REPORT

OF

PRESIDENT'S EMERGENCY BOARD

CREATED BY PROCLAMATION OF MAY 21, 1936 TO INVESTIGATE AND REPORT ON MATTERS IN DISPUTE BETWEEN THE WESTERN PACIFIC RAILROAD COMPANY, SACRAMENTO NORTHERN RAILWAY, AND TIDEWATER SOUTHERN RAILWAY AND THEIR EMPLOYEES

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

REPORT OF EMERGENCY BOARD APPOINTED MAY 21, 1936, UNDER SECTION 10 OF THE RAILWAY LABOR ACT, MAY 20, 1926, AS AMENDED JUNE 21, 1934

In re the Brotherhood of Locomotive Engineers, Order of Railway Conductors, and Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway

The Emergency Board appointed by the President pursuant to the provisions of the Railway Labor Act, and in accordance with his executive proclamation of May 21, 1936, to investigate and report its findings respecting matters in dispute between the Western Pacific Railroad Co., Sacramento Northern Railway, and Tidewater Southern Railway, and certain of their employees, convened at Room 265, Post Office Building, San Francisco, Calif., on May 27, 1936. All the members of the Board, consisting of G. Stanleigh Arnold, who was elected chairman, Will J. French, and Macy Nicholson, were present. Frank M. Williams was appointed secretary and reporter. The Board held public hearings commencing on May 27 and concluding on June 5, 1936. Appearances were made on behalf of the employees by Mr. A. O. Smith, assistant grand chief, Brotherhood of Locomotive Engineers; Mr. Homer Bryan, general chairman for the Brotherhood of Locomotive Engineers on the carriers above mentioned; Mr. M. P. Reynolds, vice president, Order of Railway Conductors; Mr. L. L. Ewen, general chairman for the Order of Railway Conductors on the Western Pacific Railroad; Mr. C. E. Weisell, attorney for the Brotherhood of Locomotive Engineers and the Order of Railway Conductors. On behalf of the carriers, appearances were made by Mr. E. W. Mason, vice president and general manager, Western Pacific Railroad Co.; Mr. H. A. Mitchell, president, Sacramento Northern Railway and Tidewater Southern Railway; Mr. C. W. Dooling, attorney for the carriers. Mr. C. V. McLaughlin, vice president of the Brotherhood of Locomotive Firemen and Enginemen, and Mr. R. McIlveen, general chairman of the same brotherhood on the Western Pacific Railroad, were also present, and presented a statement and evidence in behalf of their organization.

Evidence was submitted and exhibits presented to the Board upon which we base the following Preface, Findings, and Report.

To PRESIDENT FRANKLIN D. ROOSEVELT,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: Pursuant to your letter of appointment dated May 21, 1936, asking us to investigate and report to you respecting the disputes existing between the Western Pacific Railroad Co., Sacramento Northern Railway, and Tidewater Southern Railway, and certain of their employees, we respectfully submit the enclosed findings and report.

The evidence submitted by the parties in interest has been carefully studied. We sincerely hope that our preliminary comment resulting from our investigation may be of some value in relation to the proper solution of present and future disputes.

Very respectfully,

G. STANLEIGH ARNOLD,
WILL J. FRENCH,
MACY NICHOLSON.

SAN FRANCISCO, CALIF., *June 15, 1936.*

PREFACE

The original Railway Labor Act, approved May 20, 1926, was enacted as a result of continuous study and effort for many years upon the part of both the executives and the organized employees of the railroads to promote in the interests of themselves and the public more secure industrial relations.

The "First Annual Report of the National Mediation Board, including the Report of the National Railroad Adjustment Board, for the Fiscal Year ended June 30, 1935", states:

