Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED MAY 12, 1949
BY EXECUTIVE ORDER 10056
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between the
Union Railroad Company (Pittsburgh) and certain of its
employees represented by the Brotherhood
of Railroad Trainmen

(*NMB Case A–3083*)

PITTSBURGH, PENNSYLVANIA
JULY 29, 1949

(No. 75)

PITTSBURGH, PA., *July 29, 1949.*

THE PRESIDENT,

The White House.

DEAR MR. PRESIDENT: The Emergency Board created by you on May 12, 1949, under Section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between the Union Railroad Company (Pittsburgh) and certain of its employees represented by the Brotherhood of Railroad Trainmen, has the honor to submit herewith its report.

Respectfully submitted.

ANDREW JACKSON, *Chairman.*
LEIF ERICKSON, *Member.*
ELMER T. BELL, *Member.*

INTRODUCTION

On May 12, 1949, the President of the United States issued the following Executive order creating an Emergency Board:

EXECUTIVE ORDER CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE UNION RAILROAD COMPANY (PITTSBURGH) AND CERTAIN OF ITS EMPLOYEES

WHEREAS a dispute exists between the Union Railroad Company (Pittsburgh), a carrier, and certain of its employees represented by the Brotherhood of Railroad Trainmen, 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 within the State of Pennsylvania to a degree such as to deprive that portion 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 the said board shall be pecuniarily or otherwise interested in any organization of railway 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 the Union Railroad Company (Pittsburgh) or its employees in the conditions out of which the said dispute arose.

THE WHITE HOUSE,

May 12, 1949.

(Signed) HARRY S. TRUMAN.

The President appointed Andrew Jackson of New York, N. Y., the Honorable Leif Erickson of Helena, Mont., and the Honorable Elmer T. Bell of Washington, D. C., members of the Emergency Board.

The time and place fixed for the convening of the Board was 9:30 a. m., on May 18, 1949, Hotel Roosevelt, Pittsburgh, Pa. At the time

and place fixed, the Board met in executive session and elected Andrew Jackson chairman and confirmed the appointment of Ward & Paul of Washington, D. C., as its official reporter. The hearing was called to order at 10 a. m.

Appearances before the board were as follows:

For the Brotherhood of Railroad Trainmen:

Earl B. Welcome, deputy president, Brotherhood of Railroad Trainmen;

Q. C. Gabriel, general chairman, Brotherhood of Railroad Trainmen;

For the Union Railroad Co. (Pittsburgh):

James R. Orr, Esq. and Donald B. Heard, Esq. (of Read, Smith, Shaw & McClay), 747 Union Trust Building, Pittsburgh, Pa.

The hearings were adjourned subject to call by the chairman and were resumed on June 20, 1949, and extended through July 23, 1949.[1] On June 28, 1949, the Board inspected the property of the Carrier. The record consists of 2,244 pages and a total of 55 exhibits.

PRELIMINARY STATEMENT

Following an election held on May 20, 21, 22, 24, 25, and 26, 1943, the Brotherhood of Railroad Trainmen was certified by the National Mediation Board on June 2, 1943, as the representative of yardmen for the purpose of collective bargaining with the carrier. Lengthy discussions resulted in an agreement effective November 1, 1943.

Subsequently, various issues arose between the parties over the application of the provisions of the contract, which remained unsolved over the years. Finally, on February 14, 1949, the Brotherhood of Railroad Trainmen requested the services of the National Mediation Board.

Efforts to settle the dispute were unavailing and on February 23, 1949, a strike ballot was spread, resulting in a vote in favor of a strike. The strike ballot listed 15 issues in dispute which involved alleged violations of various provisions of the current agreement and memoranda of understanding.

Upon receipt of advice that a strike was to be called, effective May 14, this Board was created.

During the hearings and during mediation by this Board, items 2, 5, 7, 9, 10, and 11 were eliminated as items in dispute.

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[1] During the course of the hearings it became apparent that the Board would not be able to report its findings to the President with respect to the dispute within 30 days from the date of the Executive order. Accordingly, the parties jointly stipulated to two extensions of time for 30-day periods, which requests were submitted to the President by the National Mediation Board and were approved by him.

