Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED NOVEMBER 6, 1951, BY EXECUTIVE ORDER 10303 PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT

To investigate a dispute between all Class I carriers represented by the Eastern, Western, and Southeastern Carriers Conference Committees, carriers under Federal management, and certain of their employees represented by the Brotherhood of Locomotive Firemen and Enginemen

WASHINGTON, D. C.
JANUARY 25, 1952

(No. 97)

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LETTER OF TRANSMITTAL TO THE PRESIDENT

WASHINGTON, D. C., *January 25, 1952.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT:

The Emergency Board created by your Executive Order No. 10303 of November 6, 1951, pursuant to the provisions of Section 10 of the Railway Labor Act, as amended, and appointed by you on November 7, 1951, to investigate an unsettled dispute between all Class I railroads represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, carriers under Federal management, and certain of their employees represented by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization, has the honor to submit herewith its unanimous report.

The report contains summaries of the positions taken by the parties on the issues in dispute, together with the Board's findings of fact and recommendations to the parties as to terms of settlement which the Board strongly believes are fair and equitable to them, as well as to the public represented by the Board.

Respectfully,

CARROLL R. DAUGHERTY, *Chairman.*
ANDREW JACKSON, *Member.*
GEORGE CHENEY, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED BY EXECUTIVE ORDER 10303 DATED NOVEMBER 6, 1951, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED, TO INVESTIGATE AN UNADJUSTED DISPUTE BETWEEN ALL CLASS I RAILROADS REPRESENTED BY THE EASTERN, WESTERN, AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES, CARRIERS UNDER FEDERAL MANAGEMENT, AND CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

I. INTRODUCTION

An unadjusted dispute between certain railroad transportation systems operated by the Secretary of the Army and certain of their employes represented by the Brotherhood of Locomotive Firemen and Enginemen resulted in the creation of this Emergency Board (No. 97) by Executive Order No. 10303 of the President of the United States dated November 6, 1951. A copy of the Order is attached hereto and marked Appendix A.

On November 7, 1951, the President appointed Carroll R. Daugherty, of Illinois, as Chairman of the Board and George Cheney, of California, and Andrew Jackson, of New York, as the other two members of the Board also representing the public.

Pursuant to what is understood to have been a joint request from the parties, hearings were to and did commence on November 27, 1951, at 10 a. m. at the Department of Commerce Auditorium, Washington, D. C. The Board first met for organizational purposes at 9:30 a. m. on that date. It was decided that the hearing should be public, and the appointment of Johnston & King, of Washington, D. C., as reporters for this Board in this proceeding was confirmed.

Appearances were noted as indicated on Appendix B attached hereto.

Following an opening statement, counsel for the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the Organization) announced: "We do not plan to be present further in the proceedings you have been appointed to conduct." Thereupon the representatives of the Organization left the hearing room. However, the Board is advised that copies of the transcript and of all exhibits were received by the Organization.

The Carrier representatives thereupon presented their case. The public hearings extended from November 27, 1951, through December 17, 1951. The record of the proceeding consisted of 15 volumes of transcript comprising 1,537 pages, together with 42 exhibits. Owing to the delay in the commencement of the hearings until November 27, at the instance and request of the affected parties an extension of time until December 26, 1951, within which to prepare and file the Board's report was obtained. The Board was advised that this is in accordance with the understanding of the parties. However, it later became clear that the report could not be finished by that date and, accordingly, requests were made and obtained from the President of the United States for further extensions of time, until January 30, within which to file the report.

Toward the close of the hearing the Board informally offered its services to the parties to the end of mediating this dispute or of obtaining an agreement to arbitrate the issues involved. Thus far, however, the dispute remains unadjusted. Thereupon, the Board analyzed and sifted the testimony and the exhibits as well as certain facts obtained from other sources and proceeded to develop the findings and recommendations which are embodied in this report.

Owing to the refusal of the Organization's representatives to participate in the proceeding, the Board felt constrained to obtain the assistance of the United States Bureau of Labor Statistics in checking the accuracy of certain statistical data submitted by the Carriers. The Board wishes to thank the Bureau for its assistance.

II. THE DISPUTE, ITS BACKGROUND AND DEVELOPMENT

A. *The Parties involved.*—This dispute directly involves only four railroad systems, as the strike was threatened on only those four railroads. However, indirectly it involves all of the Class I railroads represented by the three Carriers' Conference Committees in the United States. A list of those carriers is annexed hereto, and marked Appendix C.

There are approximately 130 Class I railroads or systems in the United States. A Class I railroad is one having a gross income of $1 million or more.

These railroads are divided into three groups: The Eastern group, that is, those east of the Mississippi River and north of the Ohio River; the Southeastern group, that is, all those east of the Mississippi River and south of the Ohio River; and the Western group, that is, all railroads west of the Mississippi River.

For collective bargaining purposes all railroads are represented by the respective Carriers' Conference Committees.

The total amount of single-line railroad trackage in the country is about 225,000 miles; the Carriers have total assets of approximately $25 billion; and as of August 1951 they employed a total of 1,281,000 employees. Of these employees, 76,000 are classified as supervisory; 930,000 as nonoperating; and 275,000 as operating.

The operating group is divided into approximately 124,000 yard service employees and 131,000 road service employees. Generally speaking, engineers and motormen are represented by the Brotherhood of Locomotive Engineers; firemen, hostlers, and their helpers are represented by the Organization; conductors by the Order of Railway Conductors of America; trainmen and switchmen by the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America; and approximately 6,000 yardmasters by the Railroad Yardmasters of America. But these lines cross. A very few firemen are represented by the Engineers' Organization, and a few engineers by the Organization here involved. A few brakemen, flagmen, baggagemen, switchtenders, and yardmasters, among others, are represented by the Order of Railway Conductors, whereas about one-quarter of the conductors, as well as a few yardmasters, are represented by the Trainmen. Likewise, a few yard foremen (conductors) are included in the 6,000 employees represented by the Switchmen's Union.

B. *Background of the dispute.*—Over the 11-year period 1937 to 1947 all operating employees and 75 percent of the nonoperating employees received uniform cents-per-hour wage increases aggregating 58 cents per hour. The average increase of 58.4 cents per hour for the nonoperating employees resulted from raises of 1 cent and 2 cents per hour, over and above the 9 cents per hour general increase of 1941, which were paid to the low-wage nonoperating employees.

A change in the uniform pattern of general wage rate increases started in 1948 as a result of putting into effect the 40-hour work-week for the nonoperating classifications of employees. The introduction of the 40-hour work-week with maintenance of 48 hours' pay to become effective December 1, 1949, was the result of the adoption by the Carriers of the recommendation to that effect by the Leiserson Emergency Board which filed its report with the President of the United States on December 17, 1948. That Board also recommended the granting of a 7 cents per hour general wage rate increase effective October 1, 1948.

In the middle of March 1949 the Order of Railway Conductors and the Brotherhood of Railroad Trainmen served notices on the Carriers requesting the 40-hour work-week with maintenance of 48 hours' pay

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for yard employees, together with several rules changes. The Carriers responded with requests for changes in rules.

Then on November 1, 1949, the Brotherhood of Locomotive Firemen and Enginemen served notices on the Carriers which culminated in the unadjusted dispute before this Board. These notices requested a 40-hour work-week for all yardmen; maintenance of 48 hours' pay and time and one-half for all hours worked over 8 hours in 1 day or 40 hours in 1 week; and premium pay for work performed on legal holidays. The Carriers likewise requested rules changes.

In December 1949 the Switchmen's Union of North America served notices on the Carriers requesting a 5-day 40-hour work-week with maintenance of 48 hours' pay, and likewise requesting rules changes. Again, the Carriers responded with a request for changes in rules.

At about the same time the Railroad Yardmasters of America renewed negotiations on its request for a 5-day work-week for the yardmasters represented by it. (This same request was before the Leiserson Board which declined to include yardmasters in its recommendations as to the 40-hour work-week with maintenance of 48 hours' pay. The Board recommended a 10-cents-an-hour increase at that time in line with the settlement with the other operating groups.)

Two months later, in January 1950, the Brotherhood of Locomotive Engineers served notices requesting a 20 percent increase in rates of pay and requesting numerous rules changes. No mention was made of the establishment of the 40-hour work-week with maintenance of 48 hours' pay.

During March, April, and May, 1950, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen and the Carriers presented their respective cases before the so-called McDonough Emergency Board.

The Carriers' disputes with the Switchmen's Union and the Yardmasters were also heard before that Board which filed three separate reports.

The main report involving the Conductors and the Trainmen recommended a pay increase of 18 cents per hour, which was not sufficient to maintain the regular 48 hours' pay for those groups of employees. The Board also recommended that the Switchmen's Union and the Yardmasters accept the same wage rate increase as was recommended in the case of the Conductors and the Trainmen.

The Carriers accepted the reports of the McDonough Emergency Board, but all the Organizations rejected them. Extensive negotiations of the parties ensued.

On June 25, 1950, the Switchmen's Union called a strike on five railroads but called it off on July 6 on all railroads with the exception

of the Rock Island. On July 8 the Government took possession of the Rock Island Railroad and obtained an injunction against the Switchmen's Union, which ended the strike.

On July 17, 1950, negotiations with the Conductors and Trainmen moved to Washington.

On August 8, 1950, conferences involving the Conductors and Trainmen were opened at the White House under the auspices of Dr. John R. Steelman. Shortly thereafter the railroads were seized by the Federal Government after lengthy conferences and after a strike threat by the conductors and the trainmen.

On August 19, 1950, Dr. Steelman submitted to the parties a settlement formula which provided a 40-hour work-week for yardmen and a 23 cents per hour increase in their rates of pay. This increase included the 18 cents increase recommended by the McDonough Board, plus an additional general basic wage increase of 5 cents per hour.

The wording of Dr. Steelman's Settlement Formula of August 19, 1950, follows:

1. Call off strikes.
2. Establish 40-hour week for yardmen at 23 cents per hour increase.
3. For the period of this agreement set aside the 40-hour agreement and establish a 6-day work-week. Men required to work seventh day to receive 1½ pay. This does not create guarantees where they do not now exist.
4. Settle all rules, including the 40-hour week rules in accordance with recommendations of the President's Emergency Board.
5. Road men to receive 5 cents per hour increase.
6. Quarterly adjustment of wages on basis of cost of living index (one point to equal 1 cent per hour).
7. In consideration of above, this agreement is to be effective until October 1, 1953, at which time either party may serve notice of desired changes in accordance with the Railroad Labor Act.

This proposal was accepted by the Carriers' Conference Committees but was rejected by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

In the meantime, negotiations were being conducted with the Switchmen's Union of North America. Finally, on September 1, 1950, the carriers and the Switchmen reached an agreement which was ultimately embodied in an agreement dated September 21, 1950.

Conferences between the engineers and the Carriers commenced after this settlement of October 5, 1950. On October 11, 1950, the firemen resolved to request a general wage rate increase for both road men and yard men and their resolution was presented to the Carriers the following day. Conferences were held between October 12 and November 21, but these did not result in an agreement at that time. On November 21, 1950, conferences were moved to the White House with all four operating organizations participating.

While these conferences were going on, the Carriers were likewise conferring with the yardmasters, and finally on November 2, 1950, an agreement was consummated between them. Both the yardmasters' and the switchmen's agreements were based on Dr. Steelman's settlement formula of August 19, 1950.

As a result of several days of lengthy discussions and negotiations, under the aegis of Dr. Steelman, meetings being held all day and virtually all night, a document was prepared and submitted to the parties on December 21, 1950 (this is the so-called "White House Agreement" of December 21, 1950). Because of its importance this document appears in full as Appendix D. It provided in substance the establishment of a 40-hour work-week for yardmen with a 23 cents hourly rate increase effective October 1, 1950, and an additional 2 cents to be effective January 1, 1951; the setting aside of the 40-hour week agreement until January 1, 1952, and the establishment of a 6-day work-week for yardmen; establishment of time and a half for yardmen required to work on the seventh day; option to employees to go on a 40-hour week on 3 months' notice, provided manpower was available, with a 4 cents per hour increase to be granted if and when the 40-hour work-week became effective; settlement of all rules; quarterly adjustment of wages on the basis of the cost-of-living index (one point to equal 1 cent per hour) on an arbitrary base of 176, with the first adjustment on April 1, 1951; the agreement to be effective until October 1, 1953, with a moratorium for proposals on changes in rates of pay, rules, and working conditions and a proviso that if, as a result of Government wage stabilization policy, workers are permitted to receive annual "improvement factor" increases, the parties should discuss whether or not further wage rate adjustments would be justified.

This document was signed by the heads of the four operating organizations and the chairmen of the three Carriers' conference committees. It was accepted by the Carriers but subsequently rejected by all four brotherhoods.

About January 18, 1951, conferences were resumed in Washington under the aegis of the National Mediation Board.

Early in February the Department of the Army issued General Order No. 2, directing certain striking employees to return to work by 4:00 p. m., February 10, 1951, and to continue to work, when called, or be subject to dismissal. This order also put into effect interim wage rate increases, effective October 1, 1950, of 12½ cents per hour for yard operating employees and 5 cents per hour for road operating employees.

In the meantime, on October 25, 1950, the cooperating organizations representing nonoperating employees requested an increase of 25 cents per hour as their fourth round of post-war wage rate increases. Negotiations with respect to these requests were likewise eventually moved to Washington, and ultimately, through the efforts of Dr. Steelman as mediator, an agreement was reached (March 1, 1951), providing for a fourth round of postwar wage increases of 12½ cents per hour.

This agreement contained cost-of-living adjustments similar to those granted to switchmen and to yardmasters (except that adjustments were to be based on an arbitrary index base of 178). It also included a moratorium on new wage rate proposals until October 1, 1953. Following the execution of the agreement with the nonoperating employees, similar agreements were made between the Carriers and the United Transport Service employees; between the Railway Express Agency and its employees; and between the Pullman Co. and 90 percent of its employees.

While these events were in progress in the early months of 1951, the Senate Committee on Labor and Public Welfare held hearings with respect to the dispute between the Carriers and the operating organizations. The transcript of the hearings was made a part of the record in the instant case. After the hearings, but before the Senate Committee made its report, agreement was reached between the Carriers and the Brotherhood of Railroad Trainmen, disposing of all the issues pending between them. This settlement was based upon Dr. Steelman's Settlement Formula of August 19, 1950, the agreements with the Switchmen's Union and the Yardmasters, the so-called White House Agreement of December 21, 1950, and the agreements between the Carriers and the nonoperating organizations.

Ultimately the National Mediation Board found that the parties to the instant case had reached an impasse. A strike ballot was spread by the Organization; strike action was approved by the members; and a work stoppage was called for November 8, 1951, against the Carriers specified in the first paragraph of the aforementioned Executive Order of the President. Thereupon the President invoked the provisions of Section 10 of the Railway Labor Act and created this Emergency Board No. 97, as hereinbefore set forth.

III. THE WAGE RATE AND HOURS-OF-WORK ISSUES

A. The Nature of the Issues

In considering the wage rate and hours-of-work issues before the Board, it is necessary to distinguish two main categories of employees represented by the Organization: (1) the road operating employees,

who are composed of firemen and engineers; and (2) the yard operating employees, who include yard engineers and motormen, yard firemen and helpers, outside hostlers, inside hostlers, and outside hostler helpers.

1. *Road operating employees.*—In respect to the road operating employees represented by the Organization there has been and is no dispute over changes in the length of the work-week. That is to say, neither of the parties has proposed any change in the existing lengths of work periods. The sole issue in dispute here has to do with changes in wage rates.

In respect to wage rate changes for these classifications of employees, it should be noted, further, that there is no dispute between the parties over (a) whether their existing rates of pay should be increased; (b) how much the immediate increase should be; (c) whether the increase should be percentage-wise or cents-wise; or (d) whether the increase should be across the board or should distinguish among the classifications. Both disputants are in agreement that as of July 1, 1951, both classifications of the Organization's road service members should have received an across-the-board increase totaling 19.5 cents per hour.

The differences that divide the parties here lie in the makeup and timing of the increases that compose the total amount of 19.5. Both sides agree that these employees shall receive an increase in their basic rates of 5 cents per hour effective October 1, 1950 (a date close to the time when the wage part of the whole dispute began) and a further basic-rate rise of 5 cents per hour effective January 1, 1951. But the Organization asks that as of April 1, 1951, a third basic-rate increase of 8.5 cents per hour be made effective; while the Carriers counter with the proposal that these employees receive a basic-rate increase of 2.5 cents, effective March 1, 1951. At this point, in other words, a difference of 6.0 cents distinguishes the parties' proposal—6 cents in the *basic* rates of pay. The total addition to basic rates demanded by the Organization comes to 18.5 cents per hour; that offered by the Carriers sums to 12.5 cents per hour.

How then do both sides arrive in the end at a figure of 19.5 cents per hour? It is through the medium of a cost-of-living escalator clause. And here again the parties are in dispute. Both agree on a general formula: For each point (not percent) rise in the Consumers' Price Index of the United States Bureau of Labor Statistics, there shall be a 1-cent increase in these employees' rate of pay. But the Organization proposes that an arbitrary base of 184.0 in this C. P. I. be fixed, while the Carriers demand an arbitrary base of 178.0. Application of the formula to the Organization's proposed base would entitle the employees to a 1-cent wage rate increase as of July 1, 1951

(plus subsequent increases if the C. P. I. rises again after that date). Application of the formula to the base proposed by the Carriers would provide a 6-cent wage rate increase as of April 1, 1951, and a 1-cent increase as of July 1, 1951 (plus subsequent increases under the formula)—a total escalator rise of 7 cents by July 1951.

It is clear, then, that the 6-cent greater increase in basic rates asked by the Organization is just offset, as to amount, by the 6-cent greater increase under escalation offered by the Carriers. Both parties' proposals add to 19.5 cents—18.5 cents in *basic rates* plus 1 cent by *escalation* under the Organization's request, 12.5 cents in *basic rates* plus 7.0 cents by escalation under the Carriers' offer.

Why should these differences cause a dispute? Because, if the C. P. I. were to reverse its recent and present direction of change, 7 cents in the employees' wage rates are potentially deductible under the Carriers' offer (in terms of July 1951 rates), whereas under the Organization's demand there could be a reduction of only 1 cent from the July rates.

That this is the sole issue for these employees is established by the Organization's opening statement at the hearings (which was the only information given to the Board from this source), by the testimony presented by the Carriers at the hearings, and by the transcript of the record of the hearings before the United States Senate Committee on Labor and Public Welfare (82d Cong., 1st sess.) on the Labor Dispute Between Railroad Carriers and Four Operating Railroad Brotherhoods, one of which was the Organization which declined to testify before this Board.

Both parties agree that the wage rate increase of 5 cents per hour given to the road operating employees under Department of the Army General Order No. 2 since the seizure of the railroads on August 25, 1950, by the Government shall be credited against the proposed increases.

2. *Yard operating employees.*—In respect to the yard operating employees represented by the Organization, both the wage rate and hours-of-work issues are in dispute between the parties. And the two issues are closely interrelated. It is possible as well as desirable, however, to consider them separately up to a certain point.

a. *The length of the workweek.*—At present the yard service employees who are members of the Organization may work 7 days a week without the imposition of premium overtime rates on the Carriers for hours worked in excess of 48 or 40 per week (6 or 5 days of 8 hours each). The Organization demands a 5-day, 40-hour week for such employees to be put into effect (contingent upon agreement between the parties on the necessary implementing rules) at the option of the Or-

ganization's committees on individual carriers, such option to be exercised any time after July 1, 1951, upon 60 days' notice to the Carrier.

The Carriers do not resist this proposal in principle. Their dispute with the Organization on this matter lies in timing and procedure. They offer now to establish a workweek of six 8-hour days in yard service, upon 90 days' notice from the Organization, and to compensate such employees for hours worked in excess of 6 straight-time 8-hour shifts at 1½ times their basic straight-time rates. They propose this arrangement (including rules of implementation) as an intermediate one, to be embodied in a so-called "Interim" Agreement With the Organization. (See appendix F.) In respect to establishing a workweek of five 8-hour days, they are willing to sign two other agreements: (1) one called "Agreement A" (appendix E), under which time and one-half is to be paid for hours worked in excess of five straight-time 8-hour shifts and which also includes proposed rules of implementation; and (2) one called "Agreement B," which provides that the 5-day week will be put into effect on or after January 1, 1952, upon 3 months' notice from the Organization, but also states in effect that if, in the Carriers' belief, insufficient manpower exists for the performance of yard service at straight-time rates by relief men on the sixth and seventh days of a workweek and if the Organization disagrees with the Carriers on this matter, final decision on this point (and therefore on the propriety of the 5-day week at such time) shall be made by a person to be appointed by the President of the United States.

In short, the Carriers are willing to establish a 6-day week now but wish not to establish a 5-day week until sufficient manpower exists to make it possible to avoid payment of heavy premium overtime to regularly assigned members of the Organization.

b. *Wage rate changes.*—The issues between the parties in respect to wage rate changes may best be understood if a distinction is made between (1) the increases proposed for the period before the Carriers convert operations to the 5-day week (we call such increases "preconversion" ones hereinafter); and (2) the increases proposed to take effect upon conversion to the 5-day workweek.

(1) *Preconversion wage rate issue.*—For the period before conversion, the Organization asks for *basic*-rate increases of 23 cents per hour, effective October 1, 1950; 2 cents per hour, effective January 1, 1951; and 8 cents effective April 1, 1951. The total is 33 cents. The Carriers agree to the first two of these three increases. But they dispute the third, their offer being 2 cents per hour, effective March 1, 1951. Their total is 27 cents. It should be noted, the Carriers say, that 18 or 18.5 cents of the 23 cents proposed to be effective in October

1950 are a sort of retroactive adjustment for the ultimate installation of the 5-day week. Nevertheless the Carriers label the 18 cents "preconversion" because of the effective date.

As in the case of the roadmen, the difference separating the parties here amounts to 6 cents per hour in *basic rates*. And again, as with the roadmen, the Carriers propose to compensate for this difference by the cost-of-living escalator provisions described above, which give to the employees 6 cents per hour more, when July 1, 1951, is reached, than the escalation proposed by the Organization. In short, the total increase proposed by both parties as of that date is 34 cents, but they arrive at this total by different routes.

Again, as in the case of the road operating employees, both parties agree that the wage rate increase (of 12.5 cents per hour) given to the yardmen under Army General Order No. 2 shall be credited against the increases proposed above.

(2) *Conversion wage rate issue*—(a) *The Organization's proposal.*—Because the Organization did not participate in the hearings after the first day (being thereafter not available for formal questioning), it is impossible to be certain about the extent of the differences separating the parties on the wage rate changes proposed to become effective for yardmen when the Carriers convert to the 5-day, 40-hour week. At the hearings the Carriers' explanations of the Organization's proposal on this matter differed very substantially from the one advanced by the Organization's own counsel in his first-day opening statement. (There was no disagreement on the differences between the respective preconversion proposals.)

