Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED MARCH 30, 1949
BY EXECUTIVE ORDER 10048 PURSUANT
TO SECTION 10 OF THE RAILWAY LABOR
ACT, AS AMENDED

To investigate an unadjusted dispute between the Southern Pacific Company (Pacific Lines), a carrier, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen.

(N.M.B. Case A-3016)

SAN FRANCISCO, CALIF.
APRIL 29, 1949

(No. 72)

SAN FRANCISCO, CALIF., *April 29, 1949.*

THE PRESIDENT,

The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on March 30, 1949, under section 10 of the Railway Labor Act, as amended, to investigate unadjusted dispute between the Southern Pacific Co. (Pacific lines) a carrier, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization, has the honor to submit herewith its report.

Respectfully submitted,

HARRY H. SCHWARTZ, *Chairman.*
ROBERT O. BOYD, *Member.*
DANIEL T. VALDES, *Member.*

REPORT

On March 30, 1949, the President of the United States issued Executive Order 10048 creating an Emergency Board, as follows:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE SOUTHERN PACIFIC COMPANY (PACIFIC LINES), A CARRIER, AND CERTAIN OF ITS EMPLOYEES.

WHEREAS a dispute exists between the Southern Pacific Company (Pacific Lines), a carrier, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provision 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 a large section of 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 said board shall be pecuniarly or otherwise interested in any organization of employees or any carrier.

The board shall report its findings to the President 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 the Southern Pacific Company (Pacific Lines) or its employees in the conditions out of which the said dispute arose.

(Signed) HARRY S. TRUMAN.

THE WHITE HOUSE,
March 30, 1949.

The President designated and appointed Harry H. Schwartz, of Casper, Wy., Robert O. Boyd, of Portland, Oreg., and Daniel T. Valdes, of Santa Fe, New Mexico, to make said investigation and report to him.

The time and place fixed for convening of the Board was at 9:30 a.m. on April 5, 1949, in the court room, fourth floor, United States Custom Court, in the Appraisers Building, San Francisco, Calif. At the time and place fixed, the Board met in executive session, and elected Harry H. Schwartz chairman, and confirmed the appointment of Ward & Paul of Washington, D. C., as official reporter for said hearing. The hearing was called to order at 10 a.m.

Appearances before the Board were as follows:

On behalf of the employees:

Young, Hudson & Rabinowitz, by Walter Chouteau, 605 Market Street, San Francisco, Calif., counsel for Brotherhood of Locomotive Firemen and Enginemen.

C. W. Moffitt, Pacific Building, San Francisco, Calif., chairman, General Grievance Committee, Southern Pacific Co. (Pacific lines) of the Brotherhood of Locomotive Firemen and Enginemen.

George H. Meade, Pacific Building, San Francisco, Calif., vice president, Grand Lodge of Brotherhood of Locomotive Firemen and Enginemen.

On behalf of the carrier:

J. J. Sullivan, manager of personnel, Southern Pacific Co. (Pacific lines) 65 Market Street, San Francisco, Calif.

Burton Mason, general attorney, Southern Pacific Co. (Pacific lines) 65 Market Street, San Francisco, Calif.

W. A. Gregory, Jr., attorney, Southern Pacific Co. (Pacific lines), 65 Market Street, San Francisco, Calif.

Thereupon Mr. Walter Chouteau, who had been newly assigned to represent the employees, informed the Board he had had no opportunity to familiarize himself with the disputes involved in the investigation and requested a ten-day recess of the hearing. Counsel for the carrier did not oppose. After consultation with attorneys for both parties the Board postponed further hearing until 9 a.m. April 11, 1949. From that date hearings continnued until April 26, 1949, when the hearing closed.

When the President issued his Executive order on March 30, 1949, there were pending between the parties 89 unadjusted disputes. Many of these were grievances and interpretations of agreements between the carrier and its employees. In the opinion

of the Board many of these disputes came under the jurisdiction of the First Division of the National Railroad Adjustment Board. On April 18, 1949, as shown at Page 751 of the transcript, the carrier and the employees entered into the following agreement:

San Francisco, Calif.,
April 18, 1949.

....

In accordance with the suggestion made by Mr. Schwartz, chairman of the Board, on April 16th, the representatives of the Brotherhood are agreeable to refer the cases enumerated herein to the National Railroad Adjustment Board, First Division, for hearing and decision, and to withdraw all said cases from this Emergency Board, provided the 6-month statute of limitation, contained in section 17 of the Wage and Rules Agreement, signed in Washington, D. C., August 1948, does not start to run against said case until the closing date of these hearings.

Discipline Cases

Case No.	*Case No.*	*Case No.*
31	37	40
32	39	46
35		

Time Claims

Case No.	*Case No.*	*Case No.*	*Case No.*	*Case No.*	*Case No.*
47	92	120	146	175	245
48	96	127	151	178	247
51	97	128	154	180	250
52	98	129	156	189	251
65	99	130	162	190	270
66	100	131	165	191	271
70	101	134	166	211	272
71	102	135	168	212	278
77	103	136	169	213	
79	104	140	171	216	
80	105	141	172½	238	
81	118	143	173	244	

It is hereby agreed that the above enumerated cases may be referred to the National Railroad Adjustment Board within six months from the closing date of this hearing, but not thereafter. This stipulation applies to the enumerated cases only, and shall not be cited by either party in connection with any other case.

After thus eliminating the above 75 cases from further Board consideration there remained 14 separate disputes included in the strike ballot, which is the basis for the President's Executive order of March 30, 1949. In these disputes the parties presented testimony and submitted the disputes to us after argument by counsel.

Of these remaining disputes a number of them involved the consideration of grievances and claims arising out of agreements

between the parties which properly could have been submitted to the National Railroad Adjustment Board, Division No. 1. We believe it is not a desirable practice for cases of such character to be brought to an Emergency Board, that better relations between the parties will be developed if all such cases are, when necessary, taken to the Adjustment Board. However, as most of the cases on this docket referrable to the Adjustment Board, have, by stipulation, been withdrawn; and as only delay would result if the remaining cases were not considered by this Board, it was determined, in this instance, to consider them on their merits, and to attempt a final determination of such cases in these proceedings. This matter, though raised in a number of cases discussed hereafter, will not, therefore, be further considered.

After careful consideration of the evidence, exhibits and argument of counsel in each dispute the Board submits its reports and recommendations therein, in the order in which the disputes were heard, as follows:

CASE NO. 6.

Organization's Request.

> Request that men employed as student firemen be compensated in an amount sufficient to defray expenses incurred while making student trips and taking necessary examinations to qualify as firemen. (Exhibit 6).

Statement of Facts.

It has been the practice of the Southern Pacific Co. (Pacific lines) to require men who make application for employment in engine service as firemen to make a number of student, or qualifying trips. The number of trips required is not rigid, nor is the length of the qualifying time set at a fixed number of days. When the carrier's business is heavy and the need for firemen urgent, the number of trips and qualifying days is reduced so that the men can be placed on the board and made available for service within the shortest possible time. Conversely, when the need for firemen has not been urgent, the applicants (students) are required to make student trips on each portion of the seniority district where they worked, and the number of days was specified at thirty (30) or more (Exhibit 6, Attachments 2 and 3). Normal expenses for living away from home are incurred by the student on such trips as he cannot complete in 1 day.

The student is instructed by an experienced fireman who is

present and responsible for every function which the student may perform (Trans., p. 89, 127); and he performs no service for the carrier on his own account (Trans., p. 126, 127, 128).