JURISDICTION

In his opening statement to the Board, counsel for the carrier argued that the items on the strike ballot were without exception cases which properly should have been presented to the first division of the National Railroad Adjustment Board. Counsel agreed that a Presidential Emergency Board once established has jurisdiction of all disputes which caused the taking of the strike vote. He urged however that in the exercise of jurisdiction, this Board should dispose of all issues by recommending their reference to the Adjustment Board.

The testimony developed that a number of the issues should have been referred to the Adjustment Board and should not have been included in a docket to be considered by a Board appointed by the President of the United States. Some of the matters that should have been submitted to the Adjustment Board were withdrawn. Some of those remaining we conclude should be submitted to the Adjustment Board. There are certain items however that have an importance that places them in the category of major disputes and were the disputes which actually resulted in the taking of the strike vote. This is particularly true of item No. 1.

We decry the tendency to load the strike ballot with relatively minor issues once the decision is made to spread the ballot by reason of major disputes. Much time has been expended by this Board and others in handling matters that should have been settled without difficulty through negotiation or should have been referred to other statutory tribunals. We have made recommendations on some items of relatively minor importance because there are elements in them other than a mere request for the payment of time claims, though standing alone, they would not, in our opinion, have been the cause for a withdrawal from service by the employees.

Item 1 of the Strike Ballot

Violation of rule 6.—Since the signing of our agreement, November 1, 1943, the carrier has refused to bulletin assignments in keeping with the provisions of rule 6, paragraphs (a) and (b) and has refused to pay time claims resulting from their violation of the rule. Their refusal to abide by the rule denies our yardmen the right of preference to work.

Between February 1938, and November 1943, the following provision was in effect between the carrier and the various organizations representing the conductors and brakemen:

When runs or jobs are advertised, the bulletin will plainly state the job or run.

As of November 1, 1943, a new assignment rule became effective on the Union Railroad which, so far as this item in dispute is concerned, provides as follows:

(a) Yardmen will be assigned for a fixed period of time, which shall be for the same hours daily for all regular members of a crew. Insofar as practicable, assignments shall be restricted to eight (8) hours' work.

(b) Each regular assignment shall be give a number and shall be advertised on the bulletin board, in order that employees may exercise their right of preference to work. The bulletin shall indicate the hours of assignment and give a general description of the regular service to be performed on each assignment.

The only difference between (b) as adopted and as proposed by the brotherhood was the elimination of the proposed words, "the number of days worked per week," following the words, "hours of assignment."

The gist of this dispute relates to the meaning of the words from (b): "a general description of the regular service to be performed on each assignment." Apparently very little time was spent during negotiations discussing the meaning of the words. The parties are in agreement that there was no intent to change the method of operation by the adoption of the new rule.

According to carrier's exhibit No. 12, consisting of 47 bulletins advertising 266 vacancies in these 5 seniority districts over the period January 5, 1942 to March 9, 1942, there appeared under the heading, "Name of run," at least 36 titles applicable to crews. In the Main Line Division there were the following categories: Roustabout, work train, yard (Bessemer, Munhall, Mon. Jet., Universal, Rankin, and North Bessemer), hot metal, hostler, Irvin Works, hot ingot, drag (Bessemer, Irvin, Mon. Jct., Rankin, and Clairton), slag (Duquesne and Rankin), and Duquesne Interchange; in the Clairton Division, the following: Hot metal, works (Coke and Clairton); in Duquesne, the following: Steel works, and Yard (Merchant Mill and Furnace); in Edgar Thomson: Yard (Furnace, Rail and Valley), car dumper, and flagman; and in Homestead: Yard (Hays, Carrie, Munhall, and Farm), and Carrie metal.

Both sides confirmed that there was no use of the title, "general switching," prior to November 1, 1943.

After that date, the carrier, "being cognizant," to use its own words, "of the possible implications of the phrase, 'in order that employes may exercise their right of preference to work' in rule 6 (b) * * *" began advertising certain jobs as they became vacant under the title, "general switching." According to carrier's exhibit No. 11, there were as of the date it was compiled 8 designations for the 340 crews

on the 3 tricks on the 5 divisions. The parties are in agreement as to the descriptions for the 56 "hot slag and/or hot metal," "outside hostler," "pusher," and "work train" crews. However, they are not in agreement as to the 254 crews designated as "general switching," "drag and general switching," and "air dump and general switching," and the 6 crews designated as "hot ingot, hot slag and/or hot metal."

