

PUBLIC LAW BOARD NO. 7394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY
(Former St. Louis—San Francisco Railway Co.)

Case No. 68; Award No. 68 (F. Ponzer remedy)
Carrier File No. 12-15-0128
Organization File No. 493-FR91C5-1510
NMB Subject Code 173

Claimant Frank Ponzer was terminated from his employment in 2015, for alleged dishonesty. The Organization brought a claim on his behalf, which was heard as Case 64:

STATEMENT OF CLAIM IN CASE 64:

Claim of the Atchison Topeka & Santa Fe Frisco System Federation of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters, Region I that "Due to violations of due process and the SLSF Agreement the Organization contends the assessed discipline is excessive and unwarranted Mr. Ponzer should be placed back in service immediately with all charges dismissed and removed from his record with ALL monetary losses incurred be repaid to Mr. Ponzer."

This Board issued its decision on September 30, 2017, sustaining the claim, and directing the Carrier to comply within 45 days.

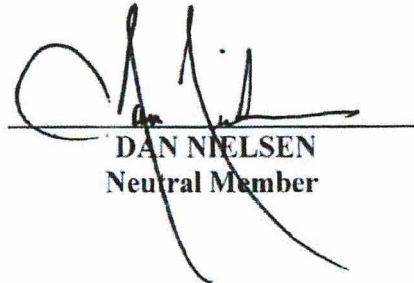
The Organization asserts in this case that the Carrier has failed to comply with the remedy ordered by the Board, in that it has failed to repay all monetary losses to Claimant. Specifically, the Organization claimed that Claimant incurred unreimbursed medical insurance expenses, and penalties for early withdrawals from his retirement account made necessary by the loss of his income upon termination. In the course of the September 28, 2018 hearing on the remedy claim, the Carrier asserted that its insurance plan had fully reimbursed Claimant for all COBRA premiums. This was investigated by the Organization, and the Organization Member confirmed it in an e-mail to the other Board members on October 3, 2018. This renders the insurance premium aspect of the claim moot, and that issue is not further addressed in this award. The remaining issue concerns the penalty for early withdrawals from Claimant's 401(k) account.

The Organization argues that a make whole remedy must include consequential damages from the termination, and that there is a strong and consistent line of cases with this Carrier in support of that proposition. The Carrier counters that make whole relief on this property has always been limited to lost wages and should not be expanded unless the parties specifically bargain for such an expansion.

In resolving this dispute, the Board finds it unnecessary to address the propriety of awarding damages beyond lost wages. The Organization has presented no evidence to support a conclusion that the claimed damages should be part of a reinstatement award under this agreement. Moreover, they are unable to point to a single incident of a past practice of including said damages under this agreement prior to this case. Finally, the record contains no detailed information as to the claimed loss. For all of these reasons, the remedy claim must be denied.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



MICHELLE MCBRIDE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 27th day of November 2018.