During the student period the applicant receives nothing from the carrier either as remuneration for expenses nor as compensation. It is admitted by The Brotherhood that there is no present rule in the Southern Pacific (Pacific lines) Firemen's Agreement requiring payment of expenses to students (Trans. 129). The Brotherhood proposes a new rule to accomplish this purpose but no specific language has been suggested.

Contentions of the Parties.

It is the contention of the Brotherhood that by the payment of expenses to students a better class of men will be attracted to the service and that it will be easier for the carrier to maintain a corps of experienced men for firemen service (Trans. 84 et sequi).

It is the contention of the carrier that students are not employees; that the present system attracts a better and more responsible type of men than would be secured otherwise (Trans. 174 – 175).

Discussion and Recommendations.

There is no showing that under existing conditions the present system of recruiting men for positions as firemen is failing to produce a corps of new men adequate to meet the needs of the carrier. When an applicant for a fireman's position applies he is advised of the requirements respecting student trips, that such are made without compensation and without reimbursement for expenses. This requirement tends to establish the good faith of the applicant. If he seriously intends to become a fireman, the very modest requirements of the carrier will not deter him. The necessity for a rule as proposed by The Brotherhood has not been established.

The Board therefore recommends that the request of the Organization as embodied in Case No. 6 (A-3016) be not adopted.

CASE NO. 8.

Organization's Request.

> Carrier's refusal to reimburse firemen for Pullman and dining car expenses when dead-heading from parent Division to other Divisions as borrowed firemen (Exhibit 8).

Statement of Facts.

Under the provisions of article 44, Southern Pacific (Pacific lines) Firemen's Agreement, employees (firemen) are permitted to move temporarily from their home seniority district to another. This is to enable firemen to move from a Division where work is slack into another seniority district where work is available. Ordinarily men making such move are furloughed firemen. (Trans. 221 – 222 and 229). No allowance for travel expense is made to the firemen when such move is made; and they are not entitled to deadhead allowance (Trans. 223, Exhibit 1, Art. 31, p. 79). The transfer is entirely voluntary and permissive (Trans. 236).

Contention of the Parties.

It is the contention of The Brotherhood that, while the transfer is of advantage to the employee, it is also advantageous to the carrier because the carrier has the advantage of the services of an experienced fireman and is not under the necessity of training students (Exhibit 8, Trans. 236); that in comparable situations with other craft, such as the shop men, the travel expense is allowed (Trans. 234); and that the company, while not commanding the transfer, is in fact gaining the same advantage as in the case where they actually transfer an experienced fireman in which instance they pay, in lieu of travel expenses, deadhead mileage (Trans. 236, 237, 238).

The carrier contends that while a furloughed fireman is traveling for work on a new division he is not an employee until assigned a place on the new work list (Trans. 248, 249); that the transfer is wholly at the option of a furloughed employee (Exhibit 9) and that this case is covered by the agreement of January 17, 1944, entered into in Washington, D. C., relating, among other things, to allowances for away from home expenses (Trans. 245).

Discussion and Recommendations.

From the record before us it appears that the request for reimbursement for meals and Pullman expense while enroute to a new division under the provisions of article 44 of the Southern Pacific (Pacific lines) Firemen's Agreement is made on behalf of furloughed firemen at a time when they are making a voluntary move and are not employees of the carrier. It also appears that the agreement of January 17, 1944, made in Washington, D. C., and relating to away from home expenses does not cover the situation presented by this case.

Without doubt the privilege accorded the firemen under article 44 (supra) to move from one Division to another is of advantage to both the men and the carrier. The men can move from a division where work is slow to a division offering better advantages for steady employment; and the carrier avoids the necessity of training new men in the locality where otherwise they would be short-handed (Trans. 252). However, so long as this arrangement is entirely voluntary (Trans. 254–255) and the men are free to accept the employment in a new seniority district and are free to leave such temporary work at any time, it is unreasonable to require the carrier to pay the meals and Pullman expense of such "volunteers."

No proposal has been made to this Board for a rule encompassing the payment of travel expense and a limitation on the minimum time a transferee would be required to spend on a new seniority roster. It is probable that other features, not presented to this Board, should be considered in connection with any such broad proposal. The case here, however, presents the single proposition, i.e., payment of travel expense under article 44 of the Firemen's Agreement.

The Board therefore recommends that the request of the Organization as embraced in Case No. 8 (A–3016) be not adopted.

CASE NO. 9.

Organization's Request

> Carrier's refusal to grant enginemen who reside at points between San Francisco and San Jose, inclusive, Coast Division, free transportation in the form of annual or card passes. At present, enginemen who do not possess a meritorious service annual must go to roundhouse to obtain a trip pass, which is furnished only when men are called to deadhead and not in going to and from their residences (Exhibit 9).

Statement of Facts.

This request is on behalf of firemen who do not have sufficient seniority to obtain an annual pass. The firemen and engineers without annual passes must go to the roundhouse for a trip pass furnished free by the carrier only when called to deadhead. There are engine service employees living in San Francisco, Redwood City, Burlingame, San Bruno, San Carlos, Palo Alto, and San Jose, who are called to accept service in either San Jose or San

Francisco and those assigned with home terminal at San Jose or San Francisco are required to furnish their own transportation to the terminal where assigned.

The majority of the engine service employees involved are extra men and are subject to call at all times, so they can not be placed in the same category as other employees who have regularly assigned hours either day or night.

One-half rate book pass (good between two points only) is now being furnished by the carrier to the employees. There is no present rule which is applicable.

Contentions of the Parties.

The Brotherhood contends that the request is a reasonable one (Trans. 304), and that the fact that other employees may not get free transportation is not a valid basis for the carrier to refuse this request (Trans. 306).

The carrier contends that the employees' request is not a grievance matter and if it is a request for a new rule, The Brotherhood of Locomotive Firemen and Enginemen has no right to negotiate a rule covering engineers (Trans. 306–307); that the granting of passes is a gratuity solely controlled by the carrier (Trans. 307); that to grant the employees' request would be to discriminate against other employees under similar circumstances (Trans. 308); and that no undue hardship is placed on employees under the present system of granting transportation passes (Trans. 309).

Discussion and Recommendations

The carrier's argument that the granting of free transportation to the employees involved in this case would be to discriminate against hundreds of others similarly situated appears to be reasonably valid. While the granting of passes is a gratuity, it is not necessarily a subject outside of the scope of negotiation between the parties to a rule. However, on the showing here, The Brotherhood has not shown undue hardship under the present system. Nevertheless it would appear feasible for the carrier to develop a more convenient system of one-half rate passes. But such arrangement should have system-wide application.

The Board, therefore, recommends that the request of the Organization as embraced in Case No. 9 (A–3016) be not adopted.

CASE NO. 7

Organization's Request

(1) Request that extra firemen be allowed $4 per day "away-from-home expense" when called to leave their home terminal and work at some outside point. (2) Request that furloughed firemen who accept temporary employment as borrowed firemen on other Divisions, or away-from-home terminal, be allowed $4 per day to defray their away-from-home expense. (Exhibit 12).

Statement of Facts

This request is for a supplemental agreement to provide for the payment of $4 per day to extra firemen when assigned at a tie-up point which is not their home terminal and for the same compensation for furloughed firemen serving away from their home terminal. Such men incur living expenses for which they are not reimbursed under existing rules. Extra firemen and furloughed firemen take assignments away from home voluntarily and are free to return to their home terminal at any time. This request is for men not now covered by away-from-home allowances provided in the present rules.