(i) *The Organization's view of its proposal.*—In his opening statement, counsel for the Organization stated that the Organization desired take-home pay to be maintained upon conversion to the 5-day week. That is, as of any given date the reduction of the workweek from 48 to 40 hours, representing a decrease of 20 percent, should be compensated for by a wage rate rise of 20 percent. It was said that, going back to 1940 wage rates, the formula to be applied would be as follows: Take the basic wage rate of a given classification of yardmen as of the date (September 1, 1949) when the nonoperating employees changed from the 6-day (48-hour) to the 5-day (40-hour) week. From this rate subtract 10 cents, the hourly increase granted to all operating employees (road and yard) in October 1948. (These employees did not go to the 5-day week when the nonoperating employees did.) Increase the resulting basic rate by 20 percent. Then add the 7 cents per hour granted to the nonoperating employees in December 1948 as a third-round rate increase. Add further the 12.5 cents (fourth round) obtained by the nonoperating employees in

February 1951 plus the 6 cents obtained by this group (under escalation) in April 1951. To illustrate: The basic rate of yard engineers and motormen before the 10-cent increase of 1948 was about $1.60 per hour. Twenty percent of this amount gives a raise of 32 cents per hour. Adding 7 plus 12.5 plus 6 cents to the 32 cents provides a total "conversion" increase of 57.5 cents for this classification of employees, according to the Organization's counsel This increase is to be in addition to the general basic-rate increases demanded above.

(ii) *The Carriers' view of the Organization's proposal.*—According to the Carriers' representatives, the "conversion" increases demanded by the Organization are not nearly so high They are said to be 14.5 cents for yard engineers, 9.5 cents per hour for yard firemen, 10.5 cents for outside hostlers, 9.0 cents for inside hostlers, and 7.3 cents for outside hostler helpers. These amounts are obtained as follows: Take each classification's 1950 basic straight-time rate. From this figure subtract the 10 cents obtained by the operating employees in October 1948. Add to this resulting figure 20 percent thereof. Add also the 7 plus 12.5 plus 6 cents mentioned above. Add also the 1 cent obtained under escalation by the nonoperating employees July 1, 1951. Subtract from this total the 1950 basic straight-time rate. Subtract finally the preconversion 34 cents. The final results for the respective classifications are the five figures given in the first sentence of this paragraph.

To illustrate for yard engineers and motormen: The basic hourly rate for these employees in 1950 was about $1.70. A subtraction of the 10 cents granted in October 1948 gives $1.60. Adding 20 percent to this produces $1.92. Adding 7 plus 12.5 plus 6 cents plus 1 cent produces $2.185. Subtracting the 1950 basic rate of $1.70 gives a gross rise of 48.5 cents per hour. This figure minus the preconversion increase of 34 cents equals a net conversion amount of 14.5 cents for this classification.

The wide difference between the parties' apparent understandings of the Organization's proposal on conversion wage rate increases is perhaps to be explained as follows: (a) The Organization's demand includes not only the 20 percent conversion change and the 7 cents third-round increase for matching the nonoperating employees' increases of 1948–49, it also contains the 12.5 cents fourth-round increase and the 6 cents escalation increase for matching the nonoperating employees' 1950–51 attainments. Presumably the 33 cents increase (not including the July 1, 1951, escalation) proposed by the Organization as a preconversion change also contains the latter two amounts. Therefore it appears that the preconversion and the conversion increases proposed by the Organization contains at least that

amount of duplication. (b) The Carriers' subtraction of the proposed preconversion increase of 34 cents (including the July 1, 1951, escalation) appears to represent an attempt to remove duplication, and to apply the recommendation made by the so-called McDonough Emergency Board in respect to wage rate increases to be made when the Carriers put the yard operating employees on the 5-day week.

In any case it should be understood that the part of the Organization's proposal which involves the use of the 20 percent raise for each classification *separately* is said by the Organization to represent the exact way in which each nonoperating classification was converted to the 5-day week. The Organization contends that each classification under its jurisdiction must be accorded the same treatment.

(b) *The Carriers' conversion wage rate proposal.*—The Carriers offer to all five yard classifications an increase of 4 cents per hour upon conversion. This makes the following differences between their proposal and their explanation of the Organization's proposal: for yard engineers, 10.5 cents per hour; for yard firemen, 5.5 cents; for outside hostlers, 6.5 cents; for inside hostlers, 5.0 cents; and for outside hostler helpers, 3.3 cents. The differences between the Carriers' offer and the Organization's statement of its own demand would be very much larger. For yard engineers, for example, the difference would be 53.5 cents.

The Carriers contend that in the matter of total wage-rate increases since September 1948 the sum of their offered preconversion and conversion increases (38 cents per hour) brings the yard operating employees represented by the Organization abreast of the nonoperating employees and those of the operating employees (e. g., those represented by the Brotherhood of Railroad Trainmen and those represented by the Switchmen's Union of North America) who have agreed to the Carriers' proposals. In other words, the Carriers assert that their entire wage-hour proposal to the Organization is in precise accord with the pattern already established for 89 percent of all railroad employees.

We proceed now to consider the arguments advanced by both parties in support of their respective proposals for road operating employees and for yard operating employees.

B. Positions of the Parties on Wage Rate Increases for Road Operating Employees.

1. *The Organization's position.*—So far as the Board has been able to discover, the Organization has made no statement explicitly justifying its demand that, of the total wage rate increase of 19.5 cents per hour (which both parties agree should be made by July 1, 1951),

18.5 cents rather than 12.5 cents should be embodied in the roadmen's base rates and only 1 cent should be added under escalation. However, the Organization has stressed before the Board, as well as before the previously mentioned Senate Committee, the worsening relative wage rate position of railroad employees in general and of the Organization's members in particular. The Organization holds that since 1939 the wage rate rank of these railroad employees has deteriorated among the country's manufacturing and nonmanufacturing employees. They appear to base this conclusion upon data similar to those presented by the Senate Committee's general counsel as Committee Exhibits 17, 18, and 19 on pages 640 to 655 of the printed transcript of the hearings before that Committee. The main point said to be established by these exhibits is that, whereas the average hourly earnings afforded by Class I railroads ranked thirty-seventh among a list of 124 manufacturing and nonmanufacturing industries' hourly earnings in 1939, this rank had dropped to sixty-fourth by 1949.

The Organization made no attempt to inform the Board as to what the relative position of railroad earnings would be if its wage rate demands or the Carriers' wage rate offers would be put into effect. That is, from anything the Organization said, the Board is unable to infer whether the hourly earnings rank of railroad employees would be above, below, or the same as the 1939 rank if the Organization's proposal (or the Carriers' proposal) were put into effect.

The Organization also made no statement on the relation between the trend in railroad workers' and Organization members' earnings (hourly and weekly) and the trend in the workers' cost of living. Nor did the Organization present its notion of whether the Carriers could afford to pay the demanded or offered wage rate increases.

2. *The Carriers' position.*—In trying to justify their wage rate offer for road operating employees the Carriers presented detailed information on two main points: (a) The past and present relative wage rate standing of railroad employees in general and of the Organization's members in particular; and (b) the pattern of wage rate increases obtained and accepted by nonoperating and operating employees in the railroad industry since earlier dates. A third point, applicable to the parties' proposals on wage rate increases for yardmen as well as for roadmen, was also developed: the ability of the Carriers to pay the proposed increases.

a. *The relative wage rate position of railroad employees.*—On this question the Carriers offered two lines of evidence: (1) At the Board's request they presented data showing past and present relationships between the straight-time and gross hourly earnings of road operating employees in the classifications represented by the Organization and

those of manufacturing workers. (2) At the Board's request the Carriers presented data on the past and present rank of all railroad employees' average gross hourly earnings in a list of manufacturing and nonmanufacturing industries and crafts. (The Board asked the United States Bureau of Labor Statistics to make an independent spot check of these data; they were found to be substantially correct, as presented.)

(1) *Comparisons between road engineers, firemen, and manufacturing workers.*—The Carriers' data on this comparison purported to show that (a) whereas in 1932 the excess of the straight-time average hourly earnings of road engineers and firemen over those of all manufacturing workers and over those of all production workers in durable goods manufacturing were, respectively, 71 cents and 66 cents per hour, (b) and whereas these excesses in 1939 were, respectively, 78 and 72 cents, (c) in 1950 the respective excesses were $1.05 and $0.99; and (d) under the Carriers' offer would in September 1951 have been $1.20 and $1.13 per hour. The Carriers pressed the point that the wage rate differentials between engineers-firemen and manufacturing workers had widened in terms of cents per hour and would continue to do so under the Carriers' offer; that is, the straight-time hourly earnings of these two classifications had risen and would continue to rise more, in cents, than those of manufacturing workers.

The data of the Carriers led them to the same conclusion in respect to comparisons involving gross rather than straight-time hourly earnings.

(2) *Rank of all railroad hourly earnings among manufacturing and nonmanufacturing industries.*—Starting with the Senate Committee Exhibit 16, which showed average gross hourly earnings on Class I railroads as a whole to have ranked thirty-seventh in 1939 and sixty-fourth in 1949 among 124 manufacturing and nonmanufacturing industries, the Carriers compared the rank of all Class I railroad hourly earnings in May 1949 among 261 manufacturing and nonmanufacturing industries with the rank in July 1951 after the 1950–51 wage rate increases had been granted to 89 percent of all railway employees. (The Bureau of Labor Statistics, whose data—in addition to those of the Interstate Commerce Commission—were used for the comparison, had reclassified and redefined its wage reporting industries into a more detailed, longer list after the Senate comparison was made.) The Carriers showed that, whereas Class I railroads ranked 151st in May 1951 as to average gross hourly earnings, they stood fifty-fourth in July 1951.

The Carriers also stated that, whereas in 1939 the railroad employees had been only among the top third of the country's industries in the

matter of average gross hourly earnings, by July 1951 they had risen to the top fifth of the Nation's industries.

From these comparisons the Carriers concluded that (a) the Organization's contention on the relative deterioration of railway wage rates was invalid and untenable; and (b) the Senate Committee's exhibits and conclusions were erroneous as of March 1951 when its counsel's exhibits were made part of the Committee's record. Most railway workers had received fourth-round increases by that time.

b. *Patterns of wage rate increases within the railroad industry.*—The Carriers went back to the year 1937 in an effort to establish three conclusions: (1) Beginning (at least) in 1937, wage rate increases for all classifications of railroad employees have been made in cents per hour rather than in percentage terms. (2) If the Carriers' proposed increases for all road operating employees are put into effect, then over the years 1937–51 the wage rate increases (in cents per hour) for road operating employees will have been as large as (in fact 2.6 cents per hour higher than) those for the nonoperating employees—87.5 cents compared with 84.9 cents. This statement of course holds only if the 40-hour week increase, averaging 23.5 cents per hour for all nonoperating employees is not included. The Carriers held it should not be included in such a comparison because the roadmen do not desire such an hours change. The same conclusion holds, said the Carriers, if general, non-5-day-week wage rate changes are considered for the shorter period 1948–51. Here such increases amounted to 29.5 cents for the road operating employees, compared with 26.5 cents for the nonoperating employees. (3) As of August 1951 the total number of railroad employees that have accepted the pattern of increase offered by the Carriers to the roadmen represented by the Organization is more than 1.1 million, or 89 percent of total railroad employment. All the 930,000 nonoperating employees have followed the pattern. Moreover, 51 percent of the operating employees have accepted it. These operating employees include 65,000 road trainmen and conductors represented by the Brotherhood of Railroad Trainmen; 76,000 yard brakemen, conductors, and switch tenders represented by the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America; and the yardmasters represented by the Railroad Yardmasters of America. Therefore, to deviate from the Carriers' offer would, it was contended, create a great many inequities among employees and crafts that have always been very careful to preserve historical, existing wage rate differentials.

c. *The Carriers' ability to pay wage rate increases.*—The Carriers' position on their ability to bear the increased labor costs involved in

sizeable wage rate increases covered of course not only the raises proposed for roadmen but also those for yardmen.

Their contentions may be summarized as follows: (1) The railroads have suffered and are continuing to suffer heavily from the competition of rival forms of transport—motor trucks and busses (of which only a small fraction are owned or controlled by the railroads), passenger automobiles, airplanes, and ships. For example, in 1926 railroads handled 77 percent of all intercity freight traffic and 76 percent of all nonautomobile intercity passenger traffic. But by 1951 these percentages had dropped, respectively to 58 percent and 53 percent. (2) Class I railroads' ratio of net income to net assets is less than one-third the ratio for all manufacturing corporations and about one-half that for public utilities. (3) In respect to ratio of net income after taxes to net worth, the railroads rank sixty-eighth in a list of 70 leading industries. (4) The ratio of net railway operating income to the value of transportation-service property is even lower than the last mentioned ratio. (5) Return on net investment, after accrued depreciation and amortization, averaged only 3.5 percent during 1946–50. (6) No immediate improvement in this situation can be anticipated. (a) The railroads have invested large sums in new, modernized facilities. But any increase in man-hour productivity made possible through this program will be more than wiped out by the recent and proposed wage rate increases and (in the words of the Carriers) by the burdensome "featherbedding" rules imposed by many of the railway labor organizations, particularly in the field of train operation. Dieselization of the roads at first produced large savings in areas of heavy traffic. But diminishing returns from this source have set in as diesel locomotives are used in lighter traffic lines. (b) The locomotive fireman's job used to be arduous and responsible. Now, say the Carriers, under dieselization it has become almost obsolete in any rational technological sense. (c) In spite of its heavy total investment in facilities, the railroad industry outranks any manufacturing industry in ratio of total wages and salaries to value of sales. (d) The ratio of wage payments to operating revenues has risen substantially during recent years; and under the proposed wage rate increases, this trend will continue. (e) Railroads are not free like almost all other industries to raise product prices when productions costs increase. Their freight and passenger traffic rates are regulated by the Interstate Commerce Commission, which, according to the Carriers, has usually not permitted rate increases commensurate with wage rate increases. (7) The financial difficulties of the railroads are not the result of excessive bonded indebtedness and interest charges thereon or of excessive dividend payments to stockholders. The ratio

of interest on funded debt to operating revenues has declined from 9 percent in 1921–25 and 13 percent in 1936–40 to 4.2 percent in 1946–50. The ratio of cash dividends to revenues has fallen from 5 percent in 1921–25 to 3.5 percent in 1936–40 and 3 percent in 1946–50.

C. Positions of the Parties on Wage-Hour Adjustments for Yard Operating Employees

1. *The hours issue*—a. *The position of the Organization.*—On the issue of the reduction of the length of the work-week as such (i. e., apart from the related question of a compensatory wage rate increase) for yard operating employees represented by the Organization, the limited presentation of the Organization did little to enlighten the Board in respect to the reasons for this demand. It appears, however, that the Organization rationalizes this change in terms of the 5-day, 40-hour week which prevails in the great majority of other industries. An underlying reason is undoubtedly the fact that there are hundreds of furloughed firemen and enginemen on the Organization's membership rolls. This fact tends to lead the Organization to reject the Carrier's contention that a serious manpower shortage would arise from the sudden, immediate introduction of the 5-day week.

It should be noted that the Organization does not propose a sweeping, uniform establishment of the shortened work-week. It wishes the members on each railroad to decide if and when it is to be introduced. This leads to the inference that (1) many members might prefer to be employed under present conditions, whereby they are able to work more than 40 hours (although at straight-time rates) and take home larger pay because (2) if the 40-hour week were installed, such members would not expect to be asked to work more than 5 days, i. e., they would not expect to receive overtime pay.

b. *The position of the Carriers.*—Under present emergency defense conditions the Carriers do appear to expect a manpower shortage of qualified yardmen to develop if the 5-day week is suddenly and sweepingly installed. To use inferior employees would tend to increase labor costs. They are also mindful of two additional, related cost-increasing matters: (1) If the manpower shortage actually develops, they may have to work existing employees more than 40 hours per week, in which case the penalty overtime rates become applicable. (2) A reduction in the length of the work-week is usually associated to some extent, at least when a labor organization is involved, with an increase in wage rates.

This brings us to the main issue involved in the proposed conversion to the 5-day week.

2. *The wage rate issue.*—In section A on *Issues*, herein, the wage-hour proposals were outlined as presented to the Board by the parties. In giving this outline, we divided the discussion, as the parties did, into "preconversion" and "conversion" parts. However, in the Board's judgment, this separation does not adequately describe the nature of either party's proposal. Accordingly, the analysis here embraces no such division.

a. *Introduction.*—In order to understand the nature of and arguments for each side's proposal, it is necessary to consider some of the background. Both parties agree on the facts involved therein. In 1948 the so-called Leiserson Emergency Board heard the dispute between the Carriers and the combined nonoperating organizations on the issues of (1) reduction of their workweek from 48 to 40 hours, with 48 hours' pay for 40 hours of work (i. e., a wage rate increase of 20 percent upon conversion); and (2) a third-round general wage rate increase, separate from the work-week wage-rate increase. In respect to the first issue, the Organizations contended there that, as experience and statistics showed, a reduction in the length of the work-week had always been accompanied by an increase in hourly wage rates sufficient to maintain take-home pay. They cited developments during the 1930's, particularly under the President's Reemployment Agreement and the codes of fair competition promulgated by the National Recovery Administration. They also stated that a 20 percent compensatory increase was necessary to restore the historical relation of nonoperating employees' hourly earnings to those of workers in outside industry. And they cited four arbitration awards in which a work-week reduction from 48 to 40 hours had been accompanied by a 20 percent rise in hourly wage rates—the *Pittsburgh Street Railways* case of 1934, the *Central Greyhound Lines* case of 1941, and the *Northwest Airlines* and *Northeast Airlines* cases of 1946. The Carriers in the case before the Leiserson Board addressed themselves mainly to the movements in wage rates and hours that occurred from 1936 to 1941, mainly under the Fair Labor Standards Act of 1938, and apparently were not able to reply convincingly to the Organizations' contentions, which focused attention chiefly on the movements from 1929 to 1935.

In any case, the Leiserson Board found for the nonoperating organizations and recommended (1) a 20 percent increase in wage rates for each nonoperating classification to become effective in September 1949, the conversion date; and (2) a third-round general wage rate increase of 7 cents per hour effective in October 1948.

In 1950 the so-called McDonough Board sat on three separate cases between the Carriers, and, respectively, the Order of Railway Con-

ductors and the Brotherhood of Railroad Trainmen; the Switchmen's Union of North America; and the Railroad Yardmasters of America. (It should be noted that, because the issues were similar, the President of the United States, without apparent criticism, appointed the same personnel to each of the three McDonough Boards.) Among the issues was the present one of introducing the 5-day week for yard service employees, with no loss in take-home pay through a 20 percent wage rate increase. The arguments of the organizations before the McDonough Boards were substantially the same as those presented by the nonoperating organizations to the Leiserson Board. In addition the findings and recommendations of that Board were stressed. The Carriers, addressing themselves this time to the period 1926–36, contended as follows: (1) Under the National Industrial Recovery Act the reductions in the lengths of work-weeks were mainly a spread-work measure and were not thought of chiefly as a way of raising hourly wage rates. (2) Most of the wage rate increases from 1933 to 1936, although doubtless accelerated by the N. R. A. provisions, would have occurred anyway as the result of business recovery from the depressed conditions of 1930–32. (3) In general, only the unskilled workers affected by the minimum wage rates of the N. R. A. codes received wage rate increases commensurate with their reductions in weekly hours. (4) From 1925 to 1936, during which period earnings of the 5-day week movement began and gained great momentum, the hourly earnings of the railroad employees, whose work-weeks were not reduced, rose more than those of other industries. (5) The Leiserson Board fell into serious error when it accepted the unions' arguments.

The McDonough Boards rejected the Organizations' arguments. They recommended a wage rate increase of 18 cents per hour to the yard operating employees before them, not mainly as an allowance to compensate for any possible future establishment of the 5-day week but to restore the historical differential between the average hourly earnings of the nonoperating employees and those of the yard operating employees.

Among the organizations before these Boards, the Switchmen and the Yardmasters came to agreement with the Carriers in the fall of 1950 on the general basis of the Boards' recommendations and of Dr. Steelman's suggestions. The conductors and trainmen rejected the recommendations and threatened a strike which led to Government seizure in August 1950 as previously noted. Later, in May 1951, the Brotherhood of Railroad Trainmen signed an agreement with the Carriers, accepting the McDonough recommendations and Dr. Steel-

man's suggestions and falling into line with the general previously established pattern.

In the light of this summary of preceding events three things become clear: (1) Two previous Emergency Boards have faced the issue of wage rate increases related to proposed changes in the length of the work week. The respective findings and conclusions of these Boards appear to be opposed and in conflict. Nevertheless, the McDonough Board was compelled to recommend a wage rate increase to restore a wage rate differential disturbed by the recommendation of the Leiserson Board. Thus, the employees before the McDonough Board benefited indirectly from the earlier Board's recommendation, although not by the same number of cents per hour. (The nonoperating employees received an average of 23.5 cents per hour upon conversion in September 1948, whereas the McDonough Board found that, in the light of other increases previously received by the yardmen, 18 cents would be sufficient to restore the differential.) (2) In the instant case the total amount ("preconversion" and "conversion") offered by the Carriers to the Organizations' yardmen by July 1951, is 38 cents per hour. Of this amount, 19.5 cents may be considered as a straight general wage rate increase, composed of a 12.5-cent rise in *basic* rates and a 7-cent escalation increase; and 18.5 cents may be regarded as a "McDonough Board" increase, of which 14.5 cents is payable by July 1951 and 4 cents upon actual conversion to the 5-day week. (3) The Organization's demand for 33 cents, to which its 1-cent July escalation figure may be added, giving a total of 34 cents, was previously labeled "preconversion." This 34-cent figure, in terms of the pattern established in other agreements, may be regarded as having the following composition: a "McDonough Board" 18 cents to restore the differential with the nonoperating employees; 5 cents, 2 cents and 8 cents (total of 15 cents) as ordinary general increases in *basic* rates, effective on successive dates, to match increases received by other organizations (but the latter received in their basic rates only 12.5 cents of these increases); and a 1-cent escalation increase, as of July 1951. The Organization's "conversion" demand, as explained by its counsel, duplicates the "preconversion" demand in the following respect: It contains all but 1 cent of the 19.5 cents general increase (12.5 cents in basic rates and 7 cents under escalation) granted to other crafts under the so-called pattern.

b. *The position of the Organization.*—In the Organization's opening (and only) statement to the instant Board its arguments before the Leiserson and McDonough Boards were repeated in summary fashion. The findings of the majority of the previously mentioned

Senate Committee (contained in the latter's report of June 27, 1951), which upheld the operating organizations' contentions before that committee, were also cited and quoted.

