

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 290, (Case No. 290)**

**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. 214:

On March 3, 2020, the Organization advised the Neutral Member of the Board that a dispute had arisen over the implementation of Award No. 214 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 on the basis that the Claimant had resigned.

The instant dispute was a dismissal case wherein it was determined that the Carrier did not meet its burden of proof that the Claimant accepted other employment while on Medical Leave in violation of Rule 22(d). Award No. 214 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 the Seniority Roster. The Carrier’s liability period begins upon the date the Claimant’s doctor found him fit for full service until the date Claimant is reinstated in accordance with Rule 13(f) of the Discipline Rule.”

The Question at issue: **“Did the Carrier fulfill the determination of Award No. 214?”**

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.

It is the position of the Organization in its Interpretation Request of March 3, 2020, that the Carrier has asserted that Claimant resigned from its service, and it has complied with Award No. 214. The Organization argued that the Carrier has offered no proof of resignation from the Claimant and without proof of such and an examination of that resignation it is clear that the Carrier has not fulfilled the continuing requirements of Award No. 214. In the Organization's Submission of August 13, 2020, it has narrowed its request to being that the Carrier be required to reimburse the Claimant for out-of-pocket medical expenses that Claimant incurred while out of service. It asked that its request be sustained.

It is the Carrier's position that the record substantiated that Claimant resigned from its service effective July 4, 2018 (See Carrier Exhibit 10). It argued that the record substantiates that Claimant's release to full duty was only on a provisional basis. Nevertheless, based upon this full release, Claimant was able to displace a junior employee effective June 11, 2018. According to the Carrier Claimant's pay records shows that Claimant only worked that assignment one day on June 11th. Following that Claimant took floating vacation days from June 12 to June 25, unapproved absences from June 26 to July 3 (five consecutive work days that could have resulted in termination per Appendix 11 of the South Agreement and then resigned effective July 5, 2018.

The Carrier further stated that Claimant's seniority rights were fully restored and, it argued, that in error, calculations to the good of the Claimant's "net wage loss" resulted in a payment of \$81,583.33 on July 26, 2018. It concluded that it had complied with Award No. 214 and it asked that the Organization's Interpretation Request be denied.

The Board has been requested to issue an Interpretation of Award No. 214 which is the fourth of five Interpretation Requests to this Board during its ten plus years of existence. The central issue in the instant case is whether or not the Carrier adhered to the aforementioned Award.

Award No. 214 was adopted by the parties on January 5, 2018, and the Carrier was directed by the Board to make the Award effective on or before 30 days following the date the Award was signed by the parties. Claimant was medically released to service on June 7, 2018, and returned to service on June 11, 2018. Claimant worked one day, then took floating vacation days followed by an unapproved absence after which Claimant resigned effective July 4, 2018. It was not rebutted that Claimant was paid \$81,583.33 on July 26, 2018, which was 20 days after the Claimant had resigned.

The Board finds and holds that the Organization's argument set forth in its Request for Interpretation of Award No. 214 to compensate Claimant for out-of-pocket medical expenses Claimant might have incurred while in a dismissed status have become moot because of the Claimant's resignation, therefore, the Organization's Request for additional monies is denied. The Board would be remiss not to mention that the Organization's good work in behalf of the Claimant appears to have not been appreciated as Claimant resigned shortly after being returned to service.

AWARD


Interpretation Request denied.



William R. Miller, Chairman and Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: 10-14-20