Contentions of the Parties

The Brotherhood contends that a hardship is being placed on employees affected by nonpayment of expense allowance, due to unusual and extra living expenses, that it is of benefit to the carrier to be able to borrow extra firemen and furloughed firemen for use where needed most, and that the terms of the 1944 Washington Wage Agreement were never intended to cover the present request; and that even if the conclusion were reached that the 1944 agreement covered the present request, that agreement did not preclude further demands by the organization.

The carrier contends that the demand now presented by the Brotherhood was met by a 5 cents per hour increase agreed to in the 1944 Supplemental Agreement (Exhibit 13) ; that the demand was made during the war emergency and arose from war time conditions; that the Brotherhood has not shown a hardship justifying the granting of its request; that the granting of the employees' request would result in discrimination against other employees in similar circumstances; and that the practice of granting "away from home" expenses on airlines and on the

Pacific Greyhound Lines is not a proper guide for the determination of this issue.

Discussion and Recommendations

The principal argument advanced in behalf of the proposal is that if experienced firemen are not transferred from one district to another for temporary service when a shortage of firemen exists, the carrier would be required to employ new firemen and in so doing would incur the financial burden of training the new men.

Further, the carrier, in many instances, would be required to compensate the firemen working on the district where the shortage of firemen existed, at overtime rates, account not having sufficient firemen to make reliefs. By compensating borrowed firemen in part for their expenses the carrier would be assured of being able to obtain experienced and competent firemen at points where shortages exist, at a minimum of cost.

But this is a responsibility of management. It is primarily the duty of the carrier to have an adequate working force available. Further, the employees who would be covered by the proposed rule are away-from-home on a volunteer basis.

It is also apparent that by granting this rule the differential in pay now existing between men on assigned list, and extra boards would, in large measure, be extinguished.

It also appears that this request was instigated during the war in an effort to assist in a solution of the manpower problem. That problem does not exist today.

And, further, even though the average daily wage of the employees involved in this case is reduced to about $7 a day as a result of having to pay their own "away from home" expenses, there has been no sufficient showing of hardship to warrant the granting of the Union's request.

No showing was made by The Brotherhood that firemen from extra lists or furloughed firemen receive expense allowances from other carriers.

The Board therefore recommends that the Organization's request in Case No. 7 (A—3016) be not adopted.

CASE NO. 12

Organization's Request

> Protest against the carrier arbitrarily reducing pay of firemen operating Diesel yard engines from Firemen's pay to Helper's pay; and request that the

Firemen's rate be reestablished, also that check-back be made to November 16, 1942, and firemen in this class of service allowed the difference between firemen's and helper's pay—(Exhibit 16).

Statement of Facts

From the time the carrier first placed Diesel locomotives in yard service until November 16, 1942, they paid a fireman (helper) at the rate specified for steam firemen in the Southern Pacific (Pacific lines) Firemen's Agreement (Exhibits 1 and 16; Trans. 451). The first Diesel was placed in yard service in 1939 (Trans. 448). After notifying the Brotherhood that the rate being paid the second man on Diesels in yard service was not in accord with carrier's interpretation of existing contract, the rate was, on November 16, 1942, changed to helper's rate (Exhibit 17). This latter rate is less than the rate for steam firemen (art. 28, Exhibit 1). The carrier continued to pay this rate from November 16, 1942, until October 16, 1948, when, by national agreement, the discrepancy in the rates was removed (Trans. 514–519).

Agreements between the Parties

The pertinent provisions of the several agreements to which reference was made are:

Extracts from Decision 178, Railway Board of Adjustment No. 1.

In the Engineers' Agreement, article 29, section 4, and Firemen's Agreement, section 59, it is provided that on lines that have been, or may be, electrified, the rates of pay and working conditions provided for in steam service shall apply. However, the rates on steam locomotives are fixed according to weight on drivers or dimension of cylinders, and the company takes the position that such bases are not applicable to motor cars or electric motors.

Further, representatives of the company and employees, respectively, shall endeavor to work out a table of rates for electric locomotives along lines herein suggested, and shall also try to agree upon equitable rates for multiple unit or other self-propelled cars which cannot be compared or measured by either weight on drivers or draw bar pull.

Extracts from Diesel Agreement of 1937 (Robertson Agreement.

I. Effective March 15, 1937, except as defined in section III, a fireman (helper), taken from the ranks of the firemen, shall be employed on the following locomotives used in road or yard service:

(a) Diesel-electric, oil-electric, gas-electric, other internal combustion, or steam-electric, on stream-lined, or main line through passenger trains.

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

II. (b) Rates of pay for helpers on electric locomotives, as set forth in individual schedules, shall apply to firemen (helpers) in all other road service, and yard and transfer service, employed as a result of section I(b) hereof. In the absence of such provisions in individual schedules, the rates of pay for helpers on electric locomotives in the respective territories shall apply.

IV. Existing agreements between any individual railroad and its employes covering any of the subject matters of this agreement, and which are considered by the employes to be more favorable, shall remain unchanged.

V. Except as specifically provided herein, this agreement does not modify or supersede existing agreements covering rates of pay, rules, and working conditions of locomotive firemen, hostlers, and outside hostler helpers.

Extracts from Southern Pacific (Pacific Lines) Firemen's Agreement.

Article 28, Sec. 1. The minimum rate of wages per day shall be:

	Firemen	*Helpers*
Weight on drivers:		
Less than 140,000 lbs.	$6.07	$6.07
140,000 to 200,000 lbs.	6.19	6.07
200,000 to 300,000 lbs.	6.31	6.07
300,000 lbs. and over	6.47	6.23

	Firemen
Mallet Type:	
Less than 275,000 lbs.	$7.19
275,000 lbs. and over	7.43

Article 30. Electric Service.

SEC. 1. The company concedes to the Organizations the right to negotiate, maintain and protect, under the protective laws of their Organizations, without segregation of committees, schedules covering rates of pay, rules of seniority and working conditions governing enginemen, trainmen and yardmen in both steam and electric service.

SEC. 2. Portions of the Pacific Lines in Alameda County and in Oregon that have been electrified, and any portion of the Pacific Lines that may hereafter be electrified and any new lines constructed for operation in connection therewith will not be segregated insofar as it affects the right of enginemen, trainmen and yardmen, in either steam or electric service, or, of the System General Committees to legislate for and represent such employees, (and the rates of pay and working conditions provided for in steam service shall apply), subject to agreement provisions. None of the above to apply to street car service.

SEC. 3. Firemen shall have the preference for the positions of helpers on electric locomotives or multiple unit trains.

SEC. 4. Before an employee in the exercise of his seniority rights is assigned to runs in the electric service from steam service, or vice versa, the company shall have the right to establish and require such tests and standard of efficiency as it may deem necessary to satisfy itself of the competency of the employee for the position desired in order to fully provide for the safety

of operation of its trains. It is agreed that an engineer who has had experience in freight service only, going into electric service and remaining therein a number of years, desiring to exercise his seniority in fast steam passenger service, may be required to qualify by first going into steam freight or local service or both on the same district for a reasonable period.

SEC. 5. The term "helper" as used in this schedule will be understood to mean the second man employed on electric locomotive or other than steam power, and firemen shall have the preference for the positions of helpers.

