

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 270, (Case No. 270)**

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

**vs**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Louis R. Below, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing September 6, 2018, when Claimant Jeremiah Kelley (1598515) was dismissed for falsely reported time in order to receive pay for hours you did not work, beginning March 5, 2018 through April 23, 2018, while assigned as Foreman on TSCX0008.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove this dismissal with all rights unimpaired and pay for all wage loss including overtime commencing September 6, 2018, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-18-0S86) (Organization File No. 0493-SL13D3-185)**

**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.

The facts indicate that Claimant was the Foreman on Region System Gang (RSG) TSCX0008 (SC08 Surface Gang) scheduled to work with RSG Production Gang TTPX0008 (TP08) during March and April 2018. Timekeeping alerted the Compliance Anti-Fraud Department that Claimant's overtime was much more than compared to other members of the gang. Compliance Officer, Project Manager, JennieAnn Blair, was assigned to audit Claimant's payroll and allegedly found

multiple discrepancies between hours work and monies requested. Because of that Claimant was directed to attend a formal Investigation on July 5, 2018, that was mutually postponed until August 8, 2018, concerning in pertinent part the following:

**“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonesty and theft when you falsely reported time in order to receive pay for hours you did not work, beginning March 5, 2018 through April 23, 2018, while assigned as Foreman on TSCX0008. The date BNSF received first knowledge of this alleged violation is June 21, 2018.”**

On September 6, 2018, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the Organization's position that Claimant was denied a "fair and impartial" Investigation because the Hearing was not held in a timely manner. It argued that contrary to the Carrier's assertion the Carrier had knowledge of the alleged violation prior to June 21, 2018. It argued the record shows that Carrier Officer, Ms. Blair, had knowledge of the alleged violation on June 19, 2018. It further argued that in accordance with Rule 40(A) the Carrier was obligated to schedule the formal Investigation by no later than July 4, 2018, therefore, the scheduling of the Investigation on July 5<sup>th</sup> was outside of the prescribed time limits. The Organization also argued that it was improper for Carrier Officer Blair to be allowed to present telephonic testimony because the Claimant was entitled to face his accuser. Based upon the aforementioned procedural errors it requested the discipline be set aside without reviewing the merits.

Turning to the merits the Organization asserted that Claimant's testimony on pages 74 – 116 Claimant validated each and every time entry that was in question. It argued Claimant was performing services to the Carrier of providing protection for the members of his Gang while they performed maintenance on their machines, completing required surfacing and curve reports, taking locks off switches, taking required tags to mechanics, getting rooms set up through the Corporate Lodging Facility. Getting assistance from the Carrier's payroll department preparing play books for the territory that the Gang was working, preparing for job safety briefing by getting slow orders, Form B's on the territory, getting a plan together of how he would get all work groups lined out to get the most production for the day plus countless other tasks. It further argued that the Claimant's testimony was not effectively refuted, therefore, it concluded the Carrier did not meet its burden of proof and it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier the Investigation was held in a timely manner. It argued that first knowledge for the purposes of scheduling an Investigation begins when a Carrier Officer with the authority to convene an Investigation becomes aware of the information that gave rise to an Investigation, thus, it stated first knowledge was not until June 21, 2018, and the Investigation scheduled July 5<sup>th</sup> was timely. Secondly, it argued that telephonic testimony is well accepted by railroad arbitral precedent as being allowable. It reasoned there were no procedural errors and it asked that the claim be resolved on its merits.

Turning to the record, the Carrier argued Carrier Officer Blair who interviewed the Claimant about the alleged discrepancies in his overtime compensation had no reason to fabricate Claimant's inability to account for 47.5 hours of claimed overtime. It argued that Exhibit 2 corroborates Ms. Blair's testimony that Claimant informed her, among other things, that there was not much specific communication with the Roadmaster regarding overtime, that he rarely worked overtime when back at the hotel, that there was no reason he would claim that much overtime, and that he never mentioned other individuals driving his Company vehicle during her interview with him. Claimant made only two changes to Ms. Blair's account of Claimant's explanation of their conversation Claimant informed Ms. Blair that he did not have the only truck on the gang, rather there were two truck and five vans. Claimant also stated that he did not work on Timekeeping after work, but sometimes he did reports on curve data, print charts, etc.