Apart from the duplication mentioned above, the essence of the Organization's position on the wage-hour issue for yardmen appears to be these four things: (1) Nonrailroad workers generally receive wage rate increases high enough to maintain take-home pay when the lengths of their work-weeks are reduced. Equity requires that the Organization's members be treated likewise. (2) When the nonoperating employees were put on the 5-day week, each classification received a *percentage* (not a cents) increase. This meant a 20-percent rise in each class' basic rates. There was no averaging of all the nonoperating classifications' basic rates, to which 20 percent was then applied, with the resulting cents-per-hour figure given to each class. Equity demands that *this* Organization's members be given the same treatment. (3) The war and postwar practice of giving across-the-board wage rate increases in cents per hour to all the occupations in a plant or industry has so narrowed the *percentage* differentials among the classes of workers to the disadvantage of the skilled crafts that a reversal is required: General wage rate increases should now be made percentage-wise. (4) The Organization's members should of course receive as much in wage rate increases unrelated to work-week reduction as other crafts have since its members last received increases. Equity demands this also.

c. *The position of the Carriers.*—In their appearance before this Board the Carriers restated the previously mentioned arguments made before the Leiserson and McDonough Boards. In doing so they tried to point out the errors in the reasoning of the Leiserson Board as well as the logical, factual basis for the findings and recommendations of the McDonough Boards.

Three additional points were made: (1) In the 1946 Airlines cases cited by the Organization the nonoperating personnel of the airlines industry were granted a 40-hour week, accompanied by a 20 percent wage rate increase, which averaged 24.9 cents per hour. But they agreed to forego the first-round wage rate increase of 18.5 cents per hour which the workers in other industries obtained in that year. Their net wage rate increase was thus only 6.4 cents, or only one-fourth of the amount needed to maintain their take-home pay. (2) The *Pittsburgh Street Railways* case, also cited by the Organization, was unique in the transit industry. In 1950, among 26 leading transit systems serving cities of 500,000 or more inhabitants, only 13 operated under the 5-day week. Among these 13, all but the Pittsburgh system had converted to the shorter work-week without maintaining take-

home pay. The weighted average of wage rate increases made when these 12 systems converted was 6.4 cents per hour, or less than one-fifth of the amount needed for maintenance of weekly pay. (3) Special note was made of the circumstance that a fact-finding board on the *New York City Transit* case in 1950, refused to recommend full maintenance of take-home pay for conversion to the 40-hour week in that city, citing the fact that such maintenance had not been the prevailing practice in the transit industry. The Carriers emphasized that (a) the chairman of this New York transit board had been a member of the above-mentioned Leiserson Railroad Emergency Board but had failed to cite the action of that Board; and (b) the economist for the union in the New York case was the same person who had appeared for the railroad nonoperating organizations before the Leiserson Board and he made the same arguments before the transit board.

The basic contentions of the Carriers on the amount of wage rate increases justified for the Organization's yard operating members thus appear to be these: (1) Most nonrailroad workers, including those in the municipal transit industry, have not at any time received wage rate increases large enough to maintain weekly earnings when their workweeks were reduced. (2) The McDonough Board dealing with certain yard operating railroad employees were correct in rejecting the erroneous conclusions and recommendations of the Leiserson Board for the nonoperating railroad employees. The McDonough Boards recommended what the Carriers now propose; namely, a wage rate increase intended to restore the differentials and redress the inequities between the nonoperating classes, on the one hand, and the yard operating employees, on the other—these inequities having been erroneously created by the action of the Leiserson Board.

D. Findings and Recommendations of the Board on the Wage-Hour Issue

1. FUNDAMENTAL WAGE RATE AND HOURS ISSUES BEFORE THIS BOARD

a. *Wage rate issues.*—There seem to be two basic issues on wage rates that the instant case has raised for consideration by the Board. These issues underly both the dispute over wage rate increases for the Organization's road operating members and the dispute over increases for the Organization's yard operating members.

There appear to be two basic wage rate questions to be faced by the Board: (1) Are the Organization's road and yard members now suffering from wage rate inequities? (2) If so, what wage rate increases are needed properly to redress these inequities?

An important subsidiary question is raised by these issues: How is "wage rate inequity" to be defined? In relation to whom are the Organization's members suffering inequities, if any: the members of other labor organizations representing road and yard operating employees of the railroads? the members of organizations representing nonoperating employees of the railroads? workers in nonrailroad industries? the stockholders of the railroads? the carriers as entities? the consumers of the carriers' services? or all other persons who receive income out of the productive process of the economy?

The Board is not unmindful of the economic position of the Organization's members in relation to the last five of the seven groups of persons just listed. The Board herein does give some attention to comparisons affecting these groups. But it is well known to students of labor relations and labor economics that the most important inequities are those felt and suffered closest to home. That is, workmen have the keenest sense of injustice in respect to what have come to be known as intraplant or intrafirm inequities—unreasonable or unjustified wage rate differences between the rates in effect for a given job or craft in relation to the rates being paid for other jobs or occupations, particularly those that are closely related in terms of physical proximity or in terms of connections in the production process.

In these terms the members of the Organization would be most concerned over the relation of these wage rates to those being received by other road and yard operating employees and over relative changes in these rates over periods of time. Next in effect on their morale would be the relative rates and changes therein received by the employees of the nonoperating crafts.

Although relatively less important as a rule, interplant, interfirm, and interindustry inequities are of very real significance to employees. Injustice is often felt when neighbors in other employments have received wage rate increases not matched by anything a given workman or group thereof have obtained. Similarly with increases in the profits made by employers and in the dividends received by stockholders: Even in the absence of intra- plant or firm and inter- plant or firm or industry wage rate inequities, employees might well feel rankling injustice if informed of abnormally high profits or dividends in the firms for which they work.

But, in the railroad industry as in others, these kinds of inequities normally assume major importance only in what may be called "lead" or "key" cases. For example, suppose that within the railroad industry all the classifications of employees had received a given round of wage rate adjustments and that, therefore, no intra- firm or industry inequities were being felt. Suppose further, then, that a particular

labor organization wished to lead off and initiate another round of increases. Here certainly the determination of whether this organization's members were suffering wage rate inequities would properly demand a comparison of changes in the members' rates or hourly earnings with changes in those of the workers in other related industries. And major weight should be given to the results of such a study.

The instant case is not one of these. On the basis of the evidence presented by the Carriers, which the Organization did not attempt to controvert, the Board concludes that most weight must be given to comparisons of wage rate changes within the industry.

Another important subsidiary question remains: Granted that intraindustry wage rate comparisons are of prime significance here, should these comparisons be made in terms of cents-per-hour changes or in terms of percentage changes? In answering this question, the mere fact that, as the uncontroverted evidence shows, all wage rate changes since 1937 (except the one involved in the conversion of the nonoperating groups to the 40-hour week) have been made in cents-per-hour does not appear to be compelling. The definitive point is, in what terms was the existing intraindustry inequity created, cents-per-hour or percentage? Because it was established by cents-per-hour wage rate increases given to other employees, the Board is bound to redress it in these terms. Here again, it is only in a "lead" case, as defined above, that a percentage change in rates for the Organization's members should be considered.

b. *Reduction of the work-week.*—In the Board's opinion all the above-stated circumstances are also conclusive in respect to the introduction of the 5-day week, as such, for the Organization's members in yard service. That is, intraindustry comparisons must take precedence here also.

2. WAGE RATE INCREASES FOR ROAD OPERATING EMPLOYEES

a. *Intraindustry comparisons.*—If changes in the wage rates and hourly earnings of road engineers and firemen are compared with changes in those of other railroad classifications of employees, the uncontroverted evidence introduced by the Carriers establishes the following: (1) In respect to wage rate changes since 1937, the road engineers and firemen represented by the Organization are presently in an inequitable position vis-a-vis the nonoperating employees and the road and yard operating employees represented by the Brotherhood of Railroad Trainmen, the Switchmen's Union of North America, and the Railroad Yardmasters of America. This is because these other groups have received a fourth round of wage rate increases, whereas the road engineers and firemen have not. (2) In respect to changes in

gross hourly earnings, the road engineers and firemen are now in an inequitable position only in relation to the members of the Brotherhood of Railroad Trainmen. The favorable earnings opportunities afforded by the "dual" system of pay under which the road operating employees work account for the lack of inequity vis-a-vis the nonoperating and the yard operating employees. (3) All these existing inequities would be removed if the Organization were to accept the Carriers' wage rate proposal for these members of the Organization.

b. *Other comparisons.*—Uncontroverted evidence introduced by the Carriers, plus the Board's own independent studies of available data, establish certain conclusions in respect to other comparisons sometimes relevant to the discovery of possible inequities. As stated above, the Board ascribes minor importance to these comparisons under the circumstances of the instant case. But the comparisons should be made, and the conclusions stated. (1) Among all the industries of the country the wage rate rank of railway employees as a whole appears to have improved in July 1951 over their rank in 1939 or 1949. However, because road engineers and firemen are among the 11 percent of railway employees who have not yet received the railroad fourth round of general wage rate increases, the road engineers and firemen represented by the Organization may not have improved their ranking much, if at all. But acceptance of the Carriers' offer would redress any such inequity, if it exists. (2) The Organization's road members are not now suffering from any inequity vis-a-vis the railroads as corporate entities or the stockholders of the railroads. This fact is established by data on available railroad earnings and dividend payments, plus the information presented on the railroads' unfavorable competitive position. (3) The cost of living for urban wage-earners, as depicted by the Bureau of Labor Statistics' Consumers' Price Index, has in general risen by smaller percentages than the gross hourly earnings of road engineers and firemen. Thus, from 1937 to September 1951, the C. P. I. increased about 82 percent, while these employees' hourly earnings rose about 94 percent. And from 1948 to September 1951, the respective increases were about 8 percent and 14 percent. However, from 1949 to September 1951 the C. P. I. went up about 10 percent, while the average hourly earnings of these employees increased only about 4 percent. But acceptance of the Carriers' offer would have provided for September 1951 an hourly-earnings increase of 12 percent. (This cost-of-living comparison has significance because the C. P. I. represents the prices received by most of the Nation's contributors to production, including railroad workers. Changes in the C. P. I.

indicates changes in the prices and incomes received by most producers. Therefore, if it rises faster than the price or hourly earnings received by a given group, the latter is subject to an inequity.)

c. *Findings and recommendations.*—On the basis of all the evidence and information before it and in the light of the reasoning presented at the beginning of this section (D), the Board finds that the only serious inequity to which the road operating members of the Organization are now subject is an intraindustry one, arising out of earlier 1950–51 wage settlements made by the Carriers and out of the disinclination of the Organization to accept the Carriers' offer to extend this fourth-round pattern of railroad wage rate increases to this group. The Board finds that this offer, if accepted, would redress the inequity. The Board finds also that 89 percent of all railroad employees, 100 percent of the nonoperating employees, 51 percent of all operating employees, and 62 percent of all yard service employees have accepted this fourth-round pattern of railroad wage rate increases. It concludes that (1) if the Organization received less, its members would still be subject to an intraindustry inequity; and (2) if the Organization got more, its own members' inequities would be eliminated, but immediately the bulk of railway employees would be stricken with a newly created inequity. This would be particularly serious because all these covered employees are bound by a moratorium agreement not to ask for further wage rate increases until October 1953 (except those permissible under an "improvement factor"). The Board's present task is to make recommendations for the correction, not the creation, of inequities. Therefore the Board strongly recommends that the parties conclude an agreement incorporating the Carriers' offer for road operating employees.

WAGE-HOUR CHANGES FOR YARD OPERATING EMPLOYEES

a. *The hours issue.*—In respect to the question of reducing the workweek of the yard operating members of the Organization—apart from the issue of related wage rate increases—the data available to the Board establish the following conclusions: (1) Some of the Organization's members wish to work only 5 days and 40 hours a week; others do not. Otherwise the Organization would not have asked that conversion be introduced at the option or wish of the members on individual carriers. It is impossible to say whether a majority of members desire the 5-day week. (2) In respect to those who desire it, an intraindustry as well as interindustry inequity exists. Most of the workers in nonrailroad industry have long been on the 5-day week. All the nonoperating

classifications are now on the 5-day week. A majority of the yard operating employees (62 percent) are now working under agreements which permit the introduction of this work-week under certain conditions. (3) These conditions are those contained in the Carriers' offer to the Organization. As before stated, the Board feels no obligation to find whether or not the manpower situation is such as to justify the Carriers' wish to introduce the 5-day week gradually and only upon their own or an arbitrator's decision that sufficient manpower exists to make the conversion without significant increases in costs (because of the use of inferior workmen or because of premium overtime payments). (4) The fact remains that the organizations representing 62 percent of yard service employees have agreed to accept the Carriers' wishes in this matter. Therefore to accede to the Organization's proposal would again create more inequities than are resolved.

Accordingly the Board here too recommends that the parties conclude an agreement incorporating the Carriers' proposal.

b. *The wage rate issue*—(1) *Intraindustry comparisons.*—If changes in the wage rates and hourly earnings of yard operating employees are compared with changes in those of other railroad employees, the uncontroverted evidence introduced by the Carriers establishes the following: (a) In regard to wage rate changes since 1937, the yard service employees represented by the Organization are now in an equitable position in a number of respects: (i) Vis-à-vis the nonoperating employees, they not only have not received the railroad fourth-round of general wage rate increases but they also have failed to match the cents-per-hour increase received by the nonoperating organizations in 1949, when the latter went onto the 5-day week. (ii) Similar inequities now exist in relation to the yard operating members of the organizations (noted above) that have signed agreements with the Carriers accepting the latters' offer. (iii) In relation to the road operating members of the Brotherhood of Railroad Trainmen, an inequity now exists, arising from that organization's acceptance of the Carriers' offered fourth round of general wage rate increases. (b) In respect to changes in gross hourly earnings, the yard operating employees (especially the engineers, firemen, and hostlers) are now in an inequitable position in relation to nonoperating employees. (c) All these existing inequities would be removed if the Organization were to accept the Carriers' wage rate proposal for its members.

(2) *Other comparisons.*—Other comparisons, less important for the instant case than those made above, were also made by the Board. The first two are the same and produce the same results as those given above for road operating employees. The third—the one involving a

comparison of movements in the Consumers' Price Index with changes in average hourly earnings—shows the following: (a) From 1937 to August 1951 the C. P. I. rose about 82 percent, while the gross hourly earnings of yard engineers, firemen, and hostlers went up 105 percent. (b) From 1948 to August 1951 the C. P. I. increased about 8 percent and these employees' hourly earnings rose about 16 percent. (c) From 1949 to August 1951 the C. P. I. rose about 10 percent, while hourly earnings went up about 9 percent. Here again the only cost-of-living inequity for these employees exists for the short, last mentioned period. (d) Acceptance of the Carriers' offer would have raised their earnings by 23 percent from 1949 to August 1951. In other words, such acceptance would have more than removed their short-term inequity.

(3) *Findings and recommendations.*—On the basis of the information before it and in the light of the reasoning developed in section D1 above, the Board finds as follows: (a) The only serious wage rate inequity from which the yard operating members of the Organization are now suffering is an intraindustry one, arising out of the previous 1950–51 wage rate-hours settlements made by the Carriers and out of the Organization's disinclination to extend these settlements to its own members by accepting the Carriers' offer. Acceptance of this offer would fully redress the inequity. (b) Because the great majority of railway workers have accepted the Carriers' offer, for this Board to recommend a settlement in excess thereof would mean recommending that many more inequities be created than corrected. (c) This unhappy result is by all means to be avoided, particularly because the settlements already made contain a moratorium on further wage rate changes (except under escalation and possibly under an "improvement factor") until October 1953.

Accordingly, the Board strongly recommends that the Organization conclude an agreement with the Carriers which will incorporate the wage-hour offer of the Carriers as explained to the Board.

4. *Approvability of Board recommendations under Government's wage stabilization program.*—The Carriers presented to the Board a rather detailed analysis of the Government's wage stabilization policies and regulations under the Defense Production Act, as amended. They also analyzed their own and the Organization's wage rate proposals in the light of this stabilization program.

The Board has familiarized itself with these wage stabilization policies and regulations. Its conclusions are as follows: (a) The increases proposed by the Carriers and recommended by the Board in general require the special approval of the Railroad and Airline

Wage Board created in September 1951 by General Order No. 7 of the Economic Stabilization Agency (subject to review by this latter Agency). (b) No matter what the unit of employees chosen—all engine, train, and yard service employees (the 22 classes of operating employees); road operating employees and yard operating employees separately; engineers, firemen, and hostlers separately; road engineers and firemen and yard engineers, firemen, and hostlers separately; all firemen and hostlers; or any other combination—only the road service units could obtain the recommended increases without approval under General Wage Regulation No. 6 (the "catch-up" 10 percent formula) of the Wage Stabilization Board (this Order and others having been taken over by the Railroad and Airline Wage Board). That is, the recommended increases in wage rates for all but the road units make for increases in average straight-time average hourly earnings which exceed the amounts found by multiplying the average straight time hourly earnings of January 1950 in the respective units by 10 percent. (c) The cost-of-living escalator provisions of the recommended increases are also not automatically approvable under General Wage Regulation No. 8. This is because these provisions establish a higher percentage increase in wage rates than the percentage increase in the cost of living as measured by change in the Bureau of Labor Statistics Consumers' Price Index. (d) The recommended increases are doubtless approvable under General Wage Regulation No. 17, which provides for the correction of interplant inequities after scrutiny by the Wage Board. (e) In any case, Wage Adjustment Order No. 1 of the Economic Stabilization Agency and Wage Stabilization Board Resolution No. 32, which were issued to make effective the recommendations of the Temporary Emergency Railway Panel in respect to the approvability of wage rate increases agreed on between the railroads and the nonoperating organizations, make it probable that pattern increases such as those recommended by this Board in the instant case will be approved by the Railroad and Airline Wage Board. (f) This conclusion is fortified by the fact that in June 1951 the Wage Stabilization Board, before the creation of the special Railroad and Airline Wage Board, approved the May 1951 agreement between the Carriers and the Brotherhood of Railroad Trainmen. This agreement is almost identical to that recommended by the Board in the instant case.

Accordingly, pursuant to the requirements of section 502 of the Defense Production Act of 1950, as amended, the Board certifies that the wage rate changes recommended herein are consistent with the standards that have been established by the Federal Government for the purpose of controlling inflationary tendencies.

IV. THE PROPOSED RULES CHANGES

A. Preliminary Considerations

In addition to considering and making recommendations on the wage and 40-hour work-week issues this Board is confronted with issues involving proposed changes in rules, which represent another but equally significant segment of the instant controversy. No one has ever entertained even a captious doubt but that "Railroad Rules" and "Railroad Rules Changes" constitute one of the most technical, involved, and highly complex subjects in the entire baffling welter of industrial relations problems which from time to time are thrown into the lap of Emergency Boards for solution. Some, if not all, of the rules changes confronting the present Board have been passed upon previously by other Emergency Boards, or by arbitrators, but seldom before under such straightened or handicapping circumstances. Rarely, if ever, has an Emergency Board been obliged to perform its statutory duty in a situation where the contestant of such changes continuously abstains from participating in the Board's fact-finding efforts and procedures, and in addition issues an anticipatory declaration critical of the Board's forthcoming findings of fact and recommendations, before either have been conceived or published. This Board makes these observations doubly to underscore the incalculable handicaps and difficulties under which this Board must perform its statutory duty to the President of the United States and to the people of this Nation. Manifestly, in attempting to perform its functions under such circumstances this Board assumes something of a new and altogether singular role in the history of Emergency Boards.

The history of the movement generating the present rules changes is substantially the same as that developed earlier in this report in connection with the demands for wage rate increases and the 40-hour work-week. In order to avoid duplication and overextending this report, note here will only be made of this history, and the same will simply be incorporated by referenece in the present discussion of the proposed rules changes, supplemented however by a brief history of such developments as are singular to one or more of the rules under discussion.

B. Road Employees Performing More Than One Class of Service

This proposed rule change is similar to one urged upon the Brotherhood of Railroad Trainmen, the language and context of which ultimately and finally was determined by an arbitration proceeding between that organization and the Carriers' conference committees, parties to the instant Emergency Board proceeding. That award was released August 1, 1951, and thereafter the Brotherhood of Railroad

Trainmen appointed a special committee to study the award and to make recommendations to its general chairmen in respect thereto. It is interesting to note, that this special committee's report contained the following recommendation, as published in the Trainmen's News for September 10, 1951.

The special committee appointed to handle the More Than One Class of Road Service Dispute declared in its report, which was also adopted, that as a result of its study it was found that: (1) The award is binding upon the parties and not subject to legal attack. (2) The award applies to road service only. (3) The award does not authorize a combination of yard and road service. In view of our findings, we recommend that the general committees who, under the award, are required to revise existing rules, *adopt without change* the awarded rule including the eight questions and answers. [Emphasis supplied.]

In the above mentioned arbitration proceedings with the Brotherhood of Railroad Trainmen, the Carriers' conference committees proposed a more-than-one-class-of-service rule somewhat different from the one adopted by the Arbitrator. The adopted more-than-one-class-of-service rule, in general, was the one proposed by the Brotherhood of Railroad Trainmen, with certain modifications. Although the Carriers' proposal on this subject in that arbitration proceeding was rejected by the Arbitrator, the Carriers apparently accepted the rule drafted by the Arbitrator without protest. In this Emergency Board proceeding they are now urging a modified text of the rule largely drafted by the Brotherhood of Railroad Trainmen, as a fair, just, and equitable basis for agreement on this subject with all operating organizations, and particularly with the Brotherhood of Locomotive Firemen and Enginemen. The rule adopted by the Arbitrator in the Brotherhood of Railroad Trainmen Arbitration Proceedings, and modified and adapted to this proceeding by the Carriers, reads as follows:

Road engineers, firemen, and helpers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed. The overtime basis for the rate paid will apply for the entire trip.

Question 1.—Does the rule apply to engineers, firemen, and helpers in unassigned and/or assigned road service?

Answer.—Yes, except where existing rules adopted prior to August 1, 1939, specifically provide that engineers, firemen, and helpers will not be required to perform work other than that to which regularly assigned.

Question 2.—Does the rule apply to engineers, firemen, and helpers at an intermediate point or between two intermediate points where engineers, firemen, and helpers are required to perform road service not incident to the normal trip?

Answer.—Yes, except where existing rules adopted prior to August 1, 1939, specifically provide separate compensation for such work.

Question 3.—Does the rule set aside lap-back or side-trip rules?

