Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED JANUARY 28, 1949
BY EXECUTIVE ORDER 10032 PURSUANT
TO SECTION 10 OF THE RAILWAY
LABOR ACT

To investigate the facts as to disputes with respect to the manning of Diesel-electric locomotives between the Akron, Canton & Youngstown Railroad Co. and certain common carriers by rail and certain of their employees represented by the Brotherhood of Locomotive Engineers.

(N.M.B. Case A-2920)

WASHINGTON, D. C.
APRIL 11, 1949

(No. 68)

WASHINGTON, D. C., *April 11, 1949.*

THE PRESIDENT,

The White House.

DEAR MR. PRESIDENT: The Emergency Board created by you on January 28, 1949, under Executive Order 10032, entered pursuant to the authority of section 10 of the Railway Labor Act, as amended, to investigate and report on a dispute between the Akron, Canton & Youngstown Railroad Co. and certain other carriers designated therein, and certain employees represented by the Brotherhood of Locomotive Engineers, has the honor to submit, herewith, its report made in conformance to the directions of that Executive Order.

Respectfully,

GEORGE W. TAYLOR, *Chairman.*
GRADY LEWIS, *Member.*
GEORGE E. OSBORNE, *Member.*

Report of Emergency Board No. 68 appointed January 28, 1949, by the President pursuant to section 10 of the Railway Labor Act, to investigate the facts as to disputes with respect to the manning of Diesel electric locomotives between the Akron, Canton & Youngstown Railroad Co. and certain common carriers by rail and certain of their employees represented by the Brotherhood of Locomotive Engineers

INTRODUCTION

The President, acting under authority of section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), created this Emergency Board by the following designations:

1. Designation of Emergency Board.

EXECUTIVE ORDER 10032

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE AKRON, CANTON & YOUNGSTOWN RAILROAD CO. AND OTHER CARRIERS, AND CERTAIN OF THEIR EMPLOYEES

WHEREAS a dispute exists between the Akron, Canton & Youngstown Railroad Co. and certain other carriers designated in the list attached hereto and made a part hereof, and certain of their employees represented by the Brotherhood of Locomotive Engineers, a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service:

NOW, therefore, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate the said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement,

shall be made by any of the carriers involved or its employees in the conditions out of which the said dispute arose.

(Signed) HARRY S. TRUMAN.

THE WHITE HOUSE,
January 28, 1949.

2. Letters of Appointment.

Pursuant to the above Executive Order, the President, on February 1, 1949, designated George W. Taylor, Grady Lewis, and George E. Osborne as members of the Board so created.

At a preliminary meeting, the Board chose George W. Taylor to act as its Chairman, and, as thus established, the Board met in Chicago, beginning on February 7, 1949, to investigate the disputes referred to it by the above designations.

In order to make possible a complete investigation of the dispute, the Board found it necessary to request of the President, by letter dated February 14, 1949, an extension of 45 days from February 27 as the time within which its report was to be made. The parties to the proceeding stipulated their approval of this request.[1] Acting upon the recommendation of the National Mediation Board, the President on February 19, 1949, approved the extension request "permitting this Emergency Board to file its report and recommendations not later than April 13, 1949."[2]

The hearings of the Board were held from February 7, 1949, to February 24, 1949, (inclusive) and from March 14, 1949, to March 23, 1949, (inclusive). The following appearances were made before the Board:

For the carriers:

Eastern Carriers' Conference Committee.

Mr. H. A. Enochs, chairman, executive committee, Bureau of Information of the Eastern Railways;

Mr. N. N. Baily, vice president, Operation and Maintenance, Reading Co.;

Mr. G. H. Caley, vice president and general manager, Delaware & Hudson Railroad Corp.;

Mr. F. J. Goebel, vice president, personnel, Baltimore & Ohio Railroad;

Mr. L. W. Horning, vice president, personnel and public relations, New York Central System;

Mr. E. B. Perry, assistant vice president, personnel, New York, New Haven & Hartford Railroad;

Mr. H. E. Jones, executive secretary, Bureau of Information of the Eastern Railways.

[1] Tr. 803, 804.
[2] Tr. 1923, 1924.

Western Carriers' Conference Committee.
Mr. D. P. Loomis, chairman, the Association of Western Railways;
Mr. B. E. Dwinell, vice chairman, general attorney, Chicago, Rock Island & Pacific Railroad;
Mr. C. A. Conway, commerce attorney, Chicago, Burlington & Quincy Railroad;
Mr. J. E. Kemp, manager of labor relations, Denver & Rio Grande Western Railroad;
Mr. W. L. More, assistant general manager, the Atchison, Topeka & Santa Fe Railway Co.;
Mr. R. F. Welsh, executive secretary, the Association of Western Railways.

Southeastern Railroads appearing individually before the President's Emergency Board by counsel and by their officers named:

Atlanta & West Point Railroad Co., Western Railway of Alabama, Georgia Railroad, Marshall L. Bowie, director of personnel.
Atlantic Coast Line Railroad Co., W. S. Baker, assistant vice president.
Central of Georgia Railway Co., R. R. Cummins, vice president and general manager.
Florida East Coast Railway Co., C. L. Beals, chief operating officer.
Gulf Mobile & Ohio Railroad Co., J. M. McDonald, manager, personnel.
Louisville & Nashville Railroad Co., L. L. Morton, vice president.
Norfolk Southern Railway Co., J. S. Cox, assistant to vice president.
Richmond Fredericksburg & Potomac Railroad Co., W. A. Aiken, Jr., general superintendent.
Seaboard Air Line Railroad Co., H. A. Benton, director of personnel.

For the Brotherhood of Locomotive Engineers:
J. P. Shields, first assistant grand chief engineer;
Clifford D. O'Brien, counsel for the Brotherhood.

All parties were given a full opportunity to present such evidence, to submit such exhibits, and to make such arguments as they desired, and to rebut opposing evidence and arguments. Opportunity to examine and to cross-examine witnesses was afforded to the parties and was utilized by them as they desired. Oral argu-

ments were presented to the Board before the hearings were adjourned, and on March 31, 1949, printed briefs were filed on behalf of the B.L.E. and of the carriers. The record constitutes 3,796 pages of testimony and argument and 64 exhibits covering hundreds of pages.

Following opening statements by representatives of the B.L.E. and of the carriers, the Brotherhood of Locomotive Firemen and Enginemen on February 8, 1949, requested permission of the Board to intervene in these proceedings.[3] This request was denied, but the Board announced that it reserved the right to call upon representatives of the B.L.F. and E., or other parties, as Board witnesses if that seemed essential or desirable to make a complete investigation of the dispute.[4] A similar request to intervene was voiced by representatives of the Railway Employees Department of the A. F. of L. on March 18, 1949, on behalf of so-called shop craft employees, and the Board again denied the request to intervene, while reserving the right to call upon these representatives as Board witnesses.[5] The thoroughness of the presentation by the parties to this proceeding, however, obviated any need for the Board to call upon either of the requesting intervenors.

In designating its members, the President instructed the Board to "investigate promptly the facts as to such dispute and, on the basis of the facts developed, make every effort to adjust the dispute and report thereon to me within 30 days from the date of the Executive order." The Board has given careful consideration to the possibility of seeking an adjustment of this dispute through a mediated settlement acceptable to the parties. In the hearings, prior to the presentation of final arguments, the chairman inquired of the parties "if they have any plans or programs under way for resolving this difficulty by agreement between themselves, or if they are desirous of the Board holding itself in readiness to assist in any such procedure."[6] Speaking for the Brotherhood, Mr. Shields expressed a willingness to meet with the carriers in an attempt to compose the issues and stated, "We would be willing to meet the convenience of your Board and the Carriers at any time that they might desire."[7] Speaking for the carriers, Mr. Dwinell stated that he "would not want to be placed in the position of refusing any offers of mediating office which the Board might make" but he also suggested a "doubt [of] the efficacy of

[3] Tr. 167–187, inclusive.
[4] Tr. 236–241, inclusive.
[5] Tr. 3179, 3180.
[6] Tr. 3592.
[7] Tr. 3592, 3593.

any attempt at mediation with the engineers."[8] Discussion of this matter was concluded when Mr. O'Brien stated that, "If the Board believes, after it has had an opportunity to study the matter, that there was a reasonable hope for successful mediation, we would welcome a call to meet with the Board and Carriers, however the Board should choose to set it up."[9]

Following the hearings and after a full consideration of the entire record, the Board unanimously concluded that there was no equitable basis upon which it could properly inaugurate meetings for the purpose of bringing about a compromise or mediated settlement.

ISSUE BEFORE THE BOARD

There is but one issue before this Board. It has arisen out of the carriers' denial of a request made by the Brotherhood of Locomotive Engineers for the employment of an additional or a second engineer on certain specified types of Diesel-electric locomotives—including most of these locomotives in service—whenever attention to engine room machinery is required by the carriers while the locomotive is enroute. The B.L.E. seeks such changes in the terms of its existing contracts with the carriers as will insure the employment of the additional or second engineer under the circumstances it has specified.

1943 Diesel Board

The present proceeding is a phase of what has come to be known as "The Diesel Question." This is a term applied to disputes over the consist of the engine crew of the Diesel-electric locomotive. Since 1935, various agreements relating to the manning of Diesel-electric locomotives have been consummated by the labor organizations in negotiations with the carriers. The earlier agreements will be specifically referred to later in this report. A precise delineation of the question at issue in the present case, however, requires particular attention at the outset to the various agreements made separately between the carriers and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen following the issuance of the report of the Emergency Board appointed on February 20, 1943, pursuant to section 10 of the Railway Labor Act and Executive Orders No. 9172 and No. 9299, and commonly referred to as the 1943 Diesel Board.

The real substance of the issue now before us was dealt with

[8] Tr. 3593.
[9] Tr. 3594.

by that 1943 Board.[10] Agreements made between the B.L.E. and the carriers after recommendations of that Board had been made were intended by the contracting parties as a settlement of the dispute over the manning of Diesel-electric locomotives. The first notices out of which this present proceeding developed were filed by the B.L.E. in protest of the application of those agreements. The issue before us, then, is closely related to the report of the 1943 Diesel Board and especially to the agreements made between the organization and the carriers subsequent to the report made by that Board.

Issues raised both by the B.L.E. and by the B.L.F. & E. were involved in the case before the 1943 Board and both organizations had made requests with respect to the consist and duties of the crew of Diesel-electric locomotives. In important particulars, they were conflicting requests. The report and recommendations of the 1943 Diesel Board, issued on May 21, 1943, stated that if, under certain circumstances, an additional man is needed in the engine room "to perform the work customarily done by firemen (helpers), he shall be taken from the ranks of firemen." No recommendation was made for the employment, under any circumstances, of an additional engineer in the engine room.

The recommendations of the 1943 Board concerning the manning of Diesel-electric locomotives were accepted by the carriers. They were initially rejected by the organizations, but there is no doubt that the 1943 Board recommendations importantly affected the ensuing negotiations. For example, to a significant extent, the very words of the recommendations were incorporated into the B.L.F. & E. agreements. Through separate negotiations, the dispute over the manning of Diesel-electrics was settled by a series of agreements between each organization and the several conference committees representing the Western, Eastern and Southeastern carriers.

Agreements Made Following Issuance of Report of the 1943 Diesel Board

The first of the series of agreements entered into after the issuance of the report of the 1943 Board was made on August 13, 1943, between the Brotherhood of Locomotive Firemen and Enginemen and the Eastern Carriers Conference Committee. Section 3 embodied an understanding of these parties with regard to the manning of Diesel locomotives, and it reads:

[10] In Employee Exhibit No. 2, p. 11, the B.L.E. commented that the question of manning the Diesel-electric locomotive which was at issue in 1943 was "in substance similar to that before the present Board." Additional matters were before the 1943 Board but they are of no significance in the present proceeding.

3. On multiple-unit Diesel-electric locomotives in high-speed, streamlined, or main line through passenger trains, a fireman (helper) shall be in the cab at all times when the train is in motion. If compliance with the foregoing requires the service of an additional fireman (helper) on such trains to perform the work customarily done by firemen (helpers), he shall be taken from the seniority ranks of the firemen, in which event the working conditions and rates of pay of each fireman shall be those which are specified in the firemen's schedule. The rates of pay shall be determined by the weight on drivers of the combined units.

NOTE.—The term "main line through passenger train" includes only trains which make few or no stops.)

For the sole purpose of designating the ranks from which the employee shall be drawn and for no other purpose, it is further understood that on multiple-unit Diesel-electric locomotives operated in other classes of service, should there be added a man to perform the work customarily performed by firemen (helpers) such man shall also be taken from the seniority ranks of the firemen and his working conditions and rates of pay shall be those which are specified in the firemen's schedule. The rates of pay shall be determined by the weight on drivers of the combined units.[11]

A similar understanding was included as section 4 in the next agreement in this series which was consummated, as of November 27, 1943, between the B.L.F. & E. and the Western Carriers Conference Committee. Instead of the final paragraph of section 3 above noted, the final part of section 4 of the Western Agreement of the B.L.F. & E. reads:

Nothing contained herein requires the assignment of an additional or second fireman (helper) on multiple-unit Diesel electric locomotives operated in other classes of service, but should there be added a man to perform the work customarily performed by firemen (helpers) such man shall also be taken from the seniority ranks of the firemen and his working conditions and rates of pay shall be those which are specified in the firemen's schedule. The rates of pay shall be determined by the weight on drivers of the combined units.

Nothing contained herein requires the assignment of an additional or second fireman (helper) on straight electric locomotives in multiple-unit operation.[12]

Not until May 11, 1944, did the B.L.F. & E. complete its third so-called Diesel agreement with the Southeastern Carriers Conference Committee.[13] In the meantime two B.L.E. agreements had been made.

Under date of January 25, 1944, the first B.L.E. agreement in this series of contracts was entered into by that organization with the Western Carriers Conference Committee. Among other

[11] Carriers' Exhibit No. 1, pp. 135–136.

[12] The preceding parts of these sections are identical in the two agreements. For section 4 of the B.L.F. & E.—Western Agreement, see Carriers' Exhibit No. 1, p. 157.

[13] Carriers' Exhibit No. 1, p. 195. This agreement included a Section 4 identical with the similarly numbered section of the Western Conference Agreement.

matters, the question of manning the Diesel locomotive was dealt with. Section 3 provides:

> In the application of this agreement it is understood that the existing duties and responsibilities of engineers will not be assigned to others. It is further understood that a second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls.[14]

As will be noted later, and in some detail, the B.L.E. has insisted in this proceeding that by the first sentence of section 3 quoted above the engineers maintained and protected what they claim to be a previously established craft right of either performing or directly and personally supervising all work performed on a Diesel-electric locomotive enroute. In the engineers' view, that includes attention to the engine room machinery. Later reference will also be made to the contention of the railroad management that such was not the case for various reasons, including the second sentence of section 3 of the B.L.E. agreement and also the terms of the agreements previously made by the carriers with the B.L.F. & E. just quoted.[15]

Other parts of the Western Carrier Conference understanding with the engineers, made as of January 25, 1944, have been emphasized in these proceedings with respect to the difference between the parties as to whether the claim of the engineers over engine room work was recognized or abandoned in the negotiation of this agreement. Section 6 of the current Western agreement provides that,

> This agreement is in full settlement of the second parties' proposals and

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[14] Carriers' Exhibit No. 1, p. 176. Although this contract was dated January 25, 1944, it was actually agreed to on December 18, 1943. See Carriers' Exhibit No. 9, p. 75.

[15] The carriers have contended that their contracts with the firemen preclude the assignment of an additional engineer to perform work in the engine rooms of Diesel locomotives. They have suggested that the engineers' emphasis upon their exclusive right to supervise engine-room work as distinct from its actual performance (a distinction to be referred to later in more detail) was made in an effort to minimize the jurisdictional dispute aspects of this case. In the firemen's agreements, the words of the 1943 Diesel Board recommendations are closely followed, and the recommendations of the 1943 Board as to firemen's work "customarily" performed were preceded by a discussion in which the fireman's duties, as that Board saw them, were described in some detail. It was found by the 1943 Board that "since 1937 the fireman has in fact divided his time between supervision of the operation of the equipment in the engine room and assisting the engineer in the calling and observing of signals." The earlier Board also concluded, though over the dissent of its chairman, "that when an additional operating man is placed on a Diesel locomotive he should be taken from the ranks of the firemen." We do not share the view expressed by the B.L.E. in these proceedings that its request now before us involves no work jurisdictional dispute aspects at all.

the questions covered by Mediation Case A–978, and shall continue in effect, subject to change under the provisions of the Railway Labor Act as amended.[16]

On January 25, 1944, a memorandum supplementary to the Western Conference agreement was executed. It reads, in part, as follows:

> This will confirm our understanding that any pending claims for the employment of a second engineer on multiple-unit Diesel-electric service, except those covering conditions where employees other than engineers were handling the operating controls of any of the units, are hereby withdrawn.[17]

The significance of section 3, section 6 and the memorandum of January 25, 1944, to the issue before us will be developed in a later part of this report.

One of the main objectives sought by the parties to the Western agreement was a settlement of the dispute between them over the manning of Diesel-electric locomotives. Both parties have expressed to this Board their belief that, when they made this agreement, this dispute had been settled. One of the major problems in the present case is, nevertheless, based upon widely divergent contentions about the kind of settlement that was actually made.

Almost a year elapsed after consummation of the B.L.E.-Western Conference agreement before the second B.L.E. Diesel agreement was signed. On December 20, 1944, the terms of a contract between the B.L.E. and the Eastern Carriers Conference was agreed upon. Its section 3 is identical with the section 3 of the B.L.E.-Western Conference agreement quoted above. Section 4 of the Eastern Conference Agreement, however, was distinctive and it reads as follows:

> This agreement is in full settlement of the disputes growing out of the notices filed by representatives of the Brotherhood of Locomotive Engineers on individual eastern railroads on or about December 15, 1937, and in subsequent dates, proposing the adoption of two articles which would provide: (1) That units of horsepower developed by the prime mover of locomotives powered by internal-combustion engine or steam-powered turbines shall constitute the basis from which to calculate rates of pay for engineers operating such locomotives, and (2) that a locomotive engineer taken from the working lists of engineers and designated as an assistant engineer will be employed in the engine rooms of certain types of locomotives.[18]

It is pointed out that section 4 of the Eastern Conference agreement differs in certain particulars from section 6 of the Western Conference agreement. The pending claims that the engineers abandoned by section 4 of the Western agreement were spelled out—they specifically gave up the claim previously made for an

[16] Carriers' Exhibit No. 1, p. 177.
[17] Carriers' Exhibit No. 1, p. 184.
[18] Carriers' Exhibit No. 1, pp. 209–211.

assistant engineer. Unlike the Western Conference agreement, no supplemental memorandum covering certain other "pending claims" was added to the Eastern Conference agreement, because there were no other pending claims relating to the Diesel operation.

The third and final B.L.E. contract covering Diesel operations, with the Southeastern Conference, was completed on January 19, 1945, but execution of this agreement was deferred pending receipt of authority by the Conference Committee to sign on behalf of the carriers involved. This authority was secured, and the contract was finally consummated on April 3, 1945. Section 3 of the Southeastern agreement is identical with similarly numbered Sections of the Western and Eastern agreements. Section 6 of the Southeastern agreement reads:

> This agreement, in full settlement of the second parties' proposals and the questions covered by Mediation Case A–1323, shall continue in effect, subject to change under the provisions of the Railway Labor Act, as amended.[19]

The "Whereas" clause of the Southeastern agreement should also be particularly noted in so far as it specifies the particulars of Mediation Case A–1323 which was settled through section 6. The pertinent language refers to this case as follows:

> Whereas notices were served * * * proposing the adoption of rules to provide * * * (2) that a locomotive engineer taken from the working list of engineers and designated as an assistant engineer will be employed in the engine rooms of certain types of locomotives—which led to proceedings before the National Mediation Board, identified in its docket as Mediation Case A–1323, and subsequently to a hearing by a President's Emergency Board which rendered its report on May 21, 1943, * * *[20]

A supplementary memorandum to the Southeastern Conference agreement was also consummated under date of April 3, 1945. It reads, in part, as follows:

> This will confirm our understanding that any pending claims for the employment of a second engineer in multiple-unit Diesel-electric service, except those covering conditions where employees other than engineers were handling the operating controls of any of the units, are hereby withdrawn.[21]

The agreement terms just referred to, and which are embodied in existing contracts, are important in appraising the engineers'

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[19] Carriers' Exhibit No. 1, pp. 220–221.

[20] Carriers' Exhibit No. 1, p. 219. In the "Whereas" clause of the Western Conference agreement, the specifications of Mediation Case A–978, the case withdrawn by section 6 of that agreement, were not spelled out as in the Southeastern agreement.

[21] Carriers' Exhibit No. 1, p. 227. This memorandum is identical with the similar memorandum executed with the Western carriers.

claim before us. Even if the B.L.E. bargained away its claim for an additional engineer by those agreements, as maintained by the carriers, they are, to be sure, not precluded from reasserting their claim. But the equity of a reasserted claim would have to be weighed in the light of the fact that it was previously bargained away and in view of any commitments made by the carriers in consequence of such action.[22]

The "Long Form" and the "Short Form" Notices

The issues raised before the 1943 Emergency Board, including those bearing on the manning of Diesel-electric locomotives, were thus bargained out in a series of negotiations that resulted in agreements bearing various dates.[23] It was intended by the various contracting parties, as the representatives of the B.L.E. and of the carriers have testified, that those agreements would "settle the Diesel question."

Doubts about the firmness of these settlements were soon raised. As early as March 12, 1945, B.L.E. general chairmen began serving notices on certain carriers requesting the assignment of an additional engineer to Diesel locomotives. The first type of notice, which has been referred to as the "long form" notice, was sent by general chairmen to 16 western railroads, with 2 subsidiaries, between March 12, 1945, and March 23, 1948.[24] This notice reads as follows:

DEAR SIR: It has come to the general committee's attention that firemen employed as such on multiple-unit Diesel-electric freight locomotives are being required to leave their proper position in the operating cab to perform duties pertaining to the operation of the machinery in the enginerooms and thereby performing duties and assuming responsibility for the proper functioning of this machinery, which the committee contends comes within the scope of duties and responsibilities to which an engineer always has and should in such cases be assigned to.