The Carrier further argued that on the other hand, Claimant had a vested interest to claim he was never asked about specific dates or times so that he could clear up all of the discrepancies during his interview with Ms. Blair. It also suggested that it was interesting that at the Investigation almost two months after Ms. Blair interviewed the Claimant and after numerous recesses during the Hearing and almost five hours after the start of the Hearing the Claimant was somehow miraculously able to provide a detailed account of every minute of every day in question. However, it asserted the explanations could not be corroborated at this late date and were full of inconsistencies.

For example, it stated, Claimant initially claimed that one hour of overtime on several of the dates being questioned was for an 11<sup>th</sup> hour meal that he had simply forgotten to report correctly. Claimant later changed his explanation to he couldn't enter the 11<sup>th</sup> hour meal properly because he had issues with a new application for entering time called EAM. That explanation again changed to he had never been instructed to use the Overtime Reason Code for the 11<sup>th</sup> hour meal period. The Carrier stated that it was clear that the Claimant did know how to identify overtime compensation for an 11<sup>th</sup> hour meal on 14 days, but could not account for

why he did not do so on the other days he supposedly qualified for that additional compensation.

Another example offered by the Carrier involved Claimant's assertion he sent one of the members of his gang back to the hotel in his Company vehicle on March 5, 6, 7 and 10, 2018, to account for the difference between where and when his Company vehicle was turned off and his claim for an additional 12 hours of overtime on those dates. It argued that on March 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> the reason Claimant gave for sending a Machine Operator back to the hotel in his truck was because it was too hot and the Machine Operator didn't want to work. However, on those dates the temperature only reached 72 degrees on one day, 59 degrees on the second day, and 66 degrees on the third day. And on three of the four days, no one on the Claimant's gang shows returning to the hotel around the time the Company vehicle was turned off at the hotel.

In summary, the Carrier reasoned that Ms. Blair's testimony was more credible than the Claimant's testimony and it was clear that Claimant was guilty as charged. It concluded that Claimant was appropriately disciplined for dishonesty and theft and it asked that the discipline not be disturbed and the claim remain denied.

The Board has reviewed the transcript and record of evidence and will first address the Organization's procedural arguments. Contrary to the Organization's argument the time limits for calling for a formal Investigation in this case did not begin on June 19<sup>th</sup>. This Board has consistently determined that the time limits for holding a formal Investigation begins when an Officer with authority to convene an Investigation learns about information which gives rise to the Investigation. Compliance Anti-Fraud Project Manager, Ms. Blair turned her findings over to a Carrier Officer on June 21<sup>st</sup> who had the authority to initiate disciplinary proceedings. The date of first knowledge for time limits purpose was June 21, 2018. The Organization also argued that it was improper to allow Ms. Blair to offer telephonic testimony. The Organization's argument is not persuasive because at the Investigation, the Hearing Officer explained that Ms. Blair was unable to travel to Memphis for the Hearing. This Board has repeatedly determined that telephonic testimony is permissible provided all parties are allowed an unrestricted right to fully question and cross-examine the witness. The record shows that Claimant and his representative were not inhibited in the Claimant's defense. The Board has determined that the Investigation and appeal process met the guidelines of the Agreement and the Claimant was afforded his "due process" Agreement rights. The case will be resolved on its merits.

Review of the record, reveals that the Carrier has argued that Carrier Officer Blair did a thorough interview of the Claimant wherein every date in dispute was discussed as to the validity of the overtime requested. Examination of Ms. Blair's testimony shows that she made a call to



the Claimant while he was in the field working. On page 114 of the transcript, Claimant testified he received an email from Ms. Blair on June 19<sup>th</sup> asking him to call her. Claimant called Ms. Blair, and she identified herself. Claimant stated Ms. Blair asked him to take her through an average work day. Claimant responded by stating what he was doing on that particular day June 19<sup>th</sup> and he explained that recently he had not worked a great deal of overtime. According to the Claimant Ms. Blair then advised him she was conducting an audit of his time-roll for the period of March 5 – April 23, 2018, after which she asked him about a few particular days. Claimant explained that he could not answer those questions at that moment as he couldn't remember exactly what he had done three months ago without examining his personal records.