Answer.—No, except that when a combination of service includes work, wreck, helper, or pusher service, such rules will not be applicable to any movements made in the performance of such service.

Question 4.—Does the rule set aside existing conversion rules?

Answer.—No.

Question 5.—Does the rule set aside existing terminal switching rules?

Answer.—No.

Question 6.—Does the rule apply to engineers, firemen, and helpers in passenger service?

Answer.—Yes, except where under existing rules seniority acquired by employees in passenger service is separate and distinct from the seniority acquired by employees in freight service. Helper or pusher service, not a part of their regular assignment, or wreck or work train service should not be required of passenger engineers, firemen, and helpers except in emergencies.

Question 7.—Does the rule apply to engineers, firemen, and helpers who are required at an intermediate point or points to perform work train service?

Answer.—Yes, except where existing rules adopted prior to August 1, 1939, specifically provide for separate compensation for engineers, firemen, and helpers performing work train service.

Question 8.—Does the rule apply where road engineers, firemen, and helpers are instructed at the outset of a trip before leaving the initial terminal to perform another class of road service outside of the terminal?

Answer.—Yes, except where existing rules adopted prior to August 1, 1939, specifically provide otherwise.

The foregoing résumé outlines the genesis of the proposed rule change, involving combinations of more than one class of road service.

Throughout the past century and during periods covered by collective bargaining agreements with the various operating brotherhoods as well as before the Carriers have required their employees to perform more than one class of road service. And, when such combinations have been made, these labor contracts have usually established definite and certain rates of pay therefor. But, as might be expected, numerous changes were effected by negotiation and interpretation after collective bargaining agreements became customary, which for purposes of this discussion need only be noted, but not discussed.

Following the enactment of the Adamson Eight Hour Law which became effective in January 1917, certain significant events took place. A body known as "The Eight Hour Commission" was created pursuant to this statute and charged with the responsibility of studying the operation of the Adamson Act and its effect upon wages and working conditions of railroad employees. This Commission employed Prof. William Z. Ripley as a consultant, and in his report he discussed the rules pertaining to combinations of road service, laying particular emphasis on the lack of uniformity in these rules with respect to the compensation provided.

Shortly thereafter the United States became involved in World War I, and the various railroads of this Nation were placed under Federal

control, and their operation placed in the hands of the Director General of Railroads. This officer immediately established another commission to study the problems originally examined by Professor Ripley, and authorized and directed it to make recommendations for their solution. Based upon the recommendations of this second commission, rules and rates of pay for the various operating organizations were established by the Director General, retroactively effective to January 1, 1917. One of these orders obligated the Carriers to pay time and one-half to trainmen in yard service, but did not extend the time and one-half rate to road service compensated on a mileage or daily basis. Consequently, the operating brotherhoods pressed for the establishment of time and one-half for overtime worked in all classes of train service. After a number of meetings with the Director General, this official finally made a proposal to the operating Brotherhood representatives on November 15, 1919, reading in part as follows:

I am therefore willing to establish, December 1, 1919, the time and one-half for overtime in road freight service provided the train and enginemen will accept such a basis in lieu of all special allowances and arbitraries of every character, and will do this for the railroads as a whole.

In order to remove any ambiguities or misunderstandings relative to the Director General's proposal, the operating Brotherhoods thereupon submitted several questions to him, one of which reads as follows:

Question *f*.—Will highest rates for day be paid when two or more classes of service are performed on the same day or trip?

Answer.—When two or more classes of road service are performed on the same day or trip there is no objection to applying the rate applicable to the highest class of service performed with the overtime basis for entire trip applicable to the rate paid.

At a conference between the general chairmen of all operating brotherhoods held November 27, 1919, the aforesaid question and answer was considered and the following resolution approved:

BE IT RESOLVED, That our Chief Executives be directed to notify the Director General that we are willing to accept his proposition for the payment of time and one-half for road overtime in freight service on all roads under Federal Control: *Provided*, That all initial and final terminal allowances or rules of every description in individual schedules, together with mountain differentials, and all constructive mileage allowances of every description be preserved. Terminal allowances to be paid at pro rata when the trip, including time at terminals, does not entail overtime. If overtime accrues (terminal and other time to be measured continuously), overtime at one and one-half time to be paid.

Following receipt of a copy of the aforementioned resolution, the Director General on December 2, 1919, commenced negotiations with

the operating brotherhoods to agree on implementing changes and additions to the rules, so that they might conform to the revised understanding of road overtime. The resulting new rule covering two or more classes of road service, agreed upon during these negotiations, appears in the Basic Day and Overtime Rule of Supplement No. 24 as Article VII (c), and reads as follows:

> Road engineers, firemen, and helpers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip.
>
> When two or more locomotives of different weights on drivers are used during a trip or day's work, the highest rate applicable to any engine used shall be paid for the entire day or trip.

A rule identical with the above Article VII (c) of Supplement No. 24 has been written into all labor contracts which have been in effect on all Carriers since the year 1919, except where the same have been modified or supplemented by Escape Agreements signed subsequent to December 1, 1919.

But, as anyone would anticipate, the connotation to be accorded such a rule became the subject of many ensuing controversies. After the year 1919, various interpretive forums charged with the responsibility of construing this rule came into being from time to time. One of the principal agencies issuing interpretations of the more-than-one-class-of-service rule quoted above was the First Division of the Adjustment Boards created under the Railway Labor Act, as amended. Some of the interpretations released by the First Division have done violence to the manifest meaning of this rule. In fact these interpretations have largely confused the intent and meaning of the existing more-than-one-class-of-service rule, as a guide to Carriers in determining whether diverse classes of service could be combined without the payment of a penalty.

In order to avert the payment of substantial penalties resulting from distortions of the existing rule by the various Adjustment Board rulings, certain Carriers have entered into "escape agreements," which the Carriers generally assert are about as unmeritorious as the awards they seek to supersede. The Carriers allege that these escape agreements are not a reasonable or proper solution of the combination-of-service problem, when considered in the light of modern efficient technical operations. The Carriers also allege that these escape agreements are subject to the same infirmities, in principle and in cost, as are the distorted awards resulting from the interpretations placed upon the original rule.

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In this connection it should be observed and emphasized that the performance of two or more classes of road service during a single trip is not only desirable in many situations, but not infrequently is entirely unavoidable. An outstanding example of a desirable combination, used by the Carriers probably more frequently than others, is the combination of through or local freight train service with so-called work train, construction, or maintenance-of-way service. Such a combination frequently occurs when a through or local freight train is obliged to handle, as a part of its consist, one or more cars of ballast or other roadbed material from a terminal or supply point to a location along the right-of-way, where maintenance or construction work is being performed. Another combination equally desirable and not unusual consists of the occasional handling of cars of revenue freight by work trains, when perishable products are offered for immediate movement, and customary freight train service is not readily available. Still further combinations of road service often essential in order to avoid interruption in the movement of freight include the use of the locomotive of one train to assist in rerailing a derailed car of another train in order to clear the track of such obstructions (technically a combination of freight or passenger service with road-train service) ; the use of the engine and crew of one train to assist another train which has become stalled by reason of being immobilized during extremely cold weather (technically a combination of freight or passenger service with helper service) ; or the diversion of a crew, already called and on duty in through or local freight service, from the train for which called for the purpose of handling a wrecked train in an emergency. The performance of the aforementioned combinations does not appear to involve any particular hardship or difficulty for the employees involved. In truth the transition from one class of service to the other in such combinations of road service is largely technical, frequently only temporary, and almost always of little consequence to the employees affected, except that their rates of pay for the trip may be increased as a result of the making of such combinations.

Any attempt to portray accurately the position of the Organization on the combination of service problem constitutes a most difficult undertaking in this proceeding. The only evidence or pronouncement coming directly from the Organization, and related expressly to this subject, is embraced in a statement by its Counsel appearing at page 49 of the Transcript, which reads as follows:

> The third and fourth rules changes proposed by the carriers are those relating to payment for performance of more than one class of service while on the road, and for deferring the regular time for reporting for duty. Both proposals involve many different local conditions and local rules. In fact, the latter proposal has significance, so it developed in conference, only in the eastern region. These

rules, to advert to a former theme, are retrogressive in effect, and are incongruous in labor relations in this day.

No proof whatever was submitted by the Organization to substantiate the above generalities, and this Board was left to speculate regarding their alleged existence, as well as their relative significance in connection with the problem now under consideration.

A balancing of the equities of the interested parties including those of the public, as demonstrated through the compulsory ex parte procedures thrust upon this Board, persuades it that the rule proposed by the Carriers affords the most equitable, practical, and least hazardous solution to the vexing combination-of-service problem. Such a statement of the rule will preserve the many and varied existing agreements on diverse properties relating to combinations of road service, which were negotiated and executed by the Organization pursuant to the desirable process of voluntary collective bargaining. Practices and interpretations based on the long-standing rule as originally drafted by the Director General of Railroads, will not be destroyed or have to be discarded in favor of new, untried, or revolutionary provisions. And, of even greater significance, the adoption of the rule urged by the Carriers in this proceeding will nullify and vitiate the violent interpretations placed upon the language of the original combination-of-service rule by the awards of the First Division of the Railroad Adjustment Boards, which literally have thrust railroad management into an operating jungle providing only unreliable guides for determining whether different classes of road service may be combined without the payment of sizable penalties. Finally, existing seniority rules and standing will not be jepoardized, and foreseeable unrest and inefficiency resulting from jeopardy to seniority standing will be avoided.

The Board therefore recommends that the parties adopt a combination of road service rule, the language and text of which should be substantially in the form as presented above.

C. Designation of Switching Limits

Another proposed rule change relates to the propriety of management's freedom to expand or contract switching limits, together with the establishment of effective procedures for implementing any such expansion or contraction. An intelligent and accurate appraisal of this proposal necessitates a thorough understanding of the connotations attached to three trade terms, namely "*switching limits*"; "*yard limits*"; and "*terminal limits.*"

The term "switching limits" describes an area or district within which the movement of cars is accomplished by yard crews as distin-

guished from road crews. There are several terms often used in railroading which are almost but not exactly synonymous with switching limits, namely "yard limits" and "terminal limits." While all of these terms are sometimes loosely employed in the same sense, they do not in all cases connote precisely the same geographical areas, and a controlling consideration always to be borne in mind is that yard limits, switching limits, and terminal limits may or may not be geographically coextensive or identical in any particular location.

Yard limits are identified within and between distinctive roadside signs, usually carrying those words, and represent an area wherein the operating rules impose different specific requirements from those applying outside of such yard limits. For example when a yard engineer reaches the yard limit board, he becomes aware that he is on his own, and that he must proceed with greater caution. Another noteworthy difference is that the flagging rules do not apply in the same manner when a train stops within yard limits.

"Terminal limits" is a term possessing a somewhat broader connotation. Often this term is employed to define the area within which carload freight may be delivered to, or received from shippers at line-haul rates applicable to or from the station, and such terminal limits are not physically marked with a board like yard limits. In this connection, it should be further observed that switching limits invariably are not physically marked by any monument either. Apparently a Carrier by unilateral action can alter terminal limits or yard limits, but such unilateral powers of change are not enjoyed by the Carrier with respect to switching limits, for reasons hereinafter discussed in greater detail.

Another significant concept which must be borne in mind in connection with the subject presently under consideration is the circumstance that switching limits are generally not defined by metes and bounds in any written instrument, nor are they portrayed on any chart or plat accessible to the Carriers and the Brotherhood. Manifestly therefore, the boundaries of switching limits within any given yard or terminal, almost without exception, exist only in the minds of the Carriers and their employees and their bargaining agents, and these boundaries have been established wholly through custom and practice among the parties over the years. Consequently, actual written memorials, defining boundaries within which road crews and yard crews have operating rights on any property, seldom exist.

The observations just made demonstrate that, on the vast majority of railroads in the United States, no written rule or agreement on the subject of the establishment or alteration of switching limits exists. A few of the Nation's railroads, however, have entered into written

agreements with their employees, specifying the location of switching limits within some yards or terminals. Even in the great majority of situations where no written instrument exists specifying the boundaries of switching limits, or requiring the consent of the employees before any expansion or contraction of the same is made, the operating Brotherhoods have insisted that alteration of switching limits is a subject requiring an agreement between the Organizations and the Carriers. Except where agreements exist defining such boundaries, the Carriers have opposed this position.

However, such a practice has been thrust upon the railroads by the sundry rulings and interpretations issued by the First Division of the National Railroad Adjustment Board. These awards uniformly hold that established boundaries of switching limits may not be changed under any circumstance by a Carrier without the consent of its employees. Even in situations where the boundaries of switching limits have not been defined either by agreement between the parties, or by unilateral action of the Carrier, the First Division has ordered the parties to negotiate agreements specifying switching limits and has held that agreements so negotiated cannot thereafter be changed except by mutual consent. In addition, the First Division has held that where yard crews are employed to perform some service outside of switching limits, the Carrier may be subject to penalty payments to both the yard crew used and to the road employees who assertedly are entitled to perform such work.

That from time to time changes in switching limits are required in the interest of efficiency, economy, and better public service, certainly is a self-evidence fact. Constant shifts in population; the growth of one city and the contraction of another; and the consequent shifting of industrial enterprises from one area to another produce a continuing need for expansion or contraction of trackage and switching facilities in one or more areas. Only a static population with a static economy would present different switching limit requirements. As new industrial areas are opened and existing terminals or yards are expanded, extension of switching limits is desirable. The Carriers contend that a particular railroad should not reasonably be expected to delegate a veto power to its employees or their bargaining agent, as to whether a particular industry shall or shall not be included within a given switching territory under such circumstances.

The precise switching limits rule which the Carriers are proposing follows:

(a) The employees involved, and the Carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, being desirous of cooperating in order to meet conditions on the various properties to the end that

efficient and adequate switching service may be provided and industrial development facilitated, adopt the following:

(b) Except as provided in paragraph (c) hereof, where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, whereupon the carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board.

If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. The jurisdiction of the Arbitration Board shall be limited to the questions submitted to it. The award of the Board shall be final and binding upon the parties.

(c) Where, after the effective date of this agreement, an industry desires to locate outside of existing switching limits at points where yard crews are employed, the carrier may assure switching service at such location and may perform such service with yard crews from a yard or yards embraced within one and the same switching limits without additional compensation or penalties therefor to yard or road crews, provided the switch governing movement from the main track to the track or tracks serving such industry is located at a point not to exceed 4 miles from the then existing switching limits. Road crews may perform service at such industry only to the extent they could do so if such industry were within switching limits. Where rules require that yard limits and switching limits be the same, the yard limit board may be moved for operating purposes but switching limits shall remain unchanged unless and until changed in accordance with paragraph (b) hereof.

The yard fireman or yard firemen involved shall keep account of and report to the carrier daily on form provided the actual time consumed by the yard crew or crews outside of the switching limits in serving the industry in accordance with this paragraph (c) and a statement of such time shall be furnished the General Chairman or General Chairmen representing yard and road crews by the carrier each month. Unless some other plan for equalization of time is agreed to by the General Chairman or General Chairmen representing yard and road crews, the carrier shall periodically offer to road employees the opportunity to work in yard service, under yard rules and conditions, on assignments as may be mutually agreed upon by the local representatives of the employees involved, for a period of time sufficient to offset the time so consumed by yard crews outside the switching limits. In the event such local representatives fail to agree, the carrier will designate such assignments but shall not be subject to penalty claims because of doing so. Such equalization of time shall be apportioned among employees holding seniority as road firemen in the same ratio as the accumulated hours of yard firemen.

(d) This agreement shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.

(e) This rule shall become effective (—— date —— except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before the (—— date ——).

The announced purpose of this proposal is to improve rail service to the public by providing means whereby existing switching limits

may be permanently changed at the instance and request of the Carrier, but through and by means of the orderly processes of collective bargaining, or arbitration if necessary. And, in addition, the proposal was made to permit the Carriers to assure switching service to an industry proposing to locate adjacent to but outside of existing switching limits within 4 miles of existing switching limits and under conditions which will safeguard the work opportunities of the employees affected. It contemplates employing the customary procedure of notice, negotiation, and mediation; but recognition that mediation conceivably may not produce an agreement also appears in the proposal. In the event of disagreement arbitration is suggested, thus insuring against a stalemate in negotiations, while providing machinery whereby legitimate objections of the employees may be heard and considered by a neutral arbitrator.

Finally, the Carriers' offer establishes a method whereby switching service to a particular industry proposing to locate outside of, but reasonably adjacent to, established switching limits, may be assured at once and for as long as required, but without any prior necessity that the Carrier follow out the procedure for permanently extending switching limits. The proposition embraces provisions whereby the conditions under which such service is performed, will preserve for the employees involved, and particularly for those in road service whose work opportunities may be affected, an opportunity to share in the performance of the added service by performing equivalent yard work.

The absence of any proof submitted by the Organization disclosing the effect of the proposed switching rule on its membership, has impelled this Board to make an exhaustive search of the evidence available to it, for the purpose of determining the probable impact of such a rule on firemen generally. In connection with this search, it was noted that on most railroads, the engineers and firemen working in both road territory and in yards or terminals are drawn from common seniority rosters; and these employees, except for those few who are permanently restricted to yard service, may move from one type of service to another as they desire, but of course in accordance with their individual seniority standings. Furthermore, employees working in engine service are represented by the same organizations, whether employed in road or yard service. Emphasis should also be placed on the circumstance that seniority relates to and is accumulated on a yard and/or road basis, but never on a switching limit basis. As a result, any valid objections by these organizations to changes in the scope of switching territory, must be based upon con-

siderations other than the asserted protection of the respective seniority rights of road and yardmen.

The proof submitted persuades this Board that, if the Carriers were able to act with reasonable promptness in providing expanded switching service, actually all employees in both road and yard service would mutually benefit to a greater extent than they would otherwise. The sole source of railroad revenues and take-home pay for employees is traffic. Whenever the Company can attract new shippers or better satisfy old ones, both the firemen and their employers are likely to prosper to a greater extent. Prompt and adequate switching service obviously assists existing shippers to increase their shipments, and tends to persuade new and prospective shippers to channel their business over the railroads rather than over competing carriers. The delays and uncertainties which grow out of attempts to secure agreements with labor organizations relative to switching service exhibit the poorest type of salesmanship to customers. Manifestly the Carrier, not the firemen, negotiates with shippers regarding switching service, and it should be in a position to give prompt assurance of the very best possible service. Obviously, from such an ability on the part of the Carrier, all classes of employees, and certainly the firemen, will acquire benefits outweighing any possible disadvantages.

With respect to the proposed designation-of-switchig-limits rule, this Board again was furnished with only a rudimentary statement of the Organization's position, and there was no persuasive proof demonstrating that its position on this subject is sound or justifiable. Again we are compelled to look almost exclusively to the statement of the Organization's counsel, to ascertain its objections to a switching limit rule:

> Two of the important rules which the Carriers would have us accede to concern the establishment of interdivisional runs and alteration of the location of switching limits. It would seem to us obvious, without more, that such matters as the length of runs or the size of a switch yard on a particular railroad, would be a matter of purely local concern and development. Despite the obvious, these representatives of the Carriers would have us in the course of a nation-wide movement agree to a plan for settlement of their local problems, in addition, agree on behalf of our local committees that such Carrier requests as are not disposed of in conference would be submitted to a final and binding arbitration under the Railway Labor Act. They ask this although they do not know what the questions to be submitted to arbitration will be in any one or all instances. * * * Who will decide what questions are germane to each arbitration? And, who, in possession of his faculties, would commit himself to arbitrate unknown questions?

A careful appraisal of the objections raised by counsel for the Organization in his opening statement, demonstrates that they are without merit. For example, the claim that the Carriers would have

the Organization, in the course of a nation-wide movement, agree to a plan for the settlement of their local problems, appears wholly unfounded when viewed in the light of the actual suggested language. Subsection (b) of the Carriers' proposal expressly provides that changes in switching limits shall be negotiated individually in each instance on the particular property involved; and by inference, yet undeniably, each proposed change in switching limits must be determined locally and upon the facts inherent in each individual switching limits controversy, even when carried to arbitration.

Likewise counsel's attack on the arbitration features of the proposal appears unconvincing. Startling as it may appear, the Carriers propose an unlimited and unconditional arbitration procedure relative to controversies over alterations in switching limits. Under the language suggested, the arbitrator could not only adopt or reject the requested change in switching limits, but he could also determine any ancillary issue which an individual fireman might feel he should raise and have determined for his own individual protection.

The firemen's rights also appear to be fully protected insofar as the establishment of service is concerned beyond established switching limits, under circumstances where no permanent change in such limits is either contemplated or has been finally made. The Carriers' proposal contemplates, that in the first instance in such situation, an actual record of the time consumed in this service will be kept by each yard engineer who, with a fireman, performs such service. This appears logical and workable, since these men are actually on the scene and thus would have no difficulty in keeping a record of the time devoted to this type of service during a tour of duty. The accumulated record would then be furnished in a statement to each interested general chairman. The latter then has an option of agreeing upon a plan for equalizing the work opportunities of the affected road and yard employees; but if the parties fail to agree upon such a plan, the Carrier is then required to offer road employees the option of working in yard service for a period sufficient to offset the time spent by yard crews in service outside of switching limits. In executing such provisions, and particularly in designating yard jobs to be worked by road men for equalization purposes, the Carrier would obviously be relieved of liability for penalty claims.

The foregoing observations clearly demonstrate, this Board is persuaded, that the Carriers' proposal for a switching limits rule is meritorious and that the objections thereto raised in this proceeding by the Organization are groundless and indefensible. Accordingly, toward the end of promoting industrial peace, increasing the volume and quality of railroad switching service available to the public, and

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increasing the work opportunities for firemen generally, this Board recommends that the parties adopt a switching limit rule, the language and text of which should be substantially in the form as hereinbefore set forth.

D. Interdivisional Runs Rule

The Carriers also have proffered an interdivisional run rule and they are asking this Board to make an informed recommendation with respect to it. In substance they suggest the establishment of a new rule declaring their right to create interdivisional, interseniority district, intradivisional, or intraseniority district service, of both freight and passenger types. The rule suggested by the Carriers, which would embrace assigned and unassigned service operated through established terminals, also contemplates additional sections of regular trains and extra trains, and reads as follows:

(a) Where an individual carrier not now having the right to establish interdivisional, interseniority district, intradivisional, or intraseniority district service, in freight or passenger service, considers it advisable to establish the same on any particular territory of the property, appropriate committee or committees of the Brotherhood of Locomotive Firemen and Enginemen representing the employees involved and proper representatives of the Carrier will conduct negotiations relating thereto. In such negotiations, the Carrier and the employees should definitely recognize each other's fundamental rights and, where necessary, reasonable and fair arrangements should be made in the interest of both parties.