SEC. 6. Wherever electric or other power is installed as a substitute for steam, or is now operated as a part of their system on any of the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for positions as engineers or motormen, and locomotive firemen for the positions as firemen or helpers on electric locomotives; but these rates shall not operate to displace any men holding such positions as of April 10, 1919.

(This Section is taken from Article VI, Supplement No. 24, and the inclusion by the company was wholly account decision Case No. 27/425.)

Contentions of the Parties

The contention of the Brotherhood is that the firemen (helpers) on diesel electric locomotives in yard service should have been paid from November 16, 1942, to October 16, 1948, at the rate applicable to firemen on steam locomotives (Exhibit 16) and they rely on Decision 178, Railway Board of Adjustment No. 1, article 30 of the Southern Pacific (Pacific Lines) Firemen's Agreement and the Diesel Agreement of February 28, 1937 (Robertson Agreement), (Exhibit 16).

The contention of the carrier is that the second man on diesel yard engines should have received pay in accordance with the schedule set forth in article 28 of the Firemen's Agreement (Exhibit 1); that the agreement of February 28, 1937 (Robertson Agreement), was the first contractual undertaking by the parties requiring the employment of a fireman (helpers) on diesel electric locomotives in yard service and that the rate of pay for such firemen (helpers) was that scheduled in Article 28 for helpers (Exhibit 17, Buckley letter of June 13, 1946).

Discussion and Recommendations

The chronological development of the provisions in articles 28 and 30 is as follows: A rate for electric helpers was established in 1919. Sections 1, 2, and 4 of article 30 were adopted in 1913; section 3 in 1915; section 5 in 1909; article 28 and 30 were incorporated in their present form (except for rates) in 1929; and in 1937 the Diesel Agreement was signed.

Stress is laid by the Brotherhood (Exhibit 16) on the language of Decision 178 of the Railroad Board of Adjustment No. 1. This decision was made in 1919 and was followed by the adoption of article 28 wherein rates for "helpers" were established. Obviously, the rates for "helpers" applied only to electric locomotives for there were no helpers on steam locomotives. It is also argued by the Brotherhood that section 2 of article 30 established the rate of pay for steam service as the rate for firemen (helpers) on electric locomotives. But section 2 applies only to electric lines, and contains no reference to rates of pay of firemen (helpers). Section 5 of article 30, when read in connection with the entire section amounts only to a definition of the second man used on electric locomotives or other than steam power.

When the different provisions of the agreement were adopted by the parties they could not have had in mind rates of pay for "helpers" on diesel locomotives, and the first contractual undertaking by the parties on the subject of diesel helpers (firemen) was in 1937, prior to the installation of the first yard diesel on the Southern Pacific system. Argument is also made that because the carrier paid the steam rates for the first 3 years, that therefore the steam rates applied. A practice followed for a long time may aid in clarifying ambiguous provisions of a contract, but does not change the terms of the contract.

We have been unable to find a rate of pay for helpers on electric locomotives, other than as specified in article 28 for helpers, and therefore find that the provisions of paragraph II (b) of the agreement of February 28, 1937, established the rates of pay for firemen (helpers) on diesel locomotives.

The Board therefore recommends that the request of the organization as embraced in Case No. 12 (A–3016) be not adopted.

CASE NO. 13

Organization's Request

> Carrier's refusal to assign a fireman to diesel yard engines weighing 90,000 lbs. or less on power driven wheels; and that check-back be made allowing the fireman standing first out on the extra board at terminal where this power is being operated one day's pay at firemen's rate applicable to engines weighing less than 140,000 pounds on drivers (Exhibit 20).

Statement of Facts

This case involves the same provisions of the Firemen's Agree-

ment as are set forth under Case No. 12, supra, and are incorporated here by reference.

In addition to the chronological statement of the development of those articles of the agreement, the following summary should be noted:

On October 31, 1936, the demand was first made on a national basis for the employment of a fireman on all types of power on road, yard, or any other class of service;

On February 28, 1937, the Robertson, or Diesel Agreement, was signed, providing for the employment of a second man on all locomotives, except those with 90,000 pounds or less weight on drivers;

On May 10, 1941, the national organization of the Brotherhood served notice on practically all railroads in the United States of its demand for the employment of a fireman (second man) on all locomotives;

On November 27, 1943, the Western Diesel Agreement was signed, which provided for the employment of a fireman on all locomotives except Diesel-electric, steam-electric, oil-electric, gas-electric locomotives of 90,000 pounds or less weight on drivers in service performed by yard crews within designated switching limits;

On June 30, 1947, a demand was made by the national organization of the Brotherhood of Locomotive Engineers for the hiring of a second man on all locomotives. This demand is now before another Emergency Board.

Contentions of the Parties

The Brotherhood contends that its position is supported by rules that exist in its agreement with the carrier, specifically article 30 and the sections thereof, and that the Robertson Agreement or subsequent agreements made on a national basis contained savings clauses which state that "existing agreements between any individual road and its employees covering any of the subject matters of this agreement and which are considered by the employees to be more favorable shall remain unchanged"; and article 5 of that agreement: "Except as specifically provided herein, this agreement does not modify or supersede existing agreements covering rates of pay, rules and working conditions of locomotive firemen, hostlers and outside hostler helpers."

The Brotherhood further contends that its request for a check-back is supported by other retroactive awards made by the National Railroad Adjustment Board.

The carrier contends that no agreement existed prior to 1937

relating to the manning of other than steam power in the circumstances covered by this case, and particularly article 30 of the agreement contains no provision of that character. The 1937 Robertson Agreement contained the first specific provisions respecting the use of firemen on Diesels' and that the 1943 Western Diesel Agreement continued the exception that firemen need not be employed on light-weight Diesels in yard service, and that since this claim was pending at the time the agreement was made, it disposes completely of the current claim; that the present claim, or its precise equivalent, is now before an Emergency Board whose appointment antedates this one; that the claim in this case is probably referrable to and should be disposed of by the Special Diesel Committee under either the 1937 agreement or the 1943 agreement, and if it is not referrable to the Special Diesel Committee, then it is properly referrable to the National Railroad Adjustment Board.

It further contends that there is no prior award or decision rendered on this property which has any bearing upon these issues.

Discussion and Recommendations

The Brotherhood premises their contention on paragraphs IV and V of the Diesel-Electric Agreement of 1937 (Supra), claiming that these provisions of the Diesel Agreement saved to them the agreements then in effect on the Southern Pacific system; and then reliance is placed on sections 2, 5, and 6 of article 30 as establishing working conditions for firemen on diesels, i.e., the employment of a helper on all such locomotives.

It was our conclusion in Case No. 12 that the articles referred to and relied on there, which are the same here, did not establish the same rates of pay and working conditions on diesel locomotives as on steam power and that the terms of the Diesel Agreement of 1937 were applicable. It therefore follows that the provisions of the 1937 Diesel Agreement are applicable here, and the carrier is not, under the provisions of I (b) thereof required to employ a fireman (helper) on diesels of less than 90,000 pounds weight on drivers.

We therefore recommend that the organization's request embraced in Case No. 13 (A–3016) be not adopted.

CASE NO. 14

Organization's Request

> Request that 3900 and 4000 class engines and other types of steam locomotives, with space of less than

3 feet between boilerhead and front of cab on back-up Mallet type engines and less than 3 feet from boilerhead to back of cab on conventional type engines have the cab moved back when these engines are undergoing heavy repairs so as to allow not less than 4-feet clearance (Exhibit 22).

