

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA**

Brock Bumbarger v. Norfolk Southern Railway Company

No. 3:23-cv-00063 (W.D. Pa. Jan. 5, 2026) · No. No. 3:23-cv-00063 · Decided January 5, 2026

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA BROCK BUMBARGER,) Plaintiff, No. 3:23-cv-00063 Vv. District Judge Stephanie L. Haines NORFOLK SOURHERN RAILWAY COMPANY,) Defendant. MEMORANDUM OPINION A. Procedural History Plaintiff Brock Bumbarger (“Plaintiff”), by and through his attorney, James M. Duckworth, initiated this civil rights action on April 6, 2023 (ECF No. 1).

Absolutely no action has been taken in the case since the Complaint was filed. Though civil procedure should be common knowledge for lawyers, after the case languished, the Court issued an order reminding Plaintiff he is responsible for service of the Complaint upon the Defendant (ECF No. 4). There remained no activity in the case.

Finally, an Order to Show Cause was issued on December 15, 2025 (ECF No. 5). The Order noted the posture of inactivity of the case. Plaintiff was directed to respond to the Court’s Order by December 29, 2025, or risk dismissal for failure to prosecute.

As of today, there has been no correspondence to the Court from Plaintiff or Plaintiff’s attorney. B. Standard Rule 41(b) of the Federal Rules of Civil Procedure addresses the involuntary dismissal of an action or a claim, and, under this Rule, “a district court has authority to dismiss an action sua sponte if a litigant fails to prosecute or to comply with a court order.” *Qadr v. Overmyer*, No. 15-3090, 642 F. App’x 100, 102 (Gd Cir.

2016) (per curiam) (citing Fed. R. Civ. P. 41(b)); see also *Adams v. Trustees of New Jersey Brewery Employees’ Pension Trust Fund*, 29 F.3d 863, 871 (3d Cir. 1994) (“The Supreme Court affirmed, stating that a court could dismiss sua sponte under Rule 41(b).”) The Third Circuit Court of Appeals has stated that “a district court dismissing a case sua sponte ‘should use caution in doing so because it may not have acquired knowledge of the facts it needs to make an informed decision.’” *Qadr y. Overmyer*, No. 15-3090, 642 F. App’x 100 at 103 (quoting *Briscoe v. Klaus*, 538 F.3d 252, 258 (3d Cir.

2008)). Before engaging in a sua sponte dismissal, “the district court ‘should provide the plaintiff with an opportunity to explain his reasons for failing to prosecute the case or comply with its orders.’” *Jd.* (quoting *Briscoe*, 538 F.3d at 258).

In *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984), the Third Circuit Court of Appeals set forth the following six factors to be weighed in considering whether dismissal is proper under Rule 41(b): (1) the extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Id. at 868 (emphasis omitted). In balancing the *Poulis* factors, no single factor is dispositive, nor do all factors need to be satisfied to result in dismissal of the complaint. See *Briscoe*, 538 F.3d at 263. However, in determining whether a dismissal is warranted, the Court must analyze the factors in light of the “strong policy favoring decisions on the merits.” *Hildebrand v. Allegheny County*, 923 F.3d 128, 132 (3d Cir.

2019). The Third Circuit has emphasized that “dismissals with prejudice or defaults are drastic sanctions, termed ‘extreme’ by the Supreme Court,” and that they “must be a sanction of last, not first, resort.” *Poulis*, 747 F.2d at 867-68, 869 (citing *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976)). “Cases should be decided on the merits barring substantial circumstances in support of the contrary outcome.” *Hildebrand*, 923 F.3d at 132.

C. Application of the *Poulis* Factors 1. The extent of the party’s personal responsibility. “[I]n determining whether dismissal is appropriate, we look to whether the party bears personal responsibility for the action or inaction which led to the dismissal.” *Adams v. Trs. of the N.J. Brewery Emps.’ Pension Tr. Fund*, 29 F.3d 863, 873 (3d Cir. 1994).

In determining personal responsibility for the delay, the Court must distinguish “between a party’s responsibility for delay and counsel’s responsibility.” *Hildebrand*, 923 F.3d at 133 (citing *Poulis*, 747 F.2d at 868). A plaintiff is not conjecturally responsible for her counsel’s delay. See *id.* Any doubt as to personal responsibility should be resolved “‘in favor of reaching a decision on the merits.’” *Jd.* at 138 (quoting *Emerson v. Thiel Coll.*, 296 F.3d 184, 190 (3d Cir.

2002)). Plaintiff is represented by counsel so this factor is not favorable to dismissal. 2. Prejudice to the adversary. Prejudice to the adversary is a substantial factor in the *Poulis* analysis; but like any other factor, it is not dispositive. See *Hildebrand*, 923 F.3d. at 134. “Relevant examples of prejudice include ‘the irretrievable loss of evidence[{} [and] the inevitable dimming of witnesses’ memories.’” *Jd.* (quoting *Scarborough v. Eubanks*, 747 F.2d 871, 876 (3d Cir.

1984)). A party is not required “to show ‘irremediable’ harm for [this factor] to weigh in favor of dismissal.” □□□ (quoting *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 222 (3d Cir. 2003)). If the opposition is unable to prepare “a full and complete trial strategy” then there is sufficient prejudice to favor dismissal. *Id.* (citation omitted).

Here, the ability to gather facts and documents to defend this case will diminish with the passage of time. Therefore, Defendant could suffer prejudice if the case were not to proceed in a timely manner. Thus, this factor weighs marginally in favor of dismissal. 3. A history of dilatoriness. A history of dilatoriness is generally established by repeated “delay or delinquency.” Adams, 29 F.3d at 874.

While once or twice is normally insufficient, this factor weighs in favor of dismissal where the plaintiff has a history of repeated delay. See Hildebrand, 923 F.3d at 135 (citation omitted). In addition to repeated acts, “extensive” delay can also create a history of dilatoriness. Adams, 29 F.3d at 874. A “failure to prosecute” does not require that plaintiff take affirmative “steps to delay the trial...

It is quite sufficient if [he/she] does nothing....” Jd. at 875 (citation omitted). “While extensive delay may weigh in favor of dismissal, ‘a party’s problematic acts must be evaluated in light of its behavior over the life of the case.’” Hildebrand, 923 F.3d at 135 (quoting Adams, 29 F.3d at 875).

Thus, where a plaintiff has not been previously delinquent the weight given to even a long delay should be mitigated. See *id.* This case never proceeded past the initial pleading and for more than two years has sat dormant. This is sufficient evidence, in the Court’s view, to indicate that Plaintiff no longer desires to proceed with this action.

Thus, this factor weighs heavily in favor of dismissal. 4. Whether the party’s conduct was willful or in bad faith. In determining if plaintiffs conduct constituted willful or bad faith, the “court should look for ‘the type of willful or contumacious behavior’ that can be characterized as ‘flagrant bad faith,’ such as [a case history of] failing to answer interrogatories for nearly a year and a half, demanding numerous extensions, ignoring admonitions by the court, and making false promises to correct delays.” Jd. (citing Scarborough, 747 F.2d at 875 (citation omitted)). ““Willfulness involves intentional or self-serving behavior.” Adams, 29 F.3d at 875.

Although “[a] lengthy delay reflects ‘inexcusable negligent behavior,’ *id.* at 876,... that behavior alone does not rise to the level of willfulness or bad faith.” Hildebrand, 923 F.3d at 135. Finally, “[b]ecause the harsh sanction of dismissal should serve to deter bad faith or self-serving behavior, and because of our policy of favoring decisions on the merits, [in the absence of evidence] that the delay was not effectuated willfully or in bad faith, [this factor] should weigh against dismissal.” Jd. at 136.

There is no indication on this record that Plaintiff’s failure to act in this case was the result of any excusable neglect. Therefore, this factor weighs in favor of dismissal. 5. Effectiveness of sanctions other than dismissal. A district court must thoroughly consider “alternative sanctions before dismissing a case | with prejudice.” /d. (citing Briscoe, 538 F.3d at 262).

The court should also provide an analysis of effectiveness sufficient “to honor [the] longstanding tradition of favoring decisions on the merits.” *Jd.* In so doing, the court should be mindful that “[a]lternatives are particularly appropriate when the plaintiff has not personally contributed to the delinquency.” *Poulis*, 747 F.2d at 866 (citations omitted). “[A]lternative sanctions need only be effective toward mitigating the prejudice caused by dilatory behavior or delinquency.” *Hildebrand*, 923 F.3d at 136.

They are not required to be “completely ameliorative.” *Jd.* It is unlikely that any sanction imposing costs or fees upon Plaintiff would be effective given that the case never moved past the initial filing. Therefore, the Court can see no alternative sanction that would be appropriate other than dismissal. 6. Meritoriousness of claim or defense. “The standard for determining whether a plaintiff’s claims are meritorious ‘is moderate.’” *Adams*, 29 F.3d at 876.

The standard for a Rule 12(b)(6) motion to dismiss for failure to state a claim, and not a summary judgment standard, is applicable in a *Poulis* analysis. See *id.* at 869-70. The United States Court of Appeals for the Third Circuit summarized the standard to be applied in deciding motions to dismiss filed pursuant to Rule 12(b)(6): Under the “notice pleading” standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with “a short and plain statement of the claim showing that the pleader is entitled to relief.” As explicated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a claimant must state a “plausible” claim for relief and “[a] claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Although “[f]actual allegations must be enough to raise a right to relief above the speculative level,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), a plaintiff “need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element.” (*Fowler v. UPMC Shadyside*, 578 F.3d 203, 213 (3d Cir.

2009) (citation omitted)]; see also *Covington v. Int’l Ass’n of Approved Basketball Officials*, 710 F.3d 114, 117-18, (3d Cir. 2013). *Thompson vy. Real Estate Mortg. Network*, 748 F.3d 142, 147 (3d Cir. 2014). Plaintiff’s Complaint, brought under the Federal Rail Safety Act (49 U.S.C. 20109) (“FRSA”), alleges that Plaintiffs supervisor failed to take meaningful steps to address safety concerns.

The supervisor blamed the hazards on Plaintiff and suggested wrong and unsafe means to remedy the problems. ECF No. 1, {§ 17-18. Personal problems arose and tense work conditions ensued. Eventually, Plaintiff’s health insurance was cancelled and his job was placed up for bid. ECF No. 1, 438. A disciplinary hearing was held and Plaintiff was terminated for improper performance.

ECF No. 1, § 39. Plaintiff was returned to service but eventually left due to stress and anxiety caused by the Defendant’s retaliation. ECF No. 1, Jf 43-44. Plaintiff sought damages under FRSA

and filed a whistleblower complaint with OSHA. ECF No. 1, 45. At the early stage of litigation (Complaint only), it is difficult to determine whether the case is meritorious or even plausible.

As such, this factor weighs neutral. Given that the Poulis factors weigh in favor of dismissal, the Court will dismiss this action for Plaintiff's failure to prosecute. An appropriate Order follows. ORDER 4 rem ANDNOW, this. day of January, 2026, IT IS HEREBY ORDERED that this case is dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Courts is to mark this case closed. eet OS Bans Stephanie L. Haines United States District Judge