(b) In the event the carrier and such committee or committees cannot agree on such matters, any party involved may invoke the services of the National Mediation Board.

(c) If mediation fails, the parties agree that such disputes shall be submitted to arbitration under the Railway Labor Act, as amended, but no dispute shall be submitted to arbitration until after the expiration of 1 year from the date of this agreement.

The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the Carrier to establish interdivisional, interseniority district, intradivisional or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established in that territory. *Provided further*, However, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of 1 year following the date of said award, except by consent of employees party to said arbitration.

(d) This rule shall become effective _____, 1951, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before _____, 1951. (Carriers' Exhibit No. 1, page 48.)

Early rules concerned with interdivisional runs had their origin in the circumstance that for many decades it was impracticable to run

engines or crews farther than about 100 miles in freight service or approximately 150 miles in passenger service. As a consequence of this operating obstacle, the approximate average distance between terminals was customarily established at around 100 miles. These early interdivisional rules also appear to have been written for the ostensible purpose of protecting district seniority, rather than for the purpose of establishing prohibitions on a Carrier's right to operate its trains in any particular manner.

During World War I and Federal control of Carriers by the Director General of Railroads, the essence of existing interdivisional run rules was embodied in paragraphs (c) and (d) of Article IV of Supplements No. 16 and No. 25 to General Order No. 27. Thereafter, by Interpretation No. I to Supplements No. 16 and No. 25, the Director General of the Railroads clarified the Government's understanding of permissible interdivisional runs, in the following language:

> What rearrangement of runs are permissible under these sections?
> Decision: * * * (4) Interdivisional runs may be established excepting where prohibited by provisions of existing agreements, providing constructive mileage is not absorbed.

Following the termination of Federal Control, the substance of Article IV paragraphs (c) and (d) of Supplements No. 16 and No. 25 was embodied in the Conductors and Trainmen's Agreements on a majority of roads, in addition to whatever interdivisional rules then existed on such properties. Rules subsequently devised by other operating brotherhoods also usually followed the general pattern quoted above.

By means of convincing proof, it was made to appear to this board that neither through the orders of the Director General, nor in subsequent rules based thereon, did the interested parties manifest an intention to transfer to the operating brotherhoods any part of the Carriers' responsibility for determining how its service should be performed. In fact the proof discloses that interdivisional service was operated before any rules were written on the subject, and patently before any orders were made by the Director General of Railroads. Indeed some of the first rules generally restricting employees to their own divisions, expressly recognized the existence of interdivisional runs, not as an exception for the Carriers' benefit, but more as an established and accepted practice to which the employees voiced no objection, other than making a request that they receive their proportionate share of such service on each division. In the furtherance of such a purpose, rules generally were written describing how interdivisional service was to be apportioned.

Notwithstanding this manifest intention and design, the First Division of the National Railroad Adjustment Board soon began announc-

ing interpretations of interdivisional run rules to the effect that each time a carrier wishes to establish or rearrange interdivisional service, it must first obtain the consent of the bargaining agent for its employees. For example, in Award No. 4636, the First Division stated that the obligation of the Carrier to confer upon the equalization of mileage was the precise reason it could not establish interdivisional runs without first obtaining the consent of the bargaining representatives of its employees. For all practical purposes, this and subsequent rulings of like tenor armed the operating brotherhoods with a veto over the establishment of interdivisional runs. Significant among such subsequent interdivisional rulings are those declaratory of seniority rights; those forbidding running through terminals; and those prohibiting the absorption of constructive mileage, unless consent of the bargaining agent is first procured.

The objections of the Organization and others to interdivisional runs probably had their genesis in the theory that their labor agreements (in conjunction with the complex and highly technical interpetations placed on the basic day pay rule; the first in—first out rule; and the district seniority rule) constitute a proscription against the running of road crews through terminals or division boundaries. But, in interdivisional service it appears obvious that, if and when the employees from District A perform service in District B, rules of the character just mentioned are not violated, provided the employees from District B are in turn permitted to perform equivalent service in District A. Such complimentary privileges manifestly must and do inhere in all rules relative to interseniority district runs, which until recently were not the subject of controversy initiated by either the Carriers or the operating brotherhoods. This conclusion is particularly emphasized by the circumstance that seniority rules, and first in-first out rules, together with those governing interdivisional or interseniority district runs, existed for many years in the same collective bargaining agreements on numerous properties, with no apparent conflict. The proof establishes that most interseniority district runs consist of two trains operated on expedited schedules; and mileage is run, and labor is generally performed, in both seniority districts. Thus in practice, both labor performed, and mileage run, appear equitably distributed among all seniority districts and divisions.

Many justifications are urged by the Carriers for the establishment of interdivisional runs. The more significant justification from an operational perspective, appear to be substantially as follows:

By means of interdivisional runs Carriers will be able to speed up both passenger and freight service, thereby more effectively meeting

presently existing keen competition in the transportation field. Modern trains admittedly are moved over properties between terminals at satisfactory speeds. But the limiting factor affecting the expeditious movement of trains today appear to be largely the delays and time spent at stations and in terminals. For some years, all Carriers have been vigorously reorganizing their terminal operations to avoid every possible delay, toward the end that both freight and passengers may arrive at their destinations with less elapsed time. To accomplish such ends, it is manifestly desirable to reduce, and insofar as possible eliminate, terminal delays and keep trains moving both on the road and through terminals with a minimum of interruption. The Carriers allege that some of the major obstacles in their battles for survival with competing motor and air carriers are the many restrictions currently preventing them from operating trains through terminals with a minimum of delay, and without the necessity of changing crews.

A second operational advantage claimed is that, with fewer crew changes, a substantial reduction in the number of individual sets of train orders required to be issued to crews can be accomplished.

A third asserted operational advantage is that the number of points at which crews must lay over between runs can be reduced, with a consequent diminution in the cost of providing and maintaining rest and recreational facilities for such employees at such points.

The Carriers further declare that a substantial financial advantage will enure to them, through the establishment of interdivisional runs and through the elimination of pay for considerable constructive mileage. The proof demonstrates that on many properties there are numerous runs of less than a hundred miles (or a hundred and fifty miles in passenger service), and on all such runs the employees nevertheless receive compensation equivalent to at least a minimum day's pay, pursuant to the dual-basis-of-pay principle which appears in practically all operating labor agreements. Under the Carriers' proposal these short runs could be combined, thereby producing runs with total mileage tantamount to or exceeding the equivalent of a minimum day, thus avoiding pay for constructive mileage for which neither the traveling public nor the Carriers receive a valuable consideration.

Finally, it is contended, the expansion of interdivisional runs will result in a better utilization of available manpower. During military emergencies or other manpower shortage periods, if the lengths of runs are restricted by divisional or seniority district boundaries, manifestly more men will be required to fill each run within each seniority district than would be required to fill interdivisional runs. Conse-

quently, it is urged, with a future manpower shortage almost a certainty, considerable operational advantage will result from the general establishment of such interdivisional runs.

Although the Organization avoided presenting any proof on the subject of interdivisional runs to this Board, evidence was introduced in the present proceeding upon which ostensibly this Board has every right to rely, and from which it may reasonably infer, that in recognition of the problems inherent in this highly controversial subject, this Organization during negotiations with the Carriers proposed that the following language be incorporated in an interdivisional run rule, which proposal it has never modified or withdrawn:

> Where a carrier desires to establish interdivisional interseniority, intradivisional, or intraseniority runs in passenger or freight service, the carrier shall give notice to the general chairmen of the organizations involved of its desire to establish such runs, giving detailed information with respect to the manner in which the crews will be assigned, including the specific trains on which the crews will operate in both directions, the length of lay-over at the away-from-home terminal, etc., the purpose being to furnish the employees with all necessary information to the end that the employees will be able to determine the extent to which their wages and working conditions will be changed and the added expense that will be imposed upon them as result of the adoption of the changes proposed by the carrier.
>
> At least 6 months' time from the date of this agreement will be allowed, within which to permit the carriers and the employee representatives on the individual properties to handle any changes proposed by the carriers under this rule and within the procedures provided in the Railway Labor Act, all unsettled questions to be handled on a national basis between duly authorized representatives of the carriers and of the employee organizations involved at a time to be mutually agreed upon. With respect to specific cases not finally settled on the national conference basis, the conferees will in good faith undertake to agree upon a method for ultimate and final disposition thereof. (See: Carriers' Exhibit 11, page 2).

A comparison of the language quoted immediately above, with the text of the interdivisional run rule offered by the Carriers (as previously presented), discloses many points of similarity in the two. However, when the texts of the two suggested rules are brought into sharp focus, certain facets of marked dissimilarity become palpable. The text of the rule suggested by the Organization fails to provide machinery for processing to a final conclusion any controversy concerned with establishing future interdivisional runs, if the interested parties should be unable to agree at the local level upon the desirability of creating such runs, or upon the terms and conditions incident to their creation. The Organization's proposal also prevents the Carriers from establishing any interdivisional service after the expiration of a 6 months' period following the execution of such an interdivisional run rule.

On the contrary, the proposition urged by the Carriers does embody machinery suitable for finally determining the desirability of establishing interdivisional runs and for the applicable conditions for interdivisional service established at any time in the future. The Carriers' offer expressly enables the parties to avail themselves of all orderly processes provided by the Railway Labor Act, as amended, including negotiation, mediation, and final arbitration if agreement is not reached in earlier steps. Under the language tendered by the Carriers, every objection which could be raised by the Organization in joint conference negotiations, including the relocation of homes, moving expenses, additional expenses incurred by longer lay-overs, elimination of constructive mileage, etc., as well as the length of proposed runs, constitute proper subject matter for negotiation, and/or arbitration. Significantly, language enabling the parties to avail themselves of all orderly processes established by the Railway Labor Act, as amended, including negotiation, mediation, and final arbitration, appears conspicuous by its absence in the rule proposed by the Organization. Such obvious deficiencies in implementing language calculated finally to determine future controversies arising over the establishment of proposed interdivisional runs, as are inherent in the text of the Organization's proposal cannot be lightly dismissed, if one concludes that the final resolution of such disputes is a desirable goal.

This Board is persuaded that a wise measurement for interdivisional rule proposals is the desirability of any such rule from the perspective of public service. In other words this Board is convinced that the limiting and controlling criterion for judging interdivisional run proposals should be their probable effect upon the abilities of the Carriers to serve the public safely, efficiently, economically, and in accordance with the law.

Notwithstanding the Organization's obvious coolness toward any change in the status quo, this Board is convinced that a fair, equitable, and uniform new interdivisional run rule will enable road employees as a whole to earn substantially the same amount of money in a lesser number of days each month, compared with what such employees presently earn under current interdivisional restrictions. A strong probability appears that road employees will also receive a further financial advantage, resulting from a reduction in the number of days they are required to lay over away from home and from the complementary increase in the number of leisure days they will be afforded at their respective home terminals.

The foregoing employee advantages, together with the extraordinary development of new and highly competitive modes of travel and

transportation and with the enormous technological improvements in railroading since the present proscriptions on interdivisional runs were conceived, in this Board's opinion furnish compelling reasons for largely removing the existing restrictions. Indeed any veto power abridging the establishment of rail transportation service to the limit of existing capacities, whether enjoyed by a labor organization or a carrier, cannot and should not long remain unbridled, whenever its employment appears to hinder or impede national economic progress.

When the apprehensions of the Organization, as expressed in its opening statement to this Board, relative to progressing future interdivisional run controversies through the orderly processes of the Railway Labor Act, including final and binding arbitration, are weighed in conjunction with its failure to establish any justification for these alleged apprehensions, it is reasonable to infer that some deep and as yet undisclosed motives are being harbored by the Organization, which induce it to assume this unexplained position. If the Organization has a sound case against the establishment of future interdivisional runs, why should it be apprehensive about exhibiting all of its reasons for such a stand, publicly and completely, before an impartial arbitrator appointed by the National Mediation Board? On the contrary, if the Organization is unable to muster persuasive reasons supporting such a position, why should this Board recommend impotent procedures for processing disputes over the establishment of future interdivisional runs, calculated only to obscure the absence of justifications supporting such a position? Recommendations by this Board of senile and inadequate procedures can and will only inspire an operating organization, lacking a sound case against the establishment of interdivisional runs, to insist upon the retention of obsolete interdivisional rules, and to decline to submit the reasons supporting such a stand for national scrutiny.

If on the other hand, the Organization's objective in eschewing effective procedures for finally determining the desirability of interdivisional runs is that it has secured rules on this subject which have outlived their usefulness in the light of modern efficient railroading practice; or if the retention of such archaic rules is sought simply because they confer small temporary financial emoluments on some of its members, then certainly the Organization should not seek to maintain obsolete rules that cannot be harmonized with the potentialities of modern railroad transportation. The intransigeant attitude displayed by the Organization, not only toward any change in existing interdivisional run rules, but also toward even an impartial investigation of this subject by this Board, creates an unfortunate impression. Its reluctance to participate with this Board in the examination of

suitable procedures for the establishment of a new interdivisional run rule raises a presumption that the Organization considers all current rules on this subject forever unchangeable. If the considerations just discussed do constitute the foundation underlying the Organization's resistance to a fair, equitable, and uniform new interdivisional run rule, manifestly its position is unsound; and the untenability of such a position will become more and more evident the longer it is maintained.

In introducing a new rule of this sort it is obviously important, after considering the public interest, to provide means for protecting the interests and welfare of employees. The Board finds that the second paragraph of the Organization's proposal is more specific and is better aimed at achieving the above-stated objective.

To the extent intelligent judgment may be formed on evidence adduced in an ex parte proceeding such as the one this Board has been compelled to conduct, and toward the end of scrupulously performing its functions and obligations under the Statute and the terms of its appointment by the President of the United States with respect to all affected parties, this Board recommends that the Carriers and the Organization adopt a new interdivisional run rule, embodying the following language:

(a) Where an individual carrier not now having the right to establish interdivisional, interseniority district, intradivisional, intraseniority district service, in freight or passenger service, considers it advisable to establish the same on any particular territory of the property, such carrier shall give notice to the general chairmen of the Organizations involved of its desire to establish such runs, giving detailed information with respect to the manner in which crews will be assigned, including the specific trains on which the crews will operate in both directions, the length of layover at the away-from-home terminal, the purpose being to furnish the employees with all necessary information to the end that the employees will be able to determine the extent, if any, to which their wages and working conditions will be changed and the added expense, if any, that will be imposed upon them as a result of the adoption of the changes proposed by the carrier.

Appropriate committee or committees of the Brotherhood of Locomotive Firemen and Enginemen representing the employees involved and proper representatives of the Carrier will then promptly conduct negotiations relating thereto. In such negotiations, the Carrier and the employees should definitely recognize each other's fundamental rights and, where necessary, reasonable and fair arrangements should be made in the interest of both parties.

(b) In the event the carrier and the aforesaid committees of the Organization involved cannot agree on such matters, any party involved may invoke the services of the National Mediation Board.

(c) If mediation fails, the parties agree that such disputes shall be submitted to arbitration under the Railway Labor Act, as amended, but no dispute shall be submitted to arbitration until after the expiration of 1 year from the date of this agreement.

The decision of the Arbitration Board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional, interseniority district, intradivisional or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established by the carrier in that territory within 1 year following the decision release date of the Arbitration Board; *Provided*, That if the carrier elects not to put the award into effect, the carrier shall be deemed to have waived any right to renew the same request for a period of 1 year following the date of said award, except by consent of the Organization party to said arbitration

(d) This rule shall become effective ----------, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before ----------, 1952.

E. *Rules for effectuating the shortened work week*

For the purpose of this part of our report, the two documents of importance are the last proposals of the parties, that is, (1) the so-called Basis of Agreement dated April 28, 1951, proposed by the three operating organizations (Engineers, Conductors, and Firemen); and (2) the "Agreements Proposed by the Carriers' Conference Committees," dated June 6, 1951, and submitted June 14, 1951.

The following proposal of the Organizations is pertinent:

> Establish 5-day, 40-hour week in yard, transfer, belt line and hostler service, using same formula as used in applying the 5-day, 40-hour week to the nonoperating group, contingent upon reaching an agreement on the necessary implementing rules, conversion to be at the option of committees on the individual carriers, such option to be exercised any time after July 1, 1951, upon 60 days' notice.

No proposals on implementing rules have ever been submitted by the Organization.

The pertinent provisions of the Carriers' proposals, consisting almost wholly of implementing rules, are in three parts, namely:

1. Agreement "A," which contains, inter alia, article 3 covering 12 sections designed to implement the establishment of the 5-day work-week when, as, and if established;

2. Agreement "B," which defers the application of Agreement "A" and substitutes in lieu thereof an "Interim Agreement," which is subject to termination on not less than 3 months' notice from the Organization that it desires to place into effect the 5-day work-week. But under this agreement the parties affirm that the Carriers are entitled to have 6- and 7-day service performed at straight-time rates with reasonable regularity; and if it be claimed that the manpower situation is such that adoption of the 5-day work-week would not permit this, the question of availability of sufficient manpower for such service is to be submitted for final decision to the nominee of the President of the United States; and

3. The Interim Agreement, which contains among other things article 3 covering a note and 10 sections to implement the establishment of the 6-day work-week.

Copies of article 3 of proposed Agreement A and of the proposed Interim Agreement, as well as the full text of Agreement "B," are annexed hereto, marked Appendices E, F, and G, respectively.

These proposed agreements are the outgrowth of the very general wording of item 1 originally proposed by the Carriers on or about November 1, 1949, and are based upon corresponding provisions in the Brotherhood of Railroad Trainmen's agreement. Obviously, since this is the first time the operating groups have requested the 40-hour work-week, there were no previous proposals of these rules.

The Carriers contend that their proposals are substantially identical with the implementing clauses arrived at through collective bargaining and finally incorporated in their agreements with the Brotherhood of Railroad Trainmen; that there has been very little, if any, detailed discussion of the clauses with the Organization, whose representatives, it is claimed, stated that, if a meeting of the minds could be reached on the other issues, there would be no difficulty with respect to these rules; and that there is no valid reason why the rules as agreed to by the Brotherhood of Railroad Trainmen should not likewise be agreed to by the Organization. The Carriers urge that it is just as important to the Carriers that the Board make recommendations as to rules changes to effectuate the shortened work week as it is to the Organization that the shortened work week be recommended. They summarize their argument as follows:

* * * the questions (1) whether a 5-day work week should be established * * *, (2) what adjustment should be made in their

basic rates of pay, and (3) what rules should be adopted to effectuate the 5-day and 6-day work weeks, are all interrelated—and in fact inseparable—questions.

A careful comparison of the Carriers' proposals with the corresponding provisions in the agreement with the Brotherhood of Railroad Trainmen shows the following:

1. Agreement "A": *The 5-day work week.*

a. The Carriers' proposed article 3 contains 12 sections—2 less than the 14 sections in article 3 of the agreement with the trainmen on this subject. Sections 5 and 7 in the latter, according to the Carriers, were not proposed for the Organization because the latter's members hold seniority in both road and yard service, whereas that is not true of the trainmen. For the latter employees it was necessary to have these sections 5 and 7; they related to the separation of common extra boards to protect both yard and road service and the handling of yardmen if a regular or regular relief assignment should be annulled.

b. The following provisions or relevant portions thereof in the Carriers' proposals vis-à-vis the corresponding provisions in the agreement with the Brotherhood of Railroad Trainmen are substantially identical:

Carriers' proposals	*Trainmen's agreement*
Sec. 1 (a)	Sec. 1 (a)
Sec. 2	Sec. 2
Sec. 3 (a) (b)	Sec. 3 (a)[1] (b)[1]
Sec. 3 (c) (d) (e)	Sec. 3 (c) (d) (f)[2]
(1) (2) (3) (4) (5) of subdivision (b) of Sec. 5 and the last unnumbered paragraph	(a) (b) (c) (d) (e) of subdivision (3) of Sec. 8 and the last unlettered paragraph
Sec. 4	Sec. 4
Sec. 5 (c)	Sec. 8 (4)[3]
Sec. 6 (a)	Sec. 6
Sec. 7	Sec. 9
Sec. 8	Sec. 10
Sec. 9 (a)	Sec. 11 (a)
Sec. 9 (e)	Sec. 11 (d)[4]
Sec. 10 (a) (b)	Sec. 12 (a) (c)[5]
Sec. 11	Sec. 13[6]
Sec. 12	Sec. 14

[1] The following wording in the Trainmen's agreement does not appear in the Carriers' proposal: "* * * except that in a seniority district having more than one extra board, such relief assignments as are established will be manned from the territory allotted to a particular extra board." The Carriers assert that this language was added because of a peculiar situation with respect to the trainmen in the Detroit district, where the trainmen have two extra boards in one seniority district. One part of a yard is covered by one

c. The following provisions seem identical, the only differences being that in the Carriers' proposals there is a separation of regularly assigned employees from extra employees, whereas the Trainmen's agreement seems to apply generally to all yardmen, including extra men, except for the new overtime rule.

Carriers' proposals — *Trainmen's agreement*

5 (a)[7] — 8 (1)[7]

Existing rules which relate to the payment of daily overtime for regular (assigned employees) ((yard men)) * * * shall be understood to apply to regular (assigned) relief men on assignments which conform with the provisions of Section 3 (of this Article) * * *.

5 (b)[7] — 8 (3)[7]

(Regular assigned yard and hostling service) employees worked (as such) more than 5 straight-time 8 hour shifts ((in yard service)) in a work week shall be paid 1½ times the basic straight-time rate for such excess work, except;

5 (d)[7] — 8 (5)[7]

Any tour of duty in road service shall not be considered in any way in connection with the application of (this agreement) ((the provisions of this Article 3)); nor shall service under two agreements be combined in (computations leading to overtime under the 5-day week.) ((any manner in the application of this Article 3.))

d. The Carriers' representatives state that the following are similar in principle, though not at all similar in wording:

Carriers' proposals	*Trainmen's agreement*
9 (c)	11 (c)—2d par.
9 (d)	11 (c)—1st par.

board and another part of the same yard by a second board. This situation does not exist in the case of the Organization.

[2] Section 3 (e) of the Trainmen's agreement was not included in the Carriers' proposal since it applies to the establishment of assignments for a crew as a unit. Yard engineers, firemen, and hostlers do not work with other engineers, firemen, or hostlers as a unit.

[3] This subdivision is identical except for a repetition in the second sentence of the Trainmen's agreement of the examples of arbitraries or special allowances.

[4] The following addition is in the Trainmen's section: "* * * unless the extra board has been exhausted and the exigencies of the service require the use of additional men, in which event senior available employees in the class in which the vacancy occurs shall be used in accordance with applicable rules or practices in effect on individual properties." These additional words are not applicable to the Organization, according to the Carriers, since on the individual properties they (the firemen) have provisions covering the manner of using men if the extra boards are exhausted.