Statement of Facts

The basis of the Brotherhood's request lies in the fact that on a number of locomotives of the carrier the space between the boilerhead and the back of the cab, in conventional type engines, and between the front of the cab and the boilerhead in the back-up Mallet type engines, is less than three feet. By reason of this narrow space the corner of the seat box is so close to the boilerhead that it is difficult for the engine crew, on both sides of the cab, to get in or out of their seat. This is especially true when the head brakeman is occupying his seat. Thus, in times of emergency, it is difficult for the fireman (or engineman) to leave his seat quickly (Trans. 659; Exhibit 22, Attachment). The first request of this nature was made in 1937 (Exhibit 22, Attachment 1). Thereafter the carrier adopted a program of either scrapping the locomotives affected by the request or of remodeling the cabs when the engines were in the shops for a major over-haul. This program was pursued except during the war when a number of engines were over-hauled without remodeling the cabs. Since the war the carrier has remodeled the cabs on all engines having less than 3 feet clearance in the cab when such were in the shop for a major over-haul (Trans. 713). When the request was first made in 1937 there were 262 engines having a clearance in the cab of less than 3 feet in service. At the present time there are 62 (Trans. 699). Of these present engines all but 21 are due to be replaced by diesels or scrapped. When any of these 21 engines are in for major over-haul the carrier plans to remodel the cabs in accordance with the request (Exhibit 23; Trans. 691–697, 700–702). Engines to be retired or scrapped do not come under the request. (See Brotherhood's Request supra; Trans. 697.)

The Issue

The issue between the parties is that the Brotherhood desires a binding promise from the carrier that the cabs will be remodeled as requested; and the carrier is unwilling to commit itself to a program from which it may not deviate. However, it must be noted that no request for a rule is made (Trans. 735).

Discussion and Recommendations

Two members of the Board inspected two of the engines affected by this request. From such inspection and from the testimony presented it is reasonable to conclude that the Brotherhood's request is a reasonable one; and that by compliance therewith the working conditions in the cabs of the engines now having less than 3-feet clearance from boilerhead to back (or front) of cab will be improved. The carrier has made definite assurances to the Brotherhood that their request will be carried out (Exhibit 23; Trans. 717, 719, 730). It must be assumed that these assurances to the Brotherhood by the carrier's assistant general manager and assistant manager of personnel (Exhibit 23); by the carrier's assistant general superintendent of motive power (Trans. 701) and by the carrier's counsel in this proceeding (Trans. 717, 719, 730) are made in good faith, with the present intention of carrying them out, that they will not deviate from such plan except under most compelling circumstances such as war (Trans. 733). This program, if carried out, will be satisfactory to the Brotherhood (Trans. 680).

As no request for a rule is made, it is the Board's recommendation that Case No. 14 (A–3016) be continued indefinitely; that if, without good cause, the carrier deviates from their expressed intentions set forth in their letter of January 17, 1949 (Exhibit 23), the Brotherhood shall be free to renew their request without prejudice.

CASE NO. 26

Organization's Request

> Carrier's refusal to cancel their instructions of April 27, 1946, wherein the carrier's representative placed an arbitrary interpretation on section 1, article 42, Southern Pacific Firemen's Agreement, requiring all firemen who are in line for promotion to position of locomotive engineers to have 2 years' (610 days) in main line steam locomotive service, and that all firemen who have been denied the right of promotion under this erroneous interpretation be called in immediately for examination for promotion to the position of engineer and given date as engineer in their relative standing on the firemen's seniority roster.

Statement of Facts

On April 27, 1946, the carrier announced that thereafter it would require firemen to perform 610 days' service as firemen in main line steam locomotive service as a prerequisite to being called for promotion to the position of engineer. This requirement was subsequently modified to include main line diesel service and the number of days reduced to 180.

Contention of the Parties

The position taken by the Brotherhood is that experience qualification requirements have been negotiated between various carriers and their employees (Trans. 942); that a similar rule has been negotiated between the carrier subject to this dispute and the Brotherhood of Locomotive Engineers (Trans. 492); that the rule as it now stands is a change in the rate of pay rules and working conditions and comes under the applicable provision of the Railway Labor Act; (Trans. 943); that the application of the rule since April 27, 1946 has been a violation of the Firemen's Agreement (Trans. 943–944); and that there is no argument between the parties as to the required number of trips (Trans. 946–947).

The carrier takes the position that it cannot share or delegate its duty of operating its railroad safely (Trans. 951); that it has a primary right to prescribe qualifications of its employees (Trans. 951); that it may properly decline to bargain with respect to qualification, and that there are no provisions in the Firemen's Agreement limiting the carrier's right to prescribe employment or promotion qualifications (Trans. 952).

It further contends that there has been no abridgments or amendments of article 42 of the Firemen's Agreement.

Discussion and Recommendations

There are two aspects or phases to this dispute, namely, *(a)* Should the carrier's right to prescribe promotion qualifications be restricted by requiring it to enter into agreements with the employees with reference to such qualifications? *(b)* Should the carrier's exclusive right to establish promotion qualifications extend to the unilateral interpretation of existing agreements with reference to the seniority rights of the employees involved?

The carrier has stated its willingness to sign an agreement regarding the specific promotion requirement which brought about the dispute but with the stipulation that the carrier maintain the exclusive right to establish promotion qualifications. The

Brotherhood is agreeable to the carrier's offer for disposition of the specific qualifying requirement involved, but will not accept the carrier's desire to qualify the rule to the extent of protecting the carrier's exclusive right to establish such qualification. The Board notes that there is nothing in the present agreement between the parties authorizing the carrier to prescribe hiring and promotion qualifications but there is nothing in the agreement restricting this right. The carrier's exclusive right to establish promotion qualifications should not be restricted or limited since the carrier alone has the responsibility under the law for the safety of its operation.

The seniority rights of the employees involved in this dispute derive from agreements between the carrier and the employees but article 42 of the Firemen's Agreement nowhere provides what qualifications a fireman must have to enter the ranks of engineers. It should be noted, however, that there is material difference between rules relating to promotion and hiring and rules dealing with qualifications of those who are to perform the very responsible work of operating engines. The term "when qualified" in section 1, article 42 of the Firemen's Agreement relates to promotion and hiring qualifications and not with qualifications to perform the work. By retroactively applying the work qualification to the seniority provisions of the agreement, a carrier has arbitrarily placed a new and different meaning on this term and thereby has deprived certain employees not meeting the new qualification requirement of the carrier of their rights to promotion as provided for in article 42, section 7. The parties should negotiate an agreement whereby men who have been deprived of their seniority rights by the retroactive application of the new company requirements are given an opportunity to regain their rightful place on the seniority list and to prevent similar cases arising in the future. No specific language of such agreement has been submitted to us and we are unable to recommend specific terms of such a proposal.

Therefore, subject to the foregoing, we recommend that the organization's request embraced in Case No. 26 (A–3016) be not adopted.

CASE NO. 28

Organization's Request

> Carrier's refusal to comply with sections 1, 4, 5 and 7, article 42, Southern Pacific Firemen's Agreement, in declining to give Fireman R. M. Sachtler, Port-

land Division, a seniority date as an engineer as of April 28, 1942, after having taken and successfully passed the mechanical and transportation examinations for promotion to position of locomotive engineer on April 13, 30 and May 2, 1942, account temporary physical restrictions placed on him by local doctor, A. L. Berkley of Portland, Ore. (Exhibit 29).

Statement of Facts

Fireman R. M. Sachtler was called to take an examination for promotion to position of engineer, and on April 6, 1942, he successfully passed the examinations on mechanical and transportation rules. On April 10, 1942, he was given a physical examination and because of an ailment he was not passed by Dr. Berkley. On April 13, 30, and May 2, 1942, he performed service as an engineer on a yard assignment in the Brooklyn Yard, Portland. On April 28, 1942, Fireman M. Tasnady, who was junior as fireman to Fireman Sachtler but had successfully passed the required examination for promotion to engineer, was used as engineer. Because Fireman Sachtler had failed to pass the physical examination the carrier refused to give Sachtler a seniority date as of April 28, 1942, on the engineers' working list (Attachments 1 and 2, Exhibit 29). When Sachtler served as engineer on April 13, 30, and May 2, 1942, he was junior to another fireman his senior standing for promotion. Some time in 1942 Sachtler was permitted to work a yard assignment as fireman. In 1944 he was sent to the hospital in San Francisco and thereafter in 1944 Drs. Allen and Guilfoil reported him free from his ulcer condition (p. 2, Exhibit 29; letter of October 8, 1945, Dr. Berkley to Hopkins, Exhibit 30). Sachtler was continued in a position as fireman in yard assignment, but the carrier refused to give him a seniority date as an engineer.

The provisions of the firemen's schedule applicable to the dispute are the following sections in article 42, Southern Pacific Co. (Pacific lines) Firemen's Agreement (Exhibit 1).

SEC. 1. Firemen shall rank on the firemen's roster from the date of their first service as firemen or hostler when called for such service, except as provided in Section 14, and when qualified shall be promoted to positions as engineers in accordance with the following rules:

SEC. 2. Firemen shall be examined for promotion according to seniority on the firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

SEC. 3. Upon failure to pass or refusal to take first examination, mechanical or trasnportation, a fireman will forfeit the right to promotion for six months, at the end of which time he must take or refuse second examination. In case of refusal or failure on second examination, his seniority rights will be arbitrarily reduced to one year, but he will be permitted to exercise his original seniority on any unassigned extra list on his seniority district, except in the application of Section 4, Article 23; Section 11, Article 29; Section 9, Article 37; Section 1, Article 39; or Section 6, Article 40, when he will be restricted to seniority date established after having failed or refused second examination.

SEC. 4. Firemen having successfully passed the required examination for the handling and care of locomotives, and knowledge of rules and regulations adopted and enforced by the Operating Department, shall be eligible as engineers. Promotion and seniority as road engineer to date from first service as engineer on any class of locomotive.

SEC. 5. If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

NOTE—Qualification, as referred to herein, is not intended to include learning of road or signals.

SEC. 7. No fireman shall be deprived of his right to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the Company's service, by sickness, or by other proper leave of absence. Provided, that upon his return he shall be immediately called and required to take examination and accept proper assignment.

Contentions of the Parties

It is the contention of the Brotherhood that when Sachtler passed the mechanical and transportation rules and thereafter a juniorman ran an engine (Sachtler being his senior), he was automatically promoted and dated as an engineer (Trans. 1001). In this contention the Brotherhood relies on the provisions of article 42, supra.

It is the contention of the carrier that Sachtler was never passed physically for unrestricted service as an engineer (Trans. 1028, 1045); that the firemen have always recognized the right of the company to require a fireman to pass a physical examination in order to qualify for promotion (Trans. 1027, 1039); and that by reason of clauses in the Engineers' Agreement they are unable

to promote a fireman to engineer and give him a date on the engineers' seniority list unless the applicant has passed a physical examination for unrestricted service (Trans. 1032, 1043–44).

Discussion and Recommendations

Article 42 of the Firemen's Agreement (Exhibit 1) contains the rules to which the parties have agreed respecting the manner and conditions under which firemen may be promoted to engineers. If Sachtler was entitled to promotion he must have complied with the terms of this article.

In section 1 of this article it is provided that firemen "when qualified shall be promoted to position as engineers in accordance with the following rules:". The phrase "when qualified" must relate to the following rules." It is the contention of the carrier that the phrase "when qualified" includes the condition of physical fitness. But the article is silent on the subject of physical fitness. In fact the entire agreement is silent on the subject of the company's right to require an adequate degree of physical fitness for their jobs; but the Brotherhood concedes that the company has a right to require a fireman or engineer to pass a physical examination before assigning him to service (Trans. 1002, 1118). But there is a distinction to be made between the act of promoting a fireman to engineer and assigning a fireman so promoted to service as engineer. Article 42 relates only to the matter of promotion.

The only examinations prescribed in the article are those of "mechanical" and "transportation" mentioned in section 3. Fireman Sachtler passed these examinations. He thus was entitled to a certificate of qualification.

Fireman Sachtler's promotion and his relative standing on the engineers' roster would date from the date of his first assignment or, if not available, then he would be dated by a junior. Fireman Sachtler, by reason of his physical disability, was not available for assignment and a junior was used. Under the terms of section 5 a date was thus established.

We therefore find that Fireman Sachtler was qualified and entitled to a seniority date on the engineers' roster in his relative standing on the Firemen's roster in accordance with the provisions of article 42; and recommended that Fireman Sachtler be given the date of April 28, 1942, on the engineer's roster.

For the purpose of future application of this recommendation and to determine further the rights, if any, of Fireman Sachtler under any applicable agreement, we find that Fireman Sachtler, since April 28, 1942, has never been eligible for unrestricted service as an engineer; and, by reason of the letter of October 13,

1942, written on his behalf by D. P. Pippy, local chairman of the Brotherhood, to the superintendent of the carrier (Exhibit 30) Fireman Sachtler is estopped from making any claim hereunder.

During the presentation of the testimony in this case it was developed by representatives of the parties that in the discussion of this case on the property an effort was made to agree upon an interpretation of article 42 respecting the treatment of firemen who had passed their examinations for promotion but were not eligible for unrestricted service as engineer because of some physical disability (Trans. 1032 et sequi; Exhibit 30). However, the matter of determining desirable provisions of such an interpretation was not presented to this Board as a pending dispute under the Brotherhood's strike notice.

It is apparent from the record that the parties are close to agreement (Trans. 1094 et sequi). A principal objection found by the Brotherhood to the last proposal was that it was not retroactive and did not dispose of pending disputes such as the instant case. The finding and recommendation of the Board to this case, and others on this docket, should remove the necessity for any retroactive feature in the proposed interpretation. Further, we urge the parties to continue their efforts in a conciliatory manner, each having in mind the problems of the other.

Subject to the foregoing, we recommend that the Organization's request embraced in Case No. 28 (A–3016) be adopted.

CASE NO. 30

Organization's Request

> Carrier's refusal to comply with sections 1, 4, 5, and 7, article 42, Southern Pacific Firemen's Agreement in declining to permit Fireman O. E. Jacobson, Tucson Division, to take the examination for promotion to the position of engineer in his relative standing on the Firemen's seniority roster, account temporarily restricted by the hospital department, thus permitting Junior Firemen to be promoted and dated as engineers around him (Org. File F–7542–42, Co. File E & F 135–93; Exhibit 35).

