

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41091
Docket No. MS-41388
11-3-NRAB-00003-100312**

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 \$427.00 for my wife’s prescription eyeglasses, per the attached invoice, account I was unable to access eye care benefits through the Vision Service Plan, which had been negotiated between the carrier and the Organization, due to my wrongful, retaliatory discharge effective July 6, 2007. I have now been reinstated to the service of the carrier through award rendered by Special Board of Adjustment No. 988, SBA Case No. 599, dated December 17, 2008. The \$427.00 being claimed here is part of my ‘... all other rights intact ...’ as specified on page 4 of the above referenced award.
2. The carrier shall now be required to pay claimant J. S. Miles, Jr., ID No. XXXXXX, \$427.00 for the above mentioned violation.”

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 attend an EAP program."

The Petitioner had been dismissed from service, following an Investigation, on July 6, 2007. He returned to service in February 2009.

In this dispute, the Petitioner is seeking reimbursement of the cost of his wife's prescription glasses purchased on June 7, 2008. The Petitioner contends that he is entitled to the benefits of the Vision Service Plan, negotiated between the Carrier and the Organization representing the Petitioner, including the year 2008 in which he performed no service. The basis of his claim, as set forth in his Notice of Intent, and throughout his on-property correspondence and Submission to the Board, is that the Award of SBA 988 deprived him only of backpay, but not of any other benefits during the period that he was out of service.

The Carrier's on-property defenses raised several issues, only three of which need be considered here. Initially, the Carrier contends that the claim must be dismissed on jurisdictional grounds. A consideration of this issue, involving the same parties, was discussed in Third Division Award 41089. For the same reasons, incorporated herein by reference, we find merit in the Carrier's position and conclude that the claim must be dismissed for lack of jurisdiction.

The second issue raised by the Carrier pertains to its position that the claim must be dismissed because it was untimely filed. The same issue arose between the same parties to this dispute and was considered in Third Division Award 41090. In that dispute, we agreed with the Carrier's contention. For the same reasons,

incorporated herein by reference, we find merit in the Carrier's position and conclude that the claim must be dismissed as untimely.

The third argument raised by the Carrier goes to the merits of the dispute. The Carrier points out that there is no provision in the Vision Care Agreement that supports a finding that an employee in a legally suspended status has a right to the benefits of the Agreement at the time he is in such status. The Carrier's argument is persuasive. The Petitioner has not supplied any provision of the Agreement, precedent, or logic to support a contrary conclusion.

In summary, for all the reasons set forth above, the Board finds that 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.