The suggestion that Claimant's testimony at the Investigation contradicted his answers given Ms. Blair during their telephonic interview is not convincing as there was no showing that Claimant discussed any particular dates covered by the Notice of Investigation during that telephone call. The Organization's reiteration of the facts and the incident under charge, set forth in its appeal of October 17, 2018, is far more persuasive than the Carrier's summary of the event. Review of the transcript shows that Claimant gave specific answers that accounted for all time that had been questioned by the Carrier as being suspect. The record further shows that Claimant's recollection of the individual dates as to what he was doing and why he was entitled to overtime was not effectively rebutted. The Board also notes that Claimant was a 14 plus year employee with an unblemished disciplinary record. On page 119 of the transcript, Production Roadmaster, Brian Poston was questioned as follows:


**"Shane Lindsey: Just one question Mr. Hearing Officer. Overall as far as an employee, Mr. Kelley, I mean would you say that he's honest and hardworking? How would you summarize Mr. Kelley?"**

**Brian Poston: Jeremiah would do anything we asked him to do. My experience working with him on the surfacing gang was that he is diligent in his duties and is knowledgeable."**

Clearly Claimant was a good employee with a good work ethic with nothing in his work history to suggest questionable character or dishonesty. It is determined that the Carrier did not meet its burden of proof. The Board finds and holds that the discipline is rescinded and removed from the Claimant's record. The Claimant will be reinstated with seniority intact and all benefits unimpaired with full back-pay from September 6, 2018, until returned to service.

AWARD

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.




William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: 

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 378, (Case No. 378)**

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

vs

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Jeffery L. Fry, Employee Member

**REQUEST FOR INTERPRETATION of P.L.B. No. 7048, Award No. 270**

On March 22, 2022, the Organization advised the Neutral Member of the Board that a dispute had arisen over the implementation of Award No. 270 because the Carrier had refused to make the Claimant whole for all loss of earnings suffered during the period he was improperly withheld from service (dismissed) by the Carrier.

Part 2 of the **STATEMENT OF CLAIM** of Award No. 270 requested the following:

**“As a consequence of the violation referred to in part 1 the Carrier shall remove this dismissal with all rights unimpaired and pay for all wage loss including overtime commencing September 6, 2018, continuing forward and/or otherwise made whole.”**

Award No. 270 was adopted on May 8, 2020, and it concluded as follows:

**“The Board finds and holds that the discipline is rescinded and removed from the Claimant’s record. The Claimant will be reinstated with seniority intact and all benefits unimpaired with full back-pay from September 6, 2018, until returned to service.”**

The Question at Issue: **“BMWED, therefore, requests an interpretation to the Award in order for PLB No. 7048 to further clarify the proper remedy to be applied therein.”**

**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.

The facts indicate that on September 6, 2018, Claimant was notified that he had been found guilty as charged and was dismissed on that date. Claimant’s dismissal was appealed through the normal process and eventually appealed to this arbitral tribunal where the claim was sustained.

It is the position of the Organization to fully satisfy the requirements of Award No. 270 the Claimant was entitled to be restored to the “economic status quo” that Claimant would have obtained, but for the Carrier’s wrongful refusal to fully compensate Claimant for lost wages. It asserted that “restoring the economic status quo” required the Carrier to compensate the Claimant’s lost wages based upon the production gang earnings that Claimant had historically earned and received rather than a headquarterd position which resulted in the Claimant being shorted more than forty thousand dollars (\$40,000.00) in yearly wages when compared to Claimant’s earnings over the previous years.

The Organization argued the record shows that e-mail correspondence between the parties (Employee’s Exhibit “B”), established that between 2013 and 2018, prior to Claimant’s dismissal Claimant’s yearly wages were between \$113,142.06 and \$129,665.56. Notwithstanding that unrefuted fact, the Carrier compensated the Claimant based upon a position that earned in the \$70,000’s salary range (See Pages 5 and 6 of Employee’s Exhibit “B”). It argued that Carrier asserted that the Claimant’s gang did not exist in 2019 or 2020, so the Carrier used a headquarterd position on the Claimant’s district to calculate the wages despite the fact that Claimant’s work history shows that Claimant had for the previous six years worked on a production gang. It stated that production gangs tend to come with a significant amount of overtime, which was why the Claimant had consistently made well over \$100,000.00 a year. It further argued that it referenced multiple production gang positions that Claimant could have held after his position was abolished. It asserted those positions more closely replicated Claimant’s historical earnings and should have been used as a reference position for the calculations of the monies owed Claimant while Claimant was held out of service rather than a headquarterd position. Additionally, the Organization argued to pay Claimant less than what he could have earned on a production gang position was not equitable and was contrary to Award No. 270 and it asked that its Interpretation Request be sustained.