The genesis of the dispute was the substitution of the words, "general switching" either alone or with other words for approximately 30 previous titles. Time claims in connection with this dispute were first filed in July 1944, and now amount to approximately 1,500.

The question involved is whether the use of these words by the carrier complies with (b) of rule 6, and more particularly, constitutes "a general description of the regular service to be performed on each assignment."

The obligation placed upon the carrier by section (b) of rule 6 is to give a general description of the actual work regularly performed by any specified crew. There is wide difference in the day-to-day work of the crews. Some of them work on restricted trackage, making restricted movements, and serving restricted parts of industries. Others move freely about a large area handling miscellaneous duties. There is not only a great difference between the work of the crews, but also as to the pattern or regularity with which the duties are performed. It is agreed that all crews perform switching but a hot slag crew or a cinder crew, though it performs switching, does an entirely different job than one which is engaged in classifying inbound cars in a particular yard. General switching is a proper description of many of the crews so advertised because that is just what those crews do regularily.

Testimony was adduced, however, which shows there are a number of crews which do the same thing day in and day out, month in and month out, and year in and year out. When a crew member goes to work he knows in a general way what he will be doing the entire day. This is borne out by the oft repeated statements of carrier witnesses that any man who has enough seniority to bid in a job knows from observation, even though it is advertised as general switching, just what that job does; and that, if he does not know, he can learn quickly from older employees and from railroad officials.

The carrier urges that because the duties of a particuar job can be earned by this inquiry and observation, an empoyee can exercise the preference to work set-out in rule 6. That is not what is clearly stated in the rule to which the parties agreed. The rule says: "In order that employes may exercise their preference to work," each assign-

ment shall be advertised, each assignment shall be given a number, and "the bulletin shall indicate the hours of assignment and give a general description of the regular service to be performed on each assignment." The current bulletins furnish all of the information the employee needs as to starting time, starting place, and hours of assignment. But the rule requires that the bulletin itself contain further information essential to giving the employee his right to exercise his preference to work. The bulletin contains all this information on many jobs; i. e., those advertised pusher, hot metal, and so forth, but as to others, that is not the case. The rule gives the employees the right to secure all the information as to a particular run from the bulletin itself.

On the basis of the record, we cannot particularize just which crews are not properly advertised when they are designated general switching. Any job which performs the same pattern of work with the regularity suggested above and where deviations from that pattern are rare, requires a description other than general switching. The test is: does the crew actually perform, regularly, the services spelled out in the bulletin? If so, there is no violation of the rule. For instance, if some crews do drag work and general switching day in and day out, month after month, a bulletin using those words is a general description within the meaning of the rule. We cannot agree with the brotherhood's contention that such a description is no assignment. On the other hand, if certain crews' regular duties are the performance of drag work and switching incidental to their own train, we cannot agree that the designation drag and general switching is a proper one for such a crew.

Much time was spent in discussing the ultimate results that might flow from compliance with rule 6 (b) as interpreted by the brotherhood. Those were arguments that should have been considered when the rule was negotiated. They are arguments we are not called upon to decide here but in view of the positions taken by the parties we make these observations.

The carrier expressed concern that the use of restrictive words of description would result in loss of flexibility of operations. Brotherhood representatives agreed whenever a so-called "mess" occurred or whenever there was a derailment at a ladder, the nearest available crew could be called without penalty. They also agreed that, whenever there was no work to be performed on any particular job, the crew could perform other services in assisting other crews without penalty so long as another crew did not come in and perform its regular work. It is also to be observed that nothing in rule 6, or any other rule, prevents the carrier from rearranging the work of any

particular assignment as changing conditions may increase or decrease the amount of work to be performed.

The carrier has urged that the decisions in the seven cases before the First Division of the National Railroad Adjustment Board will be a solution to the problems troubling the parties. We cannot agree with this position of the carrier.

Guided by these recommendations and observations, we are confident that there will be no difficulty in properly describing the great majority of the assignments within the requirements of rule 6. On some, there may be differences of opinion as between the parties. These differences can be resolved in the give and take of cooperative consultation, to the advantage of employer and employee alike. In the event, however, there are some jobs upon which the parties cannot agree in carrying out the requirements of rule 6 (b), we recommend that resort be had to arbitration. Sixty days would seem to be a reasonable time within which to work out these bulletins and if, at the end of that time, it has not been possible to do so the matter should promptly be referred to a board of arbitration. In the event the parties are not able to agree upon an arbitrator, the services of the National Mediation Board should be invoked for that purpose.

