

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Jed L. Wheeler

PARTIES TO DISPUTE: (

(Huron and Eastern Railway Company, Inc.

STATEMENT OF CLAIM:

"1. Profit sharing- based on the company's own criteria I was not paid my fair share for profits that I helped the company make. My share was \$450.00-\$540.00 less than other comparable employees, claim: \$450.00-\$540.00.

2. Vacation- all former/laid-off CSX employees employed by Huron & Eastern had the same verbal agreement; we would be eligible for the same number of weeks vacation we would if working for CSX. For me, based on my years of service, that would have been 3 weeks. I had 3 weeks paid vacation in 1989. Vice President of Operations & Sales, Larry M. McCloud changed that agreement in late January/early February of 1990 to reflect what he claimed were changes in vacation requirements of CSX. This was untrue, as I will be eligible for 3 weeks paid vacation in 1991 from CSX. Claim; 1 weeks vacation pay, \$400.00.

4. Wages- on 05/07/90 I gave the Huron & Eastern Railway Co. 1 weeks notice of resignation that my last day would be 05/13/90 as I was recalled to CSX and was to start 05/14/90. I was available all week but not allowed to work for two reasons as stated by V.P. Larry M. McCloud on 05/09/90: #1- to give inexperienced train and engine personnel 'baptism under fire' and #2- someone had anonymously (sic) written a derogatory letter to President John H. Marino and it was implied that I was the author. I feel I was wrongfully discharged and claim: 1 weeks wages of \$600.00."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In September 1989, Petitioner, a furloughed CSX employee, accepted employment with the Huron and Eastern Railway Company, Inc. As one of ten train service employees in the service of this Carrier, his employment, wages and working conditions were not covered by the terms of a formal Collective Bargaining Agreement. Wages, Vacations and Profit Sharing, the three items on which Petitioner is seeking a monetary adjustment before this Board, were established by "verbal agreement" or by Company policy. During the first week in May 1990, Petitioner gave Carrier a one week notice that he was accepting recall with CSX Transportation. He was not used after giving notice and contends that this was termination without just cause.

In its response to Petitioner's submission, Carrier filed a counter-claim seeking return of \$600.00 which it contended Claimant had improperly been paid.

In First Division Award 23909 this Board stated:

"It is well settled that the jurisdiction of the Board is restricted by statute to disputes involving 'the interpretation or application of labor agreements.' The record before the Board, however, reveals there is no Collective Bargaining Agreement in effect on this Carrier and, therefore, there are no Agreement rules to interpret or apply."

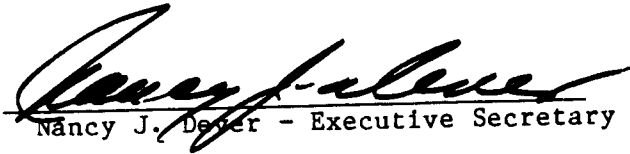
Accordingly, this Board has no alternative but to dismiss the Claim. For a similar holding see First Division Award 24059 and Fourth Division Awards 4410, 4478, 4508, 4510 and 4548.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1992.