[5] Section 12 (b) of the Trainmen's agreement is not applicable to firemen; it excepts certain employees from two sections of article 3 not contained in the Carriers' proposals.

[6] "Mark-up-boards" are added in the Trainmen's agreement. No such boards exist in the firemen's situation. Otherwise, the two sections are identical.

[7] Words in ( ) are in Carriers' proposal and not in Trainmen's agreement; words in (( )) are in Trainmen's agreement and not in Carriers' proposal.

e. The following provisions differ:

1 (b): This section provides for each individual carrier and an Organization representative to meet and agree on details and methods for rebulletining and reassigning jobs to conform to the 5-day week. Carriers argue that this is more desirable than the procedures set forth in the Trainmen's agreement.	1 (b)—This section provides for the carrier to post notices or bulletins regarding change in existing assignments and sets up a fixed procedure to be followed.
6 (b) (c) (d)—These comprise very short provisions relating to extra employees and are not found in the Trainmen's agreement.	8 (2) (a)-(e) NOTES (1) (2) (3). According to the Carriers, this is the overtime rule for extra men adopted under the following circumstances: The December 12, 1947, settlement with the Trainmen contained a rule covering overtime for extra men. Subsequently on August 11, 1948, a more favorable overtime rule for extra yard engineers and firemen was agreed to. Subdivisions (a) to (e) and the notes embody this more favorable overtime rule for extra trainmen.
9 (b)—If an employee transfer from one regular or regular relief assignment to another resulting in working more than 5 days in the period starting with the first day of his old work-week and ending with the last day of his new work-week, such day or days will be paid for at straight-time rates. The Carriers argue that this is more practical than the Trainmen's equivalent.	11 (b)—In the case referred to under Carriers' proposed 9 (b), the employee is not permitted to work more than 5 days in the work-week of the assignment he had at the time he made his choice if an extra man is available who can be used to perform the work on those days.

2. *Agreement "B".*—The Carriers' proposal is the same as agreement "B" signed with the Brotherhood of Railroad Trainmen.

3. *Interim Agreement.*—The 6-day workweek.

Instead of 12 sections, as in article 3 of proposed agreement "A," there are only 10 sections proposed for article 3 of the Interim Agreement—sections 4 and 7 having been inserted but marked "Blank." All proposals bear the same numbers as in proposed Agreement "A." The same procedure is followed in the Trainmen's agreement—12 sections instead of 14, numbers 4 and 9 (corresponding to Carriers' proposed sections 4 and 7) being inserted, but marked "Blank."

The "NOTES" appearing at the beginning of each article 3—in the Carriers' proposal and in the Trainmen's agreement—are substantially the same. These notes make the adoption of a 6-day week optional with the employees. In the Trainmen's agreement there is an exception to the option in the case of section 8 (2), which is the over-

time rule for extra trainmen, already in effect so far as the firemen are concerned. Section 8 (2) of the Trainmen's agreement became effective August 1, 1951, and had and has nothing to do with putting into effect the 5-day or 6-day week.

In the Carriers' proposal, except for a change in the timing of the effective dates in section 1 (a), the omission of section 4, subdivision 1 of section 5, and section 7, and the change from "5" days to "6" days, the article 3 in Agreement "A" and in the Interim Agreement are identical. The same is true of the Trainmen's agreement, the corresponding omissions being however section 4, subdivision (a) of (3) of section 8, and section 9.

The argument of the Carriers in regard to putting these effectuating rules into effect is most persuasive. Here again the absence of the Organization's representatives from the hearings creates certain difficulties. These difficulties are overcome in part by the fact that after lengthy discussions and negotiations the Brotherhood of Railroad Trainmen ultimately agreed to practically all of the Carriers' proposals for implementing the 6-day work week, for granting a certain period of time within which to ascertain the manpower situation, and finally, for implementing the 5-day work week should it be desired by the employees.

We find that the adoption of rules to implement the 5-day and 6-day work-week is as important as their actual establishment. Our recommendations in this connection are that the proposed Agreements "A" and "B" and the proposed Interim Agreement be incorporated as an integral part of the whole wage-hour settlement of this case.

F. Rule for Setting up a Disputes Committee

During the course of the negotiations following the exchange by the Organization and the Carriers of their respective proposals, several additional rules changes were proposed by each party. One of these was a proposal by the Carriers for the establishment of a disputes committee composed of representatives from both sides, and empowered to consider and determine disputes arising between railroads and the Organization's committees in connection with the revision of individual railroad contracts necessary to conform to the basic agreement. In case the disputes committee is unable to reach agreement, a neutral referee is to be selected by the committee members to sit with the committee and make a decision. This is considered particularly important by the carriers in connection with the 5-day or 6-day work-week situation.

In their proposal of June 14, 1951, the Carriers included article 10, entitled "Disputes Committee," providing as follows:

> Any dispute arising between the parties to this agreement in connection with the revision of individual agreements so as to make them conform to this agreement shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committees, signatories hereto, or their successors, and the employee members of which shall be three representatives selected by the organization signatory hereto.
>
> In the event the committee is unable to reach a decision with respect to any such disputes, a neutral referee shall be selected by the members of the committee, to sit with the committee and act as a member thereof.
>
> If a majority of the committee is unable to agree upon the selection of a neutral referee, any three members of the committee may request the National Mediation Board to appoint such neutral referee.
>
> Decisions of a majority of all the members of the committee shall be final and binding upon the parties to any dispute in which a decision may be rendered.

The Carriers desire this provision in the hope that it will provide a quick method of settling any dispute which may arise in connection with the revision of agreements on individual carriers to conform, for example, to either the Interim Agreement or Agreement "A." Unfortunately the position of the Organization was not made known to the Board; and, as previously indicated, there has been practically no discussion of the clause. According to the Carriers, the Organization might well wish to participate in the creation and operation of such a committee. This is because at one time the Engineers and the Switchmen, as well as the Organization, asked that a disputes committee be set up in connection with another rules movement.

A disputes committee clause substantially identical to that proposed here appears in the Interim Agreement, as well as Agreement "A" of the Trainmen's Agreement.

Under the circumstances of this case we find that the Carriers have established a prima facie case for the adoption of such a rule. We recommend that the parties adopt a disputes committee rule in the wording above set forth.

G. Rule Relating to Reporting for Duty in Road Service

In the original proposal for changes in rules made by the Carriers, there is no mention of the establishment of a rule regarding reporting for duty in road service. However, during the course of negotiations such a rule was proposed and was ultimately inserted in the Carriers' proposal of June 14, 1951. The Brotherhood in its so-called Basis

for Agreement of April 28, 1951, likewise proposed a rule on the same subject. These proposed rules follow:

Carriers' proposal

Article 7—Reporting for duty.—In assigned road service where employees report for duty without being called, and it is desired on any day to defer the reporting time, advance notice shall be given not less than the usual advance calling time for reporting for duty at each terminal and in accordance with usual calling practices at such terminal. The employee shall be notified at such time when he is to report and only one such deferment shall be made. In such cases the time of the trip or tour of duty shall begin at the time the employee is required in accordance with said notice of change to report for duty and does so report. If not so notified, the reporting time shall be as provided in the assignment.

Where employees are called, existing rules or practices are not changed or affected by this rule.

This rule shall become effective _____, 1951 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before _____ 1951.

Organization's proposal

Reporting for duty.—(a) In assigned road service where employees have a regular time for reporting for duty without being called and the train to which they are assigned is running more than 1 hour late, management may make one setback, not to exceed 2 hours, in the reporting time and compute compensation of the employees accordingly; provided, advance notice and a specified time to report is given at least 2 hours before the regular reporting time. Length of advance notice may be extended by mutual agreement between representatives of carrier and employees on individual railroads.

(b) Failure to comply with the provisions of paragraph (a), employees will be considered on duty as of the regular reporting time.

(c) Carriers will assume all expense incurred in giving advance notice under paragraph (a).

(d) Calling rules on individual railroads are not affected in any manner.

The Carriers urge that the Organization has agreed with them in principle; that therefore we should recommend the adoption of the rules proposed by the Carriers without the limiting conditions imposed by the Organization. These they argue are the following:

1. Apparently the rule would apply only at intermediate crew change points and not at origin terminals.

2. The Organization's rule would limit the setback to not more than 2 hours.

3. The setback could be made only if 2 hours or more advance notice were given.

4. No setback could be made unless the train were running at least 1 hour late.

The Carriers point out that, prior to 1947, employees regularly assigned to scheduled trains who were accustomed to report for duty

in terminals without being given a specific advance call could have their reporting time set back whenever their assigned trains were expected to be late leaving their terminals. However, as a result of requests served in 1947, engine service employees in 1948 obtained rules providing for arbitrary payments for initial terminal delay time. In presenting their case, the Organization urged that Carriers have both the right and duty to notify employees whose trains were late, so that they would not report before they were needed. This would allow the employees to have more time for their own purposes, instead of being required or permitted to report and thereafter to wait at the reporting point for long hours with nothing worthwhile to do. However, according to the Carriers, after the initial terminal delay rule was adopted, the Organization's representatives presented and progressed claims based upon the contention that the Carriers have no right to set back the reporting times of assigned employees whose trains were late. The Organization argued that these employees should be permitted to report as usual and thus become entitled to added compensation for initial terminal delay from their usual reporting times until the actual departure of the trains. It is for the purpose of clarifying this situation and eliminating these claims that the Carriers have proposed their reporting for duty rule. A provision in identical words is contained in the agreement signed with the Brotherhood of Railroad Trainmen.

On the basis of all the evidence, we find that the rule proposed by the Carriers, as reproduced above, is fair and reasonable and should be incorporated in an agreement. We therefore so recommend.

H. Moratorium on Wage and Rules Changes

The proposal for a moratorium on rates of pay, rules, and working conditions originated during the course of negotiations after the original changes in rules proposed by the Carriers had been presented on or about November 1, 1949. The proposals of the Carriers and of the Organization follow:

Carriers' proposal

Article 9—Moratorium.—No proposals for changes in rates of pay, rules, or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of 3 years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950: *Provided, however,* That if Government wage stabilization policy permits so-called annual improvement wage increases, the parties may meet with the President of the United States or such other person as he may designate, on or after July 1, 1952, to discuss whether or not further wage adjustments for employees covered by this agreement are justified, in addition to increases received under the cost-of-living formula. At the request of either party for such a meeting, the President or his representative shall fix the time and place for such a meeting. The President or his representative and the parties may secure information from the wage stabilization authorities or other Government agencies. If the parties are unable to agree at such conferences whether or not further wage adjustments are justified they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further wage increases are justified and, if so, what increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employee representatives shall have one vote, and the referee shall have one vote.

The foregoing will not debar management and committees on individual railroads from mutually agreeing upon changes in rates, rules, and working conditions of employees covered by this agreement.

Organization's proposal

Moratorium.—If a moratorium rule is to be included in the agreement, it should contain a provision for an annual increase, as an improvement factor, of 4 cents per hour or 32 cents per day to be added to all basic rates of pay in each class of service during the time the moratorium is in effect.

The Carriers' proposal is based on Dr. Steelman's formula of August 1950, as well as on the so-called White House Agreement of December 21, 1950, the latter having added the annual wage-improvement factor.

Since 1930, there have been over 15 wage and/or rules movements initiated by all or different groups of the operating employees to which the Carriers have generally responded with requests for rules changes. In addition, the Carriers have initiated two movements for wage rate reductions and in some cases movements for rules changes separate from any movements initiated by the employees. In virtually every case, resort has been had to the National Mediation Board. If the dispute has not been resolved by that agency, sometimes an agreement to arbitrate has been effected by the Board. Otherwise, as has happened in most cases, the dispute has come to an Emergency Board. And sometimes, with rejection of Emergency Board recommendations, there has been intervention by the White House.

Counsel for the Organization stated: "In no major case involving operating employees * * * have the recommendations of an Emergency Board been found to be acceptable." This statement seems to be substantially correct, for in almost every case of national importance, the employees have obtained, after Emergency Board reports and in one case after arbitration, higher wage rate increases or more favorable rules than those recommended by the Boards. This has been accomplished as a result of either further negotiations, White House intervention, or threatened or actual strikes. In the last situation, it has been necessary in some instances for the Government to take over the railroads.

The time and expense involved, not only in the case of the parties to the movements but also in the case of various governmental agencies, departments, and officials would be incalculable.

We find that both parties to this proceeding, as well as the public, would benefit by a moratorium until October 1, 1953, on wages, rules, and working conditions. In the interests of temporary industrial peace, we recommend that the Carriers' proposal in this regard, as above set forth, be adopted.

A moratorium such as the one just recommended offers no long-term solution to labor relations difficulties on the railroads. The Board therefore proceeds to a consideration of the more fundamental problems in broad perspective.

V. THE RAILWAY LABOR ACT AND COLLECTIVE BARGAINING ON THE RAILROADS

A. The General Problem

In the Organization's opening statement to the Board and at certain points in the Carriers' presentation a number of things were said which inevitably raised questions about the health of the institution of collective bargaining in the railroad industry and about the adequacy of the Railway Labor Act as a measure calculated to promote and preserve collective bargaining and labor peace in the industry.

Thus, the Organization stated that "the state of labor relations (on the railroads) is grievously disturbed" and "formerly harmonious relationships are rapidly deteriorating. This is the almost unanimous report reaching us from our members treating with management at all levels." Again: "We voice the strong suspicion that advantage is being taken of us because of the shackles imposed on labor's right to strike. The almost insolent aloofness of management to the demands of railway labor has in recent years made amicable and honorable settlement of major controversies a virtual impossibility."

In respect to the Carriers' demands for changes in rules in the instant case, the Organization declared them to be "an innovation in recent history of labor relations."

> Any one having a primer knowledge of labor relations since the end of the war is familiar with the fact that labor's course has been one of the progression—not retrogression. Only employers possessing the brashness of the railroads and having the Government as a partisan to their cause would undertake a program in these days of war and preparedness having as its objective the destruction of employees' hard earned working rules and conditions.

Again:

> By their literal terms the Carriers' original propositions would in one fell blow wipe out most of the protective rules acquired through the efforts of these employees since collective bargaining began in the railroad industry several decades ago.

And again:

> No responsible industry in these times of stress and tension has undertaken to modify any standard rule or condition of employment to the detriment of its workers. The railroads have dubiously distinguished themselves by conduct quite to the contrary. They have proposed to uproot and destroy rules that have been a part of railroad working conditions for decades. They know full well that strikes in essential industries in time of war are to be abhorred. They have taken advantage of the inequality of our bargaining power to attempt to ram down our throats proposed changes in our conditions of employment which they would not dare to advance under circumstances other than those of war.

The Organization also made strong statements about the Railway Labor Act and its operation. In its view, this "carefully wrought

instrument" is "fundamentally sound. The error lies in its administration." Again:

> Let us * * * examine briefly the experience of the railroad industry with reports made by Emergency Boards within the last decade. In no major case involving operating employees, and in only one major case involving the nonoperating employees—namely, the Leiserson Board Report of 1948—have the recommendations of an Emergency Board been found to be acceptable to the employees. Proceedings before those boards, which have failed to state persuasive conclusions in their reports, and have fallen short of bringing the parties to agreements, have been expensive, burdensome, and sterile academic exercises.

At a later point:

> The ineffectiveness of Emergency Board procedure does not stem from a stubborn determination on the part of labor leaders to consistently and arrogantly reject Board recommendations. In the past the leaders of labor have hopefully looked to Emergency Boards to provide them with a solution of their problems. That their hopes have not been fulfilled is not the fault of this side of the table. The fault we believe lies in large part with the detached attitude of Boards from the practicalities of the necessity to settle cases, from a determination to sit in the role of judge and law-giver to decide categorically whether a particular party is right or wrong, and in inability or unwillingness to seek a means of settlement of the dispute before them which would do justice to both sides and serve the public interest.

And again:

> Another fault in recent years stems from the tendency of the Executive Departments to subordinate or disregard the functions of the National Mediation Board, and to take direct charge of and to make recommendations for the settlement of disputes. Then, it appears, after negotiations have failed, the boards have been appointed by the executive's office for a specific purpose, to perhaps report on a prejudged dispute, rather than to study the facts impartially and objectively.

The substance and implications of the Organization's criticisms seem, in summary, to be these: (1) The demands of the Organization have been and are justified in equity. They are for the protection and advancement of the members' interests. (2) Railroad management has had no justification for its own demands, which aim to destroy members' rights and equities. (3) In all Emergency Board cases, the railway labor organizations are justified in rejecting unfavorable Board recommendations because the Boards have sought to act more as arbitrators than as mediators and because the personnel of the Boards have not known enough about the industry. (4) In the present case, the fact that the general chairmen of the operating Brotherhoods declined to ratify the White House Memorandum of Agreement of December 21, 1950, (a) interjects the Government as a partisan in the dispute; (b) causes the Carriers to refuse to bargain in good faith for any terms less favorable to them than those of that

Agreement; and (c) robs the instant Board members, as White House appointees, of objectivity and neutrality.

The substance and implications of railroad management's reply to these contentions of the Organization may be summarized in these words: (1) The railroads, being in a perilous competitive position, must become more efficient if they are to continue to exist as the country's major mode of transport. (2) The rules proposed by the Carriers are in the interest of increased efficiency; yet they provide complete protection of the proper interests of employees. (3) The Carriers have always accepted Emergency Board recommendations, unfavorable as well as favorable. (4) The Organization is correct in saying that since 1940 the railroad labor organizations have consistently rejected all unfavorable recommendations of Emergency Boards. (5) They have also resisted the mediatory efforts of the National Mediation Board under the Railway Labor Act, as amended, and have also rejected, much more often than the Carriers, the suggestions of that Board that the issues be settled under voluntary arbitration. (6) The basic reason for the failures in the efforts of the Mediation Board and of the Emergency Boards has been that the organizations have believed they could use their political influence to obtain more favorable settlements from the White House or the Congress. (7) The original conception of the Congress behind the Emergency Board provisions of the Railway Labor Act was that "either party would think a long time before they would reject a report and recommendations of a board appointed by the President of the United States, that it would have to be so inequitable as to be almost beyond the limits of human endurance, and that it could be expected the public would make it so hot for any party which rejected the report of such a board that the people of the country would clearly understand the issues." (8) Because the intent of the Act's provisions has not in general been realized since 1940, the Carriers have supported the Donnell Bill introduced in the Congress to replace present procedures with compulsory arbitration of all railroad labor disputes. (9) The Carriers intend to stand on the substance of the White House Agreement of December 1950 and believe that the presidents of the Brotherhoods have a moral if not legal commitment to do likewise.

Although the questions raised by statements like these were not directly at issue before the Board, it is perhaps not inappropriate for the Board to comment briefly thereon. These broader questions and problems, which came to a head in the present proceeding, are of prime importance. If the present trend continues, the Congress will undoubtedly have to face them.

As is well known, railroad employees are almost completely organized. There are some 20 standard railway labor organizations. The operating Brotherhoods, strategically placed, have long been recognized and bargained with by the carriers. And under the favoring provisions of the 1934 amendments to the Railway Labor Act of 1926, unions in the nonoperating part of the industry have also waxed strong. For this reason alone collective bargaining must be a successful, vital institution.

There are other reasons: First, collective bargaining is one of the chief institutions involving the day-to-day practice of democracy by and for employees. In a democracy, issues among disputants must normally be settled by compromise, and one essence of collective bargaining is such compromise. Second, although there may well be elements of divergence between management's rights and economic interests and those of employees, there are also frequently large, important elements of mutuality. This is particularly true in the competitively beset railroad industry. Management and labor organizations must work together through collective bargaining to further their mutual objectives of efficient operation, financial strength, expanding employment, and adequate wage income. Third, if collective bargaining were to fail on this biggest and most strategic of all industries, such failure would undoubtedly have marked unfavorable influence on bargaining in other industries. Fourth, collective bargaining, wherever found, involves the practice of economic as well as political or human-relations democracy. It means liberty in making economic decisions, freedom from Government intervention.

But collective bargaining also embraces freedom to strike. In fact, this freedom is part and parcel of collective bargaining; the latter cannot really exist without it. The right of management and labor to effect work stoppages makes for agreement in the overwhelming majority of cases. The reason is simple: A work stoppage is costly to both sides; and rather than undergo this cost, with no assurance of winning a conclusive victory, each side normally prefers to reach a compromise settlement of opposing demands.

Here, then, is one of the major requirements for successful collective bargaining and its preservation: The alternatives to reaching a settlement must be unattractive and expensive. There must be no other inviting place to go. The conference table must be "home."

Under normal peacetime conditions work stoppages do sometimes occur. One or both of the parties may believe that more can be gained than lost by engaging in a stoppage. The public then suffers some temporary inconvenience. In the end a settlement is effected, usually still a compromise. Relations between management and unions may

be improved or embittered by such an experience. In any case, each has obtained fresh evidence of the costliness of a stoppage. Ordinarily a stoppage will not occur there again for a considerable period of time.

What does all this mean for the railroad industry and for the Railway Labor Act? Consider first what has happened in this industry and with this Act. For more than half a century the people of this country, through their representatives in the Congress, have recognized that a work stoppage on the railroads produces extraordinary loss to the public. If the railroads are shut down for any considerable period, almost the entire production mechanism of the economy comes to a standstill. So successive statutes have been enacted to facilitate dispute settlement and prevent stoppages.

None of these laws has worked well. The present Railway Labor Act, passed in 1926 and importantly amended in 1934, provided agencies and procedures for the settlement of two kinds of disputes: (1) For the adjustment of unsettled grievances arising under existing agreements and of unsettled disputes over the interpretation of existing agreements, bipartisan Railroad Adjustment Boards, covering four Divisions of employees classifications or crafts, were established. If these Boards failed to agree, decisions were to be made by neutral referees appointed by the National Mediation Board, the latter being an agency of three public representatives created under the Act. Referees' decisions were to be binding. (2) For the adjustment of unsettled disputes over the terms of new agreements proposed by either side, the Act provided for the successive steps of (a) mediation by the National Mediation Board; (b) in the absence of a settlement here, suggestion of arbitration to the parties by that Board; and (c) in the event arbitration is rejected by either party and a work stoppage threatens, notification of the President that an emergency exists, whereupon the President is empowered to set up an Emergency Board to hear the dispute, receive evidence from witnesses, and report to the President on the facts and on its recommendations for an equitable settlement. For a period of 30 days following the date when such a Board is appointed, during which time the Board normally holds its hearings and prepares and presents its report, the parties are prohibited from changing existing terms of employment (except by mutual agreement) and from creating a work stoppage. An additional "cooling-off" period of 30 days begins at the end of the first period; during this second interval the parties are supposed to bargain in the light of the recommendations, either face-to-face or with further conciliation assistance from the National Mediation Board. If, after exhausting all the foregoing procedures, agreement is still

not attained, either side is free to exert economic pressure through a work stoppage.