In view of the above-described condition, the committee contends this represents a violation of the current engineers' schedule, in that the practice results in the use of a fireman to perform duties and assume responsibility that should be assigned to an engineer.

Therefore, please accept this as 30 days' notice, pursuant to section 6 of the Railway Labor Act, and the terms of the agreement between the Carrier and the General Committee of Adjustment, representing locomotive engineers, of the committee's request that you arrange to employ an additional engineer on each Diesel-electric locomotive in all instances and under all circumstances

[22] For example, the vast dieselization program of the carriers.

[23] In addition to the agreements specifically referred to above, there was the B.L.F. & E. Eastern Supplemental Diesel Agreement (for engineers) of May 4, 1945 (Carriers' Exhibit No. 1, p. 230), and the B.L.F. & E. Western Supplemental Diesel Agreement (for engineers) of October 22, 1945. (Carriers' Exhibit No. 1, p. 234.)

[24] Tr. 298.

where attention to engineroom machinery is required which cannot be rendered by the operating engineer.

The Railway Labor Act requires within 10 days of the date herein that we agree upon a date for holding initial conference, which date for conference must be within 30 days from the date of this notice. I therefore propose that the initial conference of the foregoing be in your office at _____

_____

Very truly yours,

GENERAL CHAIRMAN, B. OF L. E.[25]

Representatives of the Brotherhood of Locomotive Engineers have explained to this Board that the notices were sent because, in the judgment of the chairman, the performance of engine-room duties by the fireman constituted an invasion of the engineer's traditional craft rights which had been fully protected by the first sentence of section 3 of the B.L.E. agreements. Because of the assignment of such work to firemen, representatives of the B.L.E. have told us they reached the conclusion "that the recommendations of the 1943 'Diesel' Emergency Board and the agreements signed as a result thereof constituted no real, effective or lasting solution of 'the Diesel question' * * * The difficulty lay principally in the fact that the 1943 'Diesel' Board failed conclusively or even adequately to deal with the problem before it. Contracts based upon its findings, therefore, were fated to be wholly unequal to the task of providing any workable answer to the whole vexing question."[26]

The March 12, 1945, notice served upon the Great Northern Railway Co. over the signature of A. F. Kumner, B.L.E. chairman on that road, in the words of Mr. Shields, "set in motion the train of events, spanning a period of nearly 4 years, leading directly to these proceedings."[27] A considerable time elapsed, however, after service of the first group of notices before similar notices were served on other carriers. Beginning early in 1948, so-called "short form" notices were served by the general chairman upon other carriers party to these proceedings. These notices have been characterized by the B.L.E. as "a somewhat curtailed form, but no whit different in content" from the "long form" notice.[28]

The short form notice was sent to 22 western roads (embracing 28 additional subsidiary lines) during the period from January 8,

[25] Appendix A 1. Employees' Exhibit No. 2, p. 25.

[26] Employees' Exhibit No. 2, p. 15. As will be noted presently, the B.L.E. similarly protested before this Board against the performance of engine room work by maintainers in the absence of supervision by an engineer or by carrier supervisors under certain conditions. These complaints have not been specified in such detail or pressed with such emphasis as in the case of engine-room work done by firemen.

[27] Employees' Exhibit No. 2, p. 1.

[28] Employees' Exhibit No. 2, p. 15.

1948, to October 8, 1948; to 17 eastern railroads (embracing 17 subsidiaries) in the period between May 8, 1948, and September 13, 1948; and to 10 southeastern carriers (plus 6 subsidiaries) in the interval of May 8 to May 11, 1948.[29] The "short form" notice reads as follows:

> DEAR SIR: Please accept this as 30 days' notice, pursuant to section 6 of the Railway Labor Act as amended, of a request that you arrange to employ an additional engineer on each Diesel-electric locomotive in all instances and under all circumstances where attention to the engine-room machinery is required which cannot be rendered by the engineer operating the Diesel-electric locomotive.
>
> The Railway Labor Act requires that within 10 days of the date herein we agree upon a date for holding initial conference, which date for conference must be within 30 days from the date of this notice. I therefore suggest the initial conference for consideration of the foregoing to be held in your office on _____.
>
> Please acknowledge receipt and advise whether or not the proposed conference date is acceptable to you.
>
> Very truly yours,
>
> GENERAL CHAIRMAN, B. OF L. E.[30]

To recapitulate: The "long form" notice was served upon 16 lines, with 2 subsidiaries; the "short form" notice upon 47 major roads having together 51 subsidiaries—a total of 63 principal carriers plus 53 lesser lines, or 116 railroads in all. The earliest notice was dated March 12, 1945; the latest October 8, 1948.[31]

Nature of Pending Claim

Each notice constituted a request of the B.L.E. chairmen made pursuant to section 6 of the Railway Labor Act and was, therefore, "written notice of an intended change in agreements affecting rates of pay, rules, or working conditions" as referred to in that Act. The request of the B.L.E., as stated in the notices, was for such change in the existing agreements as would insure the employment of "an additional engineer on each Diesel-electric locomotive in all instances and under all circumstances where attention to engine-room machinery is required which cannot be rendered by the engineer operating the Diesel-electric locomotive."[32] In the "long form," but not in the "short form" notice,

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[29] Employees' Exhibit No. 2, p. 16.

[30] Employees' Exhibit No. 2, Appendix B-1, p. 27.

[31] Employees' Exhibit No. 2, p. 16. Also Appendix B-2, pp. 28-32, inclusive.

[32] In its brief (p. 10), the B.L.E. suggested that, as finally developed, "the issue in this case may, for discussion, be epitomized thus: Shall an additional engineer, taken from the working lists of engineers and under the wages and working conditions described in paragraphs 2 through 6 of the B.L.E. memorandum of December 15, 1948, be employed in the engine rooms of all Diesel locomotives (save certain specifically exempted types) used in road, belt-line and transfer service whereon the Carriers require attention to the engine-room machinery enroute between terminals while the locomotive is in motion?

reference was made to the B.L.E. contention that the assignment of certain work to the firemen to be performed in the engine rooms constitutes "a violation of the current engineers' schedule."[33]

Negotiations and Mediation of Pending Claim

Following service of each notice, conferences were held between the B.L.E. general chairman for the railroad and representatives of management of each railroad.[34] No agreements resulted. A number of the general chairmen then sought assistance from the grand office of the Brotherhood, which assigned an assistant grand chief engineer to aid the chairmen in the prosecution of their claims. After further negotiations, in which the assistant grand chief engineer participated, failed to provide an agreement, mediation was undertaken in conformance with the Railway Labor Act.

The National Mediation Board assigned docket numbers to all these cases.[35] Mediation under Board auspices was first undertaken separately with each of the 17 Western roads which, by and large, had received the first B.L.E. notices. This attempt to resolve the dispute by mediation was unsuccessful. The B.L.E. then spread a strike vote among its members who are employed by 15 of the railroads.[36] In each instance, the vote of the engineers was in favor of strike action.

During the time the strike poll was being taken, from mid-November 1948 to mid-January 1949, the National Mediation Board conducted concerted mediation in which representatives of the B.L.E. and of all carriers concerned participated.[37] At the

[33] During these proceedings there was some discussion about why the engineers refrained from prosecuting their claim to engine-room work before the Railroad Adjustment Board since they maintain that failure of the carriers to assign engineers to perform required engine-room work constituted a violation of existing schedules. Mr. Shields stated (Tr. 1642) that representation of other organizations on the adjustment board made the engineers feel that their case would be prejudged by that agency. In seeking an affirmative clause in their agreements requiring the employment of an additional engineer under certain circumstances, the B.L.E. insists that it now seeks a right that differs materially from what might have been secured through the prosecution of time claims before the Adjustment Board.

[34] Employees' Exhibit No. 2, p. 16.

[35] The docket numbers assigned to each case are set forth in Employees' Exhibit No. 2, Appendices A–2 and B–2, pp. 26–32, inclusive.

[36] Employees' Exhibit No. 2, p. 17. The roads were Great Northern; Northern Pacific; Chicago, Burlington & Quincy; Atchison, Topeka & Santa Fe (proper); Missouri Pacific; Texas Pacific; Illinois Central; Western Pacific; Union Pacific (South Central); St. Louis & San Francisco (Frisco lines); Chicago & North Western; Chicago, Rock Island & Pacific (Rock Island); Chicago, Milwaukee, St. Paul & Pacific (lines east); Southern Pacific; International Great Northern (includes New Orleans, Texas & Mexico (Gulf Coast lines); St. Louis, Brownsville & Mexico (Gulf Coast lines); San Antonio, Uvalde & Gulf; Houston & North Shore).

[37] Mediation sessions were held in Chicago on December 15, 16, and 17, 1948, and again on January 12, 13, and 14, 1949.

conclusion of the session held on January 14, the mediators announced that their conciliation efforts would be discontinued because they would obviously be fruitless.

The mediators then proffered arbitration in conformance with the procedures of the Railway Labor Act. The B.L.E. notified the National Mediation Board, on January 15, 1949, of its acceptance of arbitration as provided by section 8 of the Railway Labor Act.[38] By notice to the National Mediation Board dated January 20, 1949, the Eastern Carriers Conference Committee and the Western Carriers Conference Committee declined to submit the dispute to arbitration.[39] Members of the Southeastern Conference also declined arbitration, but they did so individually rather than through a conference committee. The National Mediation Board then informed the parties, by letter dated January 20, 1949, that "in these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in section 5, Third), and in section 10 of the law, have this day been terminated under the provisions of the Railway Labor Act."[40]

Creation of Emergency Board

With the termination of mediation, the B.L.E. fixed 6 a. m. on January 31, 1949, as the time of withdrawal from service by the engineers employed under B.L.E. agreements on the 15 Western railroads on which strike votes had earlier been completed.[41] Prior to the time fixed for the withdrawals from service, the Executive Order creating this emergency board was issued to consider the dispute between the B.L.E. and those railroads designated in a list attached to the Executive Order.[42]

Clarification and Modification of the B.L.E. Claim

The various efforts at mediation just referred to were made initially on the basis of the B.L.E. proposal as set forth in the "long form" and the "short form" notices. As pointed out previously, the carriers were requested by these notices "to employ an additional engineer on each Diesel-electric locomotive in all instances and under all circumstances where attention to engine room machinery is required which cannot be rendered by the operating engineer."

This request of the B.L.E. was changed in a number of respects during the various procedural steps previously described. The Brotherhood of Locomotive Engineers presented to the carriers

[38] Employees' Exhibit No. 2, Appendices E–1 and E–2.
[39] Employees' Exhibit No. 2, Appendix F.
[40] Employees' Exhibit No. 2, Appendix G.
[41] Employees' Exhibit No. 2, p. 20.
[42] For the list, see appendix A of this report.

and to the mediators a memorandum dated December 15, 1948, for the purposes of stating more specifically and of modifying its previous proposal. The original notices constituted a request for an additional engineer on all Diesel-electric locomotives but only in cases where attention to engine-room machinery is required which cannot be rendered by the operating engineer. The December 15, 1948, memorandum requested the additional engineer, without regard to the carrier requirement that engine room work be required, on specified types of Diesel-electric locomotives when used in road service, transfer service or belt-line service.

The Memorandum of December 15, 1948, reads as follows:

MEMORANDUM

Brotherhood of Locomotive Engineers desires to amend existing schedules so as to provide:

1. An additional engineer, taken from the working list of engineers, whose duties (except as hereinafter provided for) shall be confined to the engine rooms, shall be employed:

(*a*) On each multiple-unit Diesel-electric locomotive four units or less, and

(*b*) On each single-unit Diesel-electric locomotive weighing 200,000 pounds or more

when any of the above-described locomotives are used in road service and when any of the above-described locomotives are used in transfer or belt-line service.

2. The qualifications of the additional engineers shall be the same as are required of engineers operating the locomotives and additionally will consist of such familiarity with the engine room machinery as will qualify them to perform the duties to which assigned.

3. The duties of the additional engineer shall be confined to supervision over the engine rooms of the locomotive and shall in general consist of starting and stopping the Diesel engines, patrolling, inspecting and giving such attention to adjustment and operation of engines, motors and engine appliances as are necessary in operation. The additional engineer shall not be required to perform bench work in units enroute or at terminals and will be required to make only such adjustments and light road repairs as are necessary or practicable in road operation. The additional engineer may, however, be used temporarily to relieve the operating engineer enroute if and when necessary and if permissible under operating rules.

4. Additional engineers will be paid at the rate of $12.97 per day for 8 hours or less while attending such instruction classes as may be required in meeting qualifying requirements. If required to attend instruction classes at points other than the home terminal of their seniority district, they will be paid deadhead allowance as per existing schedule rules plus actual expenses while away from their home terminal. If required to make road qualifying trips or trips under instruction they will be paid at the rate of $12.97 per hundred miles or less.

5. Additional engineers will go on and be relieved from duty at recognized home or far terminals for engineers.

6. Except as herein expressly stipulated, additional engineers will be governed by the same rates, rules, and working conditions as apply to the engineers operating the locomotive on which they are employed.[43]

Paragraph 3 of the memorandum disclosed an intention of the B.L.E. to confine the duties of an additional engineer "to supervision over the engine rooms" which is specifically stated as consisting principally and "in general of starting and stopping the Diesel engines, patrolling, inspecting, and giving such attention to adjustment and operation of engines, motors, and engine appliances as are necessary in operation."

At this stage of the proceedings, then, the B.L.E. evidently claimed for its members the right actually to perform certain work in the engine rooms. As stated in the memorandum, the term "supervision over the engine rooms" is made synonymous with the actual performance of work in the engine rooms. In paragraph 3 of the memorandum of December 15, 1948, there was thus a spelling out of the "duties and responsibilities" incident to "attention to engine-room machinery" which the B.L.E. was seeking in specific terms as a substitute for the general terms of section 3 of the agreement and as a definition of the job to be performed by the additional engineer.

During the concerted mediation sessions held in January 1949, the B.L.E. provided an additional facet to its proposal. Reference is to the so-called two-point memorandum of January 13, 1949, which reads:

DEFINITION AND MODIFICATION OF JANUARY 13, 1949, DEFINITION OF ROAD SERVICE

Road service is intended to mean that service which is assigned to road engineers as distinguished from that assigned to yard engineers as provided for in current agreements.

* * * * * * *

It will not be necessary to employ an additional engineer in the engine rooms of single unit Diesel-electric locomotives provided the carrier does not require any person to give attention to the engine-room machinery while the locomotive is in motion.[44]

By the second point of the January 13, 1949, document the B.L.E. removed from its request all single-unit Diesel-electric locomotives, without regard to weight, on which the carrier required no attention to the engine-room machinery while the loco-

[43] Employees' Exhibit No. 2, pp. 21–22. A detailed explanation of the December 15 memorandum was given by Mr. Shields during the course of the hearings (Tr. 1608–1615).

[44] Employees' Exhibit No. 2, p. 23.

motive is in motion.[45] This was in part a reverting back to the position stated in the initial notices. It is by this memorandum that the engineers' claim over engine-room work was extended from that performed by firemen to work also performed by maintainers and by carrier supervisors. Yet such an intention was not specifically disclosed to us as the basic purpose of this document. On the contrary, the document was stated as important in exposing the erroneousness of the carriers' claim that operations of the engine room were virtually automatic. There is some reason for concluding that the interest of engineers in the engine-room work of maintainers and supervisors came about by inadvertence and that the central interest of the engineers was and is in the fireman's work.[46]

It is appropriate to mention, at this point, a term similar to that in the January 13, 1949, definition and modification which was added by the B.L.E. to its proposal during the course of the hearings before the present Emergency Board. This modification reads as follows:

MODIFICATION OF FEBRUARY 9, 1949

It will not be necessary to employ an additional engineer in the engine rooms of any Diesel-electric locomotives (whether single-unit or multiple-unit) provided the carrier does not require any person to give attention to the engine-room machinery while the locomotive is in motion.[47]

As already stated, the failure of the carriers to give serious consideration to the modification of February 9, 1949, is looked upon by the engineers as convincing proof that there is important work to be performed in the engine rooms and that the Diesel engine control is not automatic. The organization then reasons that the "featherbedding" designation given by the carriers to the claim for an additional engineer is wholly unwarranted. But the modification of February 9 also continued the engineers' interest in the engine room work of maintainers and carrier supervisors, although this has not been stated as its important purpose.

Reference will shortly be made to the work that is being performed in the engine room by others than engineers. As will then

[45] An organization representative explained this modification (Tr. 326, 327) by stating that if no attention is required then no responsibility for the engine-room machinery can accrue to the operating engineer. The Board notes, however, that even under such circumstances the operating engineer would be responsible for the safe and efficient operation of the locomotive from draw bar to draw bar.

[46] As will presently be noted, a demand of engineers to perform maintainers' work on Diesels was made in 1937 on the ground that engineers could qualify to do electricians' work. This claim was then abandoned and, prior to the January 13, 1949 Modification, the engineers took no step that could be interpreted as a protest against the use of maintainers in the engine room to perform non-operating work not under the supervision of an engineer.

[47] Tr. 328.

be noted, such work is, for the most part, intermittently performed. The real question here raised by the B.L.E. is whether it is reasonable to have such intermittent work done by others altogether discontinued or to require the assignment of a full-time engineer to the engine room.

The January 13, 1949, memorandum, as well as the modification of February 9, 1949, seems to imply that, under the B.L.E. specifications, attention could properly be given to engine-room machinery by others than engineers during station stops, when, of course, the locomotive is not in motion. That such was not the intention of the B.L.E. was made clear during the cross-examination of witness Shields.[48] It appears further that the B.L.E. intends its proposal to permit maintainers and supervisors to inspect engine-room machinery, while the locomotive is enroute, but only to discern defects for later attention in the shops.[49] There was testimony to the effect, however, that any person could make adjustments and repairs enroute if they are made under the engineer's supervision.[50]

The transcript in these proceedings is replete with discussions and explanations about the rationale of the B.L.E. claims or specifications as already noted. Some stand out as significant. Thus, early in the hearings, Mr. Shields stated: "There are duties and responsibilities to be accepted and duties to be performed back in the engine rooms that partake of the traditional duties and responsibilities of engineers, and I would say that that is the real basic reason for originating this request."[51]

Somewhat later in the proceedings, Mr. Shields said: "The plain unvarnished truth * * * is that we have continuously and ceaselessly maintained our claim that engine room supervision, responsibilities, and duties are and necessarily must be performed, and that of right, and for the safety and most efficient operation, those tasks should rest where the carriers and tradition and history have always placed them, and still finally place them when anything goes wrong—on the shoulders of the skilled, trained, experience, and qualified locomotive engineer."[52]

Counsel for the Brotherhood explained its proposal in the following terms: "Let me see if I can put it this way: We think that we need an agreement which contains language such as we have in our proposal of December 15, 1948, which says that under certain circumstances on certain locomotives an additional engi-

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[48] Tr. 1683.
[49] Tr. 1682, 1683.
[50] Tr. 1685, 1686.
[51] Tr. 537.
[52] Tr. 1635.

neer will be employed. He will have the qualifications stated in section 2. He will have the duties, responsibilities and supervision stated in section 3 of that memo. But if the carrier does not require any person to give attention to the engine-room machinery while in motion, as we have explained what we mean by that, then the employment of the additional engineer is not necessary. In other words, a positive agreement covering the terms and conditions of the employment of this additional engineer with a proviso."[53]

Current Practices in Diesel-Electric Operation

Since the B.L.E. claims involve a contention that the rights of engineers to work in the engine rooms are being invaded by the assignment of this work to others,[54] it is pertinent briefly to outline the nature of the work presently being performed in the engine rooms of Diesel-electrics while the locomotive is enroute. What is the attention given to engine-room machinery by others than engineers under current practices and against which the B.L.E. protests?

With reference to the proposals of the B.L.F. & E. and of the B.L.E. relative to the manning of Diesel-electric locomotives, the 1943 Emergency Board recommended:[55]

1. That on multiple-unit Diesel-electric locomotives on high-speed, streamlined, or main line through passenger trains, two men should be in the cab at all times when the train is in motion. If compliance with this recommendation requires the services of an extra man in the engine room to perform the work customarily done by firemen (helpers) he shall be taken from the ranks of the firemen.[56]

2. That an additional man is not needed on Diesel locomotives engaged in yard service nor in local passenger or freight service; nor in multiple-unit straight electric service.

3. That an additional man is not needed on multiple-unit Diesel locomotives engaged in through freight service, but that if a carrier finds it necessary to add a man to perform the work customarily performed by firemen (helpers), such man shall be taken from the ranks of the firemen.[57]

The B.L.F. & E. agreements made in settlement of the Diesel

[53] Tr. 1790.

[54] Thus, in Tr. 1663–1635, Mr. Shields states: "Invasion of the existing duties and responsibilities of engineers to the extent that they have occurred—and we have shown you ample evidence that they have occurred—have been over the continual and uninterrupted protest of the B.L.E."

[55] Carriers' Exhibit No. 1, p. 112. 1943 Emergency Board Report, p. 63.

[56] The 1943 Board found that "since 1937 the fireman has in fact divided his time between supervision of the operation of equipment in the engine room and assisting the engineer in the calling and observing of signals."

[57] The 1943 Board found that "the necessity of having a second man in the cab continuously is met by the presence of the head brakeman who customarily does signal watching when the fireman (helper) finds it necessary to patrol the engine room."

dispute, as previously referred to, dealt with the manning of Diesel-electric locomotives in terms and in words quite similar to those recommended by the 1943 Board. Since the 1943 Board recommended against granting the B.L.E. request for an additional engineer, this, too, is reflected, according to the carrier contentions, in the agreements made with the engineers. The carriers maintain that the intent of these agreements was to effectuate the recommendations of the 1943 Board. The evidence before us indicates that Diesel-electrics are being operated in conformance with those recommendations.[58]

On high-speed, streamlined, or main-line through passenger trains the carriers have issued instructions that firemen (helpers) must remain in the cab at all times while the locomotive is in motion.[59] Inspection of the engine room and minor adjustments to the machinery can be made by the operating engineer or by the fireman (helper) only during station stops. Such work is also performed by members of the shop crafts at terminals, and some carriers state that performance of these tasks at terminals is the most efficient way of attending to the engine-room machinery. They would eliminate what they call "tinkering" while the locomotive is enroute.