> "Dissatisfaction with the Railroad Labor Board grew the longer it operated, so that by the end of 1925 both the carriers and the employees were agreed in their desire to have it repealed. A joint committee of management and railroad brotherhood representatives supported a bill which was enacted into law and entitled 'The Railway Labor Act of 1926.'
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> "In the framing of this law the experience and the lessons learned from previous legislation were thoroughly canvassed by representatives of the parties directly affected, the railroads and their employees. Most of the principles and policies already discussed in connection with the amendments of 1934 were incorporated in this act, and many of the agencies and methods developed during Federal control were adapted to the conditions of private ownership.
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> "The duty to exert every reasonable effort to make and maintain agreements, to settle all disputes in conference by conciliation, if possible, and the right of employees and carriers alike to designate individuals or organizations as representatives, without interference, influence, or coercion, were all included in this act. Provision was made for setting up boards of adjustment for interpreting agreements, and a United States Board of Mediation was set up for mediating disputes involving changes in wages, rules, or working conditions.
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> "Failing in mediation, the Board was required to attempt to induce the parties to submit their dispute to arbitration, as already described; and if this failed an emergency board could be appointed exactly as in the amended act. The main changes which the amendments of 1934 made in the original act were: (1) The creation of the National Railroad Adjustment Board, but system or regional boards of adjustment established by

agreement of legally authorized representatives are not prohibited; (2) the settlement of representation disputes by the Mediation Board without the intervention of the carrier; and (3) clarification of the right to organize and to bargain collectively, and provision of penalties for interference with this right on the part of carriers or their agents. Aside from these changes, the Railway Labor Act remains, in its essentials, the same as it was enacted in 1926."

The foregoing four paragraphs are quoted because they concisely confirm (1) the participation of employers and employees in the railroad industry in both framing and passing the original law, (2) the value of making and maintaining agreements, and (3) the proper successive methods of adjustment of disputes by negotiation, mediation, and arbitration. In the event of failure to secure adjustment by the various processes outlined, The President may appoint an Emergency Board to investigate and report on a controversy.

We appeal to thoughtful men in the industry, whether in management or in the organizations, and our desire is to do so in a helpful way, without suggestion of criticism. The Railway Labor Act now in force is predicated upon the settlement of disputes by orderly methods, clearly set forth. It is true that the word "may" appears in several places in the statute, but surely it was never intended that the use of the word "may" infers a release from all obligations. Indeed the Act states that "It is the *duty* of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." The intent certainly is that the definite methods of orderly procedure outlined for a settlement of all disputes shall be followed, step by step, until a final conclusion is reached.

It is known that both carriers and organizations have, at times, disregarded their plain obligations in order to obtain temporary advantage. A recognition by both sides of the lack of wisdom thus shown, will achieve a valuable contribution to industrial peace in this industry.

There is a distinct gain in having men decide technical questions in industry who have first-hand knowledge of the problems under consideration. It will be conceded that a President's Emergency Board may be unfamiliar with the intricacies of railroading. Therefore, it is far better to call first upon negotiation, mediation, or arbitration, in order that controversies may be settled by those who

have expert knowledge and that each side shall have full representation.

The Railway Labor Act states its first purpose as follows: "To avoid any interruption to commerce or to the operation of any carrier engaged therein." The public interest is so important in transportation controversies that there is full justification for pointing out, as the Act does, that "prompt and orderly settlement of all disputes" is also a primary purpose of the law.

As we view the existing legislation and consider its formative processes and enactment by Congress, there appears an obligation on the part of each carrier and each organization to follow these methods:

First: To make and maintain agreements.

Second: To consider and decide disputes in conference between designated and authorized representatives.

Third: To invoke the National Railroad Adjustment Board, through its four Divisions, to adjudicate controversies in cases over which it can take jurisdiction.

Fourth: To call on the National Mediation Board for its assistance, when other relief has failed.

Fifth: To invoke arbitration to reach a settlement.

The law is adequate if its purposes and intent are properly observed.

FINDINGS AND REPORT

A strike ballot dated April 30, 1936, was circulated by the Brotherhood of Locomotive Engineers among engineers and motormen on the three carriers involved, and by the Order of Railway Conductors among the conductors on the Western Pacific Railroad and Tidewater Southern Railway. The evidence shows that the efforts of the Mediator had not been concluded, nor the request yet made by the National Mediation Board that Cases Nos. 1, 2, 4, 5, and 8 be arbitrated until subsequent to the date on the strike ballot.

Cases Nos. 3, 6, and 7 had never been presented to the Governmental agencies established for the purpose of considering such disputes, namely, the National Mediation Board as to Case No. 3 and the National Railroad Adjustment Board as to Cases Nos. 6 and 7.