As the Carriers in the instant case correctly suggest, the objective of these provisions was the promotion of peaceful settlements of disputes through introducing sobering delay, injecting the fresh, neutral views of skilled mediators, informing the public on the merits of the parties' contentions on the issues in dispute, and bringing the pressure of informed public opinion to bear on the parties so as to induce attitudes of compromise.

From 1926 to 1940, the Act appeared to be realizing its objectives. (1) In respect to the first kind of dispute mentioned above, the Adjustment Boards operated rather expeditiously and were not unduly overburdened with cases. (2) In respect to the second kind of dispute, there were few major cases requiring the creation of Emergency Boards. The recommendations of the Boards that were appointed were accepted and work stoppages were avoided.

Beginning in 1941, however, the situation appears progressively to have deteriorated. (1) The Adjustments Boards, particularly in the First Division (covering the operating crafts), began to accumulate huge backlogs of cases. Referee's decisions were held by management to be either unduly legalistic or pro-labor or both. The organizations were said to be unwilling to settle grievances by direct bargaining because they believed they would fare better in the Boards. In the First Division there was a 2-year backlog of cases by 1951—this in spite of the previous appointment of two special panels to assist the main Board. Moreover, in recent years a few of the organizations threatened strikes over unsettled grievances or unfavorable awards and thereby managed to obtain Emergency Boards for such cases, something never contemplated by the framers of the Act. (2) For the second kind of dispute, direct collective bargaining failed to settle a growing number of cases. More and more cases came to the Mediation Board. Mediation itself came to be increasingly difficult, except in the smaller cases. More and more Emergency Boards had to be appointed, mainly for the big national cases involving over-all wage rate, hours, and rules movements progressed by cooperating organizations who had failed to reach settlement with the Regional or National Carriers' Conference Committees. In 1950 there were 11 such Boards, in 1949, 12. The last one appointed in 1951 was No. 98. The term "emergency," in the sense of limitation to rare cases, was becoming outmoded. Nor were the recommendations of these Boards accepted, if distasteful to the organizations. There were actual strikes—a notable increase in them—before and after Boards were appointed and had made recommendations. The post-recommenda-

tions strikes led to further Government intervention—White House conferences, injunction obtained by Government, or Government seizure of the railroads. In 1941 and 1943 President Roosevelt, wishing to keep the railroads operating in the face of dire national emergency, personally intervened, as an arbitrator, to settle disputes that continued after certain organizations rejected Emergency Board recommendations. In 1946 President Truman also intervened in a major dispute. And, as previously mentioned, there was White House intervention in the instant case. Since the war there have been at least three seizures of one or more railroads by the Government in order to forestall or break strikes.

To what causes may these developments—which come close to representing a breakdown in railroad collective bargaining and the Railway Labor Act—be ascribed? A primary factor is technological change, which has operated in two main ways; (a) It has fostered the burgeoning of new modes of transport, thereby greatly worsening the railroads' competitive position and tending to make them an industry of declining employment. (b) This development in turn has induced the Carriers to seek technological innovations of their own—improved locomotives and other equipment and improved methods of management. It is a major reason for the Carriers' demands for rules changes in the instant case.

An effect of both these technological developments is to reduce and further threaten the employment opportunities and securities of railroads' employees, who appear to be exceptionally immobile when it comes to seeking or taking jobs in other industries. As a consequence, they too seek the security of protective rules, and they resist bitterly the Carriers' demands for labor-saving or cost-reducing rules like some of those before this Board.

The second major cause of the actual or threatened deterioration of labor relations on the railroads may be considered in the same terms as those used above to explain why the freedom to effect work stoppages is normally a force making for labor peace. It is basic in human behavior to consider one's alternatives, each of which entails certain costs or disadvantages as well as utilities or benefits, and to choose the one that provides the least net cost or the highest net advantage. Any labor organization and any management will operate that way. Usually an actual work stoppage is a poor alternative to a compromise settlement. In the railroad industry this alternative is partially but by no means wholly circumscribed. But another alternative, namely political pressure on the administration and the Congress, replaces or at least significantly supplements it. And apparently it has been an attractive alternative at times to one or another of the parties—

one promising and achieving greater net advantage than the strike (which is now used mainly as a threat, to make Government amenable to political pressure) or than direct bargaining or than acceptance of mediators' suggestions or of Emergency Boards' recommendations.

Once the causes of threatened breakdown in collective bargaining are recognized, the question of remedies arises. Here again there are alternatives, this time to be considered and weighed by the public rather than just by management and organized labor. Here again the problem is to find and select the one promising the least net cost or the highest net advantage.

The Carriers have proposed compulsory arbitration to the public. Without going into details, it may be said that the essence of the proposal is the prohibition of work stoppages and the determination of the terms of employment by a Government-designated agency. If it is assumed that work stoppages in a country like the United States can actually be prevented, then the steady, uninterrupted flow of railroad traffic is the great advantage of this kind of system. But the social cost may also be very high: (1) As experience with compulsory arbitration in countries like Australia and New Zealand suggests, real collective bargaining would wither on the vine. Deprivation of the right to strike would see to that. The political-pressure alternative of railroad management and labor organizations would become supremely attractive. They probably would make little effort to settle their problems and differences among themselves. Their energies would be devoted to controlling the appointment of arbitration board members and to influencing the board's decisions. (2) The democratic principle that private individuals and groups should be free to make their own economic decisions will have been grievously violated, particularly because of the size and importance of the industry.

At the other extreme is the alternative of amending the Act so as to withdraw all restraints on work stoppages. The great advantage of this alternative is that it is highly conductive to good-faith, face-to-face collective bargaining. But here too the social cost is imposing. Can the country afford a thrombosis in the main artery of commerce?

Between these extremes lie other alternatives, all possessing social costs as well as social advantages. One of these is the system provided by the present Railway Labor Act. In its conceptual aspects, it has high net advantage. But, for the reasons given above, the net gain has not been as large in practice as was contemplated. It appears insufficient merely to admonish the railway labor organizations or railroad management that the public interest should be their main concern and that they should eschew strikes and political pressure.

Under our highly esteemed form of economic and social organization this is expecting too much. They will always tend to consider their alternatives and choose those that seem best to serve their own interests.

It is not the intention of the Board here to review every conceivable alternative measure whereby Government might promote collective bargaining on the railroads. Nor does the Board desire here to devise new plans. Both these tasks belong to the interested parties, cooperating with the Congress. All that the Board hopes to accomplish is to instill in the public mind an increased awareness of the existing unfortunate situation and to encourage a search for a solution that will be more adequate in terms of the public interest and the advantage of the parties. The fundamental problem is to devise a system that will make collective bargaining the most attractive alternative available to both sides.

B. The Specific Problem of Rules

In terms of the issues involved and the evidence developed in the present case, a general observation or two may be in order with respect to the controversy over rules between labor and management in the railroad industry. First, successful collective bargaining demands adeptness and good faith among its practitioners. It requires adherence to a basic principle, which may be stated as follows: "You, the labor organization, have certain problems. We, management, understand, why they are important to you. We are willing to help you solve them. We are sure that, once we convince you of our sincerity in this respect, you will try to understand *our* problems and constructively try to help us solve them."

The practical application of this "Golden Rule" to railroad collective bargaining requires that management do its utmost to protect employees whose job security is jeopardized or lost because of the technological innovations that railroad management is especially impelled to make under the competitive pressure exerted by rival forms of transport. By their attachment to the "romance of railroadin' " employees in this industry are particularly vulnerable to loss of jobs and job rights.

On the other hand, protective rules should not be permitted to degenerate into mere make-work devices. In the past, technological progress has never really been halted in any industry by such measures. It may be significantly retarded for a while. But management thereby, in the long run, is given an additional incentive to get rid of many jobs altogether. It seems necessary, therefore, for the railway labor organizations, especially those in the train-operating branch, to take a long view of the railroads' competitive position. They need to

realize how many of railroad management's problems are also their own. Helping management to solve its problems will contribute very importantly to a solution of their own troubles, not only from the standpoint of the just-mentioned mutuality of interests but also from the standpoint of improving the spirit of the relationship.

As every student of labor relations knows, the spirit of the relationship is of prime importance. This means that top railroad management and the top leaders of railroad labor organizations, once they have developed cooperative attitudes of the sort mentioned above, need to employ techniques known to and used by progressive managements and union leaders to educate the middle and lower levels of management and organizations to an understanding and practice of the top-held attitudes. The contacts that the members of this Board have had (before, during, and since the hearings on this case) with persons in the industry on both sides have convinced the Board that there is much to be done in this respect.

Given this attitude, railroad management will not be inclined to view every organization's requests for rules changes as a desire to impose "featherbedding" restrictions on managerial prerogatives. Nor will railroad labor organizations be inclined to continue applying the invidious adjectives "brash" and "destructive" to every managerial request for rules changes that promote efficiency and economic progress for the industry and for the society as a whole.

Respectfully submitted,

CARROLL R. DAUGHERTY, *Chairman.*
ANDREW JACKSON, *Member.*
GEORGE CHENEY, *Member.*

APPENDIX A

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN CERTAIN TRANSPORTATION SYSTEMS OPERATED BY THE SECRETARY OF THE ARMY AND CERTAIN OF THEIR EMPLOYEES

WHEREAS a dispute exists between the Baltimore & Ohio Railroad Company, including Buffalo Division (formerly Buffalo, Rochester and Pittsburgh Railway) and Buffalo & Susquehanna District, Chicago & North Western Railway Company, including Chicago, St. Paul, Minneapolis & Omaha Railway, Louisville & Nashville Railroad Company, Terminal Railroad Association of St. Louis, and all other carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, carriers under Federal management, and certain of their employees represented by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization; and

WHEREAS by Executive Order No. 10155 of August 25, 1950, possession, control, and operation of the transportation systems owned or operated by the said carriers, together with the transportation systems owned or operated by certain other carriers, were assumed by the President, through the Secretary of the Army; and

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

WHEREAS the said dispute threatens, in the judgment of the National Mediation Board, substantially to interrupt interstate commerce to a degree such as to deprive certain sections of the country of essential transportation service, and also threatens to interfere with the operation by the Secretary of the Army of transportation systems taken pursuant to the said Executive Order No. 10155:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), and subject to the provisions of that section, I hereby create a board of three members, to be appointed by me, to investigate the said dispute. Nothing in this order shall be construed to derogate from the authority of the Secretary of the Army under the said Executive Order No. 10155.

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

In performing its functions under this order the Board shall comply with the requirements of section 502 of the Defense Production Act of 1950, as amended.

(Signed) HARRY S. TRUMAN.

THE WHITE HOUSE,
November 6, 1951.

APPENDIX B

APPEARANCES AT THE PROCEEDING

FOR THE CARRIERS

Counsel for the Carriers' Conference Committees:

Howard Neitzert, Esq.,
Sidley, Austin, Burgess & Smith,
Chicago, Ill.

H. Merle Mulloy, Esq.,
General Solicitor, Reading Co.,
Philadelphia, Pa.

Burton Mason, Esq.,
General Attorney, Southern Pacific Co.,
San Francisco, Calif.

W. S. Macgill, Esq.,
General Attorney, Southern Railway System,
Washington, D. C.

Eastern Carriers' Conference Committee:

L. W. Horning (Chairman), Vice President, Personnel and Public Relations,
New York Central System,
New York, N. Y.

F. J. Goebel, Vice President, Personnel,
Baltimore & Ohio Railroad,
Baltimore, Md.

H. E. Jones, Chairman, Executive Committee,
Bureau of Information of the Eastern Railways,
New York, N. Y.

J. W. Oram, Chief of Personnel,
Pennsylvania Railroad,
Philadelphia, Pa.

E. B. Perry, Assistant Vice President, Personnel,
New York, New Haven & Hartford Railroad,
New Haven, Conn.

Western Carriers' Conference Committee:

D. P. Loomis (Chairman),
The Association of Western Railways,
Chicago, Ill.

M. C. Anderson, Assistant to Vice President,
Great Northern Railway,
St. Paul, Minn.

E. J. Connors, Vice President,
Union Pacific Railroad,
Omaha, Nebr.

Western Carriers Conference Committee—Continued
E. B. Herdman, Manager of Personnel,
Denver & Rio Grande Western Railroad,
Denver, Colo.
S. C. Kirkpatrick, Assistant to Vice President,
Atchison, Topeka & Santa Fe Railway,
Chicago, Ill.
G. E. Mallery, Manager of Personnel,
Chicago, Rock Island & Pacific Railroad,
Chicago, Ill.
T. Short, Chief Personnel Officer,
Missouri Pacific Railroad,
St. Louis, Mo.
J. J. Sullivan, Manager of Personnel,
Southern Pacific Co.
San Francisco, Calif.
R. F. Welsh, Executive Secretary,
The Association of Western Railways,
Chicago, Ill.
Southeastern Carriers' Conference Committee:
W. S. Baker (Chairman), Assistant Vice President,
Atlantic Coast Line Railroad,
Wilmington, N. C.
F. A. Burroughs, Chief Personnel Officer,
Southern Railway,
Washington, D. C.
(Succeeded C. D. Mackey, Assistant Vice President, Southern Railway, as of April 27, 1951.)
F. K. Day, Jr., Assistant General Manager,
Norfolk & Western Railway,
Roanoke, Va.
C. R. Hook, Jr., Vice President,
Chesapeake & Ohio Railway,
Cleveland, Ohio.
G. C. Howard, Director of Personnel,
Louisville & Nashville Railroad,
Louisville, Ky.
(Appointed November 13, 1951.)
C. A. McRee, Director of Personnel,
Seaboard Air Line Railroad,
Norfolk, Va.
(Succeeded H. A. Benton, Director of Personnel, S. A. L. Ry., as of April 1, 1950.)
A. J. Bier, Manager,
Bureau of Information of the Southeastern Railways,
Washington, D. C.
For the Brotherhood of Locomotive Firemen and Enginemen:
Mr. D. B. Robertson, President
Mr. Harold C. Heiss, and
Mr. Chas. W. Phillips, of Counsel.

APPENDIX C

CLASS I RAILROADS REPRESENTED BY CARRIERS' CONFERENCE COMMITTEES

EASTERN RAILROADS

Akron, Canton & Youngstown R. R.
Ann Arbor Railroad
Baltimore & Ohio Railroad
    B. & O.-Chicago Terminal R. R. Co.
    Curtis Bay Railroad
    Staten Island Rapid Transit
    Strouds Creek & Muddlety Ry.
Bessemer & Lake Erie R. R. Co.
Boston and Maine Railroad
Buffalo Creek Railroad
Canadian National Lines in N. E.
    United States & Canada R. R.
    Champlain & St. Lawrence R. R.
    St. Clair Tunnel Company
Central R. R. Co. of New Jersey
Central R. R. Co. of Pennsylvania
Central Vermont Railway
Chesapeake & Ohio Railway
    Pere Marquette District
    Fort St. Union Depot Co.
Chicago, Indianapolis & Louisville Ry. Co.
Cincinnati Union Terminal Co.
Delaware & Hudson Railroad
Delaware, Lackawanna & Western R. R.
Detroit, Toledo & Ironton R. R. Co.
Erie Railroad Company
Grand Trunk Western Ry. Co.
Indianapolis Union Railway Co.
Lake Terminal Railroad Co.
Lehigh & New England R. R. Co.
Lehigh Valley Railroad Co.
Maine Central Railroad Co.
    Portland Terminal Co.
Monongahela Railway Co.
Montour Railroad Co.
New York Central System
    N. Y. C.—Buffalo & East
    N. Y. C.—West of Buffalo
        Ohio Central Division
        Federal Valley
New York Central System
    Michigan Central Railroad
    C. C. C. & St. L. Railway
        Peoria & Eastern Railway
    Boston & Albany Railroad
    Chicago River & Indiana R. R.
        Chicago Junction Ry.
    Pittsburgh & Lake Erie R. R. Co.
        Lake Erie & Eastern R. R. Co.
    Cleveland Union Terminals
New York, Chicago & St. Louis R. R.
New York, New Haven & Hartford R. R.
Pennsylvania Railroad
    Baltimore & Eastern R. R. Co.
Pennsylvania-Reading S. S. Lines
Pittsburgh & West Virginia Ry.
Pitts. Chartiers & Youghiogheny Ry.
Reading Co.
Union Freight Railroad Co.
Washington Terminal Co.

WESTERN RAILROADS

Alton and Southern Railroad
Atchison, Topeka and Santa Fe Railway, The
    Gulf, Colorado and Santa Fe Railway
    Panhandle and Santa Fe Railway
Belt Railway Co. of Chicago, The
Camas Prairie Railroad
Chicago & Eastern Illinois Railroad
Chicago & Illinois Midland Railway
Chicago and North Western Railway
Chicago & Western Indiana Railroad
Chicago, Burlington & Quincy Railroad
Chicago Great Western Railway (including South St. Paul Terminal)
Chicago, Milwaukee, St. Paul & Pacific Railroad
    Chicago, Terre Haute & Southeastern Railway

Chicago, Rock Island and Pacific Railroad
Chicago, St. Paul, Minneapolis and Omaha Railway
Colorado and Southern Railway
Colorado & Wyoming Railway, The
Davenport, Rock Island and North Western Railway
Dever and Rio Grande Western Railroad, The
Des Moines Union Railway
Duluth, Missabe and Iron Range Railway (Iron Range Div.)
Duluth, Missabe and Iron Range Railway (Iron Range Div.)
Denver and Rio Grande Western Railroad
East St. Louis Junction Railroad
Elgin, Joliet and Eastern Railway
Fort Worth and Denver Railway
Wichita Valley Railway, The
Galveston, Houston and Henderson Railroad
Great Northern Railway
Green Bay and Western Railroad
Kewaunee, Green Bay and Western Railroad
Gulf Coast Lines, comprising:
Asherton and Gulf Railway
Asphalt Belt Railway
Houston and Brazos Valley Railway
International-Great Northern Railroad
Rio Grande City Railway
St. Louis, Brownsville and Mexico Railway
San Antonio Southern Railway
San Antonio, Uvalde & Gulf Railroad
San Benito and Rio Grande Valley Railway
Sugar Land Railway
Houston Belt & Terminal Railway
Illinois Central Railroad
Chicago & Illinois Western Railroad
Kansas City Southern Railway, The
Kansas City Terminal Railway
King Street Passenger Station (Seattle, Wash.)
Los Angeles Junction Railway
Louisiana & Arkansas Railway
Manufacturers Railway
Midland Valley Railroad
Kansas, Oklahoma & Gulf Railway
Minneapolis & St. Louis Railway, The
Railway Transfer Co. of the City of Minneapolis, The
Minneapolis, St. Paul & Sault Ste. Marie Railroad
Minnesota Transfer Railway, The
Missouri-Kansas-Texas Railroad
Missouri-Kansas-Texas Railroad Co. of Texas
Missouri Pacific Railroad
Northern Pacific Railway
Northern Pacific Terminal Co. of Oregon, The
Northwestern Pacific Railroad
Ogden Union Railway and Depot Co., The
Peoria and Pekin Union Railway
Port Terminal Railroad Association
St. Joseph Terminal Railroad
St. Louis-San Francisco Railway
St. Louis, San Francisco & Texas Railway
St. Louis Southwestern Railway
St. Louis Southwestern Railway Co. of Texas
San Diego & Arizona Eastern Railway
Sioux City Terminal Railway
Southern Pacific Company (Pacific Lines), excluding former El Paso & Southwestern System
Southern Pacific Company (Pacific Lines), former El Paso & Southwestern System
Spokane, Portland and Seattle Railway
Oregon Electric Railway
Oregon Trunk Railway
Terminal Railroad Association of St. Louis
Texas and New Orleans Railroad
Texas and Pacific Railway, The
Fort Worth Belt Railway
Texas-New Mexico Railway
Texas Mexican Railway, The
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans
Toledo, Peoria & Western Railroad
Union Pacific Railroad

Union Railway (Memphis)
Union Terminal Co. (Dallas)
Wabash Railroad—Lines West of Detroit and Toledo
Wabash Railroad—Lines East of Detroit, Buffalo Division
Western Pacific Railroad, The

SOUTHEASTERN RAILROADS

Atlantic Coast Line
Atlanta & West Point
    Western Railway of Alabama
Atlanta Joint Terminals
Charleston & Western Carolina
Chesapeake & Ohio—Chesapeake Dist.
Clinchfield
Florida East Coast
Georgia
Gulf, Mobile & Ohio
Kentucky & Indiana Terminal
Louisville & Nashville
Nashville, Chattanooga & St. Louis
Norfolk & Portsmouth Belt Line
Norfolk & Western
Richmond, Fredericksburg & Potomac
Seaboard Air Line
Southern
    Alabama Great Southern
    Cin. Burnside & Cumberland River
    Cin. New Orleans & Texas Pacific
    Georgia Southern & Florida
    Harriman & Northeastern
    New Orleans & Northeastern
    New Orleans Terminal
    St. Johns River Terminal
Tennessee Central
Virginian

APPENDIX D

THE WHITE HOUSE AGREEMENT OF DECEMBER 21, 1950

MEMORANDUM OF AGREEMENT

WASHINGTON, D. C., *December 21, 1950.*

1. Establish 40-hour week for yardmen with increase 23 cents effective October 1, 1950, and additional 2 cents effective January 1, 1951.

2. Set aside 40-hour week agreement until January 1, 1952, and establish 6-day workweek for yardmen. Effective with the first payroll period after 30 days from the date of execution of the formal agreement, yardmen required by the carrier to work on the seventh day to be paid overtime rates except engineers who shall receive straight time rates for the seventh day. This does not create guaranties where they do not now exist. On and after October 1, 1951, 3 months' notice to be given of desire to go on 40-hour week. Provide for consideration of availability of manpower and 4 cents per hour if and when the 40-hour week actually becomes effective.

3. Settle rule for 40-hour week and 6-day week.

4. Grant yard conductors and brakemen other rules such as daily earnings minimum, car retarder operators and footboard yardmasters as recommended by emergency Board No. 81.

5. Settle following rules:

Initial terminal delay (Conductors and Trainmen); interdivisional runs; pooling cabooses (Conductors and Trainmen); reporting for duty; more than one class of service; switching limits; air hose (Conductors and Trainmen); Western differential and double-header and tonnage limitation (Conductors and Trainmen, all territories).

6. Road men to receive 5 cents per hour increase effective October 1, 1950, and additional 5 cents per hour increase effective January 1, 1951.

7. Quarterly adjustment of wages on basis of cost of living index (1 point to equal 1 cent per hour. First adjustment April 1, 1951. Base to be 176).

