

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 291, (Case No. 291)**

**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. 217:

On March 3, 2020, the Organization advised the Neutral Member of the Board that a dispute had arisen over the implementation of Award No. 217 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 met its burden of proof that Claimant was guilty as charged, but the discipline was excessive. Award No. 217 was adopted on January 5, 2018, and it concluded as follows:

“...the Board finds and holds that the discipline is reduced to a lengthy suspension that is corrective in nature. The suspension period will run from the date Claimant was removed from service until March 31, 2017. Claimant will be made whole for loss of all monies since April 1, 2017, until reinstated in accordance with Rule 13(f) of the Discipline Rule.”

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. 217?”**

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, therefore, it does not owe the Claimant any monies. The Organization initially 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 requirements of Award No. 217. Subsequently, in its Submission it dropped the argument regarding Claimant's alleged resignation and instead has asserted that when Claimant was reinstated to service the Carrier added a Three Year Review Period to begin on the day of Claimant's reinstatement. It asked that the Three Year Review Period be stricken from Claimant's Disciplinary Record because it was not part of the decision of Award No. 217. It closed by asking that its Interpretation Request be sustained.

It is the Carrier's position that the record substantiated that Claimant never resigned from its service and is presently working as an Assistant Foreman on a B&B Gang. It asserted that it has complied with Award No. 217 and it asked that the Organization's requests be denied.

The Board has been requested to issue an Interpretation of Award No. 217 which is the fifth 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. 217 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.

The Carrier issued a Reinstatement Letter on January 31, 2018, to the Claimant which stated in pertinent part:

"Public Law Board 7048 decided your case and rendered Award 217, which reduced your dismissal for misuse and improper care of company property by taking railroad property to his personal residence, to a lengthy Level S actual suspension through March 31, 2017. You will be reinstated to service with seniority restored, but no pay from the date you were removed from service through March 31, 2017."


The letter goes on to explain to the Claimant five things Claimant needed to complete before Claimant would be returned to service. There is nothing in that letter that states or infers that the Claimant was being placed under a Three Year Review Period.

The Organization has offered nothing other than an allegation that the Carrier placed the Claimant under a Three Year Review Period. Examination of the Carrier's Submission reveals that it never addressed that issue. It appears that the Carrier was not aware of the Organization's complaint as there is no correspondence between the parties over the issue.

The Board is not persuaded that the Carrier placed the Claimant under a Three Year Review Period, however, there was an inference by the parties that may have occurred. Therefore, the Board finds and holds that the issue is remanded to the parties for settlement. The parties are advised that Award No. 217 never contemplated that Claimant should be placed under a Three Year Review Period upon reinstatement as the Award considered the lengthy suspension as being fully corrective of Claimant's offense and the final resolution of the disciplinary matter. The parties are instructed to review the Claimant's Disciplinary Record and if the Claimant was placed under a Three Year Review Period that Review Period should be removed from his record.

AWARD

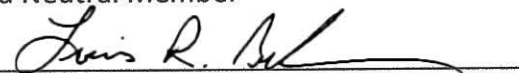
Interpretation Request remanded to the Parties in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman and Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: 10-14-20