The organizations stated that after the inclusion of the several cases in the strike ballot, they felt they could not properly negotiate a settlement of any single case unless all of the other cases had been satisfactorily adjusted. It is therefore necessary that this Board make its findings and report as to all of the questions on the ballot. The following is an exact copy of the cases as they appear in the official ballot:

CASE NO. 1: *Engineers.*—Request for adequate rate of pay, rules, and working conditions for engineers (motormen) employed on the Sacramento Northern Railway.

CASE NO. 2: *Engineers.*—Request for a separate contract for locomotive engineers employed on the Western Pacific Railroad, in accordance with the provisions of the Railway Labor Act, and the incorporation therein of certain standard representative, mileage, hiring, promotion and demotion rules as set forth in the submission to the railroad company on November 6, 1935.

CASE NO. 3: *Engineers.*—Request that on articulated consolidation type locomotives weighing over 400,000 pounds on drivers on which Mallet rate is now being paid, a differential of twenty-five (25) cents for each additional 50,000 pounds on drivers over 400,000 be allowed per 100 miles to engineers.

CASE NO. 4: *Engineers.*—Request that on district between Keddie and Bieber, a mountain differential of seventy-one (71) cents per 100 miles over present rates for each class of engine used, be allowed to engineers.

CASE No. 5: *Conductors.*—Request that on district between Keddie and Bieber, conductor be paid $7.43 per 100 miles, or less, in through freight service, $7.68 per 100 miles, or less, in local freight and mixed train service, and $7.42 per 100 miles, or less, in work train service.

CASE No. 6: *Conductors.*—Violation of agreement entered into between conference committee of managers, Western Railroads, and representatives of the conductors' and trainmens' organization, dated Chicago, April 8, 1924, to which the Western Pacific Railroad Co. was a party, by establishing helper districts without conference and agreement with the committee of the Order of Railway Conductors.

CASE No. 7: *Conductors.*—Claim for reinstatement of Conductor O. Schofield, eastern division, and payment for time lost subsequent to August 10, 1933.

CASE No. 8: Request that Western Pacific schedules be extended to engineers, firemen, conductors, and trainmen employed on the Tidewater Southern Railway effective as on May 1, 1935.

CASE No. 1

Engineers.—Request for adequate rate of pay, rules, and working conditions for engineers (motormen) employed on the Sacramento Northern Railway.

This controversy involves the Sacramento Northern Railway, extending from Oakland to Chico, Calif., a distance of 176 miles, with several short branch lines, the entire mileage of the property being 261. The passenger and freight service is handled by electric motors exclusively, the employees in train service being designated as trainmen, conductors, and motormen and total approximately 134, of whom 41 have entered service as motormen or have been advanced in the service from brakeman or conductor to motormen.

No separate schedule or contract covering rates, rules, and working conditions has ever been in existence on this property for motormen, the same rules and working conditions for conductors and brakemen being applicable to motormen. The rates of pay for each class of service vary, but on the basis of so much per hour, with not less than a minimum day in hours guaranteed, without regard to the number of miles run in an hour, day, or trip. Prior to December 1, 1935, a minimum day represented ten hours for conductors, brake-

men, and motormen, but on that date a new contract was negotiated between the carrier and the Brotherhood of Railroad Trainmen, who also represented the conductors, establishing 8 hours, instead of 10, for a minimum day, allowing for 8 hours what had theretofore been paid for 10 hours, and in addition allowing payment for time worked in freight service in excess of 8 hours at the rate of time and one-half, which increased the earnings. This concession, together with some changes in rules and working conditions, satisfactorily concluded negotiations with the brakemen and conductors.

The motormen represented by the Brotherhood of Locomotive Engineers refused to accept rules and working conditions applicable to conductors and brakemen, and insisted upon negotiating only on the basis of so-called "standard rates, rules and working conditions" in effect on steam-operated railroads, or where motormen held dual rights to render service as locomotive engineers or motormen.

The strike ballot is worded "Request for adequate rate of pay, rules and working conditions" but the testimony was to the effect that the basis desired was substantially that of the rates, rules and working conditions in effect for engineers on the Western Pacific Railroad operated by steam power. The carrier representatives testified that they have been and are, at any time, ready to negotiate an agreement with the motormen or their representatives, on the basis of "adequate rate of pay, rules and working conditions".

The Board is of the opinion that this dispute should be remanded to the parties interested, and a sincere effort made to negotiate an agreement covering adequate rates of pay, rules and working conditions for motormen. Financial conditions or the possible abandonment of service should not be controlling factors in negotiations, since such an agreement must necessarily be treated with due consideration for the interests of the public, the employees affected and the owners of the property.

(The contention of the Brotherhood of Locomotive Engineers and the Order of Railway Conductors that the Western Pacific Railroad Co. owns the Sacramento Northern Railway and the Tidewater Southern Railway, and therefore the Western Pacific rates, rules and working conditions should apply on the two subsidiaries, was carefully considered by us. We found that the Western Pacific Railroad Co. owns a large majority of the stock of each of the other carriers named. Both of the smaller companies are under separate management and our opinion is that they must be considered as separate entities.)

CASE NO. 2

Engineers.—Request for a separate contract for locomotive engineers employed on the Western Pacific Railroad, in accordance with the provisions of the Railway Labor Act, and the incorporation therein of certain standard representative, mileage, hiring, promotion and demotion rules as set forth in the submission to the railroad company on November 6, 1935.

This case involves the request of the Brotherhood of Locomotive Engineers for a separate contract governing working conditions of engineers on the Western Pacific Railroad. At the present time there is in effect an agreement between the Railroad and the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, governing working conditions of all employees in engine service (engineers, firemen, and hostlers). The Brotherhood of Locomotive Engineers represents engineers, and the Brotherhood of Locomotive Firemen and Enginemen represents the others. In requesting a separate contract, the Brotherhood of Locomotive Engineers are proposing changes in certain rules which apply also to firemen.

In 1913 the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen entered into an agreement known as the Chicago Joint Working Agreement, for the purpose of establishing uniformity in the application of certain rules that affect both classes of employees. This agreement was, by order of the Director General of Railroads, made a part of the contracts between the carriers in the Western territory (including the Western Pacific Railroad Co.) and the enginemen in 1918. At that time the engineers and firemen jointly negotiated with the management of the Western Pacific Railroad Co. to put in effect the Chicago Joint Working Agreement. In 1923, the last schedule was negotiated and has continued in effect, with its supplements, until the present time, without change so far as the rules involving the Chicago Joint Working Agreement is concerned. This schedule constitutes a tri-party agreement between the carrier, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen, the two brotherhoods being represented by the designated officers of each organization, but acting jointly with each other in negotiating the schedule of rates, rules, and working conditions.

The evidence indicates that from 1927 a controversy has existed between the two organizations over the interpretation and application of the Chicago Joint Working Agreement, and a consistent effort made by the Brotherhood of Locomotive Engineers to make a sep-

arate agreement or contract with each carrier, independent of the Brotherhood of Locomotive Firemen and Enginemen. Success in this effort has been attained on a large number of the railroads. In many cases, by mutual consent of the Brotherhood of Locomotive Firemen and Enginemen, and in other cases through the process of mediation, a mutual agreement was ultimately reached.

The two organizations are jointly interested in most of the rules and working conditions and they alone are involved in agreements in effect only between the two brotherhood organizations, insofar as regulation of monthly mileage earnings, hiring and promotion of men in engine service and representation in negotiations for changes in rates, rules, and working conditions, are concerned.

The two brotherhoods on this property have failed to reach a mutual agreement for separate contracts. The record is clear that the contract covering rates, rules, and working conditions, now in effect is a tri-party agreement between the carrier, engineers, and firemen. The Brotherhood of Locomotive Engineers claims that men now working as engineers, or on the active and working extra list, have almost unanimously expressed desire for separation of the joint contract. On the other hand, the Brotherhood of Locomotive Firemen and Enginemen state that of the total of 425 men holding seniority in engine service (engineers, firemen, and hostlers), they represent 325 who are opposed to the separation, including a number now working as engineers. They further state their opposition is based on the fact that a number of the rules affect both engineers and firemen and should not be changed, or be subject to change, without consent of all concerned.

The controversy is almost exclusively one in which the organizations alone are concerned, many points being involved where the interest of an engineer is no more important than that of a fireman, while the carrier remains neutral.