It is the Carrier’s position that “wages” are only those monies due to an employee for assignment to a specific position, and that each position’s wage is determined by bulletin. It asserted that Rule 40G states in pertinent part: **“If it is found that an employee has been unjustly disciplined or dismissed...He shall be reinstated with his seniority rights unimpaired, and he be compensated for wage loss, if any, suffered by him...”** It stated Claimant’s “wage loss” (full back-pay) was properly calculated in the same manner it had been done for decades for all reinstated employees. When questioned by the Organization the Carrier’s General Director of Labor Relations explained in two e-mails to the Organization how the calculations for monies owed the Claimant were made. In the first e-mail he stated the following:



**“I did look into this, and from what I can find he was handled appropriately and in the same manner we have handled other reinstatement/backpay cases for as long as I can remember. Here is the detail that I learned:**

**Mr. Kelley’s back pay was figured using the position he held (07801) as the Foreman on Surfacing Gang TSCX0008 from 9/7/18 to 11/9/18 – as if he had not been dismissed. Mr. Doroscan was the employee who subsequently bid in the position (07801) after Mr. Kelley was dismissed and therefore was the employee who was used as a reference to track earnings.**

**The position that was used for the rest of the time that Kelley was dismissed, 92004 EXTRA GANG FOREMAN on Surfacing Gang TSCX 0799 SPRINGFIELD, was the highest rated surfacing gang foremen position we found that he could have held on his district for the entirety of the time he was not working. TSCX0008 did not exist in 2019 or 2020 so he could not have bid that gang in again, and there would be no way to know what other off-district gang he may or may not have bid to for these years, thus we used the highest rated position on his district.” (Carrier Exhibit No. 8 dated July 16, 2020)**

In the second e-mail the General Director wrote the following:

**“As I previously stated, we handle reinstatements the same way for every reinstated employee. This is important for consistency reasons, and we have done so for many, many years. At the risk of perhaps oversimplifying, we use the earnings of the position held by the employee at the time of his/her dismissal. But, when that position ends or becomes occupied by a more senior employee, we maximize the dismissed employee’s seniority to the highest rated position that the employee could have held. We do not make assumptions about what position the employee would most likely have gone to, as you have suggested we do. Doing so would inevitably lead to additional conflict as predicting what someone would have done is certainly less than an exact science.**

**I have confirmed that Mr. Kelley was handled the exact same way as any other employee, and for that reason, I am not inclined to make any adjustments to his back pay calculation.” (Carrier Exhibit No. 9 dated July 30, 2020)**

It further argued that contrary to the Organization’s argument the process used by the Carrier for calculating back-pay owed Claimant was the standard historical process that had always been used. It stated that Rule 40G stipulates that an employee is due actual “wage loss” when it is determined the employee was unjustly dismissed. It does not, however, define wage loss as an average of the employee’s total compensation for the five years prior to dismissal. Nor does it

stipulate that wage loss will be based upon an assumption as to positions that employee might have held.

It concluded that Claimant was issued a paycheck for his wage loss on July 8, 2020, in compliance with negotiated Rule 40G and Award No. 270 and is due no additional monies. It asked that Claimant's and Organization's request be denied.

The Board has been requested to issue an Interpretation of Award No. 270 as to whether or not the Carrier fulfilled the directives of that decision to award full back-pay from September 6, 2018, until Claimant's reinstatement.

The Organization argued that to make the Claimant "whole" for lost earnings Claimant should have been allowed the normal/usual overtime that he had historically earned in addition to the straight time he would have earned for the period held out of service whereas the Carrier argued it properly used Claimant's former position to figure monies owed Claimant until that position was abolished after which it used the highest paying position Claimant's seniority would have entitled him to hold in his home district.

