

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:16-CV-107(MTT)
)	
FREDERICK J. CLARK)	
)	
Defendant.)	
_____)	

ORDER

Plaintiff Frederick J. Clark has moved to remand this case to state court pursuant to 28 U.S.C. § 1447. (Doc. 12). He relies on 28 U.S.C. § 1445(a), which bars railroads from removing FELA actions to federal court. Defendant Norfolk Southern Railway Company points out in its response that this action has never been pending in state court and hence was never removed from state court. (Doc. 15 at 3). Clark, who did not file a reply brief, never explains how this Court can remand a case that was never removed, and the Court is not aware of any authority that would allow it to do so.

Clark’s real issue is that he thinks Norfolk Southern’s complaint is a tactical move to force him to file his FELA claim in this Court as a compulsory counterclaim. He thinks this violates the spirit of § 1445(a) because by filing this action here before Clark filed his state-court FELA action, Norfolk Southern deprived him of his right to file his FELA claim in state court. Clark may have a legitimate gripe, but moving to remand a case that was never removed is not a viable way to combat Northern Southern’s tactic.

Accordingly, Clark’s motion to remand is **DENIED**. (Doc. 12).

SO ORDERED, this 25th day of July, 2016.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT