REPORT TO THE PRESIDENT

By the

EMERGENCY BOARD

CREATED

JUNE 28, 1945

PURSUANT TO SECTION 10

of the

RAILWAY LABOR ACT

In re:

THE ERIE RAILROAD COMPANY

and certain of its employees

represented by the

BROTHERHOOD OF RAILROAD TRAINMEN

CLEVELAND, OHIO,
July 18, 1945.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board created by you June 28, 1945, under section 10 of the Railway Labor Act to investigate and report on an unadjusted dispute between the Erie Railroad Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen, has the honor to submit its report and recommendations based upon its investigation of the matters in dispute.

Respectfully submitted.

LEIF ERICKSON, *Chairman*
RIDGELY P. MELVIN, *Member*
ROBERT G. SIMMONS, *Member*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED JUNE 28, 1945, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT

In re: The Erie Railroad Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen

On June 28, 1945, the President of the United States, Harry S. Truman, having been notified by the National Mediation Board, in accordance with the provisions of section 10 of the Railway Labor Act, of the announced intention of certain of the employees of the Erie Railroad Co., represented by the Brotherhood of Railroad Trainmen, to withdraw from its service because of an unadjusted dispute between said employees and the carrier, and that said dispute in the judgment of the National Mediation Board threatened substantially to interrupt interstate commerce within the States of Illinois, Indiana, Ohio, Pennsylvania, New York, and New Jersey, to a degree such as to deprive that portion of the country of essential transportation service, by proclamation created an Emergency Board of three members to investigate the dispute between the carrier and its employees, and to report to him within 30 days its findings.

The President appointed as members of the Emergency Board so created by said Executive order, Ridgely P. Melvin of Annapolis, Md.; Robert G. Simmons of Lincoln, Nebr.; and Leif Erickson of Helena, Mont.

In accordance with the Executive order and the letters of appointment the Board met in the East Court Room of the Old Federal Building in Cleveland, Ohio, on July 6, 1945. It selected Leif Erickson as its chairman, and approved the appointment of Frank M. Williams as reporter. All members of the Board were present.

Public hearings were held commencing on July 6, 1945, and concluding on July 13, 1945. The record of the proceedings consisting of 773 pages is transmitted with this report.

Appearances on behalf of the brotherhood were B. W. Fern, Deputy President, Brotherhood of Railroad Trainmen; Thomas C. O'Brien, Esq., attorney; and John C. Porter, General Chairman of the Brotherhood of Railroad Trainmen. On behalf of the Erie Railroad Co., appearances were by H. D. Barber, Vice President, Erie Railroad Co.; and the law firm of Burgess, Fulton & Fullmer, by T. H. Burgess, Parker Fulton, Robert M. Weh, and J. P. Canny, Esqs.

On items two and nine of the dispute the Brotherhood of Locomotive Firemen and Enginemen was permitted to present testimony and to make statements to the Board. Appearances on behalf of this organi-

679512—46

zation were by S. C. Phillips, Vice President, Brotherhood of Locomotive Firemen and Enginemen; John Margeson, General Chairman, Brotherhood of Locomotive Firemen and Enginemen; and Harold C. Heiss, Esq., attorney.

On June 6, 1945, the Brotherhood of Railroad Trainmen, through its general chairman on the Erie Railroad, circulated among the employees represented by its organization a strike ballot containing nine items which the ballot recited remained unadjusted between the employees and the carrier. The vote on this strike ballot was a favorable one. Seven of the items so listed concerned certain awards of the First Division of the National Railroad Adjustment Board. The other two items dealt with a request for an arbitrary allowance under certain circumstances to conductors for compiling reports, and a request for the abrogation of a certain Joint Memorandum of Understanding entered into with the carrier and with two other organizations.

Negotiations were had between the parties as to the matters listed prior to the taking of the strike ballot and afterwards. As a result of these negotiations the third item on the strike ballot was settled, and as the result of a conference suggested by this Board the first item was also settled during the course of the hearings. There were then left for consideration by this Board seven of the items in dispute listed on the strike ballot.

THE EMERGENCY

The carrier involved in this dispute operates a heavy duty railroad characterized by witnesses as essentially a freight railroad equipped to carry loads of unusual size and weight, with 2,240 miles of track. It extends from Jersey City, N. J., to Chicago, Ill., passing through a highly industrialized area of six States in which live 34 percent of the people of the United States. Nearly half of the large industrial firms of the country are located in the States served directly. This carrier serves much of the heavy metal industry of the Nation, and a considerable portion of its regular traffic is coal and ore for this industry.

Located along the line of the Erie Railroad Co. are numerous industrial concerns engaged principally in production for war, such as the rubber companies at Akron, the steel companies at Youngstown, and the coal mines in Pennsylvania. In some instances industries so engaged are served exclusively by this carrier. The only railroad providing service for a large shell loading plant at Ravenna, Ohio, and a large munitions plant at Geneva, N. Y., is the Erie. This carrier, according to the testimony, handles all of the fresh fruits and vegetables from the west coast into New York City to feed its 6,000,000

people. Added to all of this, the carrier is engaged in transporting troops on a large scale due to the deployment of men from the European theater to the Pacific.

A mere recitation of these facts is sufficient to indicate how serious would be any interruption in the vital service furnished by this carrier not only to the States it serves directly, but to the whole country. The situation brings the dispute directly within the provisions of section 10 of the Railway Labor Act, and it is for the purpose of preventing a national emergency such as the one that would arise in the event of an interruption of service on this carrier that the act provides for the establishment of Emergency Boards by Presidential Directive.

THE DISPUTE

Seven items remain in dispute. These will now be considered in the order listed on the strike ballot.

ITEM NO. 2

> 2. Award No. 7975, involving the throwing of switches by other than yardmen or switchtenders at Hornell, N. Y. The carrier here refuses to allow various claims made account hostler helpers throwing switches for light engine movements outside of the roundhouse area, notwithstanding the fact that the award specifically defined the territory to which such employees were restricted in such movements. (Strike Ballot Statement.)

Award 7975 made by the First Division, National Railroad Adjustment Board, was a dispute between the Brotherhood of Railroad Trainmen and the Erie Railroad Co. It involved a question of time claims of switchtenders in the Hornell yard based upon the use of others than switchtenders in the handling of switches. Specifically, it was claimed that switchtender positions had been abolished and switches were being handled by yardmasters, clerks, roadmen, and laborers.

The carrier denied that yardmasters, clerks, and laborers were throwing switches. It admitted that road trainmen did handle switches in connection with the movement of their own train or engine, claimed the work was incidental to their jobs and a proper practice.

The award shows that the employes submitted evidence that yardmasters were doing work formerly done by switchtenders.

The decision on April 15, 1943, sustained the claim after a finding that "upon the facts of record it is held that the claim of the employees asserted in this docket is supported by the agreement between the parties and valid thereunder, *except that it is permissible for the hostler and hostler helper to throw switches in moving engines on roundhouse track and adjacent ready track and storage track.*" [Italics supplied.]

On the same day the Division made award No. 7974 and April 20, 1943, award 7981, in disputes between the same brotherhood and carrier.

On May 10, 1943, the carrier by letter asked the division for an interpretation and clarification of the intent of the findings in the above awards in their application to road brakemen and yardmen. The Division on August 5, 1943, responded by letter stating:

> Hostler or hostler helper may throw switches in moving engines on roundhouse track and adjacent ready track and storage track without compensation accruing to any switchtender. Yardmen may properly be required to throw yard switches in connection with the movement of any car or cars which they are handling within the yard, and road trainmen may be required without penalty payments to any switchtender to handle switches in connection with the movement of their train entering or leaving the yard.
>
> There was no intention on the part of the Division in either of these three awards to require the carrier to reestablish switchtenders' positions but they do require the carrier to pay a switchtender a day's pay each shift each date when yardmen throw switches not in connection with the movements of cars they are handling or roadmen are required to throw switches not in connection with their own train entering or leaving the yard, or other than trainmen or yardmen throw switches.

Thereafter, on May 15, 1945, the carrier by letter again addressed the Division with reference to these awards, stating:

> In construing the interpretation contained in the letter of August 5, 1943, the trainmen's organization on the property are contending that these awards and the interpretations thereof prohibit hostler helpers from throwing switches in the handling of engines between the enginehouse tracks and passenger stations, between enginehouse tracks and coaling facilities at the same terminal where it is necessary to use yard tracks or main tracks to get from the enginehouse tracks over to the coal and sand facilities and the other moves that are ordinarily made by main track hostlers and their helpers.
>
> There is nothing in our contract that indicates this is yard work and it has been customary on the Erie Railroad always for a main track hostler and his helper to handle engines at terminals and the hostler helper throws the switches.
>
> The interpretation by order of the Division contained in your letter of August 5th does not say that this is not permissible, but on the other hand is silent about it.
>
> Will your Board be good enough to state its intentions when it arrived at the findings contained in these awards?

The testimony is that the Division has not advised the carrier of its intentions as requested.

It is the contention of the brotherhood that the emphasized portion of the finding above quoted in award 7975 is binding on the carrier and requires it to make penalty payments to switchtenders where hostler helpers throw switches for their light engine movements outside of that restricted area.

In order that the language in question in award 7975 and in the interpretation may be understood, we think it necesary to examine the three awards.

In award 7974 a contention was advanced that in order to bring engines out of 41 stall roundhouse foremen and hostlers were required to throw three switches each time an engine was brought out. This was an issue limited to the roundhouse area and presented no question of a movement beyond that area. The Division there made exactly the same finding that is quoted above from award 7975. The award in 7974 permits the carrier to have hostlers throw switches in that area without being required to make penalty payments to switchtenders. It did not determine the question of the right or liability of the carrier for similar movements beyond that area.

An examination of award 7975 discloses that there was no contention there advanced that it was improper for hostler helpers to throw switches. They are not named in the submission. Nor was it so claimed when the claim was progressed on the carrier before being submitted to the First Division. That issue was not in award 7975. It gets there apparently only because the Division used the language of the finding in award 7975 that is used in award 7974.

Award 7981 was made where the claim was to restore switchtenders' positions at bridge No. 1 at Susquehanna and for pay for time lost after those positions were discontinued. The basic claim was that the volume of work there showed that switchtender's work remained to be done at that point after the positions were abolished. There the evidence showed that many and various employes, including hostlers, had been throwing switches at that point after the positions were abolished. The division sustained the claim and wrote into the finding that, "it was permissible for yardmen and brakemen to handle switches in connection with movement of their train or engine."

It thus appears that the exception contained in award 7975 and the exceptions contained in the interpretation of August 5, 1943, find their origin in awards other than 7975 and further that the precise question was not submitted in any of the three awards as to whether or not hostler helpers could throw switches in connection with their light engine movements outside of roundhouse, ready and storage tracks.

Section 3, first (i) of the Railway Labor Act gives the Adjustment Board jurisdiction of disputes that have been handled on the carrier and where an adjustment has not been reached there. The question covered by the exception in award 7975 was not progressed on the carrier and not presented to the Division by the ex parte petition of the brotherhood. It appears then that in making the

finding in 7975 the Division went beyond the issues that were progressed on the carrier and beyond the issue submitted to it. Accordingly we are of the opinion that award 7975 does not determine the present dispute. Neither does the finding contained in the interpretation become binding on the carrier when applied to the facts here, for the question here presented was not before the Division for decision either in the claim or in the requested interpretation. Section 3, first (m) of the Railway Labor Act authorizes interpretations, "in the light of the dispute." No reason appears in the awards, and none appears in the evidence before us, showing any basis for holding that yardmen and roadmen may properly throw switches in the performance of their work and that hostlers may not. Hence, we see no reason for the distinction claimed.

We are further of the opinion that the awards cannot be given a construction that the exceptions made are exclusive of all others. They are permissive in terms and not exclusionary.

We are accordingly of the opinion that the award relied upon does not by its terms require the carrier to make penalty payments to switchtenders where hostler helpers throw switches in connection with their work outside of the limited area set out in the award.

We go then to the merits of the claim advanced by the brotherhood. It is established clearly by the testimony before us that hostler helper positions were created on this carrier in 1917 to assist the hostler when moving engines between roundhouse and stations or between various points within the yard when such movements involve using or crossing main tracks or when the hostler is required to throw switches or observe signals. It further appears clearly, from the testimony of officials of the carrier and representatives of the hostlers and hostler helpers, that the throwing of switches in connection with the movement of light engines, has always been considered to be the work and within the duty of hostlers and has in fact been performed by them. We do not, however, decide this question for it is properly before Division One for a decision under section 3, first (m) of the Railway Labor Act. We summarize the evidence for the purpose of demonstrating that the carrier is not acting capriciously or arbitrarily in refusing to pay this series of claims.

Under these circumstances we are of the opinion that the carrier is not under obligation at this time to make the penalty payments claimed by the brotherhood here.

ITEM NO. 4

4: Award No. 8857, involving various claims at Cleveland, Ohio, account violation of Starting Time Rules. Approximately 20 claims pending. (Strike Ballot Statement.)

The claim in award No. 8857 was that of a yardmaster and two brakemen for continuous time from 8 a. m. until 6:45 p. m., time and one-half after 8 hours account of violation of Starting Time Rules.

According to the Joint Statement of Facts, on August 26, 1939, the trainmen in question were called to report at 9:15 a. m. at one of the carrier's yard offices in Cleveland to perform yard switching. The crew was released at 6:40 p. m., and off duty as of that time.

The position taken by the employes was that during this tour of duty the yard crew was used at the ore dock in Cleveland to service ore boats, but did perform general yard switching previous to the work performed at the dock in connection with the boat. In carrying out this assignment of duty allowance of pay under the Starting Time Rules was claimed. These rules include a provision applying to regularly-assigned yard crews and for three 8-hour shifts worked in continuous service, the first to begin work between 6:30 a. m. and 8 a. m.; the second, 2:30 p. m. and 4 p. m.; and the third, 10:30 p. m., and 12 midnight.

Included in carrier's statement of this case is the following paragraph embodying its version of the relevant facts at issue:

> On August 26, 1939, a coal boat had been anticipated for the coal loader and it was reported by the Pittsburgh Coal Co. as being due approximately 1 p. m.; however, at about 9 a. m., due to change in scheduling of the lake boats the Pittsburgh Coal Co. called the yardmaster and notified him that a coal boat would be at Erie dock ready to load at approximately 10:30 a. m. There was not sufficient yard power working in Cleveland yard at the time to meet this new situation and, in accord with the customary practice, a full extra yard crew with an extra engine was called to report as soon as possible. An emergency call was issued for the crew and the starting time for this ground crew was 9:15 a. m., the time that the first member of this crew was on the ground and ready to work.

Further light on the general factual situation involved in the matter of that award (8857), and which is concededly the same as in the instant case, is given by the carrier in this part of its statement in the former case:

> At Cleveland, Ohio, the Erie Railroad serves a coal loader and ore unloader, both of which operations are owned by Erie and are operated for Erie by contract. The arrivals of boats for both plants are sometimes irregular and on occasions changes are made in the docking arrangements at the lake ports in this area on very short notice by the boat owners, making it necessary at times to call additional or extra yard crews for the purpose of setting up the tracks at the coal loader and the ore unloader to meet such situations.

With these facts and the respective statements by the parties before it, the First Division of the National Railroad Adjustment Board, *without the aid of a referee*, made the following finding:

> It is held in keeping with the awards made by this Division under similar facts and circumstances that claim made subject of dispute is valid for time claimed from 8 a. m. August 26, 1939, until relieved on that date.

On this finding the award, under date of December 7, 1943, was to sustain the claim of the employes.

Subsequent to the filing of this claim and pending consideration of it by the Adjustment Board, some 20 claims of other trainmen were submitted to the carrier. These were held in abeyance pending the decision of the Adjustment Board in the basic case.

At the hearing before this Emergency Board it was announced on behalf of the carrier that 14 of these claims would be paid "because of an understanding with a former superintendent" (Murphy), but that this payment would be "without precedent or prejudice to our position with respect to starting extra yard engines." The carrier refuses to pay the other claims involved in this item.

The dispute before this Emergency Board resolved itself, finally, into the issue as to whether or not the facts of the cases remaining unsettled are analogous to the facts of the basic case (award 8857).

In the instant cases it was conceded by representatives of the carrier that the factual situation in *all* of the cases are substantially the same. It was further conceded that there is no essential difference between those cases where trainmen are called to do general yard switching or to do specific switching at the ore docks. The position on this issue last taken by the carrier is thus expressed on the record by its counsel:

> That an extra crew can be called out of regular starting time for any kind of switching whether there exists an emergency as conceived by them or not; and may be done for unusual and abnormal demands if switching facilities arise which could not be anticipated.

That was precisely the issue which was presented to the Adjustment Board in award No. 8857, and under a state of facts admittedly analogous to the instant cases. However, the carrier earnestly urges this Emergency Board not to recommend the application of this award to the cases involved here but to "interpolate" in the finding of the Adjustment Board a word which is not there, namely, the word "normal." The effect of such an interpolation would be to reverse the finding of the Adjustment Board by sustaining the carrier's contention that it could call out an extra crew whenever abnormal demands for switching at the ore docks might arise. According to the carrier's own statement in the basic case above quoted, abnormal or irregular demands for switching service at the ore docks are to be anticipated. Such conditions arose in the basic cases just as they have arisen in the instant cases; and the point was stressed by the carrier in the

former proceedings and full presentation made in seeking an award favorable to it.

However, the Adjustment Board, without the aid of a referee, found to the contrary. The carrier has paid the claims in the basic case and has offered in writing to settle some of the pending claims because of the comparative analogy of facts. In disputing settlement of all of the cases under item No. 4 of the strike ballot they finally have adopted a ground which is clearly untenable, namely, that of seeking from this Emergency Board a recommendation that the award of the Adjustment Board be not applied to the instant claims even though the facts are admittedly analogous.

To make any such recommendation as this would be contrary to the whole scheme and purpose of the Railway Labor Act as well as to its express provisions defining the scope and functions of these two Boards. Among its other provisions the act confirms the proper successive methods of adjustment of disputes by negotiation, mediation, and arbitration; and the Adjustment Board is set up with full jurisdiction over disputes involving trainmen and yard employes of carriers.

The *last* successive method provided by the act for dealing with disputes within its scope is the "Emergency Board," provided by section 10. The invoking of that provision of the statute necessarily means that the parties themselves have failed to do what the act was set up to accomplish, as expressed in the very first sentence under the heading "General Purposes":

> 1. To avoid any interruption to commerce or to the operation of any carrier engaged therein.

The creating of an Emergency Board means that, for the first time, a third party has been drawn into the proceedings and one whose interests transcends those of all other parties—the United States of America. Thenceforth, the Emergency Board representing the national interests, and those alone, functions to avert the crisis or emergency which has been thus precipitated. It is no part of its functions to go back over the ground which the parties have covered before the Adjustment Board; or to sit in review upon the actions or the findings of that tribunal. These Emergency Boards are created by the President of the United States and report directly to him, to the end that he may be in a position to take executive action in the light of this report from his own emissaries.

While the protection of the national interests has always been the paramount and ultimate purpose of the Railway Labor Act, it is more important than ever during these times of World War that the respective functions of an Adjustment Board and of an Emergency Board be not confused; and that each side to a dispute should

unreservedly assist in not only clarifying the procedure defined in the act but in resorting to the proper method prescribed by it for adjusting their differences, without jeopardizing the national interests.

In so far as the claims involved in this particular item on the strike ballot are concerned, we find no justification for the position taken by the carrier in refusing to settle all, and not merely some, of them on the basis of the award of the Adjustment Board in No. 8857. It was within the special province of that Board to determine the issue in controversy, and the carrier, having had its "day in court" in the trial of it, has offered no valid basis for seeking a retrial of this issue before this Board.

We earnestly recommend that the parties to the dispute here, as well as those in the carrier-employee relationship generally, bear in mind the high aims and objectives of the Railway Labor Act and the fundamental distinctions between the functions of an Adjustment Board, which is a tribunal of last resort between the parties themselves, and those of an Emergency Board, which is an agency of the President of the United States, called into being solely because the parties have created a national crisis.

In disposing of the cases involved in item No. 4 on the strike ballot, the only recommendation we can make which would conform to unbroken precedent in such matters and to our own conception of the proper functions of an Emergency Board, would be that the carrier apply the award in No. 8857 to all of the cases wherein the facts are analogous to the facts of the basic case.

We accordingly so recommend.

ITEM NO. 5

> 5. Award No. 8290, involving unsettled claims totaling approximately $100,000 account passenger trainmen handling their trains from the coach yard at Jersey City to the depot, and vice versa. (Strike Ballot Statement.)

Award 8290 of the First Division of the National Railroad Adjustment Board, involved a claim by a trainman working in road service out of Jersey City against this carrier for 1 day's pay at yard rates in addition to his regular pay as a roadman for every day in which he performed certain backup services at Jersey City. The claim in the docket out of which the award in question grew has been paid by the carrier, but it has refused to pay other claims which at the hearings it stated were based on the same facts as the claim on which the principal award was based.

The position of the carrier before us eventually became that the award was erroneous. The finding in award 8290 reads:

> The issues are identical with those in award 8289 and the same award applies.

Award 8289 was not listed on the strike ballot but it is a companion case to 8290, and the basis of the carrier's position here is that award 3115 of the National Railroad Adjustment Board upon which award 8289 is based is not analogous upon the facts to the situation presented in 8289 and 8290. It was urged to us most strongly by the carrier that award 3115 involved a question which was entirely dissimilar, both as to the facts and as to the rules, to that presented in the principal case and in 8289, and that award 8290 therefore should not be applied to any claims other than the particular claim involved in that award.

We have not inquired into the correctness of the award made by the First Division of the National Railroad Adjustment Board. It may be pointed out that in award 8807 made by the First Division the following finding is made:

> Previous awards of this Division involving similar facts and rules are in hopeless conflict.
>
> However, awards Nos. 4657, 8289, and 8290 involve similar facts and the same rules and Carrier as the instant claim. Previous awards involving the parties and rules should be followed unless a clear reason appears for overruling them. This referee failed to find such reason and therefore the claim should be sustained.

We take in this issue the same position we have already taken as to item No. 4 on the strike ballot. What we have said there as to the proper function of the Adjustment Board and of this Emergency Board applies with equal force here. We recommend to the carrier that it pay the claims which are found to be based on facts analogous to those in award 8290.

ITEM NO. 6 AND ITEM NO. 7

> 6. Award No. 9983, involving unsettled claims of passenger trainmen who were required to report for duty in advance of other members of the crew at Hornell, New York, and perform service with a yard crew handling cars departing on train No. 2 from that point. (Strike Ballot Statement.)
>
> 7. Award No. 10237, involving various unsettled claims for passenger trainmen who were required to remain with their train after arrival at Port Jervis and perform work with a yard crew. (Strike Ballot Statement.)

The carrier here states that it accepts these two awards and has paid or will pay all analogous claims that were filed by the employees "currently." By currently the carrier means filing at the close of the day's work or within the payroll period of 30 days. A considerable number of claims were filed pending the decision of Division One on the basic claims; likewise, following the decisions of the Adjustment Board, claims were filed covering dates for some time prior to the awards. There is no dispute but had these claims been filed currently

they would have been subject to payment under the terms of the award in the basic cases.

The refusal of the carrier to pay is based solely upon the employees' failure to file the claims currently. There is evidence before us that at least one employee was instructed to cease filing claims for services performed prior to the award involved in claim No. 6.

At the time these claims arose there was no agreement between the parties as to when claims were to be filed. Neither is there a practice nor a carrier rule shown which required that the claims be filed within any period of time. Entrapment or prejudice to the carrier arising from the delay is not shown.

Under these circumstances we are of the opinion that the carrier's position cannot be supported and that the disputed analogous claims for services performed within the scope of the awards should be paid.

ITEM NO. 8

8. Various claims of passenger conductors for arbitrary allowance for services performed compiling reports after arrival at terminals. (Strike Ballot Statement.)

In the presentation of this case to the Emergency Board representatives of the brotherhood were asked by the Board for a list of these "various claims." It was then disclosed that although the above quotation was the way the issue was submitted on the strike ballot this was admittedly "erroneous" and was not the issue upon which this Emergency Board was being asked to make a recommendation.

It was next disclosed, and read into the record, that a proposed new rule was sought by the brotherhood in these words:

> Passenger conductors will be allowed 1 hour for making out reports in addition to road trip allowance. This is not to be applied against daily and monthly guarantees.

That was the way the record stood when the Board adjourned for the day on July 12, 1945, except that the brotherhood offered to bring in the next morning a proposed rule worded finally in the way they desired the Board to recommend it. In compliance with this offer, when the Board convened on July 13, 1945, the brotherhood submitted this proposed rule:

> PROPOSED RULE COVERING ALLOWANCES TO PASSENGER CONDUCTORS REQUIRED TO REMAIN ON DUTY AFTER ARRIVAL AT FINAL TERMINAL FOR THE PURPOSE OF COMPILING AND COMPLETING TICKET REPORTS
>
> Passenger conductors who, as a result of heavy traffic, are unable to compile and complete their passenger reports en route, and are required to remain on duty at the final terminal for such purposes, will be paid on the minute basis for the actual time consumed and in addition to all other earnings made on the road trip. Such allowances shall not be used in computing the monthly guarantees in passenger service.

It was stated on behalf of the carrier, and not disputed, that the proposed rule on this subject, as expressed by the language just quoted, had not previously been submitted for its consideration.

The record discloses that during the year 1944 negotiations had been conducted between the Brotherhood of Railroad Trainmen, acting for the conductors, and the carrier for the adoption of a new agreement between these parties; and that during the course of these negotiations a request had been made for a rule granting passenger conductors an arbitrary allowance for making out reports in addition to the road trip allowance, this not to be applied against daily and monthly guarantees.

The carrier did not agree to this proposed rule and it was brought out that when the final, over-all agreement was signed on October 10, 1944, making a new set of rules effective November 1, 1944, this one was expressly omitted.

The record does show that the assistant vice president of the carrier (Mr. Maley) gave assurance that the carrier would look into the subject involved and obtain information through the Bureau of Information as to the action of other railroads in this connection and also would have the carrier's general managers analyze their passenger train situations and report the result to the brotherhood. All this was done and under date of May 3, 1945, Mr. Maley reported in a letter to the assistant president of the Brotherhood of Railroad Trainmen (Mr. Harvey) that the carrier could not agree to such a rule, and stated the reasons for the decision.

Thereafter, a mediator was assigned to this case and when the parties could not get together, arbitration was offered. The carrier agreed to arbitrate. But instead of likewise adopting this method of adjustment of the dispute, as afforded by the Railway Labor Act, the brotherhood chose to force the issue by including this item on the strike ballot. Moreover, in doing so it did not even phrase the issue correctly, according to its representatives' own admission as hereinbefore pointed out.

This Board is now asked by the brotherhood to recommend a rule which was not only deliberately left out of the signed agreement promulgating the existing set of rules, but which was admittedly not a subject of discussion at a conference of these parties in May 1945 shortly prior to the issuing of the strike ballot.

An examination of the rule itself shows that in operation it would mean an additional payment to a passenger conductor for making out his report, even though he completed it entirely within the 7½-hour period. These rules give him daily and monthly guarantees of pay and provide for overtime. They further provide that "In passenger service, conductors' time will commence at the time they are

required to report for duty and shall continue until the time they are relieved from duty." Whether the making out by the conductor of his report is done en route or at the final terminal, he is paid under the existing rules for the time thus required.

We find that no showing has been made before this Board to justify the recommendation sought under item No. 8.

ITEM NO. 9

9. Request for complete and total abrogation of Memorandum of Understanding dated November 10, 1943, permitting the intermingling of road and yard work at division terminals. Upon abrogation of such understanding it will be the purpose of the Brotherhood to set up and define a strict line of demarcation as between yard and road service at all points on the property. (Strike Ballot Statement.)

The record before us establishes that there was constant dispute between the carrier and its employees regarding what constituted road and yard work, and the application of current schedules. Negotiations were had.

On November 10, 1943, a "Momorandum of Understanding" was entered into, signed by grand lodge officers of the Brotherhoods of Locomotive Engineers, Firemen, and Enginemen and the Railroad Trainmen, for those employees, and by the carrier. This was the result of a give and take attitude of the parties. The agreement recited that because of certain disputes involving the question of division of road and yard work, and certain named awards of the first division of the Adjustment Board, which do not satisfactorily dispose of the question, it was agreed that certain interpretations should be used in disposing of future controversies. Then followed five paragraphs reciting the interpretations to be applied to certain localities and situations. It was also agreed that claims pending before the Adjustment Board would be disposed of on the principles of the settlement and that claim prior to a named date would be waived and withdrawn.

The brotherhood officials of the three brotherhoods then advised their members of the agreement and that it was "something better than the employees have on any of our competing railroads."

Thereafter the trainmen undertook to secure an abrogation of this agreement, and as late as March 5, 1945, the general committee of the brotherhood considered a strike vote to be taken in an effort to bring about a cancellation of this agreement and determined against that being done. As late as April 9, 1945, the brotherhood advised the carrier that the matter "remains in status quo unless and until you are further advised." It nevertheless was included in the issues submitted on June 6, 1945, on the strike ballot.

The Brotherhood of Locomotive Firemen and Enginemen have appeared before us and advised that they had not moved to terminate the Memorandum of Understanding and that they were opposed to the abrogation of the agreement as it applied to them.

The position of the trainmen here is that under their constitution and by-laws the grand lodge officers were not authorized to make this agreement.

There is no showing other than that this agreement was openly and fairly arrived at. There is evidence that a dispute has arisen in one instance as to its application, but that dispute does not in any wise justify the abrogation of the agreement. The machinery of the Railroad Labor Act is available for the determination of the dispute.

To abrogate this agreement as to the trainmen would be to throw the whole controversy into dispute again within 2 years of the date of the agreement. It would leave the carrier with one set of interpretations applicable to part only of its employes when it is patent that those interpretations were to be applicable to all the employees alike whose brotherhoods signed the agreement. It would create something of a chaotic administrative condition on the carrier. It would obviously cause dissension and dispute between different classes of employes. It would again create a labor dispute that has been settled by the parties during the present war period.

We see no reason for recommending the granting of the request.

CONCLUSION

What we have said above disposes of all matters in dispute, as itemized on the strike ballot.

CERTIFICATION

In conformity with the provisions of the Stabilization Act of October 2, 1942, as amended by section 202 of the act approved June 20, 1944, this Board finds and certifies that the agreements reached and the recommended settlements involved in this proceedings are consistent with the stabilization standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Respectfully submitted,

LEIF ERICKSON, *Chairman*
RIDGELY P. MELVIN, *Member*
ROBERT G. SIMMONS, *Member*

U. S. GOVERNMENT PRINTING OFFICE: 1946