

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 69, (Case No. 69)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing September 14, 2010, when Claimant, Terry Do Rodriguez (6569255), was allegedly improperly disciplined by Disqualification as a Foreman as a result of multiple violations. The Carrier alleged violation of MOWOR 1.13 and EI 6.7.5.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this disqualification and reinstate his seniority as a Foreman and he be compensated for his lost time and expense and otherwise made whole."**
(Carrier File No. 14-10-0182) (Organization File No. 180-13D3-105.CLM)

FINDINGS:

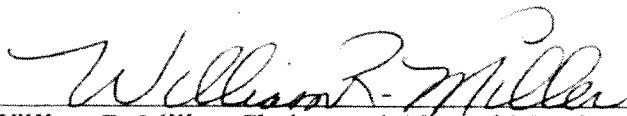
Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

This is a companion case involving the same Claimant in Award No. 66 of this Board. In that case Claimant was assessed a Level S 30 Day Record Suspension with a three year probationary period. The Board discovered that during the handling of that case the Organization was able to substantiate that in addition to the record suspension the Claimant was disqualified from his position as a Foreman which resulted in loss of compensation. The instant case involves the identical incident covered by Award No. 66 that resulted in Claimant's disqualification. In the aforementioned Award the Board held that the record suspension was to be set aside and the Claimant was to be reinstated as a Foreman with seniority intact and made whole at the straight time rate for any loss in difference of pay between the Foreman rate of pay

and the positions he has held since being disqualified. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's disqualification was resolved in Award No. 66, therefore, the Board finds and holds the subject case is now moot, thus the claim is dismissed.

AWARD

Claim dismissed.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 1-10-12