

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41090
Docket No. MS-41387
11-3-NRAB-00003-100311**

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 my three Personal Leave Days for the year 2008 at the rate of pay assigned to Position 4J10-173 on December 31, 2008, and my 200 Vacation hours and 120 Sick Leave hours for the year 2009 at the rate of pay assigned to Position 4J10-173 on January 1, 2009, account I was and will be unable to take any of the above entitlements due to being wrongfully discharged by the carrier effective July 6, 2007, with rightful reinstatement to come sometime in the future per the award rendered by Special Board of Adjustment No. 988, Case No. 599, dated December 17, 2008. The above referenced entitlements (personal leave, vacation leave and sick leave) cannot be considered as ‘back pay,’ which was denied to me by the Board, but they can and should be considered items which fall within the definition of ‘all other rights intact . . .’ as specified in the above referenced award.**
- 2. The rules which will be violated if the Carrier does not pay the above entitlements will be a) the one created by the above mentioned award when it specifies, ‘Claimant is returned to service with seniority and all other rights intact. . .’; b) Vacation Addendum No. 3; and c) Article IX of the 1981 National Agreement, Section 1c.**
- 3. The Carrier shall now be required to pay claimant J. S. Miles, Jr., ID No. XXXXXX, 24 hours and 00 minutes pay for his three**

(3) year 2008 personal leave days, at the December 31, 2008 rate of position 4J10-173, and 320 hours and 00 minutes pay for his combined 2009 vacation and sick leave entitlements at the January 1, 2009, rate of position 4J10-173, or be in violation of that portion of the above referenced award which stipulates ‘. . . all other rights intact. . . .’

4. The total amount of this claim should be in excess of \$8,081.42. Claimant would provide a more accurate accounting if he had access to past and current pay rates for position 4J10-173, but he doesn’t.”

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.”

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

In the claim before the Board, the Petitioner seeks personal leave days, vacation, and sick leave benefits for 2008. 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. It did not deprive him of any other benefits during the year 2008 in which he performed no service. As his Notice of Intent recites:

“The above referenced entitlements (personal leave, vacation leave, and sick leave) cannot be considered as ‘back pay,’ which was denied to me by the Board, but they can and should be considered items which fall within the definition of ‘all other rights intact. . .’ as specified in the above referenced award.”

The Carrier’s on-property defense raised several matters, only three of which need be considered here.

Initially, the Carrier contends that the claim must be dismissed on jurisdictional grounds. It points out that the Petitioner relies entirely upon the Award of SBA 988 as support for his position. In essence, the Carrier asserts, the claim requests the NRAB to enforce the alleged holding of that Award, a power which the NRAB does not possess.

The same issue was raised and considered by the Board in Third Division Award 41089. In that case, we found that under the applicable provision of the Railway Labor Act only United States District Courts have jurisdiction to enforce arbitration Awards. The Board adopts the reasoning and conclusion as set forth in Award 41089. We conclude that the claim must be dismissed on jurisdictional grounds.

The Carrier further argues that to the extent the Board had jurisdiction of the claim, it must be dismissed as untimely filed. The facts show that the initial claim filed by the Petitioner was not sent to the address of the Carrier representative authorized to receive same. The on-property handling contains a letter dated July 31, 2008, which was addressed to the Organization representing the Petitioner. The letter contained a “listing of officers who are designated as the first level for claims and grievances.” The listing included the addresses of each of the designated recipients. One of the

items shown as part of the address was a speed code which had the function of directing incoming claims to the proper person and floor of the office building. The Petitioner omitted the speed code and, as a result, the claim was not delivered until after the time period for filing claims as set forth in the Collective Bargaining Agreement (CBA) covering the Petitioner had expired. The Carrier's timeliness defense arose in response to the Petitioner's argument, on the property, that the claim must be sustained as presented because it was not denied within the applicable time period. The Carrier asserts that (1) it had the right to designate the appropriate officer to receive claims (2) it notified the Organization of the name as well as the complete address of the appropriate officer, and (3) the Petitioner did not send his claim to the correct address in a timely manner. It is well settled that the burden of proof to show receipt of a claim in a timely manner is upon the party sending it. There is no probative evidence submitted by the Petitioner to show that he carried such burden. Accordingly, we find that the claim must be dismissed as untimely.

The third argument raised by the Carrier is that the claim also should be dismissed on the merits. There is nothing in the CBA that entitles the Petitioner to personal leave days, vacation, and sick leave pay for the year 2008 in which he performed no compensated service. We concur with the Carrier.

With respect to vacation pay, the National Vacation Agreement provides that benefits are payable only to an employee who "renders compensated service of not less than one hundred (100) days," thus requiring an employee to render 100 days of compensated service in 2008 to qualify for vacation pay in 2009.

The Sickness Benefits Agreement requires that an employee "must have rendered compensated service on not less than seventy-five (75) days in the preceding calendar year," thus requiring an employee to render 75 days of service in 2008 to qualify for benefits in 2009.

The Personal Leave Agreement requires that personal leave days "shall be forfeited" if not taken during each calendar year. The Petitioner did not take any personal leave days in 2008.

It is obvious from the above, that the Petitioner met none of the requirements under any of the three Agreements.

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Accordingly, for all the reasons set forth 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.