8. Agreement embodying principles applicable to yardmasters to be entered into for benefit of yardmasters.

9. Effective October 1, 1950, the basic hours of dining car stewards shall be reduced from 225 to 205 hours per month; no penalty overtime to accrue until 240 hours have been worked, the hours between 205 and 240 to be paid for at the pro rata rate.

Effective February 1, 1951, overtime at time and one-half shall accrue after 220 hours have been worked. The basic monthly salary to be paid for the 205-hour month shall be the same as that now paid for the 225-hour month. Except that $4.10 shall be added to the present monthly rate effective January 1, 1951.

10. In consideration of above, this agreement to be effective until October 1, 1953, and thereafter until changed or modified under provisions of Railway Labor Act. Moratorium on proposals for changes in wages or rules until October 1, 1953, as follows:

No proposals for changes in rates of pay, rules, or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of 3 years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950: *Provided, however*, That if as the result of Government wage stabilization policy, workers generally have been permitted to receive so-called annual improvement increases, the parties may meet with Doctor Steelman on or after July 1, 1952, to discuss whether or not further wage adjustments for employees covered by this agreement are justified, in addition to increases received under the cost of living formula. At the request of either party for such a meeting Doctor Steelman shall fix the time and place for such meeting. Doctor Steelman and the parties may secure information from the wage stabilization authorities or other government agencies. If the parties are unable to agree at such conferences, whether or not further wage adjustments are justified, they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further wage increases are justified and, if so, what such increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employee representatives shall have one vote and the referee shall have one vote.[1]

11. If the parties cannot agree on details of agreement or rules they shall be submitted to John R. Steelman for final decision.

[1] The foregoing will not debar management and committees on individual railroads from mutually agreeing upon changes in rates, rules, and working conditions of employees covered by this agreement.

The usual protections for arbitraries, miscellaneous rates, special allowances, and existing money differentials above existing standard daily rates will be included in the formal agreement.

By J. P. SHIELDS,
Grand Chief Engineer,
Brotherhood of Locomotive Engineers.
By D. B. ROBERTSON,
President,
Brotherhood of Locomotive Firemen and Enginemen.
By R. O. HUGHES,
President,
Order of Railway Conductors.
By W. P. KENNEDY,
President,
Brotherhood of Railroad Trainmen.
By L. W. HORNING,
Chairman,
Eastern Carriers' Conference Committee.
By D. P. LOOMIS,
Chairman,
Western Carriers' Conference Committee.
By C. D. MACKAY,
Chairman,
Southeastern Carriers' Conference Committee.

Where a carrier desires to establish interdivisional, interseniority district, intradivisional or intraseniority district freight and passenger runs in assigned or unassigned service (including extra-service), on either a one-way or turn-around basis and through established crew terminals, the carrier shall give notice to the general chairman of its desire to establish such runs, whereupon the carrier and general chairman shall endeavor to agree upon the condition under which such service may be established or enlarged upon.

In the event the carrier and the general chairman are unable to agree, the carrier may take the matter up with the brotherhood chief who will himself, or through his designated representative, assist in securing agreement under the processes established by the Railway Labor Act. It is the intention of the parties that through these negotiations every effort will be made to dispose of the matters at issue through the machinery hereinabove provided.

After the period of 1 year from the date of this agreement, the four brotherhood chiefs, parties to this agreement, and the three chairmen of the Carriers' Conference Committees, or their successors or representatives, and Dr. John R. Steelman, will meet for the purpose of reviewing the experience of the parties during the 1 year trial period of voluntary negotiations as above provided, and if the parties, or either of them are dissatisfied with the results obtained then at that time a definite procedure and conditions for the final and conclusive settlement of such disputes shall be provided for and agreed upon.

At this meeting, the carriers shall have one vote, the employees shall have one vote, and Dr. John R. Steelman shall have one vote, and the procedure and conditions agreed upon by a majority of the three parties shall be final and binding upon all concerned. In event Dr. John R. Steelman is no longer in Government service, then the parties shall request the President of the United States to appoint a neutral person to sit with and serve as a member of the committee herein provided for.

If, at the end of the 1 year period above referred to, the experience has been satisfactory to the parties then they may, instead of providing for the definite procedure and conditions for the settlement of such disputes extend the test period from year to year under the conditions outlined above.

J. P. S.
D. B. R.
R. O. H.
W. P. K.
L. W. H.
D. P. L.
C. D. M.

12/21/50

APPENDIX E

ARTICLE 3 OF PROPOSED AGREEMENT "A"

ARTICLE 3.—*Five-day work-week*

SECTION 1: (a) Beginning on the date this agreement becomes effective on any carrier, such carrier will establish, for all classes or crafts of yard-service employees covered by this article 3, subject to the exceptions contained therein, a work-week of 40 hours, consisting of 5 consecutive days of 8 hours each, with 2 days off in each 7, except as hereinafter provided. The foregoing work-week rule is subject to all provisions of this article 3.

(b) The designated officer or officers on each railroad and the representative or representatives designated by the Brotherhood will meet and agree on details and methods for rebulletining and reassigning jobs to conform with the 5-day week. After all initial changes have been made to place the 5-day week in effect, subsequent changes will be made in accordance with schedule agreement rules.

SEC. 2: The term "work-week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for extra or unassigned employees shall mean a period of seven consecutive days starting with Monday.

SEC. 3: (a) When service is required by a carrier on days off of regular assignments it may be performed by other regular assignments, by regular relief assignments, by a combination of regular and regular relief assignments, or by extra employees when not protected in the foregoing manner. (This does not disturb rules or practices on roads involving the use of emergency men or unassigned employees.) Where regular relief assignments are established, they shall, except as otherwise provided in this agreement, have five consecutive days of work, designated days of service, and definite starting times on each shift within the time periods specified in the starting time rules. They may on different days, however, have different starting times within the periods specified in the starting time rules, and have different points for going on and off duty within the same seniority district which shall be the same as those of the employee or employees they are relieving.

(b) Where regular relief assignments cannot be established for five consecutive days on the same shift within the time periods specified in the starting time rules, as provided for in section 3 (a), such assignments may be established for five consecutive days within different starting times on different shifts on different days, within the time periods specified in the starting time rules, and on different days may have different points for going on and off duty in the same seniority district which shall be the same as those of the employee or employees they are relieving.

(c) After the starting times and days of service have been established, changes therein may be made only in accordance with schedule or bulletin rules.

(d) Rules providing for assignments of crews "for a fixed period of time

which shall be for the same hours daily" will be relaxed only to the extent provided in (a) and (b) of this section 3.

(e) Except as otherwise provided for in this section 3, regular relief assignments shall be established in conformity with rules in agreements or practices in effect on individual properties governing starting times and bulletining of assignments, and when so established may be changed thereafter only in accordance with schedule and bulletin rules.

SEC. 4: At points where it is not practicable to grant two consecutive days off in a work-week to regularly assigned or regular relief employees, agreements may be made on the individual properties to provide for the accumulation of days off over a period not to exceed five consecutive weeks.

If the carrier contends it is not practicable to grant two consecutive days off to a regularly assigned or regular relief employee and that it is necessary to establish nonconsecutive days off, representatives of the carrier and representatives of the employees will confer and endeavor to agree upon accumulation of days off or the establishment of nonconsecutive days off. If such representatives fail to agree, the carrier may nevertheless establish nonconsecutive days off, subject to the right of the employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the carrier to prove that it was not practicable to grant two consecutive days off.

SEC. 5: Regular Employee.

(a) Existing rules which relate to the payment of daily overtime for regular assigned employees and practices thereunder are not changed hereby and shall be understood to apply to regular assigned relief men, except that work performed by regular assigned relief men on assignments which conform with the provisions of section 3 of this article shall be paid for at the straight-time rate.

(b) Regular assigned yard and hostling service employees worked as such more than five straight-time 8-hour shifts in a work-week shall be paid 1½ times the basic straight-time rate for such excess work except:

(1) Where days off are being accumulated under section 4:

(2) When changing off where it is the practice to work alternately days and nights for certain periods;

(3) When working through two shifts to change off;

(4) Where exercising seniority rights from one assignment to another;

(5) Where paid straight-time rates under existing rules or practices for a second tour of duty in another grade or class of service.

In the event an additional day's pay at the straight-time rate is paid to an employee for other service performed or started during the course of his regular tour of duty, such additional day will not be utilized in computing the five straight-time 8-hour shifts referred to in this paragraph (b).

(c) There shall be no overtime on overtime; neither shall overtime hours paid for, nor time paid for at straight-time rate for work referred to in paragraph (b) of this section 5, be utilized in computing the five straight-time 8-hour shifts referred to in such paragraph (b) of this section 5, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, inquests, investigations, examinations, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime. Existing rules or practices regarding the basis of payment of arbitraries or special allowances and similar rules are not affected by this agreement.

(d) Any tour of duty in road service shall not be considered in any way in connection with the application of this agreement, nor shall service under two agreement be combined in computation leading to overtime under the 5-day week.

SEC. 6.—Extra Employees.

(a) Extra or unassigned employees may work any 5 days in a workweek and their days off need not be consecutive.

(b) Existing rules which relate to the payment of daily overtime for extra employees and practices thereunder are not changed hereby. Any shift in excess of five straight-time shifts in yard and hostling service in a workweek will be paid for at overtime rates.

(c) In the event an additional day's pay at the straight-time rate is paid to an extra employee for other service performed or started during the course of his tour of duty, such additional day will not be utilized in computing the five straight-time shifts referred to in paragraph (b) of this section.

(d) The principles outlined in section 5 (c) and (d) shall be applicable to extra employees in the application of this section 6.

SEC. 7: Beginning on the date this agreement becomes effective on any carrier, the Vacation Agreement dated April 29, 1949, effective July 1, 1949, shall be amended as to such carrier to provide the following insofar as yard service employees and employees having interchangeable yard and road rights covered by said agreement, who are represented by the Brotherhood of Locomotive Firemen and Enginemen are concerned:

SECTION 1 (a)-1 (b). Add:

In the application of section 1 (a) and 1 (b) each basic day in yard service performed by a yard service employee or by an employee having interchangeable yard and road rights shall be computed as 1.2 days for purposes of determining qualifications for vacation.

Qualifying years accumulated, also qualifying requirements for years accumulated for extended vacations, prior to the calendar year in which Agreement "A" becomes effective, shall not be changed.

SECTION 1 (d). Add "NOTE": The 60 and 30 calendar days referred to herein shall not be subject to the 1.2 computation provided for in sections 1 (a) and 1 (b).

SECTION 2 (a). Add:

YARD SERVICE

An employee receiving 1 week's vacation, or pay in lieu thereof, under section 1 (a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under section 1 (or carriers in case he qualified on more than one carrier under section 1 (f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than five minimum basic days' pay at the rate of the last service rendered.

COMBINATION OF YARD AND ROAD SERVICE

An employee having interchangeable yard and road rights receiving 1 week's vacation, or pay in lieu thereof, under section 1 (a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under section 1 (or

carriers in case he qualified on more than one carrier under section 1 (f)) during the calendar year preceding the year in which the vacation is taken: *Provided*, That if the vacation is taken during the time such employee is working in road service, such pay shall be not less than six minimum basic days' pay at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service, such pay shall be not less than five minimum basic days' pay at the rate of the last yard service rendered.

SECTION 2 (b). Add:

YARD SERVICE

An employee receiving 2 weeks' vacation, or pay in lieu thereof, under section 1 (b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under section 1 (or carriers in case he qualified on more than one carrier under section 1 (f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than 10 minimum basic days' pay at the rate of the last yard service rendered.

COMBINATION OF YARD AND ROAD SERVICE

An employee having interchangeable yard and road rights receiving 2 weeks' vacation, or pay in lieu thereof, under section 1 (b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under section 1 (or carriers in case he qualified on more than one carrier under section 1 (f)) during the calendar year preceding the year in which the vacation is taken: *Provided*, That if the vacation is taken during the time such employee is working in road service such pay shall be not less than 12 minimum basic days' pay at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service such pay shall be not less than 10 minimum basic days' pay at the rate of the last yard service rendered.

SEC. 7. Add:

With respect to yard service employees, and with respect to any yard service employee having interchangeable yard and road rights who receives a vacation in yard service, such additional vacation days shall be reduced by 1/6th.

GENERAL

Except to the extent that the Vacation Agreement effective July 1, 1949, is changed by this article 3, the said Vacation Agreement, as well as the Memorandum of Understanding of April 29, 1949, shall remain in full force and effect.

SEC. 8: Existing weekly or monthly guarantees producing more than 5 days per week shall be modified to provide for a guarantee of 5 days per week. Nothing in this article 3 shall be construed to create a guarantee where none now exists.

SEC. 9: (a) All regular or regular relief assignments for yard service employees shall be for five consecutive calendar days per week of not less than eight consecutive hours per day, except as otherwise provided in this article 3.

(b) An employee on a regular or regular relief assignment who takes another regular or regular relief assignment, will take the conditions of that assignment, but if this results in the employee working more than 5 days in the period starting with the first day of his old work-week and ending with the last day of his new work-week, such day or days will be paid at straight-time rate.

(c) A regular assigned employee who, under schedule rules goes on the extra board, may work on that board for the remainder of the work-week, provided the combined days worked in yard and hostling service on the regular assignment and the extra board do not exceed five straight-time days.

(d) An employee who leaves the extra board for a regular or regular relief assignment will work the days of his new assignment at straight-time rate, without regard to the number of days he may have worked on the extra board.

(e) Except as provided in paragraphs (b) and (d) of this section, employees, regular or extra, will not be permitted to work more than five straight-time 8-hour shifts in yard service (excluding the exceptions from the computations provided for in section 5, paragraphs (b) and (c)) in a work-week.

SEC. 10: (a) Where reference is made in this article 3 to the term "yard service" it shall be understood to have reference to service performed by employees governed by yard rules and yard conditions.

(b) None of the provisions of this article 3 relating to starting time shall be applicable to any classification of employees included within the scope of this article 3 which is not now subject to starting-time rules.

SEC. 11: Existing rules and practices, including those relating to the establishment of regular assignments, the establishment and regulation of extra boards and the operation of working lists, etc., shall be changed or eliminated to conform to the provisions of this article 3 in order to implement the operation of the reduced work-week on a straight-time basis.

SEC. 12: The parties hereto, having in mind conditions which exist or may arise on individual carriers in the application of the 5-day work-week, agree that the duly authorized representative (General Chairman) of the employees, party to this agreement, and the officer designated by the carrier, may enter into additional written understandings to implement the purposes of this article 3, provided that such understandings shall not be inconsistent with this article 3.

APPENDIX F

ARTICLE 3 OF PROPOSED INTERIM AGREEMENT

ARTICLE 3.—*Six-day Work-week*

Note: The provisions of this article 3 shall apply on those railroads or railroad systems where employees represented by the Brotherhood of Locomotive Firemen and Enginemen notify their management that they elect to become subject to the provisions of this article 3. Unless and until such notice is given, the provisions of this article 3 shall not become applicable. On those railroads or railroad systems where the employees elect not to become subject to the provisions of this article 3, such employees may nevertheless elect to take the 5-day work-week referred to, and in accordance with, the provisions of "Agreement 'B'" dated _____, 1951.

SECTION 1: (a) Effective with the first payroll period after 90 days from the date of the notice referred to in the preceding Note of this article 3, any carrier so notified will establish for all classes or crafts of yard service employees covered by this article 3, subject to the exceptions contained therein, a work-week of six basic days of 8 hours each, except as hereinafter provided. The foregoing work-week rule is subject to all other provisions of this article 3.

(b) The designated officer or officers on each railroad and the representative or representatives designated by the Brotherhood of Locomotive Firemen and Enginemen will meet and agree on details and methods for rebulletining and reassigning jobs to conform with the 6-day week. After all initial changes have been made to place the 6-day week in effect, subsequent changes will be made in accordance with schedule agreement rules.

SEC. 2: The term "work-week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for extra or unassigned employees shall mean a period of seven consecutive days starting with Monday.

SEC. 3: (a) When service is required by a carrier on a day off of regular assignments it may be performed by other regular assignments, by regular relief assignments, by a combination of regular and regular relief assignments, or by extra employees when not protected in the foregoing manner. (This does not disturb rules or practices on roads involving the use of emergency men or unassigned employees.) Where regular relief assignments are established, they shall, except as otherwise provided in this agreement, have 6 days of work, designated days of service, and definite starting times on each shift within the time periods specified in the starting time rules. They may on different days, however, have different starting times within the periods specified in the starting time rules, and have different points for going on and off duty within the same seniority district which shall be the same as those of the employee or employees they are relieving.

(b) Where regular relief assignments cannot be established for 6 days on the same shift within the time periods specified in the starting time rules, as provided for in Section 3 (a), such assignments may be established for 6

days with different starting times on different shifts on different days, within the time periods specified in the starting time rules, and on different days may have different points for going on and off duty in the same seniority district which shall be the same as those of the employee or employees they are relieving.

(c) After the starting times and days of service have been established, changes therein may be made only in accordance with schedule or bulletin rules.

(d) Rules providing for assignments of crews "for a fixed period of time which shall be for the same hours daily" will be relaxed only to the extend provided in (a) and (b) of this section 3.

(e) Except as otherwise provided for in this section 3, regular relief assignments shall be established in conformity with rules in agreements or practices in effect on individual properties governing starting times and bulletining of assignments, and when so established may be changed thereafter only in accordance with schedule and bulletin rules.

SEC. 4: Blank.

SEC. 5: Regular Employees.

(a) Existing rules which relate to the payment of daily overtime for regular assigned employees and practices thereunder are not changed hereby and shall be understood to apply to regular assigned relief men, except that work performed by regular assigned relief men on assignments which conform with the provisions of section 3 of this article shall be paid for at the straight-time rate.

(b) Regular assigned yard and hostling service employees worked as such more than six straight-time 8-hour shifts in the workweek shall be paid 1½ times the basic straight-time rate for such excess work except:

(1) Blank.

(2) When changing off where it is the practice to work alternately days and nights for certain periods;

(3) When working through two shifts to change off;

(4) Where exercising seniority rights from one assignment to another;

(5) Where paid straight-time rates under existing rules or practices for a second tour of duty in another grade or class of service.

In the event an additional day's pay at the straight-time rate is paid to an employee for other service performed or started during the course of his regular tour of duty, such additional day will not be utilized in computing the six straight-time 8-hour shifts referred to in this paragraph (b).

(c) There shall be no overtime on overtime; neither shall overtime hours paid for, nor time paid for at straight-time rate for work referred to in paragraph (b) of this section 5, be utilized in computing the six straight-time 8-hour shifts referred to in such paragraph (b) of this section 5, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, inquests, investigations, examinations, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime. Existing rules or practices regarding the basis of payment of arbitraries or special allowances and similar rules are not affected by this agreement.

(d) Any tour of duty in road service shall not be considered in any way in connection with the application of this agreement, nor shall service under two agreements be combined in computations leading to overtime under the six-day week.

SEC. 6. Extra Employees.

(a) Extra or unassigned employees may work any 6 days in a work-week.

(b) Existing rules which relate to the payment of daily overtime for extra employees and practices thereunder are not changed hereby. Any shift in excess of six straight-time shifts in yards and hostling service in a work-week will be paid for at overtime rates.

(c) In the event an additional day's pay at the straight-time rate is paid to an extra employee for other service performed or started during the course of his tour of duty, such additional day will not be utilized in computing the six straight-time shifts referred to in paragraph (b) of this section.

(d) The principles outlined in section 5 (c) and (d) shall be applicable to extra employees in the application of this section 6.

SEC. 7: Blank.

SEC. 8: Existing weekly or monthly guarantees producing more than 6 days per week shall be modified to provide for a guarantee of 6 days per week. Nothing in this article 3 shall be construed to create a guarantee where none now exists.

SEC. 9: (a) All regular or regular relief assignments for yard service employees shall be for 6 days per week or not less than eight consecutive hours per day, except as otherwise provided in this article 3.

(b) An employee on a regular or regular relief assignment who takes another regular or regular relief assignment, will take the conditions of that assignment, but if this results in the employee working more than 6 days in the period starting with the first day of his old work-week and ending with the last day of his new work-week, such day or days will be paid at straight-time rate.

(c) A regular assigned employee who under schedule rules goes on the extra board, may work on that board for the remainder of the work-week, provided the combined days worked in yard and hostling service on the regular assignment and the extra board do not exceed six straight-time days.

(d) An employee who leaves the extra board for a regular or regular relief assignment will work the days of his new assignment at straight-time rate, without regard to the number of days he may have worked on the extra board.

(e) Except as provided in paragraphs (b) and (d) of this section, employees, regular or extra, will not be permitted to work more than six straight-time 8-hour shifts in yard service (excluding the exceptions from the computations provided for in section 5, paragraphs (b) and (c) in a work week.

SEC. 10: (a) Where reference is made in this article 3 to the term "yard service" it shall be understood to have reference to service performed by employees governed by yard rules and yard conditions.

(b) None of the provisions of this article 3 relating to starting time shall be applicable to any classification of employees included within the scope of this article 3 which is not now subject to starting-time rules.

SEC. 11: Existing rules and practices, including those relating to the establishment of regular assignments, the establishment and regulation of extra boards and the operation of working lists, etc., shall be changed or eliminated to conform to the provisions of this article 3 in order to implement the operation of the work-week on a straight-time basis.

SEC. 12: The parties hereto having in mind conditions which exist or may arise on individual carriers in the application of the 6-day work-week agree that the duly authorized representative (General Chairman) of the employees, party to this agreement, and the officer designated by the carrier, may enter into additional written understandings to implement the purposes of this article 3, provided that such understandings shall not be inconsistent with this article 3.

APPENDIX G

PROPOSED AGREEMENT "B"

The Agreement dated _____ 1951, and identified as Agreement "A," is hereby deferred of application and an interim agreement, identified as "Interim Agreement," is substituted in lieu thereof.

The "Interim Agreement" will remain in effect until September 30, 1951, and thereafter be subject to the termination on not less than 3 months' advance notice from the Brotherhood of Locomotive Firemen and Engineers that they desire to place the 5-day work-week agreements in effect on a railroad system or systems but the parties agree that the carriers are entitled to have 6- and 7-day service performed at straight-time rates with reasonable regularity, and if it is claimed that the manpower situation is such that the adoption of the 5-day work-week agreement would not permit this, the question of whether there is sufficient manpower available to permit the adoption of the 5-day work-week shall be submitted for final decision to the nominee of the President of the United States.

Coincident with termination of such 3 months' advance notice, but not earlier than January 1, 1952, and in conformity with the preceding paragraph, the "Interim Agreement" will be canceled and Agreement "A" will become fully effective.

U. S. GOVERNMENT PRINTING OFFICE: 1952