Statement of Facts

In addition to the sections of article 42 set out in Case No. 28, supra, this case also involves section 10, article 42 which is as follows:

SEC. 10. Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Fireman O. E. Jacobson was notified to appear on January 8, 1945, for the purpose of taking the examination for promotion to the position of engineer. He waived his right to take the examination under the provisions of section 3 of article 42, Firemen's Agreement. On June 11, 1945, he was again called to take the examination. Physical examination made that date disclosed that he had high blood pressure. The carrier refused to permit him to take the mechanical and book of rules examination for the reason that he was not physically qualified for promotion (Attachments 1 and 2, Exhibit 35). At the end of June, 1944, Fireman Jacobson had performed a total of 116 days in main line freight service, 4 days in main line passenger service, 774 days in yard service and since July, 1944, he has been exclusively in yard service (Exhibit 36). On the 14th day of May, 1946, the carrier imposed on the Tucson Division the requirement that as a condition to promotion firemen must have 610 days in main line freight service.

Contentions of the Parties

It is the contention of the Brotherhood that the carrier is without authority to impose, as a condition to taking the examinations for promotion specified in article 42, the requirement that the applicant first pass a physical examination (Exhibit 35).

The carrier contends that, as they have the right to impose, under section 1 of article 42, Firemen's Agreement, physical and experience qualifications, no candidate for promotion is entitled to take the examinations specified in article 42 until he has fulfilled such qualifications established by the carrier (Attachment 2, Exhibit 35). This case involves the consideration of article 42, section 1, of the Firemen's Agreement; and, specifically, an interpretation of the phrase *"when qualified"* as used in that section. We discussed this subject in connection with Case No. 28, and for the purpose of brevity, our views there set forth are, by reference, adopted here.

This case differs, however, from Case No. 28, in that here the company refused to permit Fireman Jacobson to take the mechanical and rules examination because he was not physically qualified for service as an engineer.

Section 2 of article 42 provides that "Firemen *shall* be examined for promotion according to seniority on the firemen's roster. * * *" Section 3 provides that upon failure or refusal to take the first examination the fireman forfeits his right to promotion for 6 months "at the end of which time he *must* take or refuse second examination." Section 4 provides, in part, that firemen having "passed the *required* examination for the handling and care of locomotives, and knowledge of rules and regulations adopted and enforced by the company shall be eligible as engineers." There is no condition expressed anywhere in the article to the effect that a candidate for promotion must take and pass a physical examination before he can take the examinations mentioned in this article. In fact it has not always been the practice to give the physical examination before allowing the firemen to take the specified examinations (Trans. 1196, 1197).

It is argued that to permit Fireman Jacobson to take the examinations may result in the creation only of a "paper engineer" (Trans. 1215, 1216). This is countered by the argument that it will not cost the carrier anything (Trans. 1207). We deem such arguments not to the point here.

Based upon the terms of the Firemen's Agreement in effect on June 11, 1945, and upon the facts hereinabove set out, we have concluded that the carrier erred in denying to Fireman Jacobson his right to take the mechanical and rules examination in June 1945; and we recommend that he be given such examination, and if he passes, he be given a seniority date as engineer in accordance with article 42; that his eligibility for service as engineer be subject to such physical, experience and other requirements presently in effect.

Therefore, subject to the foregoing, we recommend that the organization's request embraced in Case No. 30 (A–3016) be adopted.

CASE NO. 29

Organization's Request

> Carrier's refusal to comply with sections 1, 4, 5 and 7, article 42, Southern Pacific Firemen's Agreement, in declining to permit Firemen Harry L. Herstine and Harold A. Selvig, Sparks District, Salt Lake Division, to take the examination for promotion to position of engineer in their relative position on the firemen's seniority roster, account temporarily disqualified by the hospital department and

later placed on seniority roster of engineers but not in their relative standing as firemen (Exhibit 37).

Statement of Facts

Firemen Herstine and Selvig passed the promotional examinations but because of their inability to pass the physical examination they were not given a place on the engineers' roster. Subsequently, August 29, 1944, the hospital department removed the restrictions. These men had dates on the firemen's roster of September 20, 1922, and October 25, 1922, respectively. After the claim was taken up with the carrier by the B. L. F. & E., these two men designated the engineers' organization to represent them and cancelled the authority of the firemen (Exhibit 39). Thereafter these two men were accorded seniority dates of December 20, 1941, and January 1, 1942, respectively, their names being placed on the seniority roster of engineers in the same relative standing that they occupied as firemen (Exhibit 37, Attachment 22).

Contentions of the Parties

The Brotherhood has accepted this as the proper dates for these men but request that the carrier admit that such seniority was accorded them in accordance with article 42, sections 5 and 7, Southern Pacific Firemen's Agreement (Exhibit 37, Attachment 25). The carrier has declined. This is the essence of the dispute (Trans. 1288).

Discussion and Recommendations

Whether the carrier placed these men on the seniority roster for firemen for the reason that the firemen wish the carrier to subscribe as their reason for doing so, or whether the carrier has some other reason in mind, is of little consequence.

The fact is that the men, subject of this request, have been accorded the seniority date requested for them by the Firemen. It is our recommendation, therefore, that the Organization's request embraced in Case No. 29 (A–3016) be dismissed.

CASE NO. 155

Organization's Request

Carrier's refusal to grant request that (yard) engines in Roseville yard be tied up for lunch periods at a point where meals can be obtained (Exhibit 40).

On February 28, 1942, the general yardmaster, Roseville yard, issued a bulletin which read, in part, as follows:

> Those yard and engine crews on these engines will be required to take their meal period in the vicinity of Telephone 48, at west end of sandhouse No. 2.

On the hearing the Brotherhood limited their request to the specific assignment mentioned above. (Trans. 1380, 1385, 1394, 1416). No yard engines are now operating with a tie-up point at telephone 48 in this yard (Trans. 1399). This point is approximately a mile from the nearest restaurant (Trans. 1398, 1380). In the discussion reference was made to the provision in the Southern Pacific's Firemen's Agreement (Article 28, Sec. 13) which allows 20 minutes paid time for lunch; and it was stated by the representative of the Brotherhood that no request for a rule was being made (Trans. 1386).

Discussion and Recommendations

An emergency board appointed March 28, 1945, considered a request by the engineers for a rule governing the point at which engines would be tied up at lunch periods. The Board declined the request for a rule, but suggested to the carrier that it try to accommodate its work in each yard so as to permit the crews to avail themselves of restaurant facilities where reasonably available and where the men could patronize them within the 20 minutes allotted for lunch. While the request here is not for a general rule, but only for a special agreement affecting one yard, nevertheless it is the opinion of the Board that if it were to recommend a fixed point for lunch for yard crews in the Roseville yard, such action would impinge upon the present lunch time rule. No request for a change of such rule is made here (Trans. 1418).

The Board concludes, therefore, that the Brotherhood's request should be denied. In doing so, the Board reiterates the suggestion of the emergency board of 1945 that the carrier make it possible for the men to patronize available restaurants when it is feasible to do so, and the men can avail themselves of such facilities within the time allotted for lunch under the rules.

Subject to the foregoing, the Board recommends that the organization's request embraced in Case No. 155 (A–3016) be not adopted.

CASE NO. 83

Organization's Request

Carrier's refusal to allow Engineer J. M. Stout and Fireman W. F. McKee, Sparks District, Salt Lake

Division, 100 miles for lap-back helper trip off pool freight assignment, April 18, 1945 (Exhibit 42).

Statement of Facts

When this matter was handled on the property the following facts were agreed to by the division superintendent and the local chairman of the Brotherhood:

Engineer Stout and Fireman McKee were assigned to pool freight service between Sparks and Imlay, home terminal Sparks.

