

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN THOMPSON, ET AL.,
Plaintiffs,
v.
NATIONAL RAILROAD PASSENGER CORPORATION,
Defendant.

Case No. 15-cv-05127-YGR

ORDER GRANTING IN PART MOTION FOR VOLUNTARY DISMISSAL; GRANTING STIPULATED REQUEST FOR EXTENSION TO RESPOND TO MOTION FOR SUMMARY JUDGMENT

Re: Dkt. No. 40, 45

United States District Court
Northern District of California

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Plaintiffs Kevin Thompson and Timothy Elam have brought this action against defendant National Railroad Passenger Corporation seeking the review and vacatur of an award granted by Public Law Board 7680 to plaintiff Elam pursuant to the Railway Labor Act. (Dkt. No. 7 at ¶ 1.)¹ Now before the Court is plaintiff Thompson’s motion to dismiss his claims against defendant voluntarily without prejudice. (Dkt. No. 40.) Because defendant has already filed a motion for summary judgment, Thompson may only dismiss the case “by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Defendant does not oppose Thompson’s dismissal, but requests that the Court dismiss Thompson with prejudice, or, in the alternative, that the Court condition Thompson’s ability to commence another action “based on the same claims asserted in this action upon the payments of [defendant’s] costs of the current action.” (Dkt. No. 41 at 2.) The Court has also reviewed the Stipulated Request filed by plaintiff Thompson requesting that the Court allow plaintiff until August 4, 2016 to file a response to defendant’s motion for summary judgment. (Dkt. No. 45.)

Having carefully considered the papers submitted, the Court **CONDITIONALLY DISMISSES WITH PREJUDICE** plaintiff Thompson’s claims against defendant, effective August 8, 2016. The

¹ Plaintiff Elam was an employee of the National Railroad Passenger Corporation, and the claimant in the board award, which gives rise to this action. (Dkt. No. 7 at ¶ 2.) Plaintiff Thompson acted as plaintiff Elam’s representative in his claim before the board. (*Id.* at ¶ 3.) On May 26, 2016, defendant filed a motion for summary judgment, arguing as to plaintiff Thompson that plaintiff Thompson lacked standing in this action because he was not aggrieved by the award. (Dkt. No. 39 at 7–8.)


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Court **GRANTS** plaintiff Thompson’s Stipulated Request for an extension to respond to defendant’s motion for summary judgment. If plaintiff Thompson files a response to defendant’s motion for summary judgment, the Court will deem plaintiff Thompson’s motion to dismiss his claims as withdrawn.

This Order terminates Docket Numbers 40 and 45.

IT IS SO ORDERED.

Dated: July 5, 2016



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE