

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40110
Docket No. MS-40713
08-3-NRAB-00003-080605**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Jimmie S. Miles, Jr.
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“This dispute, grievance, or claim¹ is being filed in accordance with 49 U.S.C., section 20109, formerly section 212 of the Federal Railroad [sic] Safety Act of 1970, which makes it illegal for a railroad carrier engaged in interstate commerce to discharge an employee who, lawfully and in good faith, files a complaint related to the enforcement of the Federal railroad safety laws.

*** * ***

It is now apparent that CSX Transportation Inc. unlawfully discharged me in retaliation for my lawful, good-faith attempts to make it safer for both employees and the public. Therefore, I hereby seek relief as follows in accordance with 49 U.S.C., section 20109:

All relief necessary to make me whole including, but not limited to:

Reinstatement to the service of CSX Transportation with the same seniority status that I would have had, but for the carrier's unlawful, discriminatory, and adverse act;

¹ The preceding is an excerpt from the Claimant's four page letter addressed to the Division dated July 25, 2008.

All back pay for time lost from May 24, 2007 until returned to work including, but not limited to, straight time, overtime, time claims/grievances, sick pay, personal leave pay, vacation pay, and any other pay which I am entitled to which other CSX clerks received during my absence, all with interest at 15 percent per annum and compounded monthly;

Compensatory damages including, but not limited to, compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, postage fees, letter writing and handling fees, and reasonable attorney fees;

Punitive damages in the amount of \$250,000.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The instant matter is unusual. A brief summary of the background will be helpful to understanding its status before the Board.

The Claimant was employed on November 1, 1971 and shortly thereafter established clerical seniority on January 17, 1972. His work record was apparently clear of discipline for the next 35 years. However, on May 24, 2007, he was removed from service pending a disciplinary Investigation. A Notice of Investigation dated May 25, 2007 contained charges that the Claimant engaged in conduct unbecoming

an employee because of the content of verbal and e-mail statements made by him and also for violating the Carrier's Information Users Policy and the Carrier's policy on Workplace Violence. Following an Investigation held on June 19, the Claimant was dismissed by letter dated July 6, 2007. The Organization appealed the Claimant's dismissal. The matter was eventually advanced to Special Board of Adjustment No. 988, which held its Hearing approximately one year later on June 26, 2008.

Award 599, which issued on December 17, 2008, reinstated the Claimant without backpay and required him to enter the Carrier's EAP process for anger management or related assistance.

Following the Hearing before SBA 988, but before its Award issued, the Claimant addressed a four-page letter dated July 25, 2008 to Ms. Elaine L. Chao, Secretary, U.S. Department of Labor, Ms. Paula M. Stefan, CSXT Director of Labor Relations and this Division of the Board.

Our review of the record does not reveal any evidence of handling of the instant matter on the property before the Claimant mailed his letter to the Board.

It is well settled that the Board does not gain subject matter jurisdiction to resolve a dispute pursuant to the Railway Labor Act (45 U.S.C. § 153 First (i)) unless it has first been handled in the usual manner by the parties on the property. Because the record fails to establish that the matter was handled in the usual manner on the property, we must dismiss the matter for lack of jurisdiction.

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of November 2009.