

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 289, (Case No. 289)**

**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. 207:

On March 3, 2020, the Organization advised the Neutral Member of the Board that a dispute had arisen over the implementation of Award No. 207 because the Carrier on March 5, 2018, chose to assess an additional 36-Month Review Period for the incident that was subject of the Award.

The instant dispute was a dismissal case wherein it was determined that the Carrier met its burden of proof that Claimant was guilty as charged, but the discipline was excessive. Award No. 207 was adopted on January 5, 2018, and it concluded as follows:

“...the Board finds and holds that discipline was excessive and it reduced to a lengthy suspension which is corrective in nature and in accordance with the spirit of PEPA. Claimant will be returned to service with seniority intact, all benefits unimpaired, but with no back-pay. Claimant is forewarned that he needs to be careful to abide by all Carrier Rules and Policy following reinstatement.”

The Question at Issue: **“Was the Carrier’s assessment of a 36-month review period to the Claimant’s Disciplinary Record upon Claimant’s reinstatement in accordance with Award No. 207?”**

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 May 16, 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 partially sustained.

It is the position of the Organization that the Carrier went beyond the Findings of Award No. 207 when it placed a 36-Month Review Period on the Claimant's Disciplinary Record upon Claimant's reinstatement as it goes beyond the penalty assessed the Claimant. It requested that the 36-Month Review Period be removed from the Claimant's Disciplinary Record.

It is the Carrier's position that it was within its right to place that Review Period on the Claimant's record as it reinforces the Board's forewarning to the Claimant that he should be careful to adhere to all Carrier Rules and Policy. It asked that the Organization's request be denied.

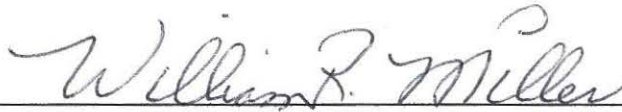
The Board has been requested to issue an interpretation of Award No. 207 which is the third of five Interpretation Requests to this Board during its ten plus years of existence. The only issue in the instant case is whether or not the assessment of a 36-Month Review Period upon Claimant's reinstatement was in accordance with Award No. 207.

The Board determined that Claimant's dismissal was excessive. That penalty was reduced to a lengthy suspension with no back-pay and a forewarning to the Claimant to be careful to meet all responsibilities associated with being a Carrier employee. Claimant's suspension was the penalty assessed the Claimant for his May 16, 2016, offense. Carrier's assessment of a 36-month review period to the Claimant's Disciplinary Record upon his reinstatement was contrary to the Findings of Award No. 207 as it was an additional assessment of discipline not contemplated by the Award.

The Board finds and holds that the Organization's argument set forth in its Request for Interpretation of Award No. 207 was correct and is sustained. The Carrier is directed to remove the 36-Month Review Period from the Claimant's Disciplinary Record.

AWARD

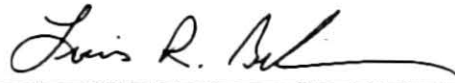
Interpretation Request sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman and Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: 10-14-20