Item 3 of the Strike Ballot

Violation of memorandum of October 20, 1947, at the Clairton engine terminal. Carrier admits the violations but refuses to pay the claims submitted as a result of such violations.

On October 20, 1947, the carrier and the brotherhood entered into a memorandum defining the movements shopmen could perform in handling self-propelled equipment and engines with or without cars within the various engine terminals.

A dispute as to the switching shopmen might do without the assistance of yardmen at the engine house terminals had existed for a number of years. Time claims had been filed by yardmen claiming that shopmen were doing yardmen's work. The very great majority of these cases originated at the Bessemer engine house and some at Hall. As a part of the settlement of a strike in 1947, the carrier agreed to pay the time claims on the basis of four hours per day, and the organization agreed to enter into the memorandum defining permissible movements and setting limits within which the shopmen could handle certain equipment. At the Hall and Bessemer engine houses the engine terminals were defined as "all tracks inside main track clearance points." The last sentence of the agreement, which is the root of the present difficulty and the foundation of the claims, provides at all other points the permissible switching by shopmen be

limited to tracks within the terminals "which are not used by yard crews in the performance of other yard work."

At the Clairton engine house, shopmen used a track in shifting certain equipment that is generally used by yard crews in the performance of yard service. It is clear that the parties overlooked the peculiar lay-out of the tracks at the Clairton engine house when the memorandum was signed. It also seems clear that, had the parties taken into consideration the situation at the Clairton engine house the memorandum would have contained provisions to permit shopmen to go on the tracks in question for the limited purposes set out in the memorandum.

Subsequent to the execution of the memorandum, employees belonging to the brotherhood took an appeal to the organization's appeal board in Cleveland protesting the action of the general chairman in signing the memorandum. The appeal board sustained the protest. The general chairman stated repeatedly at the hearing that he had no power to agree to any modification of the memorandum, and that, in fact, he had been instructed to abrogate it entirely, and planned to give the requisite notice under the Railway Labor Act to secure its abrogation. While we believe the original memorandum arrived at after the payment of claims of doubtful validity was equitable and was in the interest of harmony between the carrier and its employees, and that it should remain in effect with modifications to cover the Clairton engine house situation, in view of the circumstances existing, such a recommendation on the part of this Board would accomplish nothing.

We recommend that the parties join in submitting the time claims to the National Railroad Adjustment Board.

Item 4 of the Strike Ballot

Violation of the memorandum, effective March 1, 1944. Main line crews classifying mill freight in Swamp Yard, Duquesne. Carrier refuses to pay claims resulting from such violations.

The brotherhood contends that the fourth paragraph on page A–4 of the memorandum of March 1, 1944, between the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, and the Union Railroad was written with the intent and purpose of dividing work between the mill seniority districts and the main line. The distribution was not made by territorial limits and no actual boundaries exist.

The paragraph referred to reads as follows:

The Swamp and Orchard Yards are designated as Main Line Division Classification Yards. Duquesne Division crews will have the right to deliver out-

bound cars to these yards and classify and remove in-bound cars therefrom which are destined to the steel works, new defense plant, and merchant mills.

The brotherhood further contends that the paragraph quoted gives the Duquesne Division crews the exclusive right to classify all in-bound cars in the Swamp Yard and is processing time claims on behalf of the Duquesne crews on this basis.

The carrier contends that the Duquesne crews do not have the exclusive right claimed by the brotherhood and asserts that they have only the right in common with main line crews to make such classification of in-bound cars.

The letter of July 1, 1948, to the carrier from W. I. McCabe, general chairman of the Brotherhood of Locomotive Engineers, who signed the memorandum of March 1, 1944, on behalf of that organization, clearly sets forth his interpretation of the paragraph in dispute and it is in complete accord with the carrier's interpretation; namely, there is not an exclusive right granted to the Brotherhood of Railroad Trainmen, but a permissive right, to get urgently needed cars from the Swamp Yard which were destined to the merchant mills, new defense plant, and steel works areas.

The evidence is convincing that the memorandum of March 1, 1944, gives the mill division crews only a permissive right to classify and remove in-bound cars from the Swamp Yard to steel works, new defense plant, and merchant mills. If the parties had intended to give an exclusive right to the mill crews it could have been so stated. In other portions of the memorandum, exclusive rights were given to the mill crews by using the word "all" on several occasions.