April 18th, they were called at Imlay for Extra 3719 West; went on duty 2 a.m., departed 3:30 a.m., arrived Fernley, an intermediate station en route at 4:50 a.m., where they were instructed by chief dispatcher to cut engine off train, couple to Extra 4025 West and assist that train around west leg of wye to avoid train doubling, completing move at 5:20 a.m. Subsequent thereto, they performed station switching, after which recoupled to their train and departed Fernley at 7:10 a.m., and arrived Sparks at 12:25 p.m., went off duty 12:55 p.m.

Allowed 140 miles 30 minutes terminal delay at local freight rate of $11.08 and $8.99, respectively.

The following sections of the Firemen's Agreement are relied upon by the Brotherhood (Exhibit 42):

Article 13, "Freight Service."

SEC. 1. The minimum rate for firemen and helpers in through and irregular freight, pusher and helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snow-plow, circus train, messenger, light engines, trains established for the exclusive purpose of handling milk, and all other unclassified service, shall be according to class of locomotive and district, for 8 hours or less, 100 miles or less, miles made in excess of 100 pro rata.

Article 16, "Basis for Overtime and When Paid."

SEC. 1. In all classes of service covered by article 13, 100 miles or less, 8 hours or less (straightaway or turnaround), shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to district, class of engine or other power used.

Article 3, section 2.

Firemen in main line pooled freight service will be assigned * * * between Imlay and Sparks * * *

which established pool freight service between Sparks and Imlay.

Article 23, "Helper Service—Rates of Pay and Working Conditions."

SEC. 1. Firemen assigned to helper service exclusively will be allowed through freight rates as per class of locomotive and district as tabulated in sections 2, 3, 4, 5, 6 and 7, respectively, of article 13. One hundred miles will be allowed for the first 8 consecutive hours, or less. If used on trip which departs from home or district terminal after the expiration of 8 hours from time required to report for duty on initial call for service, firemen will begin

a new helper day of 8 consecutive hours, or less. On runs of 100 miles or less, overtime will begin at the expiration of 8 hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate. When miles exceed hours, miles will be allowed.

Contentions of the Parties

The contention of the Brotherhood is that when the engine crew of Extra 3719 West assisted Extra 4025 West around the wye at Fernley they performed helper service which was outside of their assignment. They rely on Award No. 11551, National Railroad Adjustment Board No. 1, as a controlling precedent.

The contention of the carrier is that the work performed by the crew making this claim was within their assignment; that assisting Extra 4025 West around the wye was performed within the yard at Fernley and was incidental to their assignment; that Award 11551, supra, relates to road service and not yard service.

Discussion and Recommendations

This case depends upon the application of Award 11551, supra. In that case the helper service was performed by the crew on the main line. The award reads, in part, "Service of helping trains is not related to any other service." This phrase must have reference to section 1, article 13, supra, and, of course, relates to the fact, in that case, that the helper service was performed on the main line and was road service (Attachment 8, Exhibit 42). Section 1, article 13 is an enumeration of classes of work performed in road service.

It has been the custom, of long standing, on this property, to consider the incidental helping of trains within yard limits as yard service (Trans. 1459 et sequi). A part of the assignment of the engine crew here involved was to perform necessary switching while en route on their trip (Trans. 1458).

We therefore find that the claimant crew did not perform helper service within the meaning of the cited article of the Southern Pacific Firemen's Agreement.

We therefore recommend that the organization's request embraced in Case No. 83 (A–3016) be not adopted.

CASE NO. 84

Organization's Request

> Carrier's refusal to allow Fireman C. N. Burgdorf, Tucson District, Rio Grande Division, 100 miles for lap-back trip February 28, 1945 (Exhibit 45).

Statement of Facts

On February 28, 1945, Fireman C. N. Burgdorf, assigned to pool freight service between El Paso and Lordsburg, home terminal El Paso, was brought on duty at El Paso for train Extra 5018 West at 2:15 p.m., departed therefrom at 3 p.m., arrived Lordsburg at 12:40 a.m., and went off duty at 1:35 a.m.

En route, at Anapra, an intermediate point between El Paso and Lordsburg, Fireman Burgdorf, in conjunction with the other members of the crew, was required to place train Extra 5018 West in the North Line Siding (Deming Subdivision), detach the engine, go to South Line Siding (Hacheti Subdivision), and pick up three cars of slag from the spur track No. 1, about one mile east of Anapra and unload the cars for ballasting, after which the cars were returned to the spur track connected with the South Line Siding, subsequent to which trip to Lordsburg was continued.

The north track is part of the original Southern Pacific main track between El Paso and Lordsburg and south track is part of the former EP&SW main track between El Paso and Douglas. These two tracks are now operated as double track between El Paso and Anapra, north track being the westward main track and south track being the eastward main track; these tracks being connected by cross-overs at Anapra. This double track is used jointly by firemen from two seniority districts and for two pool freight assignments which diverge at Anapra, one being assigned to operating El Paso to Lordsburg (North Line) and one assigned to operate El Paso to Douglas (South Line).

There are no yard or switching limits established at Anapra and the two sidings involved connect to the two single main tracks west of the end of double track and west of the point where the two seniority districts and pool freight assignments diverge.

This claim is based on provisions of the Southern Pacific Firemen's Agreement as follows:

Article 2—"What Constitutes a Trip."

SEC. 2. On a turn-around trip (where fireman is turned back at an intermediate point), the starting point will be the terminal as well, except as provided for in section 3, this article.

The irregular turn-around trip for which claim is made in this case does not come within the purview of exception covered by section 3, article 2, mentioned in section 2, article 2, above quoted.

Article 13—"Freight Service."

SEC. 1. The minimum rate for firemen and helpers in through and irregular freight, pusher and helper, mine run or roustabout, belt line or transfer,

work, wreck, construction, snow-plow, circus train, messenger, light engines, trains established for the exclusive purpose of handling milk, and all other unclassified service, shall be according to class of locomotive and district, for eight hours or less, 100 miles or less, miles made in excess of 100 pro rata.

Article 16—"Basis for Overtime and When Paid."

SEC. 1. In all classes of service covered by article 13, 100 miles or less, 8 hours or less (straightaway or turn around), shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to district, class of engine or other power used.

Contentions of the Parties

The contention of the Brotherhood is that when the engine crew took the cars of slag from the spur track to a point about a mile east of Anapra station on the main line, returned the empty cars to spur and again coupled to their train that they made a lap-back (turn around) and performed work train service.

The contention of the carrier is that the work performed by this engine crew, for which they claim an extra day's pay, was yard work which they were bound to perform under their assignment.

Discussion and Recommendations

There is no doubt but what this crew in moving the cars of slag from the spur track to a point on the main line approximately a mile from the station and there emptying their cars of slag and ties, were engaged in a trip not contemplated in their assignment.

We find that the claimants are entitled to 100 miles for an irregular turn around in work train service.

We therefore recommend that organization's request embraced in Case No. 84 (A–3016) be adopted.

In conclusion, the Board wishes to state that it gratefully appreciates the courteous cooperation accorded to it by all parties in the effort to bring out all pertinent information necessary for the understanding of each case.

Respectfully submitted,

HARRY H. SCHWARTZ, *Chairman.*
ROBERT O. BOYD, *Member.*
DANIEL T. VALDES, *Member.*

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