Because of the shortness and infrequency of the station stops made by these main-line through passenger trains, there is a practice on some roads of assigning traveling maintainers (shopcraft employees) for particular parts of a run[60]—not necessarily by a regular schedule—to inspect the engine-room machinery. There is also a practice on some roads of assigning a maintainer to the operation of some pieces of machinery which has been giving trouble, such as a defective heating apparatus, in order to get it fully repaired. If necessary, maintainers apparently make minor adjustments enroute and also determine by inspection the work to be performed later in the shop. The B.L.E. enters no objection to inspection by maintainers as a step in the laying out of shop work to be performed later, but it does insist that the performance of any work by maintainers enroute, not under the direct super-

[58] In the body of its report, the 1943 Diesel Board pointed out that some carriers use shopmen (electricians and machinists) to make such repairs as they could enroute. That Board called attention to the necessity of making it clear that the maintainer is not an operating employee and that as mechanic he performs only his regular work while the train is enroute. There is no real evidence before us as to whether or not this problem referred to by the 1943 Board has been properly handled.

[59] The organization claims that this rule is not commonly adhered to and, in fact, cannot be adhered to if operation of the train is to be safe, efficient and on schedule. The carriers contend that the rule is not only entirely practical and workable but that it is generally or almost universally followed. They have announced an intention of enforcing it even more strictly in the future.

[60] In one or two instances, for an entire run.

vision of an engineer, is an invasion of the established craft rights of engineers. The evidence shows that the use of traveling maintainers on these trains is far from universal practice, nor are maintainers, except in rare instances, regularly assigned to engine-room operations.[61]

The same general distinction between the laying out of work and the actual performance of work in the case of maintainers is also made by the B.L.E. as respects supervisors who ride Diesel-electrics. The organization contends that its craft rights are similarly invaded when supervisors make repairs and adjustments enroute as long as no second engineer is employed. In general, the B.L.E. claims that, so long as carriers require engine-room adjustments and minor repairs in the engine room while the train is enroute, the work must be classified as engineer's work.[62]

There are other passenger services. On most secondary or branch lines, however, the evidence before us is that service will be powered by steam or motor cars for years to come. This service is outside the scope of this case. There is, however, a class of Dieselized secondary passenger service, and local freight service, for which the 1943 Board recommended that "* * * an additional man is not needed * * *" In such service, engine-room patrol is presumably undertaken by the fireman (helper), although evidence on this point is meager in this case.

The operating practice is quite different in through freight service by multiple-unit Diesels. According to the 1943 Board, in this service:

> The necessity of having a second man in the cab continuously is met by the presence of the head brakeman, who customarily does signal watching when the fireman (helper) finds it necessary to patrol the engine room.

In through freight service, as a general practice, the carrier requires the fireman (helper) to make periodic patrols of the Diesel engine room and to make such minor adjustments as appear necessary from his inspection. The fireman (helper) also has the duty to carry out such instructions as are given him by the

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[61] One of the contentions of the organization is that performance of engine-room work by shop-craft employees at monthly rates of pay undercuts the established mileage basis rate of pay of road engineers and thus is a threat to established standards of the engineers. The Board cannot accept that cogency or force attaches to this contention.

[62] As respects the main-line through passenger service, the 1943 Board noted that the presence of the fireman (helper) in the cab at all times while the locomotive is in motion might require the services of an extra man in the engine room to perform the work customarily done by firemen. In such cases, the Board recommended that the extra man be added from the ranks of firemen. There have been a few instances where this extra fireman (helper) has been assigned to the engine room. The B.L.E. claim of invasion of its craft rights would presumably also apply to work of the nature specified performed by the extra fireman on these trains.

engineer, including inspection and adjustment of engine-room machinery, while the train is in motion, as might appear necessary to the engineer from observation of the signals and controls located in the operating cab.

The performance of such engine-room work by the fireman (helper) not under the direct supervision of an engineer, is claimed by the B.L.E. to be an invasion of the established craft rights of engineers. (The same contention would presumably apply to such engine-room work on freight locomotives as might be done by maintainers or supervisors in the performance of duties previously described.) In this connection, a comment by Mr. Shields is pertinent. He stated: "You will recall that we have claimed and have always claimed the right to supervise, and it was our thought that if the firemen were continued to be used in the engine room that the application of the first sentence of section 3 of the agreement would operate to protect us against invasions of our duties and our rights to supervise."[63]

The principal work that the B.L.E. would have the carriers discontinue, as the alternative to employing a second engineer, includes: (1) Traveling maintainers on some roads, (2) patrolling of engine rooms by firemen (helpers) in freight service and presumably in some local passenger service, (3) use of maintainers on special assignment to get a particular apparatus in working order, (4) any occasional and incidental adjustments to machinery by supervisors.

The carriers urge that there are no reasonable grounds for requiring the discontinuance of the work just mentioned and that the performance of this work is no reason at all for the employment of an additional engineer.

Distinction Between the Right to Perform Work and the Right to Supervise

The specifications of the B.L.E. claims in this case were formally stated, as previously noted, in the "long form" and "short form" notices, in the memorandum of December 15, 1948, in the definition and modification of January 13, 1949, and in the modification of February 9, 1949. These specifications were analyzed, interpreted, and modified in the direct testimony and by statements of Messrs. Shields, O'Brien, and Atkins as well as in the answers made by these witnesses in response to questions asked on cross-examination by counsel for the carriers.

[63] Tr. 3459. It is noteworthy that this statement, coming toward the close of our hearing, would indicate no thought of any employees other than firemen in the engine rooms in connection with the rights the engineers are seeking under current schedules.

As originally stated in the "long form" notice, the B.L.E. request was for an additional or assistant engineer to perform the actual work of patrolling, making engine adjustments, etc. At any event, the performance of these duties by the fireman was protested through these notices on the grounds that such work "comes within the scope of duties and responsibilities to which an engineer has always been assigned." The December 15, 1948, memorandum similarly set forth the claim of the engineers actually to perform the engine-room work.[64]

As the B.L.E. testimony developed in this case, a particular emphasis was placed upon the engineer's exclusive supervisional rights over engine-room work as distinct from his right actually to perform the work. Performance of the work was not considered to be the exclusive right of the engineers. In this regard, considerable attention was given to the exact meaning of the terms "existing duties and responsibilities of engineers" and "attention to engine-room machinery while the locomotive is in motion."

Exactly what attention to the engine-room machinery was claimed to be exclusively the work of engineers under the B.L.E. concept of existing duties and responsibilities? This was a critical question. The claim of the B.L.E. is grounded upon the preservation of traditional and existing craft rights. This was made clear by Mr. Shields[65] who, on cross-examination, stated: "What I have been attempting to do here as nearly as possible, to show you that there are duties and responsibilities to be accepted and duties to be performed back in these engine rooms that partake of the traditional duties and responsibilities of engineers, and I would say that that is the really basic reason for originating this request." When he was asked if there were any other reasons, Mr. Shields replied: "All of the other reasons spring from that one thing, whatever they might be."

Work to be performed in the engine room while the train is enroute was described by the B.L.E. in its exhibits No. 15 and No. 17.[66] The organization maintained that all the duties described in these exhibits "belong to engineers either to do themselves or

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[64] In part of his testimony (Tr. 3516, 3517) Mr. Shields indicated the intention of the B.L.E. through the memorandum of December 15, 1948, to make a separate claim for the engineer's right to supervise work done in the engine room as distinct from the actual performance of the work. Section 3 of that memorandum, however, clearly refers to "supervision over the engine rooms" which is said to consist of the performance of certain specified duties. There is no reference in that memorandum to suprvision over persons who might be assigned to do the work from outside the engineer's ranks.

[65] Tr. 1957, 1958.

[66] Exhibit No. 15 is titled: "Checks Made on a Diesel Passenger Unit Before Starting"; exhibit No. 17 is titled: "Patrolling the Engine Room."

be done under their supervision."[67] The exclusiveness of the engineers' claim to supervisory rights was expressed even more broadly when Mr. Shields stated: "We hold that it is the traditional duty of the engineer to exercise supervision over everything that is done on the locomotive, and transferring that supervision to the engine room, we mean that one of his first duties is to supervise.[68]

The supervisory rights claimed by the engineer, on the ground that they are a natural consequence of the engineer's responsibility for the locomotive while enroute, are of a particular kind. According to the B.L.E., supervision means constantly overseeing and being in the immediate presence of those who are supervised. When in cross-examination an inquiry was made of Mr. Shields as to whether the direct supervision claimed by the engineers meant that "the engineer has to be there looking at the fellow that does it?", the witness replied: "Not just exactly looking right at him all the time, but close enough so that he can observe and personally supervise the work if he thinks it is necessary."[69] It is not merely supervisory rights that the engineers claim, but a particular and unusual kind of supervisory right.

The engineers finally made categorically clear their view that the carriers could assign anyone actually to perform work in the engine room while the train is enroute so long as an additional engineer was on hand to give direct and personal supervision to all such work when performed by others than engineers. To be sure, according to the engineers, the additional engineer might be required actually to do the work but performance of the work was not claimed as an exclusive craft right of the engineers —the right to supervise was.

The responsibility of the engineer for the safe and efficient operation of the locomotive, and his responsibility for the activities of the fireman (helper), or others, as respects the operation of the locomotive is thus interpreted by the B.L.E. as giving engineers an exclusive craft right physicially to oversee all work performed in the engine room by persons other than engineers. Thus, Mr. Shields stated,[70] in explanation of the memorandum of December 15, 1948, that "by use of the term 'supervision' we mean he (the additional engineer) shall assume responsibility for

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[67] Tr. 1712. It should be noted that on redirect examination (Tr. 1767) witness Shields suggested that it would be proper for the carriers to have checks made on the Diesel unit before starting in the shops before delivvry of the locomotive to the engineer.

[68] Tr. 1708.

[69] Tr. 1710.

[70] Tr. 1611.

the road operation of engine-room machinery enroute and supervise all duties performed in connection therewith and, with the exceptions noted, perform them himself either with or without assistance."

Since the operating engineer must remain in the cab while the train is in motion, he cannot personally oversee work performed by others in the engine room. Under these circumstances, the B.L.E. claims that an additional engineer is therefore required for such supervision in order that the exclusive craft rights of engineers will be preserved.

Insistence of the B.L.E. upon the creation of a new craft of engine-room engineers means that a significant change is contemplated by the organization in the established duties and responsibilities of the operating engineer. Yet the preservation of those duties and responsibilities is basic to the engineers' case. On their face, these demands are anomalous.

Mr. Shields stated on cross-examination[71] that the additional engineer would not be responsible to the operating engineer. The operating engineer would relinquish all responsibility for engine-room operation to the engine-room engineer. When witness Shields was asked[72] whether he thought that such a result was inconsistent with the union contention that duties in the engine room traditionally belong to the operating engineer, he responded: "No, we don't think so by reason of the peculiar situation which exists on a Diesel-electric where, under present conditions, the operating engineer is held entirely responsible for the locomotive from draw bar to draw bar, but under operating conditions has no opportunity to exercise that supervision and inspection and adjustment of engine-room machinery that is necessary in order for him to fulfill that responsibility. That is the reason we have requested the additional engineer." The witness also expressed his awareness of the fact that "a natural consequence" would be divided responsibility on the head end or at least while the train was in motion. The engineers' proposal, then, is for the creation of a new job for engineers by taking away certain responsibilities from the operating engineer, on the ground he can no longer discharge them properly.

The Issue as Finally Developed

In order to assure the employment of an additional engineer on Diesel-electric locomotives, in accordance with its claim as outlined, the B.L.E. seeks a change in existing schedules. The claim

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[71] Tr. 1689, 1692.
[72] Tr. 1693.

before this Board is substantially the same as the one prosecuted by the B.L.E. before the 1943 Emergency Board and "settled" by the 1944 agreements consummated on the basis of the recommendations of that Board.

The engineers now claim that those earlier attempts at settlement of the Diesel question were abortive. Mr. Shields has said to this Board:

> Although the first sentence of section 3 of the B.L.E. Diesel agreements was supposed to settle the engine-room question insofar as B.L.E. requests for an assistant engineer were concerned, as a practical matter since there was no clear, precise definition of "existing duties and responsibilities of engineers" it became necessary—and circumstances in the years intervening have increased the necessity manyfold—to seek a new contract to settle it. Specific and workable definition of the "existing duties and responsibilities of locomotive engineers" in their application to Diesel-electric locomotives is now imperatively called for.[73]

The issue as developed before this Board, however, does not relate to all the duties and responsibilities of the engineer. The question before us relates more narrowly to the duties and responsibilities of the craft of engineer as respects engine-room operation on Diesel-electric locomotives while the train is enroute. The B.L.E. claim over this engine-room work, as previously set forth, is grounded upon the general contention "that traditionally, by agreement and practice thereunder, every single duty that is performed on a locomotive of any type whatsoever must first be performed under the direct supervision of a locomotive engineer, or performed by the engineer himself, with or without the assistance of others." This general concept of craft rights was related in the present case to engine room operation.

The narrow issue before us is whether or not preservation of the established craft rights of engineer supports the B.L.E. claim for an additional engineer who shall be made solely responsible for the engine room while the train is enroute and who shall either perform or supervise the engine-room work. Is approval of this proposition essential to the preservation of established craft rights of engineers?

There is no difference between the parties to this proceeding about the primary duty and responsibility of the locomotive engineer—he is responsible for the safe and efficient operation of the locomotive between terminals. The engineer is in charge of the locomotive while enroute.

The locomotive crew has traditionally consisted of a locomotive engineer and a fireman—occasionally two firemen—whose work

[73] Tr. 1633.

is performed under the supervision of and subject to the orders and to the instruction of the locomotive engineer. In the operation of practically all steam locomotives,[74] the fireman performs virtually all of his duties in the immediate presence of the locomotive engineer.[75] They are stationed in the operating cab together. Adjustments of the locomotive mechanisms located in the cab may be made while the train is in motion either by the engineer or by the fireman in the immediate presence of the engineer. When adjustments of other parts of the locomotive are required enroute, as a general proposition the train is stopped. The engineer can then make or supervise the making of such adjustments as are necessary to complete the run.

The B.L.E. has emphasized these aspects of operating practice in support of its claim that the traditional duties and responsibilities of the locomotive engineer include either the making of necessary repairs and adjustments enroute or supervising others who perform such work and for whose performance the locomotive engineer is held responsible by the carriers. According to the B.L.E. view, the personal and direct responsibility of the engineer for the work performed by others on the locomotive is reflected in traditional practice, long-established carrier rules applicable to all types of locomotives, and in the policies effectuated by the carriers in discipline cases. It is held by the B.L.E. that such established practices and rules reflect the traditional craft rights of engineers which can be preserved on Diesel-electric locomotives only by employment of an additional engineer.

It is particularly contended by the B.L.E.—and this is a point of central importance to the organization's position—that preservation of the craft right to supervise adjustments makes it necessary for any adjustments performed enroute by others than engineers to be made only under the eye of and in the immediate presence of an engineer.

The operation of Diesel-electric locomotives is admittedly materially different from steam locomotives in many particulars. Marked differences, of course, are in the nature and in the location of the power plant. On a Diesel-electric locomotive, unlike the steam locomotive, the power plant can be inspected at any time and at close range while the train is in motion. Minor adjustments and repairs can be more readily made while the train is in motion on a Diesel than on a steam locomotive. Because of the location of the motive power in Diesel-electrics, any attention given to

[74] An exception is the center cab type which was formerly used extensively by two railroads.

[75] He has traditionally performed some duties in the tender out of the sight of the locomotive engineer.

machinery in the engine room while the train is in motion must necessarily be given by someone other than the operating engineer. The work of maintainers and the patrol by firemen, as well as operating adjustments by firemen, became possible with Diesel-electric locomotives. It is physically impossible, moreover, for that attention to be given by someone other than the operating engineer but under his eye and in his immediate physical presence.

The B.L.E. does not contend that the traditional duties *of the operating engineer*, as it conceives them, should be preserved in the operation of Diesel-electrics. Indeed, if its proposal were effectuated, these traditional duties would be materially altered. There would be another engineer in sole and independent charge of the engine room. Although the work of the additional engineer would be done between draw bar and draw bar, such work should not be subject to the supervision of the operating engineer to whom the additional engineer would presumably be an assistant. The operating engineer would no longer be in charge of the locomotive from draw bar to draw bar—he would lack all authority and control over all work performed in the engine room.

The B.L.E. insists, however, that the overseeing of work performed by others, which overseeing cannot be done by the operating engineer, should be assigned to another engineer because the craft has a fixed and traditional right to that particular kind of supervision. The fundamental issue in the present case, then, is: Should the current agreements between the B.L.E. and the carriers be revised in such a manner as to insure that an additional engineer will be employed on certain types of multiple-unit Diesel-electric locomotives, whenever attention to the engine room machinery is required enroute, and be responsible either to perform any required work in the engine room or to supervise the performance of such work by others?

The fundamental question raised by the B.L.E. in the presentation of its claim for the contract change just referred to is: Have the engineers a craft right—flowing from their responsibility for the locomotive while enroute and through establishment by tradition, practice, and carrier rules—either to perform all engine-room work on the Diesel-electric locomotive enroute or to supervise the performance of such work by others in the sense that an engineer must directly oversee such work which can only be performed in his immediate presence?

Although a major emphasis was placed by the B.L.E. upon the preservation of craft rights, the organization also contended that the claim for an additional engineer is reasonable and equitable in its own right because the achievement of safe and efficient

operations requires that work which must be performed in the engine rooms should be assigned to an engineer as the employee best qualified to render such services. It was urged, in addition, that, since the issue raised in these proceedings can only be settled by agreement of the parties,[76] collective bargaining necessities—the need to have an agreed-upon method of operation—require a change in engineers' schedules which will insure the employment of an engineer in the engine rooms of Diesel-electric locomotives, if the carriers require any work to be done there. Such a change is necessary, states the organization, as a prerequisite for an agreement.

BASIS OF BOARD CONSIDERATION OF THE B.L.E. CLAIM

The board's consideration of the fundamental issue in this case and of the various basic questions raised by the B.L.E. contentions is set forth in following pages in five main sections. They are:

I. An examination of carrier rules, of operating practices, and of policies applied in discipline cases in order to determine whether or not the craft rights claimed by the engineers in this case were traditionally performed by them or required of them by the carriers.

II. A review of the early development of the Diesel question to determine whether or not the engineers uninterruptedly achieved or pursued a claim to the traditional craft rights, as stated by them, in the operation of Diesel-electric locomotives.

III. Analysis of B.L.E. agreements with the Western, Eastern and Southeastern Conferences in 1943 and 1944 to determine whether or not the claim of the organization to engine-room work was preserved or abandoned, and intended so to be, to those agreements.

IV. Consideration of the B.L.E. claim that the employment of an additional engineer in the engine room is meritorious, apart from traditional craft rights, upon the grounds that (a) this would contribute sufficiently to the safe and efficient operation of the locomotive as to justify it, and (b) on other grounds.

V. Appraisal of the B.L.E. contentions that, in any event, the Diesel question considered in this proceeding can only be resolved by agreement of the parties and that the practical necessities of collective bargaining call for a modification of existing schedules to provide in positive terms for the employment of an assistant engineer in the engine rooms.

[76] Arbitration having been rejected by the carriers.

I

AN EXAMINATION OF CARRIER RULES, OF OPERATING PRACTICES, AND OF POLICIES APPLIED IN DISCIPLINE CASES IN ORDER TO DETERMINE WHETHER OR NOT THE CRAFT RIGHTS CLAIMED BY THE ENGINEERS IN THIS CASE WERE TRADITIONALLY PERFORMED BY THEM OR REQUIRED OF THEM BY THE CARRIERS

The right of B.L.E. members to do, or to supervise, engine-room work relating to adjustments and minor-road repairs on Diesel locomotives is claimed upon the ground that corresponding work on steam locomotives has been firmly established over the years as a traditional part of the craft duties and responsibilities of engineers. It is claimed that under carrier-promulgated rules the engineers have always been responsible for, and have actually done such work.

Evidence submitted in support of this contention was principally in the form of carrier rules, statements or operating practices, and carrier policies enunciated in various hearings held in discipline cases.[1] These rules, practices, and policies were developed to govern steam service but have been carried over, intact, to Diesel service. The claim for an additional engineer, as made by the B.L.E. in these proceedings, depends almost entirely upon the validity of the contention that assignment of such engine-room duties and responsibilities to engineers is required to preserve their traditional craft rights.

In appendix A of the B.L.E. brief, a summary of the major evidence of record on this point has been provided. Other similar data appear in the transcript and exhibits. Among the rules pointed out by the Brotherhood as concrete examples of those exacting the responsibilities referred to are:

975. The engineman must report for duty at the appointed time; see that fireman is on hand, and remain on duty with the engine * * *

996. Engineman must note special instructions and see they are understood by fireman.

1401. They are responsible for performance of duty by Firemen * * *

868. He must report for duty at the appointed time; see that engine is in good working order and furnished with the necessary signals and supplies.

964. Read all rules, special orders and notices involving the movements or safety of trains and see that they are read and understood by the fireman.

972. Observe markers frequently and see that train is complete, and as far as possible in good order, and see that fireman does the same.

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[1]Reference was also made by the Brotherhood in support of this contention to rulings by arbitration boards (Tr. 722–725), findings of governmental agencies (Tr. 3275–3276), and Adjustment Board Decisions (Tr. 3276–3284).

A careful examination of all this material leaves no doubt at all either about the responsibility of the operating engineer for the locomotive enroute or about the fact that he is in full charge of the locomotive enroute. In the discharge of these duties, the fireman (helper) is subordinate to him. These aspects of the engineer's work are stated in general terms.

Nowhere is there any precise and complete listing or definition of the exact components of the work of a locomotive engineer. As counsel for the organization cogently indicated,[2] the duties and responsibilities of engineers cannot be neatly and precisely defined. Nor is that unusual as respects an important position in which the exercise of judgment is a major characteristic.