The Organization presented evidence that in the prior six years to Claimant's improper dismissal Claimant had only worked as a Foreman on Region System Gangs (RSG) and had not held a Headquarters' Foreman position. In the Organization's e-mail to the Carrier dated July 16, 2020, the Organization agreed that using Mr. Doroscan, who succeeded Claimant on TSCX0008 as Foreman, for the model for monies owed Claimant until that Gang was abolished was correct. However, it did not agree with the Carrier in its choice of a Headquartered Foreman position after that date. It specifically stated:

**"Mr. Kelley customarily worked the system surfacing gangs, why was there no consideration for 2019 given to TPO5 surfacing gang foreman that was held by A. N. Villarreal 1635994 (seniority date 07-15-2007) a position that could/would have been held by S. G. Bookout II 1673649 (seniority date 02-15-2007) another position Mr. Kelley could/would have held."**

In the Carrier's submission on page 6 the Carrier addressed its' rationale for calculating Claimant's lost monies as follows:

**"...Nor does it stipulate that wage loss will be based upon an assumption as to the position the employee might have held. Decades ago and without dispute from the Organization, BNSF decided the most logical and equitable way to calculate wage loss when the position an employee held at the time of their dismissal ceases to exist or is held by a senior employee, was to optimize the employee's seniority and base pay upon the highest paying position they could have held on their Seniority District...."**

In Award No. 287, Interpretation of Award No. 202 this Board acknowledged that prior Awards such as Case No. 65 of Public Law Board No. 7602, involving the same parties, had determined employees unjustly held out of service were entitled to overtime, with No Dissent by the Carrier, therefore, the Board is not persuaded that Claimant is not entitled to lost overtime. However, the question at issue in the instant dispute is not simply whether or not the Claimant was entitled to lost overtime made by the incumbent of his former position in the calculations of monies owed. The issue was complicated by the fact that Claimant's former position as Foreman on Surfacing Gang TSCX0008 was abolished while Claimant was out of service. Therefore, the question is whether or not the Carrier properly used the highest rated surfacing gang foreman position (92004 Extra Gang Foreman on Surfacing Gang TSCX 0799 Springfield) that Claimant could have held on his home district for the entire period of time he was out of service as the reference for calculating lost monies owed Claimant after the abolishment of Claimant's former position. According to the Carrier, using the highest rated position that an employee could hold in his home seniority district during the period of his absence had been the practice used in calculating lost wages without dispute for decades. The Organization countered that argument stating, that in this instance, the Carrier should have used a Region System Gang (RSG) Foreman position that Claimant's seniority would have entitled him as the model for calculating lost wages because it would have more closely replicated the Claimant's historical income earnings.

Review of the record reveals that the Organization never disputed Carrier's assertion that when the position of an employee held out of service was abolished during their absence the Carrier had determined that the most logical and equitable way to calculate wage loss was to optimize the employee's seniority and base compensation upon the highest rated position the employee could have held on their Seniority District. As stated before, the Organization did not argue that the aforementioned method had not been the customary process used for many years involving reinstated employees, but instead argued that Claimants' situation was different than most employees and the usual process for calculating lost wages and making Claimant whole did not work, therefore, an exception to the usual process was needed to fulfill the responsibility to make the Claimant "whole".

The Organization's argument of equity is not contrary to "Carrier's historical practice of making reinstated employees whole" in accordance with Rule 40G, but is only contrary to the usual process used to calculate lost earnings. Methodology should not inadvertently subvert the parties' intent, Rule 40G, and their historical practice to make employees "whole". The long-time methodology used to make reinstated employees "whole" has worked well for the parties, however, in this instance, the methodology runs contrary to the historical practice and goal to make employees "whole". Claimant's situation appears to have been an anomaly, outside of the norm, which did not allow the commonly used methodology to calculate lost wages/earnings to fulfill the parties' historical goal to make all reinstated employees "whole", including the Claimant.

