

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41089
Docket No. MS-41386
11-3-NRAB-00003-100310**

The Third Division consisted of the regular members and in addition Referee Martin Fingerhut when award was rendered.

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

STATEMENT OF CLAIM:

“1. Claiming time as follows at the pay rate of \$187.94 per day:

8 hours straight time for each of the dates of January 17, 20, 23, 24, 26, 27, 28, 29, February 3, 4, 5, 6, 7, 10, 11, 13, 14, 17, 18, 19, 20, 21, 2009 (22 days);

**8 hours overtime for each of the dates of January 18, 19, 22, 25, 28, 29, 30, 31, February 1, 3, 8, 11, 12, 13, 14, 22, 2009 (16 days);
and**

16 hours overtime for each of the dates of January 21, February 15, 16, 2009 (3 days)

account the carrier withheld me from service in violation of the award rendered by Special Board of Adjustment No. 988, SBA Case No. 599, NMB Case No. 599, which, through the agreement establishing the Board, required the carrier to have me back at work no later than January 17, 2009, 30 days after the award in the above referenced case was rendered.

- 2. The carrier shall now be required to pay claimant J.S. Miles, Jr., ID No. XXXXXX, 22 days pay at the straight time rate of position 4J10-173 (\$187.94) and 22 days pay at the overtime rate**

of position 4J10-173 (\$281.91) for the above mentioned violations. Total amount of this claim is \$10,336.70.”

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.

On December 17, 2008, the Petitioner was reinstated to the Carrier's service in accordance with an Award rendered by Special Board of Adjustment No. 988. The Award recited:

“Claim sustained in part and denied in part. Claimant is returned to service with seniority and all other rights intact, but without backpay. Upon his return he shall be required to enter an EAP program.”

In the claim now before the NRAB, the Petitioner seeks a day's pay for various dates between January 17 and February 21, 2009, and overtime pay for various dates between January 18 and February 22, 2009.

The basis of the claim reads as follows:

“... account the carrier withheld me from service in violation of the award rendered by Special Board of Adjustment No. 988, SBA Case No. 599, NMB Case No. 599, which, through the agreement establishing the Board, required the carrier to have me back at work

no later than January 17, 2009, 30 days after the award in the above-referenced case was rendered.”

The Carrier defended against the claim on two primary grounds. First, the NRAB lacks jurisdiction to consider the claim. Second, even if jurisdiction could be asserted, the claim would have to be denied on the merits. The Board finds both grounds persuasive.

With respect to the jurisdictional issue, the Carrier argues that, in the words of the Petitioner, the claim is entirely aimed at seeking to enforce the Award of SBA 988. The record before the NRAB clearly supports the Carrier’s factual assertion. Thus, whether one looks at the Petitioner’s Statement of Claim before the NRAB quoted above, or the Petitioner’s handling of the dispute on the property, the Petitioner repeatedly sets forth his contention that his rights flow from the SBA Award. Indeed, in the Petitioner’s Submission to the NRAB, he argues that the SBA Award required his reinstatement regardless of his being medically qualified to return to service. As the Petitioner put it, “Therefore, being or not being ‘medically qualified’ is irrelevant to this claim.” Under the rubric of anything is possible, his understanding of the SBA Award could have been the intent of the arbitrator who wrote the Award. However, we find that the Carrier likewise is correct in asserting that the NRAB does not have jurisdiction to enforce SBA Awards. Section 3, First (p) of the Railway Labor Act (45 USC Section 153, First (p)) provides that if a carrier does not comply with an order of an arbitration tribunal “any person for whose benefit such order was made, may file” for relief in “the District Court of the United States. . . .” Stated differently, Section 3, First (p) of the Railway Labor Act provides that jurisdiction to enforce NRAB Awards is vested solely in United States District Courts. Section 3, Second states that compliance with Awards emanating from Special Boards of Adjustment, among others, shall be enforceable by proceedings in United States District Courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with Awards of the NRAB. Consequently, the District Court, i.e., not this or any other arbitration tribunal, is the sole route for seeking enforcement of the Award of SBA 988. The NRAB does not have jurisdiction to grant the relief sought by the Petitioner.

The Carrier further argues that even if the claim were founded on the Collective Bargaining Agreement (CBA) covering the Petitioner, the claim must be

denied. The Carrier points out that the Petitioner had been properly suspended for more than 21 months. Under the CBA, the Carrier had every right to have the Petitioner certified as fit to return to service by its Medical Department. In addition, in this case, the SBA Award required the Petitioner to undergo an EAP evaluation and counseling, which required further evaluation by the Medical Department. The Petitioner was found to be medically qualified on January 31 and was returned to service beginning February 1, 2009. The Carrier asserts that under such circumstances the time taken by the Carrier in returning the Petitioner to service was not unreasonable and not in violation of the CBA.

The on-property record before the Board reveals that the position held by the Petitioner on July 6, 2007, was abolished and the Petitioner was required to displace onto another position upon his return in February 2009. The Carrier allowed the Petitioner to perform any work beginning February 1, 2009 for which he was qualified. The Carrier argued that the positions described in the claim were ones on which the Petitioner had not as yet been qualified and to which he was not entitled under the CBA. While the Petitioner obviously did not agree with the Carrier's conclusions, a careful review by the Board of all the appropriate on-property correspondence does not contain support for a finding that the Carrier's handling was not consistent with the provisions of the CBA covering the Petitioner.

Accordingly, for all the reasons discussed above, the claim must be dismissed.

AWARD

Claim dismissed.

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 18th day of October 2011.