad Co.*, ALJ No. 2019-FRS-00063.

<sup>4</sup> The Secretary of Labor has delegated to the Board authority to issue final agency decisions

his election to file an action in federal court. The Board received a copy of a federal complaint in the United States District Court for the Northern District of Mississippi, Western Division as authorized by 49 U.S.C. § 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.<sup>5</sup> Accordingly, given that Johansen has filed a de novo complaint in this action in federal district court as provided in 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114, we **DISMISS** Johansen's complaint.

**SO ORDERED.**

**WILLIAM T. BARTO**  
Chief Administrative Appeals Judge

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under the FRSA. *See* Secretary's Order 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (April 3, 2019); 29 C.F.R. § 1982.110(a).

<sup>5</sup> 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114.