The Board is of the opinion that this controversy should be remanded to the parties interested, and that the two brotherhoods should make an effort to compose their differences, so that separate agreements may be negotiated with the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen by the carrier. In the event of failure to dispose of this controversy by mutual concurrence between the two organizations, we believe that the joint contract should be separated and an agreement made between the carrier and Brotherhood of Locomotive Engineers, and another between the carrier and Brotherhood of Locomotive Firemen and Enginemen, preserving to each organization the rights now existing under the joint contract. The right of each organization to represent its members, in whatever capacity employed,

must be conceded where representation involves disputes arising under rules or working conditions; the rules in effect for the class of employees and the interpretations placed thereon by the negotiating organization and the carrier will govern.

CASE NO. 3

Engineers.—Request that on articulated consolidation type locomotives weighing over 400,000 lbs. on drivers on which Mallet rate is now being paid, a differential of twenty-five (25) cents for each additional 50,000 lbs. on drivers over 400,000 be allowed per 100 miles to engineers.

This dispute involves the Western Pacific Railroad Co. and its employees in engine service, as to rates of pay for engineers, governed by the weight on driving wheels which determines the capacity of locomotives in movement of train load.

The scale of wages is graduated to produce different rates for each class of power, according to the size of a locomotive.

For many years rates for enginemen have been established by negotiations between the organizations and the carriers and made uniform over large areas, for the purpose of standardization. Any deviation from so-called standard rates or rules that govern standard rates is accomplished by negotiations through the representatives of the organizations and the management of the particular railroad involved.

The evidence in this dispute is to the effect that there is a schedule of rates covering the various classes of locomotives which was properly negotiated and agreed upon in the contract dated January 1, 1923, and its supplements. The Brotherhood of Locomotive Engineers and the management have been unable to agree on a higher rate of pay for certain new engines put in service in 1931, of larger capacity than any theretofore used.

The evidence indicates that conferences between the representatives of the organization and the management were held in the years 1933, 1934, and in April 1935, without reaching an agreement.

The Board is of the opinion that this controversy should be referred to the National Mediation Board in accordance with the provisions of the Railway Labor Act.

CASES NOS. 4 AND 5

Engineers.—Request that on district between Keddie and Bieber a mountain differential of seventy-one (71) cents per 100 miles over present rates for each class of engine used be allowed to engineers.

Conductors.—Request that on district between Keddie and Bieber, conductor be paid $7.43 per 100 miles, or less, in through freight service, $7.68 per 100 miles, or less, in local freight and mixed train service, and $7.42 per 100 miles, or less, in work train service.

This controversy involves the Western Pacific Railroad Co. and engineers, conductors, firemen, and brakemen, although only the engineers and conductors are involved in the strike ballot.

In the Western part of the United States most of the carriers having lines of railroad in or crossing the Rocky Mountain ranges and the Cascade and Sierra ranges recognized, when negotiating rates of pay for employees in train and engine service, that the movement of freight trains over heavy grades involved additional precautions, which, together with less favorable living conditions in sparsely-settled mountain territory, justified a greater compensation than in so-called valley or low grade territory. While many of the hazards in mountain territory have disappeared and living conditions are now more comparable with those in level territory, the differentials in some form or other still exist. The Western Pacific Railroad Co. had no railroad lines with grades sufficient to bring up the question of differential rates until the year 1931, when a line was constructed from Keddie, Calif., to Bieber, Calif. This line is 112 miles in length, of which 64 miles have grades of 1½ percent, or greater, 9 miles of which are in excess of 2 percent. This line of railroad is comparable with many similar operations in the western territory where a differential in some form is now paid. While there has been little if any extension of these differential rates, the precedent is well established by the evidence in this case.

The evidence is also to the effect that no uniform basis exists, or has been followed, in determining what difference should be recognized in the rates of pay between mountain and valley or level territory, owing to the differential adopted being agreed upon through negotiations to fit any particular railroad or the different districts of any railroad.

The record also indicates that differentials are not applicable to all classes of train service, but are allowed to train and enginemen engaged in operating only certain classes of trains.

