

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 288, (Case No. 288)**

**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

REQUEST FOR INTERPRETATION of P.L.B. No. 7048, Award No. 206:

On March 3, 2020, the Organization advised the Neutral Member of the Board that a dispute had arisen over the implementation of Award No. 206 because the Carrier had refused to make the Claimant whole for all losses of earnings and benefits suffered during the period he was improperly withheld from service (dismissed) by the Carrier.

Part 2 of the **STATEMENT OF CLAIM** of Award No. 206 requested the following:

“As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this dismissal and he be reinstated, if applicable, with seniority, health insurance benefits, vacation, all rights unimpaired and pay for all wage loss including overtime commencing January 15, 2016, continuing forward and/or otherwise made whole.”

Award No. 206 was adopted on January 5, 2018, and it concluded as follows:

“...the Board finds and holds that Claimant will be returned to service with seniority intact, all benefits unimpaired and made whole for loss of all monies since being removed from service, until reinstated in accordance with Rule 13(f) of the Discipline Rule.”

The Question at Issue: **“Did the Carrier to fulfill the determination of Award No. 206?”**

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 March 22, 2016, 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 was appealed to this arbitral tribunal where the claim was sustained.

The position of the respective parties' and their various arguments are identical to those expressed in Award No. 287 and will not be reiterated for the sake of brevity, but are made a part of this Award by their reference. The Interpretation Request was narrowed down by the Organization to the following statement:

"...Carrier is required to reimburse the Claimant for out of pocket medical expenses that he incurred during the period of his improper dismissal."

Therefore, this Award will only address the aforementioned statement as to whether the Carrier is obligated as the Organization asserted to reimburse the Claimant for out of pocket medical expenses that Claimant incurred while in a dismissed status.

The Board has been requested to issue an Interpretation of Award No. 206 which is the second of five Interpretation Requests to this Board during its ten plus years of existence. Each of the Requests has a commonality regarding the non-payment of monies other than "wage losses". The issue addressed in Award No. 287 (lead case) is the same and only issue of the subject dispute. Other issues that arose in the subsequent three cases will be addressed separately.

The reasoning set forth in Award No. 287 will not be repeated for the sake of brevity, but is made a part of this Award by its reference. For the same reasons expressed in Award No. 287 it is determined that the Claimant is entitled to out-of-pocket medical expenses that would have been covered by Claimant's medical plan during the period he was held out of service. The Claimant should not be required to pay more in premiums, deductibles and co-pays than he would have paid had Claimant continued to work for the Carrier rather than being in a dismissed status. Additionally, the Claimant should not receive a "windfall" gain. Therefore, the Board requires the Claimant to provide the parties receipts and/or other proof of his medical costs that would have been covered by his medical plan until such time Claimant was returned to active service. The matter is remanded to the parties to determine the monies owed Claimant that would have been covered by Claimant's insurance had Claimant continued to be employed by the Carrier uninterrupted by Claimant's dismissal. The Board finds and holds that the

Organization's Interpretation Request for payment of out-of-pocket medical expenses incurred by Claimant during his dismissal period is sustained. The Board further notes that the instant decision is limited to the narrowed issue set forth by the Organization in its Interpretation Request Conclusion of August 13, 2020. However, the limitation of this decision should not be inferred to take exception to the recent Awards between the parties that addressed other issues.

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



Louis R. Below, Employee Member

Award Date: 10-14-20