

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39342
Docket No. MS-38218
08-3-NRAB-00003-040134
(04-3-134)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (B. W. Jenkins, Jr.
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“March 20, 2004

Miss Linda Gathings Arbitration Assistant
National Railroad Adjustment Board
Third Division
844 N. Rush Room 944
Chicago, IL 60611-2092

Dear Miss Gathings:

I can't type so I am printing this to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte submission covering an unadjusted dispute between Bobby W. Jenkins, Jr. and the CSX Railroad involving the following,

CSX has, and is continuing to discriminate against me because of an on duty injury caused by CSX, and a court trial (which I won) in Federal Court. I am currently on disability but CSX has violated my civil rights and the National Labor Agreement by firing me. I have made repeated requests to CSX and my union (Brotherhood of Maintenance of Way) to stop this and return my name to the former L&N Birmingham North Subdivision Seniority rosters but to no avail. CSX fired me without justification, with no reason given other than to say CSX Claims Department did this.

I have not received any certified mail giving me a reason, or a date for an investigation and hearing from CSX as required of someone working a rank three, two and one position.

The only certified mail I have received from BMW is in November of 2003. I also received a letter on January 23rd, 2004 trying to close my file and case, which I disagree with. BMW sent me letters on these dates they received from CSX. These letters are libelous and untrue.

Respectfully yours,

Bobby Wendell Jenkins, Jr.”

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.

According to the record, Claimant B. W. Jenkins, Jr. resigned from the Carrier's service on February 21, 1996. Nevertheless, on April 7, 2004, the Carrier was notified of the Claimant's intention to personally list this case with the Board. We find that the time limits specified in the Collective Bargaining Agreement between the parties, in particular the language dealing with filing a claim or a grievance to the Board, have not been adhered to.

The record does not indicate, nor does the Claimant's letter explain, the reason for the eight year delay between his resignation and the belated filing of his claim with the Board. It is apparent from his letter that he believed that this was an “on-going”

dispute; but had he felt that he was unjustly treated under the Agreement, he was obliged to file a grievance with the appropriate Carrier officer "within sixty (60) days from the date of the occurrence on which the claim is based," in this case February 21, 1996.

In light of the long delay, the Board is prevented from rendering a decision on the merits of his claim, if any, due to clear and unambiguous contractual prohibitions, as well as the provisions of the Railway Labor Act establishing dispute resolution procedures.

Stated differently, in light of the circumstances of this case, the Board lacks jurisdiction to reach the merits.

We have no choice but to dismiss the claim on procedural and jurisdictional grounds.

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 29th day of September 2008.