No evidence was submitted by the Brotherhood of Locomotive Firemen and Enginemen or Brotherhood of Railroad Trainmen in either of these two cases, although both organizations were parties to the dispute during negotiations with the management and during negotiations through the mediator up to and until the Brotherhood of Locomotive Engineers and Order of Railway Conductors decided to place these dockets in the strike ballot.

The Board is of the opinion that in these two cases a differential rate of pay should be allowed the engineers, conductors, firemen, and brakemen when used to move trains in either direction between Keddie and Bieber, Calif., the amount in cents per 100 miles to be determined by negotiation or arbitration.

CASE NO. 6

Conductors.—Violation of agreement entered into between conference committee of managers, Western railroads, and representatives of the conductors' and trainmens' organization, dated Chicago, April 8, 1924, to which the Western Pacific Railroad Co. was a party, by establishing helper districts without conference and agreement with the committee of the Order of Railway Conductors.

This controversy involves the Western Pacific Railroad Co. and the grievance arises under rules in the contract covering "Schedule of Pay and Regulations" negotiated between the carrier and the conductors and trainmen, effective October 31, 1922, together with supplements subsequently adopted after conference dated May 1, 1924, and December 31, 1928. The rules specifically involved are Nos. 40 and 41 and they have not been changed since the adoption of the contract of October 31, 1922. These rules are as follows:

Helper Districts

"RULE 40. Helpers may be used between the following points:

Western Division

1st district between Decoto and Fitz.
1st district between Carbona and Moy.
3rd district between Oroville and Portola.
4th district between Chilcoot and Hackstaff.
4th district between Reno Junction and Reno.
4th district between Flanigan and Sano.

Eastern Division

1st district between Sulphur and Jungo.
3rd district between Sonar and Wendover.
4th district between Clive and Delle.
4th district between Burmester and Warner.

Right to Establish Additional Helpers

"RULE 41. (a) The Railroad reserves the right to establish other helper districts from time to time as its business develops and helper service becomes necessary.

Before Establishing

"(b) Before establishing additional helper districts, the officers of the Railroad will notify the General Chairmen of the Order of Railway Conductors and Brotherhood of Railroad Trainmen in order that the matter may be discussed in advance."

The Order of Railway Conductors, jointly with the Brotherhood of Railroad Trainmen, together with representatives of the railroads in the western territory, revised some of the rates and rules of general application in negotiations conducted in Chicago, Ill., which became effective as of April 8, 1924, if and when adopted by the two organizations and the management of any railroad party to the April 8, 1924, conference, of which the Western Pacific Railroad Co. was one.

Among the rules under discussion at this conference were those in effect covering pusher and helper service to move trains over heavy grades, and the subject was disposed of in the following language found on page 12 of the April 8, 1924, agreement, Rule 4, Freight Service:

"Existing schedule provisions limiting double heading of trains and use of helpers or pushers will be modified to provide:

"(a) With trains of over 40 cars, exclusive of cabooses, double-heading is prohibited, except as hereinafter stated.

"(b) Double-headers may be run on any district provided the rating of the largest engine handling the train is not exceeded.

"(c) In case of an accident to an engine, consolidation may be effected with another train and consolidated train brought into terminal as a double-header, if practicable.

"(d) It is recognized that the exigencies of the business may require additional helper service to that provided for, in which event the matter shall be settled by negotiations between the managements and committees, and provisions for pushers or helper service may be made by managements and committees for pusher or helper engines on any district to maintain the tonnage intact over grades."

It is apparent that this grievance arises over the interpretation of the language contained in Rules 40 and 41 in the "Schedule of Pay and Regulations" now in effect, which have not been changed subsequent to the date of April 8, 1924.

The Board is of the opinion that this grievance should be referred to the National Railroad Adjustment Board for adjudication.

CASE No. 7

Conductors.—Claim for reinstatement of Conductor O. Schofield, Eastern Division, and payment for time lost subsequent to August 10, 1933.