We find no violation of the memorandum of agreement of March 1, 1944.

Item 6 of the Strike Ballot

Denial of seniority rights to Yardman J. A. Collins. Carrier refuses to permit Yardman Collins to exercise his seniority, except as a switch tender, on the grounds that he is unable to perform the duties of a yard switchman due to his having lost a foot in the service of the company. Yardman Collins maintains that he can, and has, performed such duties and has submitted time claims for each day he has been denied the full exercise of his seniority, which claims have been declined by the carrier. Your committee supports Yardman Collins' claims to the extent of award No. 12050 of the National Railroad Adjustment Board, reading as follows:

"Claimant should be reinstated with seniority rights unimpaired and paid for time lost for all time subsequent to October 23, 1944, beginning with the date (on or after October 23, 1944), that he can show he was physically able to comply with and qualify for work in his service under the carrier's operating rules."

In December 1941, Collins sustained an injury while working as a brakeman. This injury necessitated the amputation of one foot. He

was fitted with an artificial member and was reemployed by the carrier, first, as a switch tender for a short period of time, then during the war, as a fireman for approximately 3 years, and then again as a switch tender, which position he now holds. Collins contends that his seniority rights have been violated by reason of the fact the carrier refuses to reinstate him as a brakeman. The carrier contends that it is its prerogative to decide whether or not Collins is capable of working as a brakeman and has refused to join with the brotherhood in a submission to the First Division of the National Railroad Adjustment Board on this question.

We cannot help but commend the courage and tenacity of purpose exhibited by Mr. Collins. However, this is one case involving one individual and one principle. It is our conclusion that this is a proper case for the National Railroad Adjustment Board and we recommend that it be referred to that Board.

Item 8 of the Strike Ballot

Violation of rule 16.—Yardmen are required to couple air hoses, thus performing duties not coming under the scope of the agreement.

It is the contention of the brotherhood that the claims filed under this item are valid because at the time of the signing of the agreement carmen coupled and tested air at certain points on the Union Railroad and today this work is required of yardmen rather than carmen. The brotherhood further contends rule 16 allows payment for work other than their regular duties. Said rule reads as follows:

> If an employe shall be taken from his regular assignment under orders of the company to perform any service other than that covered by his regular assignment, he will be paid at the established rate of pay for the service performed, but in no case less than a minimum day's pay at the rate at which he would have been paid had he performed his regular assignment. This rule shall also apply to employes on the extra list.

The carrier contends that coupling of air hose has been performed by trainmen since the carrier began operations and that trainmen have not been paid by the carrier for coupling air hose because it was, and is, a part of their regular work and was so recognized by the trainmen until October 7, 1948, when the first time slip was filed by a trainman for 8 hours' extra pay for coupling air hose.

The evidence shows that an air-hose rule without any penalty was included in the first Order of Railway Conductors agreement with the carrier in 1938. When the Order of Railway Conductors lost representation of the trainmen in March 1940, the air-hose rule was deleted from the contract written with the Union Railroad Employees' Association in that year and did not appear in the 1941 Order of Railway Conductors contract and was not included in the current 1943 Brother-

hood of Railroad Trainmen contract because the carrier refused to accede to the request of the Brotherhood of Railroad Trainmen to incorporate such a rule in the contract.

There is no air-hose rule in the agreement entered into on November 1, 1943, or any of the amendments or memoranda of understanding. The evidence further shows that since prior to 1907 the coupling of air hose has been one of the duties of trainmen on the Union Railroad; over the same period of time, while the carrier has employed car inspectors and has had them at many points on the railroad, car inspectors have not coupled air hose except for a short period of time prior to 1944 and then only at two points on the road.

The brotherhood relies upon award No. 7309 of the First Division of the National Railroad Adjustment Board but that award does not support the brotherhood because, in that case, there was an air-hose rule which is not true in the instant case.

The carrier's reliance upon award No. 10669 of the First Division is well-founded and in point since there was no air-hose rule in that case and the Board denied the claim.

We find no violation of rule 16.

Item 12 of the Strike Ballot

Violations of rules 6 (f), 13 (c), 29 (b) and (c), 32, 37, and 45.—Carrier denies employes their rights under the above-mentioned rules unless, and until, they undergo a physical examination not required by such rules.