The record shows that Claimant had worked as a Region System Gang (RSG) Foreman for six years prior to his dismissal on September 6, 2018. The Organization noted that when Claimant was reinstated to service, Claimant returned to a Region System Gang (RSG) Foreman position. Based upon Claimant's work history it has been established that Claimant had a lengthy history of working RSG Foremen positions and earning a salary based upon those positions. It is not unreasonable to believe that if Claimant had not been inappropriately dismissed and had been working at the time of the abolishment of RSG TSCX0008 Claimant would have subsequently displaced a junior employee holding a RSG Foreman position. In the Carrier's email of July 30, 2020, it explained the process used to calculate lost earnings of a reinstated employee. It stated its intention was to maximize an employee's lost earnings based upon the highest rated position their seniority entitled them to hold in their home district. In this instance, that process did not meet the historical practice of making employees "whole" as Claimant had customarily worked RSG Foreman positions outside of his home district, therefore, Carrier's practice and/or process for calculating lost monies owed Claimant was contrary to the intent and language of Rule 40G.

Carrier's historical practice and goal regarding reinstated employees has been to make them whole (or as close as possible). That historical practice was inadvertently derailed by a long-time process that had not been objected to by the Organization in the past because it had not normally defeated the historical goal. The Board does not take exception to the process used by the Carrier in determining the appropriate position to be used in the past for its calculations for monies owed reinstated employees and believes that process has generally been equitable and has worked in most cases. However, in this instance, an exception to the norm was needed to address the uniqueness of Claimant's situation and to accomplish the historical goal and practice to make the subject Claimant "whole". Using the normal process to determine the appropriate position to be used for calculation of Claimant's lost earnings had the unintended effect of further penalizing the Claimant after reinstatement as it did not make Claimant "whole" and was contrary to Rule 40G which states in pertinent part: **"...and he be compensated for wage loss, if any suffered by him..."**. An exception to the normal methodology was needed to determine Claimant's wage loss suffered account of an inappropriate dismissal.

In Award No. 287 this Board stated:

**"Furthermore, it is an established principle that provisions of an Agreement or Rule supersedes the practices incompatible therewith (See Third Division Award 26314 and 28034) and deviations of the Agreement or Rule did not change it (See Third Division Award 18967). Lastly, failure to prosecute rightful claims in the past does not estop present action (See Third Division Awards 1941, 14896, 18957 and 20422).**

It is determined that the Claimant is entitled to the same monies that employee Doroscan earned during Claimant's absence up until the abolishment of RSG TSCX0008, (9/7/18 to

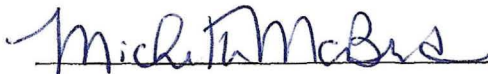
11/9/18). The Organization asserted Carrier's calculation for that time period were correct, therefore, there is no necessity for the parties to review that time period. It is further determined that because of the unique facts of the case, and without precedence, an exception to the normal process for determining the appropriate position to be used as the guideline/reference for calculations of monies owed Claimant (including overtime) for the remaining time Claimant was held out of service was needed to be used. The parties are instructed to examine Carrier payroll records for those RSG Foremen junior to Claimant's seniority and find which position/employee most closely replicated Claimant's average yearly salary income figured over the prior six years to Claimant's dismissal on September 6, 2018. If that replication exceeds Claimant's average Claimant is not entitled to more than his average because the Claimant/Organization argued that Claimant was entitled to the average salary income he had earned prior to his dismissal. Additionally, if the replication is lower than Claimant's average the Claimant is only entitled to those lesser earnings as the work opportunities might have lessened. The "make whole" remedy, in this instance, does not include items such as travel allowances, mileage, lodging, meals, etc., but only covers actual wage loss which will require the parties to examine Claimant's average yearly salary income to verify that it does not include the aforementioned items and if it does Claimant's average salary should be adjusted accordingly. The Board finds and holds that the Organization's Interpretation Request for lost earnings incurred by Claimant during his dismissal period is sustained. The Board further notes that the instant decision is limited to the subject case without precedence as the facts of the dispute were not the norm.

**AWARD**

Interpretation Request sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.

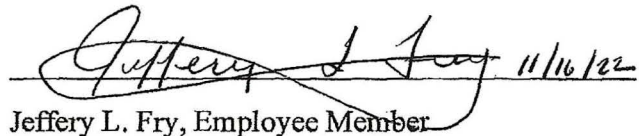


William R. Miller, Chairman and Neutral Member



Michelle McBride, Carrier Member

*Dispute to follow*



Jeffery L. Fry, Employee Member

Award Date: November 14, 2022