This controversy involves the Western Pacific Railroad Company and the grievance arises under a rule in the contract covering "Schedule of Pay and Regulations for Conductors and Trainmen, effective October 31, 1922", reading as follows:

Discipline and Dismissal

"RULE 98. (a) No trainman shall be disciplined or dismissed, except in cases where fault is apparent beyond reasonable doubt, without a thorough investigation by the proper officers. Ordinarily such investigation will be held within five days after the offense has been committed and proceed with as little interruption as may be until completed. The employee shall have full opportunity to present his case and offer testimony and may be accompanied by a fellow employee. When a decision is rendered, if the conductor or brakeman believes it unjust, he may take up his case on appeal (submitting in writing the reasons for appealing) to the next higher officer in authority, whose decision may be subject to appeal. If appeal is taken from decision rendered, it shall be presented to the next higher officer without delay and not later than thirty days from date of decision. If the suspension or dismissal shall be found to have been without just cause, the employee shall be reinstated and paid for time lost. (Thirty-day provision applies only to cases involving compensation.)

Transcript

"(b) When transcript of testimony is made, on request, local chairman will be furnished a copy."

Conductor O. Schofield, in freight service on November 4, 1932, was in charge of train designated as Extra 88 East. He was discharged from the service of the company for alleged responsibility in a collision wherein freight train designated as No. 62 struck the rear end of Extra 88 East when the latter train entered upon the main track from a side track at the east end of Beowawe Station grounds.

It is apparent that this grievance arises over the interpretation of the language contained in Rule 98 (a) of the "Schedule of Pay and Regulations for Conductors and Trainmen, effective October 31, 1922." The question involved is as to whether the responsibility of the conductor was apparent beyond a reasonable doubt,

prior to his discharge, and, if not, whether the investigation was conducted in accordance with the Rule.

The Board is of the opinion that this grievance should be referred to the National Railroad Adjustment Board for adjudication.

Case No. 8

Request that Western Pacific schedules be extended to engineers, firemen, conductors, and trainmen employed on the Tidewater Southern Railway effective as on May 1, 1935.

This controversy involves the Tidewater Southern Railway Co., a common carrier comprising 65 miles of railroad, the trains being operated by steam power. The traffic handled requires the services of only 1 train crew, consisting of engineer, fireman, conductor, and two brakemen, for 248 days; 4 train crews, each composed of 5 men, for 40 days, and 3 train crews for 77 days of the year. The evidence is to the effect that only 6 employees in train and engine service are recorded as holding seniority and who, by their rights, are entitled to operate the train service on this railroad. This evidences that in addition to the 5 employees regularly used to man a train, 1 additional employee is carried on the seniority roster for relief service when a regular man lays off.

During the period of the year when fruit shipments are heavy, extra train service is necessary and the men required to operate extra trains are hired for the period needed or borrowed from the Western Pacific Railroad Co.

No jointly negotiated contract or agreement covering rates of pay, rules, or working conditions has ever been in effect on this property.

The Brotherhood of Locomotive Engineers and Order of Railway Conductors are requesting that the schedule of rates of pay, as well as the rules and working conditions in effect on the Western Pacific Railroad, be negotiated into a contract between the two organizations and the Tidewater Southern Railway Co.

It is evident that an accumulation of rules governing working conditions and involving compensation, the result of negotiations for years on railroads of major importance, can best be placed in effect on a railroad of minor importance, in comparison, by negotiations between the directly interested parties, wherein each party can, in necessary detail, consider each separate rate and each separate rule and its relationship to the conditions existing. The Western Pacific Railroad Co. schedule with the conductors and trainmen contains

106 rules, and the schedule with the engineers, firemen, and hostlers contains 189 rules, and, in addition, many more added in supplements to both schedules.

There may be some justification in adopting on this property some of the rules involving generally recognized conditions in the operation of steam railroads, but a proper adjustment can only be reached through negotiations between the carrier and its employees.

The Board is of the opinion that this dispute should be referred to the parties in interest and disposed of through negotiations, mediation, or arbitration.

(The concluding paragraph of our findings in Case No. 1 is applicable to this Case.)

CONCLUSION

The Board believes that these cases can and should be adjusted under the processes of the Railway Labor Act as outlined in the findings. With these avenues of settlement available, there is no justification for the employees involved to withdraw from the service of the three carriers.

Respectfully submitted.

G. STANLEIGH ARNOLD,
Chairman.
WILL J. FRENCH,
MACY NICHOLSON.

SAN FRANCISCO, CALIF., *June 15, 1936.*

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