There is no physical examination rule in the agreement between the carrier and the brotherhood. The company has adopted an unwritten policy requiring that all employees who are absent from service for more than 30 days take a physical examination before they will be permitted to resume their duties. In some cases the carrier has required an examination even though the employee has been out less than 30 days where the carrier has received information that he may have been involved in an accident, or may have been ill, et cetera. The brotherhood takes the position that such requirement is a violation of the seniority rules contained in the agreement and, in some cases, results in an employee losing a day's pay.

We find that there has been no violation of any rule in the agreement.

We recommend that the carrier study the matter of physical examinations and reduce whatever policy may grow out of this study to writing so that the employees may be apprised of the policy.

Item 13 of the Strike Ballot

Violations of rules 6 and 16.—Carrier requires yard crews to perform hostler service, thus requiring them to work on two assignments during one tour of duty.

In common with most carriers, the carrier is carrying out a program under which Diesel locomotives are being substituted for steam locomotives. The steam locomotives were, and are, exchanged by hostler crews. To service its Diesel locomotives, the carrier has built fueling stations. Servicing is required approximately every 2 days. It requires yard crews to take their own engines to the fueling stations where they are serviced by employees not members of the brotherhood. The brotherhood claims that this is in violation of rules 6 and 16 of the current agreement. The gist of their contention is that the movements, in reality, are relief engine movements and that, therefore, the crews work in two classes of work in the same tour of duty.

The carrier has no hostlers' agreement with the Brotherhood of Railroad Trainmen. Its hostler agreement now in effect is with the Brotherhood of Locomotive Engineers and that agreement permits the practice complained of, with no arbitrary or other payment unless more than one spot is made at the fueling station. It has an agreement with the Brotherhood of Railroad Trainmen recently executed requiring the use of a trainman on outside hostler jobs.

The servicing of the Diesel locomotives involves no exchange of locomotives. We find nothing in the agreement supporting the brotherhood's contention. Since the movements of the Diesel locomotives for fueling and servicing have been recently inaugurated due to technological changes brought about by the substitution of Diesel for steam locomotives, there is no historical basis, aside from the agreement, to sustain the contention of the brotherhood.

In effect this item is a request for a new rule. In our opinion, there is no justification for recommending a rule which would have the effect of prohibiting trainmen from accompanying their Diesel locomotives for fueling and servicing and throwing switches and passing signals in connection with these movements.

We find no violation of the rules and therefore recommend that the claims filed be withdrawn.

Item 14 of the Strike Ballot

Violations of rules 6, 8, and 9.—Carrier insists that a crew unit can be split in paying arbitrary for violation of lunch-period rule and refuses to pay claim for such violation.

The only question presented by this item is whether a yard crew must take its lunch as a unit. While the matter does not seem of great importance, the contention of the carrier that it may split the crew and keep part of it working while other members take their lunch time, is an irritant that contributes to a lack of harmony on this property.

The brotherhood went into the history of the lunch rule and emphasized the human factors which made it so important to the employees.

Except for paragraph (f) of rule 9, the lunch period rule speaks always of yard "crews," and not of individual employees. It is clear that the crew may not be relieved for lunch as individuals without the payment of an arbitrary to all members of the crew. We recommend that the claims before us be allowed and that, in the future application of the rule, crews be sent to lunch as a unit.

Item 15 of the Strike Ballot

Violation of rules 6, 8, and 11.—Carrier insists that the crew of a train to be assisted by a pusher engine may be split and work with their engine and the pusher engine simultaneously, thus performing work on two assignments during one tour of duty.

Rule 41 of the agreement requires the assignment of a conductor or brakeman to pusher crews. In performing their work, pusher engines generally are used to perform double-overs in connection with the train to be assisted, throw out shop cars, and handle the caboose for the train. The pusher engine conductor takes no part in the groundwork in handling these movements. That work is all performed by the members of the crew being assisted. In making these movements, members of the crew of the train being assisted accompany the pusher engine, throw switches, pass signals, and the like. The brotherhood contends that the use of the members of the crew of the train being assisted to throw switches for the pusher engine in making these movements violates the crew consist rule. Further, the brotherhood argues that the operation results in crew members working on two different assignments in the same tour of duty. The brotherhood also argues that the pusher engine can only push, and that it may not be used to head the assisted train out of a yard.