Certainly, compliance with the rules does not require that the engineer physically fetch the fireman to the locomotive to "see that fireman is on hand," nor is the engineer obliged to do the work of the fireman, in case of the fireman's failure to do so. The engineer cannot be expected to do such things because he is "responsible for performance of duty by fireman" any more than it is expected that the engineer would fathom the inner mind of the fireman where he is required by the rules to "see that they are read and understood by the fireman."

It is a matter of record before us, however, that the duties of firemen, covering such work in the engine room of Diesel-electrics as may be assigned to them, have been rather precisely defined on several occasions. Early Diesel agreements made by the B.L.F. & E. on the Union Pacific, Burlington, and New England railroads, which will be later referred to in more detail, provided that duties of the firemen (helpers) on Diesel-electrics included attention to motor, generator, heating, lighting, and air-conditioning equipment. The 1943 Diesel Board also described in some detail the firemen's duties in the Diesel engine room. It was unquestionably contemplated that firemen would do engine-room work and not under the direct supervision of the operating engineer. Under circumstances to be noted presently, the engineers acquiesced in these assignments to the firemen.

The carrier rules to which the B.L.E. has directed our attention unquestionably have to be appraised in the light of assignment of engine-room work to firemen since the earliest days of Diesel operation and which were evidently not deemed to be inconsistent with these very rules. In addition, since the very inception of Diesel operation, shop men—called traveling maintainers —have been assigned to perform certain work, of a nonoperating

[2] Tr. 441.

nature, in the engine rooms. Concern has been expressed in the past that the maintainer might do operating work. But, the performance of his craft work en route has, until now, not been looked upon as an infringement upon engineers' craft rights.

As far as responsibility for operating repairs and adjustments is concerned, the evidence does not show that, under established practice and the carrier rules, the fireman on a steam locomotive is precluded from making such minor adjustments enroute as he can make on his own initiative.[3] Adjustments and road repairs will, of course, also be made by the operating engineer in steam service. If such adjustments as are necessary cannot be made while the train is in motion, the steam locomotive has to be stopped in order to permit road repairs, sufficient to complete the run, to be made by the engineer with or without the assistance of the fireman. Such a practice is also followed on Diesels although, as respects this power, more adjustments can be made while the locomotive is in motion. Relatively few adjustments are possible on the steam locomotive while it is in motion. It was suggested by one carrier witness: "In the very nature of things a locomotive engineer, if he remains in the location where he can carry out his primary duty, namely, running the engine, is not in position to do very much about correcting disabilities while the engine is in motion."[4]

The fact of the matter is that, in large measure, the work of patrol and the making of minor adjustments or repairs to the Diesel engine while the locomotive is enroute is distinctive to this kind of locomotive. The right of the craft of engineers either to perform or to supervise such engine-room work on Diesels cannot properly be supported, however, on the ground that, on steam locomotives, every inspection, adjustment or minor repair of machinery was, and is, done by or under instructions of the operating engineer. As just noted, that was not the established rule or practice in operating steam locomotives. Nor does the fireman on steam locomotives do everything under the eye of the engineer. This was certainly not the case in the operation of center cab locomotives. And it has been customary for the fireman occasionally to work on the tender out of sight of the engineer. Such activities while the train is enroute are not precluded by the rules under discussion. The record is clear on this point.

The rules and practices referred to by the organization in

[3] Tr. 3044.
[4] Tr. 1925.

appendix A of its final brief, and by similar data in the record, do show that the operating engineer has general over-all responsibility for the locomotive from draw bar to draw bar[5] and that he is responsible for the supervision, direction and instruction of the fireman. He is in charge of the locomotive.

Such responsibilities are traditional and long established. They cannot with reason be said, however, to give the engineers a right actually to perform or directly to supervise all engine-room work. This right cannot be sought by analogy with steam operations—the analogy argues against the engineers. Such a conclusion is impossible, moreover, in view of the fact that, not incompatibly with the rules, the fireman's job has been specifically defined in part (with the acquiescence of the engineers, as will presently be noted) as encompassing, under specified circumstances, the performance of certain engine-room work.

In recognition of this situation, the engineers' claim can only be that, because the fireman is subordinate to the engineer and because the engineer is responsible for the operation of the locomotive, a member of the engineer craft is, therefore, entitled directly to oversee all work done by the fireman, if an engineer doesn't do such work himself, even though that requires the employment of an additional engineer.

Such an interpretation of the traditional rights of "supervision" and "responsibility," which are set forth in the carrier rules, is entirely unreasonable. An impossible and fantastic state of affairs would be created if an employee could perform his work only in the immediate presence of the supervisor to whom he is responsible. And such a method of operation is, of course, not reflected in the carrier rules and policies to which the B.L.E. refers.

It has been further claimed by the B.L.E., however, that operating engineers are being subjected to disciplinary action invoked by carriers who allege that engineers are not carrying out their responsibilities for the efficient operation of the engine room and for the close direction of the fireman over engine-room work even though engineers cannot equitably and should not reasonably be held responsible for something entirely beyond their control. In other words, the engineers maintain that the exactions required of the operating engineer through the application of existing rules are ones that he cannot meet from his seat in the cab. Actual railroad practices, state the B.L.E. representa-

[5] Although the evidence before us is meager as respects the relation between the operating engineer and the maintainer, it does indicate that the only significant question that has arisen in this connection relates to difficulties that would be engendered if the maintainer preempted or was assigned any operating duties.

tives, thus fix a kind of responsibility upon engineers that can only be carried out by the personal and direct supervision which they contend are included within their traditional craft rights.

As examples of such injustices, 14 discipline cases on 6 carriers, chosen from the 69 railroads included in this proceeding, are cited. This board has examined every one of these cases with great care. We are unable to see how any one of them supports in any manner the claim made for them by the Brotherhood.

Analysis of the cases discloses that not all of them resulted in the assessment of discipline.[6] In some cases, discipline was first assessed but later was remitted. A number of the causes for discipline occurred while the locomotive was standing. Some grew out of incidents of improper operation of the machinery in the engine cab. Others by failure to observe and obey warning signals. None that an additional engineer in the engine room could have avoided. And in none would the disciplinary aspects of the case have been materially different had the engineer been absolved of all responsibility for the engine room.

As typical of the discipline cases relied upon, we instance the one wherein the engineer, the fireman (who was also a qualified engineer) and the head brakeman were all riding in the engine cab when the alarm bell began ringing, indicating engine trouble. This, the fireman stated, was caused by the falling down of a switch. The switch was located in the front panel in the cab of the locomotive. Shortly thereafter the locomotive passed over a dangerous grade crossing without sounding the whistle or ringing the bell, as required, and immediately thereafter ran over and exploded two torpedoes, calling for a recognition signal of two short blasts of the whistle and a slowdown of the train, neither of which was done by the engineer.

At the investigation conducted by the carrier, the engineer justified his conduct in the following language, "I was on my seat, but I was interested with the switches that the fireman was working with in the front panel and I was watching him and seeing what was going on. * * * He was fooling with that and I was watching him and interested in seeing what was wrong and I got over the crossing before I knew it and after I passed over the crossing I thought about it."

Another case, urged on this Board to support the claim made,

[6] The board has also examined these cases with particular regard to the claim of the B.L.E. that, apart from the disciplinary action taken in them, the carrier statements of policy are revealing as to the established duties and responsibilities of engineers as the carriers conceive them. From this point of view, the cases have been evaluated along with the carrier rules which have already been discussed in this section.

involved a situation wherein the engine crew left its home terminal with the ventilator shutters on the engine partly opened. The engines began to heat up and soon became so hot that all four automatic alarm bells were ringing. The fireman informed the engineer that the engines continued to overheat and suggested that the train be stopped in conformance with the rules. The engineer elected to continue to the next terminal, which he did with all four alarm bells ringing constantly. Considerable damage was done to the motors as a result of such conduct.

Again, to support a recommendation for an additional engineer, is the case wherein a knuckle came apart in the train as a result of the engineer's failure to handle his transition lever properly. A member of the train crew called for a chain, which had to be sent from a point 24 miles away, to move the disabled car. There was a chain in the equipment box on the engine under the control and responsibility of the engineer. His statement with respect to this situation is: "The conductor told me there was no chain on the engine and I did not know that there was a supply box on these engines for that purpose."

Further, while claiming duties and responsibilities on locomotives "from draw bar to draw bar," the case is submitted by the Brotherhood wherein the cooling fan clutches were not engaged, as they should have been, on beginning a trip. After the trip was under way, the engine began to overheat and all four alarm bells began to ring. Carrier bulletin instructions required that when a hot engine alarm sounded the train must be stopped until the cause is ascertained. The engineer was disciplined for his failure to stop the train in accordance with the bulletin instructions. At the investigation, when asked about the bulletin requiring him to stop, he answered: "Yes, I remember reading the bulletin about it, but on this night, Mr. Jones, I figured that the fireman was the boss back there and I worked the engine according to his instructions."

Still another case is the one in which the brakes went into emergency after an air hose parted, stopping the train. The PC switch, a mechanism operated in conjunction with the brakes, shut off three of the four motors. The fireman was unable to get the motors restarted. The engineer went into the engine room himself and attempted to start the motors without success.

Considerable time was spent in this effort when it was determined to try to reach the next terminal with the single motor. They managed to reach a point where they could telephone an electrician. The fireman told the electrician that he had tried to start the engines by pushing the left button, one plainly marked

"stop." The engineer insisted that both he and the fireman had pressed the correct button. The undisputed fact is that when the electrician instructed the fireman to press the right button, which was the starter switch and marked as such, the motor started immediately without any further trouble, and the train was able to depart. The discipline assessed against the engineer was subsequently removed.

Another discipline case was introduced into the record by the Brotherhood. Although originally submitted as supporting another phase of its contention, since it more nearly possesses the merit claimed for the other discipline cases than any of those relied upon, and since it has been given so much attention by both parties—in our opinion much more than it merits—we deal with it at this point.

In that case,[7] the engineer received a reprimand for failure to take definite action to see that his instructions to the fireman concerning some engine-room machinery had been carried out. This "definite action" which the engineer failed to take was stated by carrier to be inquiry of the fireman, upon the latter's return to the cab, whether or not the orders given him by the engineer had been carried out. It was obviously not necessary for the engineer to leave his place in the cab in order to make such inquiry. Under these circumstances, the basis of the objection to the discipline is removed.

Even if it be concluded that the discipline in this case was assessed upon the engineer for the failure of the fireman to carry out his instructions out of the presence of the engineer, such fact, within itself, does not support a claim for an additional engineer. The discipline may have constituted an unjust punishment. The B.L.E. representative recognized, at the time the first fireman's contract for work on Diesels was being negotiated, that some of the work assigned to firemen would have to be done out of the engineer's presence.[8] The test, therefore, is whether the exactions of the carrier, in the application of the rules, was arbitrary, capricious and unjust. If it was, the remedy for the unjust discipline lies in an appeal to the first division of the National Railway Adjustment Board.

In summary, we conclude that it is not intended, nor has it ever been intended, by the industry, including the engineers, to read into the term "responsibilities" as used in carrier rules the meaning now sought to be given it by the Brotherhood. The responsibility imposed upon engineers by operating rules does not

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[7] The so-called Wacasser case.
[8] Tr. 3499.

expect nor demand continuous and personal supervision and watching. No operating rule makes, or attempts to make, of the engineer a guarantor or an insuror. Supervision over the engine crew by the engineer is similar to the supervision over train crews by conductors. On most carriers, the head brakeman is required to ride in the engine cab while the train is under way, while the conductor's normal place is in the way car. Obviously, under such circumstances the brakeman is not, and cannot be, under the continuous and close scrutiny of the conductor. But, of course, the trainman is subject to the authority and supervision of the conductor. Yardmasters and agents are charged with responsibilities, yet additional yardmasters and agents are not employed so that each employee working under them may have continuous supervision. In short, supervision doesn't mean and cannot mean continuous, personal overseeing.

As already noted, it was not infrequent, over the years, for the fireman to be out of the immediate presence and supervision of the engineer on steam locomotives when his duties in keeping a supply of water and fuel available required him to be back in, or on, the tender. The same situation obtained in the operation of the many center cab engines, some of which are still in use. In such circumstances, the engineer has not been, and is not, held responsible for the acts of the fireman over which he has no control.

The responsibility of the engineer on a steam locomotive is exactly and precisely the same as that of an engineer on a Diesel locomotive. Under the rules and practices referred to by the B.L.E., the engineer is strictly accountable only for conditions, or events and circumstances over which he has control. And any attempt to impose disciplinary penalties under the pretended application of any operational rule or regulation that enlarges, in any wise, upon that requirement runs afoul of the grievance provisions of the working agreement in force on every railroad in the United States.

It must, accordingly, be seen that application of carrier imposed rules, practices, and policies does not, and may not, give foundation to the demand here made. Under such rules, practices, and policies, the B.L.E. cannot properly exercise a craft claim over engine-room work of Diesel-electrics on the ground that such work has traditionally been performed by them and traditionally expected of them by the carriers on all locomotives, including Diesel-electrics.

II

A REVIEW OF THE EARLY DEVELOPMENT OF THE DIESEL QUESTION TO DETERMINE WHETHER OR NOT THE ENGINEERS UNINTERRUPTEDLY ACHIEVED OR PURSUED A CLAIM TO THE TRADITIONAL CRAFT RIGHTS, AS STATED BY THEM, IN THE OPERATION OF DIESEL-ELECTRIC LOCOMOTIVES.

The B.L.E. claim to an assistant engineer, either to perform or to oversee all engine-room work on Diesel locomotives, has been urged as a matter of long-standing traditional right. In our judgment, for reasons expressed in the preceding section, that particular claim is without merit. The engineers claim further, however, that the same right has also been continuously and uninterruptedly claimed as a craft right as respects the Diesel-electric locomotive from the very first use of this type of power. This requires an examination of the early history of the Diesel movement from the standpoint of engine crew consists.

Diesel locomotives had their origin in railroad use on the Union Pacific Railroad in the early part of May, 1933. Soon thereafter, and in August of that year, a joint letter from the general chairmen of the engineers' organization and of the firemen's organization on that road submitted a proposal designed to require the employment of a fireman as helper on all types of Diesel locomotives.

The joint letter contemplated that repair work, required of either motorman or helper, would be compensated for in addition to other pay. No distinction was there drawn between the duties of firemen and the duties and responsibilities of engineers in connection with light repairs to the locomotive. Members of either craft could make them. And although the proposed section was not carried forward in subsequent contracts, it is significant to note that a plan of schooling for both engineers and firemen was proposed. The proposed training program would have required identical formal training for both crafts without any limitations by reason of any traditional duties and responsibilities of the engineers.

In a discussion of this joint letter of demand, carrier representatives expressed some doubt as to the existence of any work for the fireman to do, apart from assisting the engineer in observing signals. At that time "it was agreed that the firemen would give necessary attention to the motor generating equipment, air-conditioning, heating, lighting, and other appurtenances throughout the train, while en route."[1] There can be no doubt

[1] Tr. 3496.

that, at this point, the responsibilities of the engineers were not conceived by them as encompassing either the exclusive performance or supervision of all engine-room work.

Following the original joint request upon the Union Pacific, a new proposal was made in a further communication, signed by both general chairmen, as chairmen and secretary of a joint committee on behalf of both Brotherhoods. This proposal provided for schooling in both shop and road experience for firemen.

Conferences were held with carrier representatives upon this proposal, which resulted in another joint letter from the general chairmen, confirming a proposed basis for an agreement. That letter confirmed the committee's understanding of the proposal to provide for the employment of a fireman as helper on streamlined trains, and for suitable schooling for those so employed.

A letter to the chairman and secretary of the joint committee reduced to writing the proposal of the carrier for employment of firemen as helpers on the streamlined trains. That letter also stated that the local chairmen of the firemen's organization and the master mechanics would determine when a sufficient number of men had qualified to protect the service. Selection of the master mechanics to perform such duty indicates an intention of all parties that the firemen helpers would be called upon to do some mechanical work. Knowledge of this apparent intention was brought directly to the general chairman of the engineers' organization, as chairman of the joint committee, to whom the letter was addressed.

Separate agreements with the engineers and with the firemen were then formulated in a joint meeting with carriers' representative. The provision requiring the fireman to give necessary attention to the motor-generating equipment, air-conditioning, heating, lighting, and other appurtenances throughout the train, while en route, as well as a provision for their instruction to qualify as helpers on streamline trains, was incorporated in the firemen's agreement. This agreement was formulated in the presence of the engineers' general chairman, who, at last by silence, acquiesced in the contractual assignments to the firemen of the duties he had theretofore agreed to. That assignment of duties was dated November 7, 1933.

At the time of negotiation of the firemen's contract, the general chairman of the engineers realized that the duties assigned to firemen by contract would have to be performed without direct supervision of the engineers.[2] Notices, signed by the general chairman of the engineers and the general chairman of the

[2] Tr. 3499.

firemen, were served on carrier officials in May and August of 1934. Both of these dealt with requests for revision in pay rates by reason of increased horsepower in the newer Diesel locomotives. In these communications the question of the duties of the respective crafts was neither discussed nor referred to.

The first independent move of the engineers on this pioneer user of Diesel-powered locomotives came in March 1937 in the form of a request for an additional engineer. The language of that request implies an engineer demand for the assignment of an additional engineer to perform the duties that had previously been delegated to the firemen by contract. The demand was not grounded, however, upon any contention of usurpation by the firemen of engineers' traditional, or other, duties. It set forth the proposition that firemen were not qualified to discharge the duties that had been assigned to them. The demand of the engineers was made upon a stated desire for safe and satisfactory operation of the locomotives and not upon any jurisdictional claim to the work.

This proposal was questioned by the carrier as unjustifiable because three men were already located in the head end of the trains—an electrician in addition to the engineer and firman helper. The engineers' representatives explained that their request was predicated on the assumption that it was possible, desirable and entirely practicable to qualify engineers to assume the duties then being discharged by the electricians.

This is the first suggestion that an assistant engineer should be assigned the duties of traveling maintainers. Again, the claim to this work was not urged as necessary to preserve engineers' traditional duties, but obviously upon the premise that the work was such that engineers could, in time, qualify to perform, thus supplanting the electricians then being used. It is significant that the electricians were not represented by any organization at the time this demand for the work being done by them was made.

The justification then asserted for claiming the work being done by traveling maintainers was a recognition on the part of the engineers that their traditional responsibility "from draw bar to draw bar" did not encompass all the work required to be done in the engine rooms of Diesel locomotives. At no time, unless by inference since the commencement of hearings in this proceeding, have the engineers claimed the work being done by maintainers as historically engineers' work.

There was one demand made by the engineers for an additional engineer before the time their request upon the Union Pacific was filed in 1937. The earlier demand was made by the engineer

general chairman on the Burlington railroad in September 1934. That proposal, however, very clearly intended that the second engineer would assist the engineer in the operation of the controls of the locomotive as a safety measure. It carried no implication that the second engineer would be assigned to the engine room for performance of the duties assigned to firemen in the Union Pacific firemen's contract.

Meanwhile, with the full knowledge of the engineers' general chairman, the firemen were processing their claim for a fireman helper on the Zephyr trains of the Burlington. The engineers' general chairman, writing to the firemen's general chairman, objected to management's placing a second man on the Zephyr-type trains, not upon the assumption that such second man would have charge of the motor and generating machinery, but upon the fear that the second man was to perform the engineer's duties of running the train by reason of his being "virtually in charge of engineers." This letter was written on September 9, 1935.

On December 9, 1935, a firemen's contract was consummated on the Burlington railroad. That contract assigned specific engine-room duties to the firemen in substantially the same language as was incorporated in the previous contract on the Union Pacific Railroad. A copy of this contract was furnished the engineers' general chairman by the carrier, at his request. No overture was made by the engineers' representative to the carrier looking toward a change or modification of that contract.

Pursuant to an initial request served on the New York, New Haven & Hartford Railroad on January 5, 1935, for the assignment of a fireman helper to the Diesel service then planned by that carrier, agreements between that carrier and the Boston & Maine Railroad were made with the firemen's organization as of June 1, 1936. The duties assigned to firemen by those contracts were substantially the same as those assigned in the Union Pacific and Burlington contracts, to which was added the clause "and such other duties as may be reasonably and usually performed by firemen (helpers) on Diesel-electric engines or Diesel-electric streamline trains."

It may be readily conceded that the conduct of the engineers' general chairman in the joint promulgation of the initial contracts on the Union Pacific did not constitute a recognition by his organization that the duties assigned to the firemen by their contract were properly firemen's duties. However, the continued inclusion in other agreements of language similar to that employed in the Union Pacific contract, and the continued performance by firemen of the duties therein defined for more than

2½ years without protest by the engineers has significance. By the time the New Haven and the Boston and Maine contracts were signed, the duties of firemen in the engine room had apparently, in the minds of the contracting parties, ripened into the phrase: duties "reasonably and usually performed by firemen (helpers)."

After negotiation of the firemen's contracts on the New Haven and the Boston and Maine railroads, the firemen's brotherhood instituted a general demand for employment of a fireman (helper) on all types of power used in road, yard, or any other class of service. This demand was expressed in a letter from the president of the brotherhood to the president of the Association of American Railroads. The letter bears date of November 16, 1936.

This demand culminated in a memorandum of agreement between the brotherhood and representatives of the Western, Eastern, and Southeastern Carrier Conference Committees. The memorandum was signed February 28, 1937, and is known as "the firemen's 1937 agreement." It provided for the employment of a fireman (helper), taken from the ranks of the firemen, on all Diesel-powered streamlined or main line through passenger trains, and on all other Diesel-powered trains of more than 90,000 pounds weight on drivers.

It is worthy of note that existing agreements between any individual railroad and its employees covering any provision of the memorandum which might be considered by the employees to be more favorable were to remain unchanged, and that the memorandum did not modify or supresede existing agreements covering rules and working conditions of firemen.

Beginning late in 1936 and continuing into the early part of 1937, the first formal demand for the employment of an additional engineer was made by the engineers' organization. This demand was served upon six western railroads during that period of time. The notice requested joint conference with the carriers. This request was declined by the carriers. The issue raised by the notice was pressed no further. This demand was, in effect, absorbed by a Nation-wide movement covering the same subject matter. That movement began in late 1937, and between December 2 of that year and March 18, 1941, 52 carriers were served with formal notices embodying two demands, one of which was for the employment of an assistant engineer in Diesel engine rooms.

