

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION****Award No. 24766
Docket No. 44507
97-1-95-1-D-2074**

The First Division consisted of the regular members and in addition Referee Marvin F. Hill, Jr. when award was rendered.

(John D. Peters

PARTIES TO DISPUTE:(

(Durham Transport, Inc.

STATEMENT OF CLAIM:

“CLAIM IN QUESTION IS DID DURHAM TRANSPORT, INC. COMPLY WITH IMPLIED AGREEMENTS IN TERMINATING ENGINEER/TRAINMASTER PETERS?”

THE PARTICULAR QUESTION ON WHICH AN AWARD IS DESIRED IS WHETHER ENGINEER/TRAINMASTER IS ENTITLED TO ALL EARNINGS AND BENEFITS LOST AS A RESULT OF DURHAM TRANSPORT, INC. WRONGFULLY TERMINATING ENGINEER/TRAINMASTER PETERS?”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Mr. Peters, prior to his dismissal by Durham Transport, was an "employee at will," not represented by a labor organization, and not covered under any applicable collective bargaining agreement. Accordingly, the Board is without jurisdiction to grant any remedy to Mr. Peters. The Railway Labor Act, as amended (RLA), does not empower the Board to create a contract of employment, a collective bargaining agreement, or a remedy for an "at will" employee. As such, Mr. Peters' claim must be dismissed. See, First Division Awards 24098 , 23909, 21870, and Fourth Division Awards 4507, 4513, 4548. See also, *Thomas v. New York C. & S.L.R.R.*, 185 F.2d 614 (6th Cir. 1950).

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 13th day of March 1997.