The dispute is one of long standing. However, it did not assume real importance until the carrier and the Brotherhood of Locomotive Engineers entered into a memorandum agreement dated January 20, 1949, defining what work would be performed by pusher crews without penalty. The memorandum spelled out an arbitrary of one-half hour where the pusher crew performs any switching or doubling in connection with the train not permitted in the main body of the memorandum. The same agreement was offered the trainmen, but they refused to accept it. The trainmen took the view that the memorandum would permit the use of pusher crews in unrestricted general switching in connection with the assisted train upon the

payment of the arbitrary. They further took the view that the crew consist rule would become a nullity as applied to crews of assisted trains. A great many time claims have been filed by members of the brotherhood since the signing of the memorandum by the Brotherhood of Locomotive Engineers.

The carrier's witnesses, Bradley and McKeag, stated that the pusher engine could be used only in making "one or two doubles," taking the caboose to the rear of the train, throwing out a shop car that develops on the assisted train, and coming out at the head of the train assisted where conditions require, in addition to the usual pushing. Payment of the arbitrary, in their opinion, would not justify general switching in connection with the train assisted through the use of the pusher engine.

Pusher crews on this railroad have always operated in the manner complained of. They were doing so when the current agreement was adopted. In our opinion, the operations complained of do not violate the crew consist rule, nor do they result in crew members working off their assignment. The crew members of the train being assisted remain at all times under the direction of the conductor of their crew. They do not operate under the directions of the conductor attached to the pusher engine, nor do they work with him. He passes no signals, throws no switches, nor does he do any other groundwork while the double-overs, and so forth, are being made through the use of the pusher engine. The pusher engine, once it identifies itself with the train to be assisted, operates under the direction of the conductor of that crew. It becomes a part of his train. Work in connection with the pusher engine is as much a part of the work of the train assisted as is work in connection with the engine handling the assisted train itself as long as the pusher engine is acting within the limits set out above. The identity of the crew of the assisted train is not disturbed or lost by the incidental services performed by the trainmen in connection with the work of the pusher engine.

The brotherhood attaches much importance to the memorandum above referred to as an indication that the carrier recognizes the validity of its argument. On the other hand, it should be pointed out that if the brotherhood's position is correct, in the absence of the memorandum the members of the Brotherhood of Locomotive Engineers would be entitled to very substantial payments on every occasion upon which the pusher engine heads the train in leaving the yard or when any of the other movements here in dispute are performed. The willingness of that organization to agree to the memorandum and to accept an arbitrary of one-half hour is a strong

argument in opposition to the position taken by the Brotherhood of Railroad Trainmen.

During the hearing, the carrier manifested its willingness to enter into an agreement with the Brotherhood of Railroad Trainmen similar to that made with the engineers. The memorandum requires some modification so as to make it plain that the payment of the arbitrary would not justify general switching in connection with the train to be assisted. It should also make plain that the handling of shop cars should be limited to shop cars which develop on the train being assisted.

We therefore recommend that the parties make such an agreement and that the time claims which are based upon not more than two double-overs, handling shop cars which have developed on the train being assisted, handling the caboose, and snapping out of various yards, be withdrawn.

CONCLUSION

Trainmen on this carrier have been represented by labor organizations for a rather short time and by the Brotherhood of Railroad Trainmen only since 1943. The matters presented to this Emergency Board indicate that the parties have been in a period of adjustment. Many of the difficulties which have arisen come from the fact that on this Railroad many of the provisions of the agreement have not been finally interpreted in their practical application as between the parties. We are also struck by the fact that a large volume of time claims has been filed and are pending undisposed of. There seem to be unusually long delays in handling negotiations and grievances.

In the interest of improved relations between the parties, it is our opinion that the handling of conferences, grievances, and negotiations be speeded up; that time claims be disposed of as rapidly as possible; and that all time claims be carefully screened by the General committee to the end of persuading the employees to withdraw claims which are speculative or completely without merit.

The matter is a joint responsibility between the brotherhood and the carrier. It is our belief that better relations will exist through greater cooperation on the part of both parties.

Respectfully submitted.

ANDREW JACKSON, *Chairman.*
LEIF ERICKSON, *Member.*
ELMER T. BELL, *Member.*

JULY 29, 1949.

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