Neither the notice served in the earlier demand that was absorbed, nor the notice served in the nation-wide movement made mention of any traditional right to the engine room work by the engineers. They were based upon the proposition of efficiency

and safety of operation of the type of power that had resulted from the development of Deisel locomotives.

The demand stated in the notices served in the Nation-wide movement found its way, through the functioning of the National Railway Labor Act, to an emergency board. That board is referred to, in the industry, as the 1943 Diesel Board. The firemen's organization was a party to the proceedings before the 1943 Diesel Board, and presented its claim for furnishing manpower in the operation of Diesel locomotives.

The 1943 board declined to recommend the employment of an additional engineer for engine-room duty. Relative to the manning of Diesel locomotives, it did recommend, in two instances, that when carriers found need for an extra man in the engine room that he be taken from the ranks of the firemen. The Board, in making such recommendation, described the work to be done as that customarily done by firemen, in language similar, in effect, to that employed in the firemen's contracts on the New Haven and the Boston and Maine railroads.

Between March 12, 1945, and March 23, 1948, notice, pursuant to section 6 of the Railway Labor Act, was served by the engineers' organization on 16 of the western railroads, requesting the employment of an additional engineer on each Diesel-electric locomotive where attention to engine room machinery is required which cannot be rendered by the operating engineer. The notice complained that firemen employed on multiple-unit Diesel-electric freight locomotives were being required to leave the operating cab to perform duties, pertaining to the operation of the machinery in the engine room, which came within the scope of duties and responsibilities to which an engineer had always been assigned.

This notice is the first demand for assignment of an additional engineer to engine room work as a matter of traditional right that has been brought to the attention of this Board.

In a somewhat shortened form, notice was served by the engineers' brotherhood on 22 other western carriers between January 8, 1948, and October 8, 1948; on 17 eastern railroads between May 8, 1948, and September 13, 1948; and on 10 southeastern carriers between May 8 and May 11, 1948. This form of notice expressed no complaint as to the use of firemen in the engine room.

The demand made by the two forms of notice has, by the orderly functioning of the National Railway Labor Act, been brought before this Board.

The implication of the record of early attempts to deal with the Diesel question scarcely needs comment. It suffices to say that the

work in Diesel engine rooms now claimed by the B.L.E. is not shown to be traditionally that of engineers, nor has it been continuously claimed as such by the organization.

III

ANALYSIS OF THE B.L.E. AGREEMENTS WITH THE WESTERN, EASTERN AND SOUTHEASTERN CARRIERS' CONFERENCES IN 1943 AND 1944 TO DETERMINE WHETHER OR NOT THE CLAIM OF THE ORGANIZATION TO ENGINE-ROOM WORK WAS PRESERVED OR ABANDONED AND INTENDED SO TO BE IN THOSE AGREEMENTS

As a prefatory statement to the ensuing discussion it should be stated that it is a long and complicated treatment of the subject. It was so presented to the Board. In view of the importance of the contentions of the parties in respect to it, the board thought it desirable to meet the issue as presented with complete thoroughness even though the consequence is a detailed exposition requiring very careful reading.

The central contention of the B.L.E. in this case is that the engineers have "continuously," "ceaselessly," and "without interruption" asserted, since the inception of the use of the Diesel-electric locomotives, that the work to be done in the engine room of such locomotives, as specified in paragraph 3 of their December 15, 1948, memorandum and developed further in testimony before this board, was and is part of the traditional craft rights of the engineers.[1] An important part of that contention as made in the original direct presentation of their case by the engineers,[2] although minimized in their brief presented at the end,[3] was that section 3 of the B.L.E. agreements with the western, eastern, and southeastern carriers in 1943 and 1944 was one of the means by which they continued and preserved those craft rights.[4]

So strong was this contention that the engineers asserted that, if this agreement, as interpreted by them, had been lived up to,

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[1] "Invasions of the *existing duties and responsibilities of engineers*—and we have shown you in ample evidence that there have been and are now such invasions—have been over *the continual and uninterrupted* protest of the Brotherhood of Locomotive Engineers, the collective bargaining representative of that craft." (Tr. 1633, 1634) "The plain, unvarnished truth, gentlemen of the Board, is that we have *continuously and ceaselessly maintained* our claim that engine-room supervision, responsibilities, and duties are and necessarily must be performed, and that of right, and for the safest and most efficient operation, *those tasks should rest where* the carriers and *tradition and history have always* placed them, and still finally place them when anything goes wrong—*on the shoulders of the skilled, trained, experienced, and qualified locomotive engineer*" (Tr. 1635). Both statements by Mr. Shields. Italics by the board. See also Mr. Shields stating the basic issues in the case, Tr. 1957, 1958.

[2] See Employees' Exhibit No. 3, pp. 70, 71 et seq., 78. In addition, Mr. Shields repeatedly stated that he thought that the B.L.E. agreements disposed of the manpower issue involving Diesels. Tr. 616, 617, 1635, 1720.

[3] Engineers' brief, 118, 119.

[4] Idem, 1632.

there would have been no necessity for this case,[5] that violations of it led directly to this proceeding,[6] that, apart from the risk of an adverse decision by the Adjustment Board as to the coverage of the language in section 3,[7] they are not asking anything more by their request in this proceeding, as finally modified by their qualification of February 9, 1949,[8] than section 3 gave them in principle[9] and all that they ask by their present demands is reconfirmation, clarification, and a concrete workable rule.[10] In other words, their present demand is for a new provision in their contract giving them more explicitly and with greater precision and detail[11] a right to an assistant engineer in the engine room of Diesels under the conditions specified by them.

Whether this contention of the engineers is correct or whether, instead, by that section or other provisions of these B.L.E. agreements with the carriers they voluntarily relinquished by contract any claim to those craft rights or any claim to have an additional engineer assigned to the engine room of Diesels regardless of a craft-right basis, or whether they actually intended to relinquish any such claims by that contract even though the contract might not have achieved that purpose, becomes of major importance in appraising the equity of their present demand. Consequently, they become matters upon which it is the duty of this board to make findings of fact. This duty is the clearer and more important since the engineers themselves voluntarily chose not to pursue the established machinery of carrying their claims up to the Adjustment Board for an interpretation of their contract upon the

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[5] Idem, 1635, 1714, 1719, 1725, 1729. Mr. Neitzert, "Well, possibly we can put it this way, maybe you will agree with me now. That you are not asking for anything more now than you understood you were getting in principle, if not in actual matter of application, when you asked for the first sentence in paragraph 3?" Mr. Shields (after having the question repeated), "That is right." Tr. 1725.

[6] Employees' Exhibit No. 3, p. 70. Tr. 1728, 1729. "Q. Now the language appearing in that paragraph I have just read [from Employees' Exhibit No. 3, p. 70] indicates that these violations [which were stated to mean violations of the contract, Tr. 1728] have led directly to this hearing, is that the fact? [Mr. Shields] A. That is right" (Tr. 1729). See, also, Atkins (Tr. 3458, 3459), stating that the notice he served on the Burlington on August 11, 1945, in the same form as Mr. Kumner's "long form" notice, was served because of violation of the engineers' agreement with the western carriers. See additional statements by Mr. Shields to same effect (Tr. 518–523, 1717–1718) and that those notices correctly state the basis of the demands before the board (Tr. 525, 715–719).

[7] Tr. 1722. See, further, Employees brief, 117.

[8] Tr. 1722.

[9] Tr. 1725, quoted in n. 4, *supra*.

[10] Tr. 1721, 1729, 1637, 1638, 1642, 1643.

[11] Tr. 1730. Mr. Shields, in answer to a question as to whether it was the alleged violations of the contract that had led to this proceeding replied, "Partly because of the violation, and partly to get a concrete workable agreed-upon interpretation of the first sentence of section 3."

ground that they were afraid that the decision there would be against their contention.[12]

In making this finding of fact as to the intent and purpose of the B.L.E. agreements, the board wishes to make very clear that it is not doing so in the role of an arbitration board. It is not such a board. It has no power to make any decision as to the contract that would be binding upon the parties. Further, it has no power to usurp and is not attempting to usurp the function of the Adjustment Board. As an impartial agency appointed by the President to investigate the dispute, this Board does have the function and duty of making findings of fact not only for the purpose of reporting them to the President but also as a guide in reporting to him their impartial opinion of its significance as respects the merits of the proposed changes in the existing contract. The intent and purpose of the terms of the existing contract and the intent and purpose that the engineers actually thought that they were writing into them are facts that have a direct and important bearing upon the equity of the engineers in their present claim, not only as was stated above, but in other directions as well.

The findings of fact and the impartial board's expressed opinion of the effect of such facts when found upon the merits of the proposed change in the contract stand upon the same footing as its findings of fact and opinions on any other matter that is relevant to the merits of the engineers' demand. There is no difference in kind between them and findings of fact on the existence or nonexistence of the claimed craft right itself and the expressed significance in the minds of the Board of such finding upon the merits of the engineers' claim. This latter, clearly, is of major, perhaps paramount, importance. So, too, is it of importance whether, as claimed, those craft rights or any other claims to the job were buttressed by contract, or whether they were given up, or at any rate actually intended to be given up by the contract.

The Question of Whether Certain Evidence Should Be Considered

Before turning directly to the intent and purpose of the B.L.E. contracts, it is necessary to consider an objection raised by the engineers to consideration by the board of certain evidence that was introduced. The objection during the proceedings was directed chiefly at Carriers' Exhibits Nos. 9, 13, and 14 on the ground that their introduction might adversely affect future collective bargaining relationships between the parties.[13] No mention of this

[12] Tr. 1637, 1721. Engineers' brief, 117.
[13] Tr. 1984–1995.

ground is made by the B.L.E. in its final brief. But, they did state during the proceedings or in their brief:

(*a*) That the engineers did not resort to the Adjustment Board to attain their present objective by decisions under section 3 of the agreements because "in this instance it was apparent that the B. of L. E. cases would probably never reach a referee, in view of the probability that the B.L.F. & E. in effect would join with the carriers, in their opposite interpretation of the B. of L. E. Agreements (Tr. vol. 2, p. 181; letter of D. B. Robertson to this board, February 7, 1948)."[14]

(*b*) That even if the Adjustment Board decisions were favorable, "the whole question would have still remained, under the existing agreements, only negatively limited, unspecific and ill-defined, a still fertile and frequent source of friction between organizations and conflict with the carriers."[15]

(*c*) That now it seeks a "positive rather than negative, definite rather than disputed, practicable and direct rather than doubtful and involved" new rule.[16]

(d) That, although the duties and responsibilities described in Employees' Exhibit 15[17] and Employees' Exhibit 17[18] were preserved by section 3, first sentence, nevertheless there was no "clear, precise definition of 'existing duties and responsibilities of engineers' "[19] and the application of that language "would be something naturally that would cause a lot of discussion * * *" and "some controversy with the carriers."[20]

(e) And that the first and second sentences are, on their face, inconsistent, "for to conceive of both sentences of section 3 are referring to the same subject, namely, the question of an assistant engineer, simply does not make sense. The first sentence affirms that the duties and responsibilities of the engineer will not be assigned to others. The second sentence, under this false construction, would mean that, notwithstanding, a second engineer would not be assigned to multiple-unit Diesels, even in the event an additional man to assume the duties and responsibilities of an engineer were added. The two sentences, by this interpretation, would thus cancel each other out, since each (so construed) directly contradicts the other."[21]

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[14] Engineers' brief, 117.

[15] Idem.

[16] Idem, 118.

[17] Tr. 1709, 1710.

[18] Tr. 1710, 1714, 1738.

[19] Tr. 1633. See also Engineers' brief, 120: "There was, it appears evident, no agreement and certainly no concrete statement as to what was the exact and precise content of the 'duties and responsibilities' in section 3,"

[20] Tr. 3568.

[21] Employees' Exhibit No. 3, p. 72.

They also declared, either during the hearing or in their brief, that resort must be had to extrinsic evidence in order to determine the true intent and effect of the agreements, by such statements as the following:

In order for the Board properly to examine the disputed interpretation of section 3, the matters other than wage considerations pending before the parties at the time that the agreement of which that section is a part must be kept clearly in mind. These are recounted in detail in Mr. Shields' carefully documented statement of February 21, appearing at pages 1616 to 1635 of the record. * * * It is against the background of these matters, awaiting solution at the time section 3 was written, that any interpretation of the meaning of the language contained therein must be viewed.[22]

As a further preliminary to any estimation of the intent and purport of section 3 it is necessary, too, to summarize as succinctly as possible what the parties, respectively hold its meaning to be.[23]

I have no objection to Mr. Loomis' recollection of what transpired in respect to proposals exchanged by the parties, except his own conscience as to whether these are compromise proposals made by one or other, which he should not reveal.[24]

Now, we want to approach Mr. Loomis' view of section 3 of these agreements, the proposals which were exchanged which led up to it in full. They are quite as entitled to have their say on that subject as we were, *and we certainly had our say on it.* [Italics supplied.]

But these notes are quite a different thing. If they are complete they contain a lot of things that do not approach the dignity which matters presented to this Board should contain.

If they are incomplete then how are we to know to what extent they are incomplete? It is a type of evidence—here is a thing of I don't know how many pages, I haven't had a chance to look at it—that may keep us here for a long time, *and I really feel that we can trust Mr. Loomis' recollection refreshed by his consideration of any records that he kept privately that he wants* on proper matters that are in issue here on this subject matter.[25]

I state unqualifiedly to this Board that the Brotherhood of Locomotive Engineers also had notes, and good notes, and that no reference was made here in this record to them; though had the question been asked on cross-examination, our witnesses would honestly have stated that they, too, refreshed their recollection from notes.[26]

Nevertheless, in the engineers' brief it is stated that "by every rule of law, by every principle of arbitration and fact-finding, the court of last resort in the final analysis is the language itself and its plain literal, forthright meaning."[27] To support the contention

[22] Engineers' brief, 119. See also statement by Mr. Shields, Tr. 483, and Engineers' Exhibit No. 3, p. 72, "That such a misinterpretation can arise only from either a willful distortion or an inadvertent but mistaken conception of the meaning and intent of this sentence will be patently clear when the language itself *and the circumstances surrounding its adoption are examined and understood.*" The italics has been added by the board.

[23] Engineers' brief, 119.

[24] Counsel for B.L.E., Tr. 1987.

[25] Idem, Tr. 1988, 1989.

[26] Counsel for B.L.E. in closing argument. Tr. 3786.

[27] Engineers' brief, 128.

that this Board should confine its attention to the "four corners" of the instrument, there are citations to awards made by arbitrators and the language in them,[28] and to texts and language in court decisions stating in general terms what is familiar to lawyers as the "parol evidence" rule.[29] No authority is cited as to any precedent or rule which would preclude a fact-finding board, whose functions and duties are the same as this Board, from examining any sort of evidence it wishes to in order to discover the facts that it considers relevant to forming and expressing an opinion as to the merits of a proposed change in an existing contract.

As was previously pointed out, the Board is convinced that the actual *belief* of the engineers as to whether or not the effect of the contract they were making with the carriers was to relinquish any claim they had to what were, or what they considered, their craft rights to the job in the Diesel engine room, or their claim to it based upon any other ground, has an important bearing upon their equity now to claim it. This is regardless of what the actual effect of the contract might be. On this point, clearly, all of the evidence presented to the Board, including Carriers' Exhibits Nos. 9, 13 and 14, should be considered by the Board. The intent, purpose and effect of the contract itself has a similar relevancy.

As to whether the Board should look only at the language of the contract itself to determine its intent, purpose and effect, several things may be said.

1. In the first place, the engineers themselves, as the foregoing extracts make clear, did not so limit themselves in presenting their own interpretation of the agreement. They used extrinsic evidence of all the sorts used by the carriers, including, allegedly, reference to the general type of notes contained in Carriers' Exhibit No. 9.[30] The only particular piece of evidence that was put in by the carriers which did not have a counterpart by the engineers was the stenographic notes in Carriers' Exhibit No. 9.[31] Since everything in these notes was testified to in the form of both an independent recollection and a refreshed one; and since the engineers' witnesses had testified clearly on the basis of the first, and allegedly on the basis of the second, the subject matter dealt

[28] Engineers' brief, 128–131, appendix B; Tr. 3783–3784.

[29] Idem, 131–133; Tr. 3784–3786.

[30] See Tr. 3786 for statement in closing statement of counsel for engineers, quoted in text, *supra*.

[31] Carriers' Exhibit No. 9 consists of a complete stenographic report of the entire negotiations that preceded the signing of the B.L.E. agreement with the Western Conference of Carriers. Excerpts from it are quoted at the end of this part of the report.

with and this method of introducing it was obviously acceptable to the engineers, since they themselves had done the same thing. Because these notes had achieved the status of a past record, refreshed recollection,[32] it is impossible to see why they themselves cannot come in on the same basis as either an independent, or a refreshed recollection based on them.

2. Secondly, this Board is not, as has been pointed out, an arbitration board. Parenthetically, it may be pointed out that in voluntary arbitration the powers of arbitrators vary according to the terms of the agreements providing for them and, apart from limitation of this sort, there is a divergence of opinion as to whether they should confine their investigation to the language of the instrument in question. Whatever may be the scope of inquiry of arbitrators, it has no relevancy here. The function of arbitrators is to make awards binding upon the parties to the contract upon which they are passing. The function of this Board is to find facts for the purpose of expressing an opinion as to the merit of a proposed change in the contract. For this latter purpose, the rules in arbitration cases, whatever they may be, are not pertinent.

3. Since this Board is a fact-finding body with the obligation of expressing its impartial views of the merits of proposed alterations in an existing contract, it clearly is not bound by the technical rules of law governing the interpretations of that contract. To be sure, in order to know whether any change is necessary, it must take into account the legal rules so as to know what the binding contractual obligations on the parties now are. But it has to dig deeper than that. It must try to ascertain what the parties reasonably or actually intended to accomplish by their agreement, in order to pass an intelligent and informed judgment upon the equity of the present proposal of change. To do this, it is necessary that it be free from the technical legal rules governing admission or exclusion of evidence. The fact that there is no requirement that any member of these boards be legally trained and that there is no provision for trained legal counsel to advise them is an additional factor indicating that they were not expected to be bound by the law of evidence governing the admissibility of testimony.

4. In the fourth place, even if this Board felt bound by the requirements of the parol evidence rule, all of the testimony presented to it in this hearing would be admissible. It is, of course, elementary, so elementary that no citation of authority is needed, that no extrinsic evidence can be introduced to vary the terms of

[32] Tr. 1660.

a written contract when the writing in which it is embodied was intended by the parties as the final and complete memorial of their understanding. On the other hand, it is equally elementary that extrinsic evidence can be introduced to determine the meaning of the provisions of such a written contract when they are ambiguous. "And even where the writing is not ambiguous on its face, the circumstances under which the parties' contract may be looked at to establish an ambiguity, as well as to indicate the proper choice of possible meanings."[33]

The statements at the beginning of this segment of the report, all of them made by authoritative spokesmen for the engineers, indicate quite clearly that there is in section 3 of the contracts an ambiguity within the meaning of the parol evidence rule.[34] This is true as to section as whole and as to each of the two sentences.[35] That being so, extrinsic evidence is admissible within the operation of the rule to determine the true intent and purpose of the section.[36] Obviously, among the most relevant evidence for this purpose are statements of claims by the parties together with any prior history of those claims, proposals made as a basis of settlement of those claims, and the negotiations of the parties discussing the intent and purpose of any proposed language. Such evidence is not considered for the purpose of establishing a different contract altering or contradicting the one agreed upon by the parties, but in order to discover the true meaning of the contract as written.

The four considerations just stated are, in the opinion of the Board, sound. They justify the Board in considering all evidence presented to it, including Carriers' Exhibits Nos. 9, 13, and 14. The Board will, nevertheless, analyze and determine what it considers to be the true intent and purpose of the agreement in two ways. First, by excluding direct statements of the parties on the subject contained in Carriers' Exhibit No. 9. In doing this, the language of the contract will be examined and so, too, will be other extrinsic evidence, such as the claims of the parties, the historical background, and the contentions of the parties as to how those issues were disposed of by the agreements. Second, by considering direct statements of the parties as contained in Carriers' Exhibit No. 9 or elsewhere as to what intent, purpose and effect they meant the various provisions of the contract bearing

[33] Restatement of Contracts, section 242. Comment (a).

[34] See, in addition to the quotations referred to, the argument in Engineers' brief, 119–128.

[35] Idem.

[36] Although, as stated in the text, this is so elementary as really to need no bolstering of authoriy, sufficient authority for it may be found in Carriers' brief, 110–121.

upon the manpower issue to have. This will be done both for the purpose of determining what the operative effect of the contract is and, also, to determine whether the actual belief and intent of the engineers was that the contract was to operate as a relinquishment of their claims to have an additional engineer in the engine rooms of Diesel-electric locomotives.

Provisions Controling or Affecting Present Dispute

As stated in an earlier part of this report, the B.L.E. in 1943 and 1944 entered into agreements with the Western, Eastern and Southeastern Carriers Conferences. The Western agreement was first in point of time and, admittedly, the key to the interpretation of all three. Section 3 was identical in all of them. Section 6 was the same in the Western and Southeastern contracts. Section 4 of the Eastern agreement was worded differently from section 6 in the other two agreements but was intended to cover the same problem. The accompanying memorandum executed contemporaneously with the Western agreement had a duplicate with the Southeastern carriers, but there was no similar instrument executed with the Eastern group. The Southeastern contract contained in "Whereas" clauses language different from the other two. Since all of these provisions were set forth in full in the first part of this report and these differences noted there, they will not be reproduced here.

There is no dispute as to what the accompanying memorandum covered. There is no claim by either party that it dealt with the demand by the engineers for an additional engineer to be employed in the engine room of Diesels. The memorandum does have significance, however, because of its relationship with section 3 and because of the light thrown by that relationship upon the more reasonable interpretation of this section. This will be developed later.

Again, there is no dispute that section 6 of the Western and its identical counterpart in the Southeastern agreement and section 4 in the Eastern contract included the engineers' claim for an additional engineer in the engine room among the proposals, questions and disputes covered by those sections. That is explicit in the Eastern section 4 and similarly is spelled out in the opening "Whereas" clause in the Southeastern agreement. There is no argument that the same is not true of section 6 of both the Western and Southeastern contracts by reason of reference to the "proposals and questions covered by Mediation Case A–978." Section 6 stated that the "agreement is in full settlement" of these "proposals and questions." Section 4 of the Eastern contract says

that the "agreement is in full settlement of the disputes growing out of the notices filed * * * on or about December 15, 1937, * * * proposing the adoption of two articles * * * (2) that a locomotive engineer taken from the working list of engineers and designated as an assistant engineer will be employed in the engine rooms of certain types of locomotives."

It is clear that these sections would operate as a relinquishment of the engineers' claim to an additional engineer in the engine room of the Diesels, as specified in their demands unless, as the engineers argue, this demand was preserved to them by another section of the agreement. The section the engineers point to as doing this is section 3. Its interpretation, therefore, is crucial upon this particular question.

Section Three of the Contracts

We come, then, directly to a consideration of section 3. Because it is so important, it is repeated here. It reads as follows:

> 3. In the application of this agreement it is understood that the existing duties and responsibilities of engineers will not be assigned to others. It is further understood that a second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls.

The engineers rely upon the first sentence of the section to establish their contention that by contract they preserved their claim to have an assistant engineer assigned to the engine room of certain Diesels. The argument rests or falls upon whether this claim was for something that comes within the meaning of "existing duties and responsibilities of engineers" which could not be assigned to others. Coupled with this is the assertion that the second sentence has no relation to the first and cannot be used to interpret or limit it in any way.

In making this contention the engineers maintain that "the existing duties and responsibilities of engineers" included those specified in their Memorandum of December 15, 1948, paragraph 3, as explained or qualified by additional statements made during the hearing. This last is important because of an apparent shift of meaning attached to the word "supervision" from its use in the Memorandum of December 15, 1948, and its final expression by Mr. Shields and Mr. Atkins later at the hearing.

As used in the memorandum, the "supervision" is of the *engine room itself*. The natural meaning of this is that it relates to the doing of the job of giving attention to the machinery itself. It relates to actually performing the work specified in paragraph 3 of

the memorandum and amplified in more detail during the hearing in an attempt to define what was meant by the language "give attention to the engine room machinery while the locomotive is in motion" contained in both the modifications of January 13, 1949, and February 9, 1949. Its later meaning, which was stated to be what the engineers had in mind as included in the "existing duties and responsibilities of engineers" preserved from assignment to others by section 3, was that of direct personal supervision of the one doing the work in the engine room. Precisely what was meant by this was stated clearly by Mr. Shields when he said,[37] "* * * You can have someone else perform them [the actual performance of the work duties] but they must be under the direct supervision of the engineer. Q. [Mr. Neitzert] By direct, you mean that the engineer must be there looking at the fellow? A. Not just exactly looking right at him all the time, but be close enough so that he can observe and personally supervise the work if he thinks it is necessary."[38]

The coverage of the second sentence of section 3 is explained by the engineers with reference to two other claims by them that were unsettled at the time the contract was negotiated. One was represented by a number of claims by individual engineers pending before the Adjustment Board based upon the analogy to double-heading in steam service.[39] These claims went on the theory that each unit of a Diesel used in road service, whether or not it contained operating controls,[40] was another locomotive to which the engineers were entitled to have another *operating* engineer assigned. These pending claims were withdrawn by the first sentence of the memorandum accompanying the B.L.E. agreements with the Western and Southeastern carriers.[41] There were no such pending claims against Eastern carriers and therefore there was no memorandum executed there.[42]

The other claim was one presented by the B.L.E. as an organization to the 1943 Emergency Board and not clearly passed upon by it.[43] It was a claim for double-heading in yard service similar to the previously mentioned ones for road service but limited to instances where each unit was equipped with a cab and operating controls.[44] The Eastern carriers were not a party to the

[37] Tr. 1710.
[38] Tr. 1710–1711. This has been quoted earlier.
[39] Tr. 484–489.
[40] The case of W. E. Johnson of the Missouri Pacific road, cited as typical (Tr. 485–488, Employees' Exhibit No. 3, Appendix D), was a case of this sort.
[41] Tr. 491.
[42] Tr. 492.
[43] Tr. 493.
[44] Tr. 493, 494.

engineers' action before the 1943 Board, and it is not certain whether notices of this claim had or had not been served upon individual members of it.[45] There were no pending individual claims anywhere based upon this demand. The engineers argue that the second sentence of section 3 constitutes a rule for the future that no such claims of either character can be presented. The carriers do not deny that it accomplishes this purpose. The engineers contend, however, that the sole intent, purpose and effect of this sentence is to provide the carriers with protection in the future against just these two classes of claims, i.e., for double-heading in yard or road service. The sentence, it is urged, is completely independent of the first sentence, deals with entirely different subject matter, and in no way limits or qualifies it.

The carriers' interpretation of the two sentences of section 3 is radically different from that of the engineers. To understand the carriers' interpretation of the first of the sentences it is necessary to turn again to the memorandum executed at the same time as the Western agreement, this time looking at the exception in the last sentence of it.

This exception in the memorandum exempted from withdrawal pending claims having to do with cases where there were two or more units on Diesels used in road operations in which there were operating controls in a following unit in which, for a variety of reasons, those controls, normally managed by remote control by the engineer in the cab of the lead unit, had to be handled separately.[46] In some cases the controls in the lead unit were not working and the engineer in it directed from the lead cab the person handling the controls in the trailing unit. In others, the controls in the latter were operated even though the controls in the lead cab could be used.[47] Others than engineers had been assigned to the task of operating the controls in the trailing unit, and it was for this that claims had been filed by individual engineers. It was these pending time claims for the employment of another engineer that were exempted from withdrawal by the exception in the memorandum. The carriers contend that the first sentence of section 3 had reference to the same problem. The language "existing duties and responsibilities of engineers" did not and was not intended to cover and did not cover any duties in the engine room itself but had especial reference to the handling of the operating controls of a locomotive. By it "the carriers were merely

[45] Tr. 2566.
[46] Tr. 494.
[47] Loomis, Dugan.

agreeing that they would not permit others to handle the operating controls of Diesel locomotives."[48]

The second sentence, according to the carriers, was intended to accomplish several purposes. One "was to prevent any claims being made on the basis of the first sentence for a second engineer in the engine room."[49] Two others were, first, to bar for the future any claims for a second engineer when two switching locomotives were coupled together in yard service, and, second, any future double-header claims in road service of the sort that were withdrawn by the accompanying memorandum.[50] The carriers, in other words, agreed with the engineers as to the coverage of these two questions in this sentence. Still another matter stated by the carriers to be taken care of by this section involved "claims where mechanism had broken down and someone other than an engineer handled operating controls in one of the following units."[51] Such claims, since they were not barred by the language of the sentence, by implication were preserved to the engineers. Although the sentence was intended specifically to bar any claims for an additional engineer in the first three instances, the language was not intended to be limited, necessarily, to them. It was intended by its unqualified language to bar any present or future claim for an additional engineer for anything except where someone other than an engineer handled the operating controls of the locomotives.[52] Of course, since there is only one set of controls in a single-unit Diesel locomotive, no claims of this sort would be possible as to its operation.

The question before the Board is which of these two conflicting interpretations of the intent, purpose and effect of section 3 is the correct one. If the engineers' version is accepted, it would uphold their contention that they do have an existing contract right not to have the work in the Diesel engine room, which they claim belongs to them, done by anyone else. And if this is true, they would have an excellent claim to have this right clarified and made more specific and precise, which they assert is the purpose of this proceeding. On the other hand, if the carriers' contention is correct, the B.L.E. bargained away any claim whatsoever to have an assistant engineer assigned to work in the engine room. It would negate their claim that they have "continuously," "ceaselessly," and "without interruption" asserted such a claim since the inception of the use of the Diesel-electric locomotives.

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[48] Tr. 2052.
[49] Tr. 2692.
[50] Tr. 2688, 2689.
[51] Tr. 2689.
[52] Tr. 2690, 2691.

The Board accepts the carriers' contention as to the intent, purpose, and effect of the contract. Further, the Board finds that the actual purpose of the engineers at the time was that it should have this intent, purpose and effect. The Board arrived at these conclusions by reason of the considerations that are now taken up.

1. First, and perhaps most compelling and conclusive, is the finding of fact by this Board, made elsewhere in the report, that none of the work in the engine room of Diesel-electric locomotives while they are in motion, either the doing of it or the supervision of its performance by others which the engineers claim was preserved by section 3, first sentence, was ever or is now in fact any part of the "duties and responsibilities of engineers." Along with this is the further fact found by this Board that never, prior to the institution of the present proceeding, was any claim made by the engineers that they were entitled to have an engineer used in the engine room on the ground that the work there constituted one of his "duties and responsibilities." This being so, it is impossible to find that any such work constituted, or was ever claimed to constitute, an "existing duty and responsibility of engineers" which the carriers could not assign to others under section 3, first sentence, at the time it was written into the contract. Since, admittedly, section 6 of the Western and Southeastern agreements and section 4 of the Eastern would operate to bar any claim to have an assistant engineer assigned to Diesel engine rooms unless that section is qualified by section 3, it follows that the B.L.E. contracts did have the intent, purpose and effect of barring this claim.

2. The record of the hearing before this Board contains evidence which conclusively establishes, either because the testimony directly shows it or because the inference from other established facts makes the conclusion irresistible, that the engineers in charge of negotiating the agreements of B.L.E. with the carriers knew the following facts. *First,* that almost from the inception of the use of Diesel-electric locomotives firemen had been doing the actual work in the engine room which is the subject matter of their present claim.[53] *Second,* that in deciding against their claim to this same work the 1943 Emergency Board came to the following conclusions which were the foundation for their recommendations:

> Immediately back of the cab is the engine room housing Diesel engines which generate the electric power that is transmitted to the driving wheels. Most of the machinery in the engine room is closed. There are gauges and other indi-

[53] The finding of the 1943 board that such was the case (Carriers' Exhibit No. 1, p. 104) was, of course, known. In addition, Mr. Shields had aided the fireman on the Union Pacific to obtain this work.

cators which mean frequent inspection to assure that everything is working properly. There are ventilating shutters which need to be regulated, and purolators, that is, oil filters, which need to be adjusted from time to time. In passenger service there is also a steam boiler supplying hot water and air conditioning for the train, the operation of which requires supervision.

It is the fireman's duty to patrol this engine room and perform these services. When not so engaged he occupies the left-hand seat in the control cab where he watches for signals and exchanges them with the engineer in accordance with the usual operating practices and rules applicable on steam locomotives.[54]

In the light of all the facts of the case, it is the board's conclusion that, when an additional *operating* man is placed on a diesel locomotive, he should be taken from the ranks of fireman.[55]

In other words, since these conclusions of the 1943 board were known to the engineers at the time, they knew that firemen at that time were found to be actually doing the very sort of things in the Diesel engine rooms that are specified in the engineers' claims in this proceeding as part of the work customarily done by firemen. They knew, in addition, that the majority of the board had come to the conclusion that any additional *operating* man on Diesels should come from the ranks of firemen. *Third,* that the 1943 board in its recommendations, based upon these findings as well as others, had made recommendations in terms stating that if, in passenger operations of a specified sort, "the same services of an extra man in the engine room to perform the work customarily done by firemen (helpers), he shall be taken from the ranks of the firemen."[56] The board made a recommendation in similar language as to freight operations. Both of these recommendations were incorporated into contracts entered into by the B.L.F. & E. with the carriers in language almost identical with that of the 1943 board, a fact pointed out and emphasized by the engineers themselves.[57] Since this was known to the engineers, they must certainly have known that the concrete content of the B.L.F. & E. contract as to what kind of work in the engine room of Diesels their contract entitled them to claim would be construed in the light of the findings and conclusions which were the foundation of the recommendations incorporated into the contract. It is immaterial to this knowledge that the engineers might have considered those conclusions erroneous. The facts that are important is that they were made, and that the carriers gave the firemen

[54] Carriers' Exhibit No. 1, p. 104; 1943 Board's Report, p. 48. Mr. Shields stated that he was aware of this finding. Tr. 3547.

[55] 1943 Board's Report, p. 54, Carriers' Exhibit No. 1, p. 107, Tr. 3564. Italics by the board. The chairman of the board disagreed with this conclusion, believing the extra man should be an assistant engineer.

[56] 1943 Board Report, p. 63; Carriers' Exhibit No. 1, p. 112.

[57] Engineers' Exhibit No. 3, pp. 63-64.

a contract based upon them which would be interpreted, therefore, in the light of them to discover the intent and purpose of the agreement and therefore of the contract right of the firemen against the carriers. Consequently, the engineers knew, or should have known, that the firemen: (1) Have a clear contract right actually to perform the work which the engineers specify as the work covered in their present claims; (2) have, at the least, an arguable claim that if an additional *operating*[58] man is put in the engine room of Diesels to do anything there, whether it be the actual performance of the work or the supervision of another who does it, he must come under the terms of their contracts from the ranks of the firemen. *Fourth,* Mr. Shields testified that he heard the testimony before the 1943 board as to what the firemen were then doing and claiming as their customary work and stated to this Board his understanding that the only difference between what they were doing then and now is not a difference in the nature of what they are now doing but only that they do a greater quantity of it.[59] The inference is inescapable that he must have known at the time he negotiated the B.L.E. agreements with the carriers in 1943 and 1944 that the firemen were actually performing these operations in the Diesel engine rooms. And, he must further have known they were doing so in accordance with the terms of their contracts with the carriers.

In view of all of the foregoing knowledge possessed by representatives of the engineers at the time they entered into their present agreements with the carriers, it seems incredible that any reasonable person would believe that, without explanation to the carriers or discussion with them as to its intent and purpose,[60] the carrier representatives could have understood the intent and purpose of the first sentence of section 3 claimed for it by the engineers. To entertain such a belief would entail thinking that the carriers, voluntarily and without discussion, according to the engineers' versions of the entering into of the contracts, were signing an agreement with the engineers to do the same work

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[58] That the engineers, firemen, conductors, and trainmen are known to be "operating" men, see Tr. 3565, 3566.

[59] Tr. 3557.

[60] Mr. Atkins, the author of the language in the first sentence of section 3, testified that he did not say anything to the carriers as to the intent and purpose of the provision in the negotiations with the Western Conference, and his memory was that Mr. Shields did not (Tr. 3451, 3452). His sole reason for thinking that the carriers understood what the engineers claim it meant was that he could not "understand how sane men and intelligent men could read the language and not know what it means" (Tr. 3460). Mr. Shields was positive in his statement that there was no discussion of section 3 when the Eastern (Tr. 1750, 1752) and Southeastern (Tr. 1753, 3557–3559) agreements were negotiated, and he could not remember what, if any, discussion was had with the carriers at the time the Western agreement was negotiated (Tr. 1749, 1770).

they had previously given to the firemen by contract. It would entail believing that the carriers knowingly were willing to pay twice for the same work: to the firemen under their contract if the engineer did the work, and to the engineer under his contract if the fireman did the work. For anyone knowing all that the engineers' representatives knew at the time to believe that the carriers could possibly have understood that the language in the first sentence of section 3 covered the actual work in the Diesel engine room is not merely unreasonable but incredible.[61] It follows that no fair-minded, reasonable person in the position of the engineers' representatives could themselves have attached that meaning to it. And Mr. Shields, in his final appearance before the Board, apparently admitted this by implication. He said he did not consider the right to work in the Diesel engine room claimed to be preserved under section 3 was inconsistent with the 1943 board's findings, and so, by inference, not inconsistent with the firemen's contract, because the 1943 board did not mention "supervision."[62] One objection to this is that, although not so clearly, even "supervision" of anyone in the engine room may be one of the firemen's contractual rights and the carriers would be running the risk, at least, to being doubly liable as they clearly would be if doing the work was involved. Another objection to this interpretation is, of course, that this Board has found as a fact that no claim was ever made prior to the actual hearings in this case that direct supervision of the fireman or others actually doing the work was what was preserved by the first sentence of section 3.

3. The memorandum accompanying the Western and Southeastern agreements has significance in determining the intent and purpose of section 3. The first part of it barred *pending* claims for double-heading in road service. Standing by itself, this was open to an argument that *only* such claims were to be affected by the agreement and that *future* claims for the same thing might be brought. It would be only reasonable that the carriers would want written into the contract an affirmative protection against any such possibility. Both Mr. Shields and Mr. Loomis agreed that this was at least one of the purposes of section 3, second sentence, and that it did give such protection.

By the exception in the memorandum, the engineers were careful to protect themselves against withdrawal of the *pending* claims based upon someone other than an engineer at the operating controls in a following unit. Clearly, this proviso preserving

[61] See Tr. 3567–3572.
[62] Tr. 3562.

pending claims of this sort by the engineers was open to the same possible construction that might have been made in regard to *barring* pending double-header claims—that *only* such claims were to be saved and that, by implication, future ones were to be barred. With the example of the carriers' problem and its solution before them, the engineers must have been, certainly it would be unreasonable to suppose they were not, similarly solicitous as to the status of their own future claims when someone other than an engineer was used at the controls in a trailer unit.[63] It would seem that some affirmative protection of these claims in the future would be sought. It is important to notice that only by *implication* would the second sentence of Section 3 preserve to the engineers the right to file such claims in the future.[64] That such an implication is there and that the matter was intended by the carriers to be included in the coverage of this second sentence has already been pointed out. But it would not give *express,* affirmative protection. The only *express* protection for such claims is to be found in the first sentence of section 3. Without any doubt whatsoever, it would give this express, affirmative protection. For one unchallenged exclusive or monopoly duty and responsibility of engineers that always had existed and did exist at the time the agreement was entered into is the handling of the operating controls. To ascribe to the first sentence of section 3 the intent and purpose of giving the engineers express affirmative protection in the future as to such claims would give to it significance and meaning without reading into it, as part of "existing duties and responsibilities of engineers," any work in the engine room. Further, it would provide a link with the second sentence. It would expressly forbid the carrier assigning this task to others than engineers. The second sentence, by implication, would give a right to have a second engineer employed. Although such an explanation, standing by itself, would not be conclusive of the carriers' contention as to the intent and purpose of section 3, it is a reasonable one and lends support to it.

4. To substantiate the argument that the two sentences in section 3 are independent and deal with entirely different subject

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[63] Mr. Shields stated that he was not at the time of the agreement particularly concerned about this. Tr. 3478.

[64] It could be argued that by implication the second sentence of section 3 would protect against the carriers using anyone other than a engineer in a unit with a second set of controls. That is, the sentence could be construed to mean that a second engineer is not required except where there is one set of controls, with the implication that, if there were two sets of controls, another engineer would have to be employed. This, however, is only an implication. Literally, it is an unqualified exemption of the carrier from employing a second engineer whenever the locomotive is operated by one set of controls only.

matter, the engineers argue that the two sentences would be inconsistent and cancel out each other if both of them relate to the question of an assistant engineer in the engine room.[65] If the first sentence included among the engineer's duties and responsibilities that could not be assigned to others the job in the engine room, and if the second sentence were construed as giving permission to the carriers to assign that job to others, this would follow. It will be noticed that this inconsistency exists by an implication of permission in the second sentence.

Another, and more reasonable, reading of the two sentences leads to the opposite conclusion that the two sentences are related, do deal with the same subject matter, and the second both by implication reinforces the first sentence and also by its plain language limits it. The first sentence unquestionably numbers among the duties and responsibilities of the engineer which cannot be assigned to others the handling of the operating controls. The second sentence, by *implication,* would require a second engineer, an *operating* engineer, if in multiple-unit[66] service the locomotive was operated by more than one set of operating controls. In other words, the plain literal meaning of the language of the second sentence is that no second engineer, and since there is no qualification attached to it, it would cover *any* sort of engineer, either operating or engine room engineer, need be employed by the carrier so long as the locomotive is operated with one set of controls. Since this privilege to the carrier is stated to exist when the operation is by *one* set of controls, the clear implication is that, if more than one set of controls is used, the privilege no longer would exist and the carrier would have to use another engineer. Obviously, such a second engineer would be an operating, not an engine room engineer.

This interpretation of the sentence would make it read, in effect, that no second engineer need be employed except that a second operating engineer would have to be employed if more than one set of operating controls were used. Obviously, such an interpretation would not affect single-unit Diesels because there is only one set of controls in them. This reading of the sentence follows its clear, unambiguous language, and is completely reasonable. It definitely deals with the same subject matter as the first one. The first sentence prohibits the carrier from assigning anyone other than an engineer to handle the operating controls. The

[65] Employees' Exhibit No. 3, p. 72, quoted earlier.

[66] Since there is never a second set of operating controls in a single-unit operation, as was pointed out in the text earlier, there could be no second operating engineer in such service.

second, by implication, makes it mandatory to hire a second engineer to handle the additional controls if more than one set are employed. At the same time it limits the possible scope of the first sentence by the sweeping exemption in it that, apart from the exception in the case of a second operating engineer when additional operating controls are used, no second engineer need be employed for any other purpose. This would permit the use of others than engineers for engine room duty and, consequently, qualify the possible coverage of the general and undefined language of the first sentence by excluding from it any work in the engine room. This seems to the Board the proper construction of the sentence without regard to other considerations.

5. The engineers in their final brief advanced the following argument against the second sentence of section 3 having the meaning that is claimed for it by the carriers.

> The second sentence of section 3 *cannot* mean what Mr. Loomis and the Carriers claim for it, unless it is to be assumed that the Carriers are now saying that the B.L.E. was agreeing to "waive" its rights to an assistant engineer in the engine room of multiple-unit Diesels, but *not* agreeing to waive such rights to an assistant engineer in the engine room of *single-unit* Diesels, since *the second sentence of section 3 speaks only of "multiple-unit service."*
>
> Thus, if the second sentence of section 3 does not relate, as the Brotherhood of Locomotive Engineers has always believed and still believes, to a second *operating* engineer as distinguished from an assistant engineer in the engine room, then, since the 1943 case concerned an *assistant* engineer on *all road Diesels* up to four units, *including single-unit Diesels*, THE CARRIERS, BY THEIR OWN LOGIC, WERE BARRING THE ASSISTANT ENGINEER FROM THE ENGINE ROOM OF MULTIPLE-UNIT LOCOMOTIVES BUT *NOT* FROM *SINGLE-UNIT* LOCOMOTIVES.[67]

An answer to this reasoning is that only by *implication* can the provision which expressly bars any claim to an assistant engineer in the engine room in *multiple-unit* service be construed to *permit* them in single-unit service. There is, of course, the possibility of such an implication. Whether such an implication is warranted is another matter. It would require a finding in the first place that, except as specifically limited in the second sentence, the first sentence preserved the right to an assistant engineer in the engine room. If it did not, then all claim to one would be barred by the "full settlement" clauses in the contracts.

It would tax belief that a claim to an assistant engineer in a single-unit Diesel, resting only upon an implication to that effect, was excepted from the operative effect of section 6 or, as a reasonable matter, was intended to be exempted by the second sen-

[67] Engineers' brief, 127.

tence itself when the more important claims for them in multiple-unit operations were abandoned. Further, if the intent of the second sentence is looked at, no such implication is warranted. Its intent was that no claim for a second engineer of any description would be allowed with the single exception of a second operating engineer in multiple-unit service where more than one set of operating controls are used.

6. It was argued that the term "second engineer" used in section 3, second sentence, should not be construed to apply to the engineer to be assigned to the engine room because this latter engineer has always been designated as "assistant engineer."[68] The contention is without merit. It is true that in the present proceedings this language is used, and apparently with care to do so.[69] But there is clear evidence that prior to the B.L.E. contracts with the carriers in 1943 and 1944 the word "second" was used as an alternative to "assistant engineer." In the engineers' Bill of Specifications on article II of the notices served by the engineers that originated the hearing before the 1943 Emergency Board, the man to be assigned to Diesel engine rooms in those demands was described indifferently as "a second or assistant engineer."[70] It seems quite clear, therefore, that the term "second engineer" as used in section 3, second sentence, was not, at the time it was written into that contract, limited to "operating" engineers. It included a second engineer in the engine room.

Distinct from the question of the intent, purpose and effect of the contract itself is what the parties actually intended to express by the terms of the contract, regardless of whether they achieved this in the provisions of the contract itself as written. The best evidence available, apart from what has already been considered, is the statements of the parties themselves. In this case there was testimony on both sides as to what this actual intent was as revealed by statements made on the subject during the negotiations preceding the signing of the agreements. For the engineers, there was testimony by Mr. Atkins and Mr. Shields which has been referred to in a previous footnote.[71] Mr. Atkins, the author of the disputed first sentence in section 3, recalled no statement or explanations by either himself or Mr. Shields in any of the negotiations and remembers no discussion by anyone. Mr. Shields, although remembering some discussion in the Western, does not remember what was said, and his recollection is that there was no

[68] See Tr. 286, 295, 306, 300, 345, 1621.

[69] Even in the present hearing there are instances where the engineers' chief witness, Mr. Shields, departed from this usage. See, e.g., Tr. 1689, 1690, 1692, 1693.

[70] Employees' Exhibit No. 2, pp. 35-36.

[71] See Note 1, p. 92.

discussion at all in the Eastern and Southeastern negotiations. And this was true in spite of statement by counsel for the engineers in his closing argument that the engineers had notes of what occurred in these conferences and the witnesses had refreshed their memories from them. Counsel further stated that these notes were at variance with those of the carriers, but they were not offered in evidence to this Board.

In sharp contrast, Mr. Loomis has a clear and detailed, independent recollection, a clear refreshed recollection, and presented, in the form of a recorded, refreshed past recollection, the stenographic notes of the negotiations preceding the Western agreement.[72] This last corroborated Mr. Loomis' other testimony as to what was said and gave in full and convincing detail everything that was said upon the provisions in the contract dealing with the manpower question. In addition to this, Mr. Horning testified, again from a memory refreshed by notes taken at the time, of the representations made by the engineers' spokesman during the Eastern negotiations as to the intent and purpose of the similar provisions in that agreement.[73] Similar testimony was given by Mr. Dugan for the carriers as to the Southeastern agreement negotiations.[74] The testimony of these last two completely corroborated each other and the original testimony by Mr. Loomis as to what was actually said to the carriers during the negotiations by representatives of the engineers.

A failure to remember, even though refreshed, does little to discredit a positive, clear recollection of others. That is especially true when that clear, affirmative recollection is, as in this case, corroborated in exact detail by the stenographic record of the actual conversation of the parties in the course of the actual negotiations,[75] and the written proposal of basis for a contract, to which those conversations referred,[76] as well as the engineers' Memorandum of Exceptions to the 1943 Emergency Board's findings.

In view of this evidence, this Board accepts as too clear for any possible divergence of opinion the carriers' version as to the true, actual intent and purpose of the parties in including in their contracts sections 3 and 6 of the Western agreement and the accompanying memorandum; sections 3 and 4 of the Eastern and sections 3 and 6 and the accompanying memorandum of the Southeastern. Consequently, it finds as a fact that the engineers clearly

[72] Carriers' Exhibit No. 9.
[73] Tr. 2564-2611, 2708-2722.
[74] Tr. 2611-2648.
[75] Carriers' Exhibit No. 9.
[76] Carriers' Exhibit No. 13.

intended by the provisions of their contracts to give up any claim whatsoever to an assistant engineer to be employed in the engine room of multiple-unit Diesels. The intent, purpose and effect which the Board has found the contract to have, apart from any evidence showing, by the direct expression of the parties themselves as to what they intended to embody in it, coincides entirely with what this evidence reveals to be the actual intent, as established by the statements of the parties themselves. Excerpts from these stenographic notes indicate the conclusiveness of the evidence on this point. To understand them, it is necessary to bear in mind that the final section 3 was section 4 in the draft discussed; final section 6 was section 7; and up until the end of the negotiations on the matter the two sentences were transposed so that the present second sentence in section 3 was the lead sentence and began, without any introductory words, "A second engineer," etc. Further, it is essential that Carriers' Exhibit No. 9 be read with reference to Carriers' Exhibits Nos. 13 and 14. Exhibit No. 13 consisted of a Memorandum of Exceptions taken by the engineers to the 1943 board's findings. There were only two of them relating to manpower. One was its failure to deal with the question of yard or transfer service.[77] The other was as to the Board's conclusion that "when an additional operating man is placed on a Diesel locomotive he should be taken from the ranks of the firemen."[78] Exhibit No. 14 is a copy of a proposed "basis of an agreement * * * which shall constitute a disposition of questions covered by Mediation Case A–978."[79] In it only the first of the two exceptions is dealt with.[80] The second one is not mentioned at all. The significance of this is apparent in reading the quotations that follow, taken from Carriers' Exhibit No. 9.

Quite extensive excerpts from Carriers' Exhibit No. 9, the stenographic verbatim report of the negotiations between representatives of the B.L.E. and the Western carriers, are quoted below. They are somewhat repetitious and, in the opinion of the Board, aside from the preceding explanation, speak for themselves. They are, therefore, reproduced without comment.

SHIELDS. Now then, there has been some question here as to what disposition should be of certain time claims that are pending with certain of the carriers in connection with this multiple-unit operation. While our proposition here of November 22 does not deal with our original request for the employ-

[77] Carriers' Exhibit No. 14, paragraph 5.

[78] Carriers' Exhibit No. 14, p. 7. Incidentally, the fact that an exception to this finding was in the engineers' Memorandum of Exceptions to the 1943 board findings is conclusive proof that they knew of it.

[79] Carriers' Exhibit No. 14, first paragraph, p. 1.

[80] Idem, proposal No. 5, p. 2.

ment of an assistant engineer, the question of personnel of Diesel-electric locomotives seems to me, even in the firemen's agreement, to be somewhat up in the air, and I think that it is entirely proper that something like this should be incorporated in the agreement—in other words, to convey this meaning:

"In the application of this agreement it is understood that the existing duties and responsibilities of engineers will not be assigned to others."

I think if you check up on these time claims that you called our attention to, most of them are based upon the claim of the chairmen that other than engineers have been used to operate some of these units under certain circumstances.[81]

* * * * * * *

SHIELDS. Now going to No. 4, I don't see any necessity for that first sentence there, Mr. Loomis. It occurs to us your No. 7 has written out all considerations for our original proposition for a second engineer in multiple-unit service.

LOOMIS. But we have had claims filed, even after your notices were served.

SHIELDS. Well, weren't those claims predicated on the assumption that when you had what we call two "A" units coupled together, they were to be considered as two locomotives and a locomotive engineer should have been employed on each of them?[82]

* * * * * * *

LOOMIS. How is this:

"A second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls."

SHIELDS. It seems to me that first sentence is entirely superfluous, in consideration of the finality of item 7. Because definitely the request for the assistant engineer was a part of our proposal of March 18, 1939, and that is nowhere referred to in this agreement. Any way you would attempt to dress up this first sentence in connection with the following sentence would just lead to confusion rather than clarification. You understand what we have in mind now. If you sign this agreement with No. 7 in there, I don't think any one needs to have any apprehension.

LOOMIS. Yet you have claims, not for an assistant engineer, but for two engineers when there wasn't any question of anybody being in the second unit.

SHIELDS. But those claims were filed while this was up in the air. Just trying to force something.

WELSH. But they are still on the hooks.

LOOMIS. We don't want any more.

ATKINS. You have it covered about four times in this set-up here.

WELSH. In the example of two "A" units, two sets of engineers, both operating "A" units, the second sentence of No. 4:

"In the application of this agreement it is understood that the existing duties and responsibilities of engineers will not be assigned to others."

SHIELDS. That is exactly what it is meant for.

WELSH. Certainly if you ran two "A" units together and they weren't operated by remote control, and you had an operating engineer in the first unit and an operating engineer in the second unit——

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[81] Carriers' Exhibit No. 9 , p. 7.

[82] Idem, p. 32.

LOOMIS. There might be somebody besides an engineer in the second unit.

WELSH. Then they would have a legitimate claim.

SHIELDS. I know of instances where that has happened and there weren't any claims filed.[83]

* * * * * * *

SHIELDS. Let's take out that first sentence in No. 4. I don't think there is any necessity for it at all.

LOOMIS. I am not so sure. I would be willing to add in there the words "where the engineer operates the cab with one set of controls." That coupled with the second sentence I think would cover what you are talking about.

SHIELDS. You wouldn't make it any clearer if someone raises a question, because after all the purpose of this agreement is what do we understand is the consist of the Diesel-electric locomotive under this agreement?

LOOMIS. That is why I think a locomotive operated from one cab with one set of controls.

SHIELDS. Any combination of units operated through remote control by one engineer. That is exactly what we mean. Then we don't need this first sentence, do we? What we want is protection against the possibility of someone, as a result of some breakdown or something, getting up in one of those units and operating it instead of having an engineer.[84]

* * * * * * *

SHIELDS. Well now, in making disposition of claims that were based on facts other than someone other than an engineer was used to operate the controls in these "A" or "B" units, don't you think it might be well to have an understanding that those that were based on a situation where someone other than an engineer was operating the controls of one or more of these "A" or "B" units should be paid? Of course that would automatically cause them to be withdrawn from the Adjustment Board. In other words, if we are going to withdraw all these claims on this theory here, as I understand you gentlemen to say, if there was a case where someone other than an engineer was operating the machine, he should be paid. Let's wipe out the whole thing at one time.

LOOMIS. Would this cover it:

"This will confirm our understanding that any pending claims for the employment of a second engineer in the multiple-unit Diesel-electric service, consisting either of one A unit and additional B units, which claims were based on the theory that two or more locomotives were being operated by one engineer with one set of controls, will be withdrawn." * * *

URBACH. I don't know what the chairman thinks about it, but I think this other letter back here would take care of that.

LOOMIS. No, I am afraid the letter wouldn't take care of anything arising before the agreement.[85]

* * * * * * *

SHIELDS. Yes. That leaves us one sentence in No. 4.

LOOMIS. Yes. That read this way, Mr. Shields:

"A second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls."

[83] Carriers' Exhibit No. 9, pp. 35–36.
[84] Carriers' Exhibit No. 9, pp. 38–39.
[85] Carriers' Exhibit No. 9, pp. 50–51.

Isn't that specifically about what we have been talking about? What I have in mind is just this: That the demands of March 18, 1939, did refer to a second engineer in yard service and road service. We have agreed on past claims for the second engineer in road service, and if we don't put something in as I suggest we haven't got anything for the future on those claims.

SHIELDS. I think you have written the whole thing out here in No. 7.

LOOMIS. So far as pending claims are concerned.

SHIELDS. Well, I don't know how we could expect to, in this agreement, preclude the possibility of claims of some character or other. I don't know what the claims might be, but I don't know how we could write a rule that says there would be no claims filed under this agreement here.

LOOMIS. Well, you certainly could agree that where one engineer operates one set of controls, no second engineer is required.

SHIELDS. We have agreed to that here now.

LOOMIS. Have you, if you don't say so? You have agreed as to pending claims, but what about the future?

SHIELDS. I know, but what I am thinking about is item 7 over here:

"This agreement is in full settlement of the second party's proposals of March 18, 1939, and the questions covered by Mediation Case A-978, and shall continue in effect, subject to change under the provisions of the Railway Labor Act as amended."

All those questions are in there.

LOOMIS. That would cover an assistant engineer in road service but it wouldn't necessarily cover an engineer in road service, technically.

SHIELDS. That would be a pretty far-fetched possibility, it seems to me.

LOOMIS. Yes, I think it would.

SHIELDS. I don't see how anyone would get very far with a proposition of that kind. I think when we sign this agreement here we have said very definitely the second engineer is not required in multiple unit service, but we do contend that if you use someone other than an engineer to operate the controls of one of these machines then you have a violation of the agreement, not only this agreement but your agreement so far as steam service is concerned.[86]

* * * * * * *

LOOMIS. Now tell me again what you had in mind in your proposal of existing duties and responsibilities.

SHIELDS. Really, just what we have been talking about here. That in the event the remote control breaks down for some reason or other, that you aren't going to put some one of these maintainers or firemen (helpers) back there and have them operate the controls of the second or third unit. Now, if it weren't for the fact that we think there is a possibility that you will always have someone back in those engine rooms, perhaps this wouldn't be necessary. But we think you always will have someone back there. I don't know who it will be. We think you always will have someone, and I know how aggressive some of those shopmen are that you get back there. If there is a single opportunity for them to move in there and operate one of those machines, that is just exactly what they will do.

LOOMIS. Well, let me try this out again now:

"A second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls. In

[86] Carriers' Exhibit No. 9, pp. 56–57.

the application of the above it is understood that the existing duties and responsibilities of engineers will not be assigned to others."

Isn't that just what we mean?

SHIELDS. As far as the last part of it is concerned, but you are just making us say over and over again that there will not be a second engineer employed.

LOOMIS. We have had a lot of trouble on both sides because we didn't always say what we meant.

SHIELDS. I think we have said it as definitely as we could over here in No. 7. All of our contentions for the assistant or second engineer were set out in the proposals which were the subject of Mediation Case A–978. Now this settlement is accepted as settlement in full on those proposals. I don't know how we could say it any plainer. But that first sentence there could be construed by someone to mean it wouldn't make any difference if the remote control mechanism did break down, they could still use someone back there.

LOOMIS. No, you wouldn't then have an engineer operating the locomotive from one cab with one set of controls."[87]

* * * * * * *

SHIELDS. * * * I think we should just leave No. 4 as it is without that first sentence. If we haven't written off any claims for this second engineer as it was originally intended by signing this agreement, then I don't know what has happened.

LOOMIS. Your specifications as an engineer weren't in that exhibit, were they? It was only the horsepower feature. Your article 2 read:

"That a locomotive engineer taken from the working lists of engineers and designated as an assistant engineer will be employed in the engine rooms of certain types of the locomotives referred to in Article 1 of this request."

Speaking very frankly, as we understood it, it was putting in your suggested clause that led us to think we should have it understood that where one engineer operated from one cab with one set of controls there would be no claim.

SHIELDS. Well, that is what we mean. This is a protection against the possibility of someone else using the controls. That is all we had in mind. We just reached an agreement with you to wipe out those claims that were predicated on the very basis you are talking about here.

LOOMIS. What was running through my mind was adding to that letter:

"This will confirm our understanding that any pending claims for the employment of a second engineer in multiple-unit Diesel-electric service, except those covering conditions where employees other than engineers were handling the operating controls of any of the units, will be withdrawn, and that a second engineer is not required in multiple-unit service where the engineer operates the locomotive from one cab with one set of controls."

I thought if we were going to talk about that from your standpoint, you would rather have it tied up with the understanding about duties and responsibilities. Maybe it would go better in a letter.

SHIELDS. I think the letter is certainly broad enough in its coverage now without adding anything more to it. In fact, I don't see any necessity for adding anything more to it. The purpose of the letter is for withdrawing

[87] Carriers' Exhibit No. 9, pp. 59–61.

certain of those pending claims of a certain nature, and certainly the language has done that very thing. So I don't see any necessity for adding anything to that, and I still can't see any necessity for the first sentence in No. 4.

LOOMIS. How does it have any possibility of hurting you?

SHIELDS. Well, I pointed out one way, and that is, it could be misconstrued. And in addition to that, I don't see that it adds anything to the agreement in any way, because we have definitely divorced ourselves, so far as this agreement is concerned, for any claim for the second engineer except under conditions when he is to be used to operate the controls of one of these units. I don't think we could have done that more effectively than we have in this No. 7.

LOOMIS. Frankly, we didn't see the necessity for your suggestion in No. 4. We were willing to take it, but we wanted to be sure we didn't go too far.

SHIELDS. We explained to you, there have been instances where we know that has occurred. We feel, as I said before, that there will be someone back in those engine rooms, and there is always the possibility that something will happen to that remote control mechanism, or for some reason it will be necessary to expedite the movement of the train to have someone operate those controls of any one of the trailing units. If we put the language in that we have suggested here, everyone who has anything to do with the agreement will know that is not permissible even though you do have men you might consider competent back in the engine rooms, whether they are designated as maintainers, or supervisors, or firemen (helpers), or what not. They will know it isn't permissible to do that under the agreement.[88]

* * * * * * *

After transposing the two sentences as they had stood during all of the foregoing discussions, the final conversation was as follows:

ATKINS. That just turns it upside-down doesn't it?

LOOMIS. Well, it puts yours first and emphasizes yours and makes ours the tail of the kite. That is about the size of it.

ATKINS. It is the exact language in reverse, isn't it?

LOOMIS. I don't know whether it is the exact language, but it is pretty close to it.

SHIELDS. Except for the probability that the reversal of the language might give more emphasis to our effort, I don't see any change in it.

LOOMIS. Well, let me say this: That if there is any idea that anybody is going to take this agreement and then come back later with a claim for a second engineer, we might as well have that flat on the table now.

SHIELDS. I think we have it. I think we have it in every possible way we could get it. We got it first from the Board, and you will notice when we came back to talk to you gentlemen and submitted a compromise proposal November 22, 1943, we didn't say a word about it, and we haven't said a word about it since. You people are the ones who talked about it. We have written it out two or three times, but we didn't discuss it all the way through. So that is what makes it sort of difficult for us to understand where the ap-

[88] Carriers' Exhibit No. 9, pp. 61–64.

prehension is. It has been written out by experts in the first place in the Board's recommendation, and we didn't say anything about it in our compromise proposition. We have written it out in paragraph No. 7, and again over here in this letter, and I don't know how that language there could more effectively dispose of it than we have already done.

LOOMIS. Well, if that is so, it doesn't hurt to have this say so.

SHIELDS. Except for the possibility of confusing someone, which is the only reason which led us to tack the tail on the thing a while ago. If we are going to state in here in the body of the agreement anything about a second engineer, particularly in connection with our effort to protect the locomotive engineer against possible use of someone else on his job——

LOOMIS. As far as that goes, I don't think we care whether it is in the agreement or in the letter, but if we are going to take your No. 4 we want that somewhere. Do you want us to retire?

SHIELDS. No. All right, you win.[89]

* * * * * * *

The Board's conclusion from the foregoing extended analysis of the B.L.E. agreements with the Western, Eastern and Southeastern Carriers Conferences in 1943 and 1944, with special reference to section 3, is that the engineers contracted away, clearly intended to contract away, any claim, regardless of the basis of the claims, for a second or assistant engineer to do work of any kind whatsoever in the engine room of Diesel-electric locomotives while in motion.

[89] Carriers' Exhibit No. 9, pp. 68–69.

IV

CONSIDERATION OF THE B.L.E. CLAIM THAT THE EMPLOYMENT OF AN ADDITIONAL ENGINEER IN THE ENGINE ROOM IS MERITORIOUS, APART FROM TRADITIONAL CRAFT RIGHTS, UPON THE GROUNDS THAT (A) THIS WOULD CONTRIBUTE SUFFICIENTLY TO THE SAFE AND EFFICIENT OPERATION OF THE LOCOMOTIVE AS TO JUSTIFY IT AND (B) ON OTHER GROUNDS

In spite of the facts (1) that the engineers never had as part of their craft duties and responsibilities either the performance or the supervision of the performance of any of the work in Diesel engine rooms while the train is in motion, (2) that, prior to this case, in claiming such work they never contended it was part of their craft duties and responsibilities, and (3) that by their 1943 and 1944 contracts they conclusively bargained away their claim on any ground whatsoever to such work, one question still remains. Is there any merit to a claim that, even so, an assistant engineer can contribute sufficiently to the safety and efficiency of the operation of Diesel-electric locomotives as to justify his employment in the engine room of Diesels? And are there any other grounds which merit the employment of such an assistant engineer? The Board's answer to both questions is no!

The principal ground urged upon the Board by the B.L.E., apart from those already considered, is that of increased efficiency and safety of operation. No argument is made by the engineers that they must do the work themselves in order to contribute to this end. They are quite willing that firemen or others do this work provided only that an engineer directly supervise the man who actually performs the labor.

As noted at the beginning of this report, some work is now being performed in the engine room of Diesel electrics. It is intermittent work, principally in the form of periodic patrols and minor adjustments of machinery by the fireman (helper) in freight service, and of periodic inspection of engines and special repair assignments by maintainers.[1] Such work covers most of the work done in the engine rooms en route. The B.L.E. would have the roads either discontinue such attention to the engine room machinery by figuratively "locking the doors" of the engine room or assign a full-time assistant engineer either to perform such work or to supervise its performance. As a practical matter, for reasons expressed elsewhere in this report, such an assistant en-

[1] A few roads assign maintainers regularly for certain entire runs, but most roads using maintainers assign them principally to intermittent tours of inspection.

gineer could only supervise. Certainly a discontinuance of all attention to engine room machinery, an alternative suggested by the organization, would not contribute to safer and more efficient operation. Would the assignment of an assistant engineer to supervise help the service?

It should be particularly noted that, at present, the engineer does supervise the fireman who does whatever patrolling, etc., is now done while the train is in motion. Employment of an additional engineer would only provide *direct* supervision under the eye, not of the present engineer, but of another engineer. He would be called an assistant engineer, and he would carry out his responsibilities quite independently of the present engineer. The traditional duty of the operating engineer for general supervision of the engine from draw bar to draw bar would be completely ended. In its place, entire divided responsibilities and powers would be introduced.

Just how this divided responsibility would work to improve the service was never spelled out for the Board by the engineers. Would the present fireman be subject to two engineer bosses while the train is in motion? If so, which of the two would have the superior authority over him? What would be the relationship between the two engineers in meeting problems affecting both of their exclusive spheres? Instead of contributing to efficiency of operation, such a system as proposed by the engineers would seem to create confusion and diminish, rather than increase, efficiency.

Nor is there in the record any impressive evidence that the engineer by reason of his craft training and experience possesses qualifications of a sort that would entitle him to claim the engine room job he seeks in preference to others. Some cases were presented to the Board in which firemen failed properly to perform their work in the engine room with the result that there were delays and breakdowns. On the other hand, cases were also cited in which the engineer himself went back to the engine room, after stopping the locomotive, and was unable to discover the cause of the failure. The shortcomings of the engineers in these particular cases were explained on the ground that, without special additional training, they were not necessarily qualified for work in the engine room of Diesels. Indeed, the present and past demands for an assistant engineer have been coupled with demands that he be given additional engineer would be to oversee the fireman, and the maintainer, in the performance of their work. An entirely new craft job for the engineer would be created. There is absolutely nothing in the record on which to base a recommendation that the employment of a full-time engineer to watch patrol, in-

spection, adjustment and light repairing by firemen, or work done by the maintainer, in the engine room of Diesels would increase efficiency of operation sufficiently to justify his employment.

So far as safety is concerned, there is again no convincing evidence in the record to justify granting the engineers' demand. Although there is a little testimony that explosions and fires sometimes occur in engine rooms, the Board has no reliable evidence that the employment of such a supervisory engineer would prevent them.

Considerable time was spent in the hearings in discussion about a terrible freight wreck that recently occurred on the Union Pacific in Idaho. The cause of the accident is conjectural. Since the body of the fireman was found under one of the Diesel room units, it is probable, although not entirely certain, that he was not in the cab at the time of the accident. The engineer and head end brakeman were in the cab. The train ran through two signals set against it before crashing head-on into another freight train. It is assumed by the Board, although this is not entirely clear in the record, that the incident was introduced to show that the employment of an assistant engineer in the engine room would have somehow prevented the accident. To have relevancy for this point, it has to be assumed that such employment would have resulted in the fireman being in the cab at the time and that if he had been the accident would not have occurred. The last is pure guess work.

Both engineers and carriers agree that the cause of the accident will never be known. It is possible that, had the "dead man" pedal not been disconnected at the insistence of the engineers on that road, the accident might not have occurred. It seems probable, although of course only a guess, that both head-end brakeman and engineer were unconscious at the time of the accident. It could have been the fireman and the engineer who became unconscious at the same time. There is no reliable evidence, moreover, that the head-end brakeman was not as qualified as a fireman to call signals and in as good a position to do so at the time they should have been called. But all of this speculation is completely irrelevant. The engineers' proposal would not have had any effect upon the present duties of the fireman. The proposal is simply to put an engineer back in the engine room to watch or supervise whatever firemen the carrier chooses to employ.

The Board concludes, therefore, that there is no merit in the engineers' contention for the employment of an additional, full-time assistant engineer in the engine room of Diesel-electric

locomotives on the ground that a significant contribution to safe and efficient operation would thereby be made.

In addition to seeking justification for employment of a second engineer on the ground that this would contribute significantly to safe and efficient operation of the locomotive, a number of other grounds were proposed as a basis for the claim considered on its merits apart from the traditional craft right argument. Each of these has been evaluated.

Reference to two of the "other grounds" will be briefly made. It was implied by the B.L.E., though not made entirely clear, that one reason for its claim was to relieve the operating engineer from the risk of discipline being imposed by the carrier for the failures and shortcomings of others performing work in the engine room. As already indicated, a careful analysis of the discipline cases submitted to us does not indicate any problem of the type suggested—certainly no problem that can't be readily dealt with under the Adjustment Board machinery.

One final claim of the organization in this category will be mentioned. Mention has been made by B.L.E. representatives of what they consider a serious confusion about the relationship between the operating engineer, the maintainer and the supervisor. There is no possible basis for any confusion as respects the responsibility relationship between the engineer and the road supervisor on Diesel-electrics—that would be the same as on steam locomotives. The maintainer is not a member of the operating crew of the locomotive and, as noted by the 1943 Board, care should be exercised to see to it that he has no operating responsibilities. Nor is there any convincing evidence in the record of this case to show that he has such responsibilities. Because of the nature of the maintainer's work, moreover, the engineer lacks qualification to supervise it.

V

APPRAISAL OF THE B.L.E. CONTENTIONS THAT, IN ANY EVENT, THE DIESEL QUESTION CONSIDERED IN THIS PROCEEDING CAN ONLY BE RESOLVED BY AGREEMENT OF THE PARTIES AND THAT THE PRACTICAL NECESSITIES OF COLLECTIVE BARGAINING CALL FOR A MODIFICATION OF EXISTING SCHEDULES TO PROVIDE IN POSITIVE TERMS FOR THE EMPLOYMENT OF AN ASSISTANT ENGINEER IN THE ENGINE ROOMS

For reasons set forth in preceding pages, we have reached the conclusion that the claim of the B.L.E. in these proceedings cannot be supported on any logical or reasonable basis. There are neither established craft rights nor inherent equities in support of the organization contention. The evidence is overwhelming, moreover, that the engineers in 1943 and 1944 bargained away any claim for the employment of a second engineer and that they then intended so to do.

Counsel for the B.L.E. has strongly urged, however, that there is "a final statement of principle" which should be taken into account and which should even be given compelling weight by us.[1] In his view, the so-called fact-finding board should be looked upon as an integral part of the collective bargaining process and its members should, therefore, suggest "mediatory recommendations which they believe will bring about a settlement of the labor dispute, but that the Board should not and does not assist collective bargaining by reliance merely on the findings of fact as to what has transpired in the past as a means of developing a rule to govern the parties in the future."[2] Counsel for the organization went on to state that "the parties are entitled to a recommendation on this record which will reasonably and realistically settle the Diesel question once and for all between the parties."[3] It was then indicated by him that the case "cannot be settled on the terms of the senior counsel for the Carriers."

The same point was further developed in the Brief submitted on behalf of the B.L.E. after the close of the hearings. It was there suggested (p. 136) that a solution of the dispute under discussion can only be attained by collective bargaining and that the Emergency Board should "make definitive recommendations to-

[1] Counsel sought to reinforce this point by referring to parts of an address made by the chairman of this Board some time ago and which are reproduced on p. 479 of a book edited by E. Wight Bakke and Clark Kerr, entitled *Unions, Management and the Public.*

[2] Tr. 3794.

[3] Tr. 3795.

ward such a desirable achievement." It was additionally stated in the brief (p. 142) that: "An emergency board must, under the statute, seek to suggest a solution which will appeal to and satisfy the legitimate aspirations of the parties * * * and 'parties' here includes the locomotive engineers." After a brief summary of the employees' major concern about the issues involved in the case, these words appear in the engineers' final brief (p. 143): "Those locomotive engineers cannot be persuaded that a solution which fails to correct these dilutions in craft content and these threats to the pay and working standards of the craft is a sound and appropriate solution of the 'Diesel question'."

In short, the organization has called this Board's attention to the strength of the employees' belief, for whatever reasons, in the merit of their contentions. It is suggested by the B.L.E. that, in itself, this factor must be given careful weight since the agreement or the acquiescence of the engineers to conditions of employment is a necessary prerequisite, under collective bargaining, to sound industrial relations in the future. This position as enunciated by the B.L.E. has been carefully examined.

In carrying out its responsibilities under the Railway Labor Act, this Emergency Board is, of course, not an Arbitration Board. At the conclusion of the mediation process invoked in this case, under the Railway Labor Act, final and binding arbitration was proffered as a way of settling the dispute. Rejection by the carriers of that method of resolving the present dispute precluded arbitration even though acceptable to the engineers.

This Emergency Board was established because mediation was unsuccessful and because arbitration had been rejected. It is essentially a fact-finding board but, in accordance with practice under the Railway Labor Act and in conformance with its specific instructions, the duties of the Board extend beyond merely finding and stating the facts of the controversy upon which collective bargaining may later be resumed. The Emergency Board has a further responsibility—specifically and repeatedly emphasized by both parties to these proceedings—to make recommendations. This entails an expression of judgment with respect to the merits of the contesting claims. To be sure, our recommendations are not binding upon the parties. Experience has shown, however—and there is reference to this kind of experience in the record of this case—that Emergency Board recommendations will naturally be taken into account in any subsequent negotiations if they are based upon sound and convincing reasons. In recognition of these facts, we have comprehensively set forth in preceding pages the reasons for the recommendations that are made.

Our first task was to secure and evaluate the facts of the controversy. The responsibility for recommending what the Board considers a fair and equitable solution then had to be met. Under any sound concept of fair dealing, which is vital to our work and to genuine collective bargaining as well, it is elementary that a recommended solution must flow from the facts of the controversy. Were this not the case, the long days of hearings, the careful study of meticulously prepared data and exhibits and the deliberations of the Board would all add up to a travesty. This Board is firm in the belief that its recommendations must flow from the facts and data available to it.

At the same time, the Board is fully aware of the fact that the issue under consideration can only finally be resolved by an understanding between the B.L.E. and the carriers, or at least by their mutual acquiescence in some settlement. In our judgment, the report of an Emergency Board should be prepared, as this one has been prepared, with a full recognition of its intended use—to assist the parties in arriving at an agreed-upon answer to the dispute between them.

What is the significance of these characteristics of an Emergency Board in a case like this one where, after a thorough study and a considered evaluation of the voluminous testimony and the numerous exhibits submitted, the Board members without any reservations are of one mind that the facts simply do not support in any degree the contentions of the moving party? No member of this Board has any doubt whatsoever of his duty to report his conviction in this regard. No member of this Board has any doubt about the propriety of basing a recommendation for a settlement of the issue upon the facts so appraised even though that results in a recommendation against the claim of the moving party.

The conclusions just stated seem inescapable to us even in full cognizance of the belief in the equity of their claim expressed by the engineers. There is a fundamental difference about this matter, and we have the duty of expressing our judgment about the merits of the conflicting views. Where the facts are so conclusive against the claim under investigation, as by unanimous judgment of the Board members they are in this case, it would be highly improper and a disregard for elementary principles of fair dealing to recommend rights for one party, wholly unsupported by the facts, simply because that party is insistent about securing a stated objective. Such a course could also seriously impede collective bargaining. Agreed-upon settlements by the parties themselves would certainly not be encouraged if a strong reason for holding firmly to untenable positions were provided.

We do not imply, nor do we believe, that in promulgating the "final statement of principle," the engineers were urging us to recommend a right for them contrary to our conviction about the merit of their contentions. That we want to make very clear. It is evident to us that the "final statement of principle" was enunciated by the B.L.E. in the belief of its representatives that the existence of some equity and of some merit in its case had been demonstrated. Then there would clearly be some basis for proposing a so-called mediated settlement.

It is true that, in collective bargaining, the negotiating parties commonly work out compromise solutions to problems. Nor is that merely a "splitting of the difference" without rhyme or reason. The compromise solution is the essence of collective bargaining as respects subjects in which real rights and real equities possessed by both parties have to be reconciled in order that a meeting of minds may result. But, contentions and positions are also commonly abandoned in collective bargaining, just as the B.L.E. unmistakably abandoned its claim for an assistant engineer during the negotiations in 1943 and 1944 which resulted in the current schedules. That claim is no more tenable today than it was then. As a matter of fact, it is less tenable today because it was bargained away in 1943 and 1944.

We cannot recommend a change in existing schedules so as to effectuate, in whole or in part, the request of the B.L.E. for employment of an additional engineer in the engine room of Diesel-electrics because of our unqualified conviction that the engineers have no equitable claim to such employment. In the absence of such equitable claim, we believe it would be not only contrary to our duty but also destructive of genuine collective bargaining to recommend a "compromise settlement." The effectiveness of collective bargaining and of the disputes settlement machinery of the Railway Labor Act depends upon results that are protective of the equities and of the fundamental interests of both the organizations and the carriers.

Summary of Findings and Recommendation of the Board

In the preceding pages of this report, the Board has analyzed the principal reasons advanced by the B.L.E. in support of its contention that existing schedules should be changed so as to provide for the employment of an assistant engineer to give attention to the engines of certain specified types of Diesel-electric locomotives—including most of these locomotives now in service—by actually performing the work himself or supervising its perform-

ance by others, whenever the carrier requires such attention while the locomotive is enroute. Because of the number and nature of the subjects necessarily dealt with, it is appropriate here to provide a summary of our principal findings. In doing so, it is to be clearly understood that the findings here stated merely affirm those already set forth and in no way modify or supplement those more detailed findings previously stated.

Contrary to the B.L.E. contention, it is quite impossible to conclude, on any reasonable or logical grounds, that the employment of the additional engineer in the engine rooms of Diesel-electrics is necessary to preserve the traditional craft rights of engineers. There is no foundation in fact for the organization claim that either the actual performance or the continual, personal supervision of all engine room work enroute should be classified as a craft right flowing from the work engineers have traditionally performed and from the responsibilities which are imposed upon engineers by the carriers. The general responsibility of the engineer for the locomotive from draw bar to draw bar, while the train is en route, and his responsibility to instruct and to supervise the fireman (helper), cannot on any sound basis be interpreted as requiring the employment of an additional engineer on a full-time basis, solely and exclusively responsible for the engine room, primarily for the purpose of overseeing the work performed there by others.[1] Such a definition of "responsibility" finds no support in operating rules or established practices and is, in addition, neither reasonable nor practical.

The Board finds, moreover, that the craft right claimed by the B.L.E. in this proceeding has not been vigorously and uninterruptedly insisted upon by the engineers as their organization has contended before us. The facts are overwhelmingly to the contrary. The right of engineers either to perform engine-room work or to supervise such work by continuous personal observation was not even suggested by the organization in the various early negotiations with respect to manning Diesel-electric locomotives. Nor was any right of the engineers actually to perform engine-room work recognized in the early agreements made to deal with the Diesel question. But the right of the fireman to give unsupervised attention to engine-room machinery while the locomotive is enroute was specifically included in B.L.F. & E. agreements with the acquiescence of the B.L.E.

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[1] As noted previously in this report, the engineers have not claimed an exclusive right to perform the work done in the engine room but only to supervise such work as is performed by others. Indeed, as also noted in the report, the firemen have a contractual right to perform certain engine room work.

Any claim of the engineers for an additional engineer in the engine rooms of Diesel-electrics was, moreover, conclusively and affirmatively bargained away by them in the negotiations in which the current schedules were formulated. These negotiations were held following the issuance of the Report and Recommendations of the 1943 Diesel Board which recommended against the engineers' contention on a claim which was substantially the same as that pursued by the engineers before this Board. There is not the shadow of a doubt about the facts that, in the 1943 and 1944 agreements, the B.L.E. bargained away any claim for an assistant engineer to perform or to supervise work in the engine rooms, and that they intended to do so when they entered into these agreements.

We recognize that, as bargaining representative of the engineers, the B.L.E. may reassert a claim it had previously bargained away or abandoned. Under these circumstances, however, the emphasis shifts to the intrinsic merit of the claim and, in this case, away from preservation of established craft duties and responsibilities which has been urged by the B.L.E. as the principal motivating force behind its claim. The history of the previous bargaining, in which the claim was abandoned, becomes one of the factors important in appraising the equity and reasonableness of the organization purpose to reinstitute its claim. This Board has carefully appraised the B.L.E. claim for an assistant engineer on its intrinsic merit as set forth in considerable detail in the evidence before us. In this connection, we have given particular attention to the claim that employment of the second engineer is justified, apart from any traditional craft rights, because of the contribution to be made to the safe and efficient operation of the locomotive. This contention is entirely unsupported by the evidence before us. Other contentions relating to claims of intrinsic merit in the engineers' claim are similarly without significant support.

Finally, the Board evaluated the so-called "final statement of principle" proposed by the B.L.E.—the need for a recommendation by the Board which will be mediatory in nature and thus assist in bringing about a collective bargaining settlement between the parties. It is entirely proper to emphasize the relation of the Board's recommendation to the collective bargaining process. For reasons explained in the body of the report, the recommendation of the Emergency Board should flow from the facts available to it even though that results, as it does in this instance, in a recommendation against the claim of the moving party. This Board believes it would be highly improper to recommend rights

for one party, wholly unsupported by the facts, solely on an assumption that demands will be adamantly pursued at any event. Nor do we believe that such a proposition was intended by the B.L.E. to be a part of its "final statement of principle." On the contrary, we believe that the "final statement of principle" was set forth by the B.L.E. in relation to its conviction that there were equities shown by its presentation that should be given proper weight in the Board recommendation.

RECOMMENDATION

The Board recommends against the amendment in existing schedules requested by the Brotherhood of Locomotive Engineers so as to insure the employment of a second or additional engineer in the engine rooms of Diesel-electric locomotives in conformance with the specifications submitted in the original notices, the Memorandum of December 15, 1948, the Modifications of January 13, 1949, and February 9, 1949, as further explained in the hearings and arguments before this Board.

GEORGE W. TAYLOR, *Chairman.*
GRADY LEWIS, *Member.*
GEORGE E. OSBORNE, *Member.*

WASHINGTON, D. C., *April 11, 1949.*

APPENDIX A

LIST

Eastern Region

Akron, Canton & Youngstown Railroad Co.
Baltimore & Ohio Railroad Co.
    Baltimore & Ohio Chicago Terminal Railroad Co.
    Staten Island Rapid Transit Ry. Co.
Central Railroad Co. of New Jersey
Chesapeake & Ohio Railway Co. (Pere Marquette District).
Chicago, Indianapolis & Louisville Ry. Co.
Delaware & Hudson Railroad Corp.
Delaware, Lackawanna & Western Railroad Co.
Detroit, Toledo & Ironton Railroad Co.
Erie Railroad Co.
Grand Trunk Western Railroad Co.
Lehigh Valley Railroad Co.
New York Central Railroad Co. and all leased lines.
    Chicago Junction Ry. (C.R. & I.R.R. Co., Lessee).
    Chicago River & Indiana Railroad Co.
    Indiana Harbor Belt Railroad Co.
New York, Chicago & St. Louis Railroad Co.
New York, New Haven & Hartford Railroad Co.
Pennsylvania Railroad Co.
    Long Island Rail Road Co.
Pennsylvania-Reading Seashore Lines.
Reading Co.
Wheeling & Lake Erie Ry. Co.
    Lorain & West Virginia Ry. Co.

Western Region

Atchison, Topeka & Santa Fe Railway Co.
Belt Railway Co. of Chicago
Burlington-Rock Island Railroad Co.
Chicago & Eastern Illinois Railroad Co.
Chicago & North Western Ry. Co.
Chicago, Burlington & Quincy Railroad Co.

Chicago Great Western Ry. Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Chicago, Rock Island & Pacific Railway Co.
Colorado & Southern Railway Co.
Denver & Rio Grande Western Railroad Co.
Duluth, South Shore & Atlantic Railroad Co.
Mineral Range Railroad Co.
Elgin, Joliet & Eastern Ry. Co.
Fort Worth & Denver City Ry. Co.
Wichita Valley Railway Co.
Gulf, Colorado & Santa Fe Railway Co.
Great Northern Railway Co.
Houston & North Shore Railroad Co.
Illinois Central Railroad Co.
International-Great Northern Railroad Co.
Kansas City Southern Ry. Co.
Kansas, Oklahoma & Gulf Ry. Co.
Midland Valley Railroad Co.
Minneapolis & St. Louis Ry. Co.
Minneapolis, St. Paul & Sault Ste. Marie Railroad Co.
Missouri-Kansas-Texas Railroad Co.
Missouri Pacific Railroad Co.
New Orleans, Texas & Mexico Railway Co.
Northern Pacific Railway Co.
St. Louis, Brownsville & Mexico Ry. Co.
St. Louis-San Francisco Ry. Co.
St. Louis Southwestern Ry. Co.
San Antonio, Uvalde & Gulf Railroad Co.
Southern Pacific Company (Pacific Lines).
Spokane, Portland & Seattle Ry. Co.
Oregon Trunk Ry. Co.
Texas & New Orleans Railroad Co.
Terminal Railroad Association of St. Louis
Texas & Pacific Railway Co.
Union Pacific Railroad Co. (South-Central District).
Wabash Railroad Co.
Western Pacific Railroad Co.
Yazoo & Mississippi Valley Railroad Co.

Southeastern Region

Atlanta & West Point Railroad Co.
Western Railway of Alabama.
Atlantic Coast Line Railroad Co.
Central of Georgia Railway Co.
Florida East Coast Railway Co.
Georgia Railroad Co.
Gulf, Mobile & Ohio Railroad Co.
Louisville & Nashville Railroad Co.
Norfolk Southern Railway Co.
Richmond, Fredericksburg & Potomac Railroad Co.
Seaboard Air Line Railroad Co.

☆U. S. GOVERNMENT PRINTING OFFICE: 1949—839869

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