Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10862 DATED FEBRUARY 12, 1960, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate a dispute between the Atchison, Topeka and Santa Fe Railway Company—Coast Lines, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, a labor organization.

(NMB Case No. E-218)

WASHINGTON, D.C.

JULY 15, 1960

(Emergency Board No. 126)

LETTER OF TRANSMITTAL

WASHINGTON, D.C.,
July 15, 1960.

THE PRESIDENT
The White House
Washington, D.C.

Mr. PRESIDENT: The Emergency Board created by you on February 12, 1960, by Executive Order 10862, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between the Atchison, Topeka and Santa Fe Railway Company—Coast Lines, a Carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

DUDLEY E. WHITING, *Chairman.*
HAROLD M. WESTON, *Member.*
R. W. NAHSTOLL, *Member.*

TABLE OF CONTENTS

BACKGROUND OF THE DISPUTE

The Coast Lines of the Carrier extend west from Albuquerque and Belen, N. Mex., into Arizona and California and comprise about one-fourth of the Santa Fe system. The Engineers have a separate agreement on the Coast Lines and only that portion of the system is involved here.

The issues in dispute originated in notices on July 2 and October 12, 1956 of requests to change or add to the agreement between the parties, pursuant to Section 6 of the Railway Labor Act, as amended. The Carrier also served notice of requests for changes on July 31, 1956. A strike was authorized by a ballot dated November 19, 1956.

The moratorium provisions of the National Agreement of July 18, 1957 intervened and the further progress of compensatory proposals was deferred thereunder. The noncompensatory proposals were settled by agreement dated January 24, 1958.

Anticipating the end of that moratorium on November 1, 1959, the Organization submitted on October 10, 1959, a new strike ballot covering the remaining items, and a strike was authorized thereon.

After mediation by the National Mediation Board was unsuccessful in resolving the dispute, that Board proffered arbitration, pursuant to the Act. That proffer was rejected by the Organization.

Thereafter, in accordance with Section 10 of the Act, this Board was created by Executive Order on February 12, 1960. Extensions of time for a report have been granted, the last of which expires on July 15, 1960.

Hearings were held in Los Angeles, Calif. At such hearings the parties identified the issues in their presentations by the item number used in the strike ballot of October 10, 1959. We adopt the same method of identification.

At the hearing the Carrier agreed that the proposals it made in 1956 had been incorporated into subsequent notices on a national basis dated November 2, 1959 and are not before this Board.

ITEM NO. 3—CHANGING ENGINES

The Brotherhood of Locomotive Engineers submitted as Item No. 3 of its Notice and Strike Ballot the following proposal:

"Desire and intent of the Committee to amend paragraph (h), Article 7, as follows:"

Item reads as follows, and is still in dispute:

"(h) When required to change engines under any circumstances, engineers will be allowed two (2) hours, at the overtime rate applicable to the class of service performed and engine used, in addition to all other compensation paid for the day or tour of duty, each time such change is made.

In applying this Article it is understood that when an engineer is assigned to a run he will at all times remain with his assignment."

In support of this proposal for an arbitrary compensation allowance payable to an enginer each time he is required to change engines, the Brotherhood has offered reasons which, in its opinion, justify the proposal. It is suggested that a change of engines imposes upon the enginer duties and responsibilities in addition to those for which he is currently being compensated, and extends the time required by the engineer to complete his day's work and thus delays his enjoyment of what would otherwise be his leisure time. Also, the Brotherhood contends that changes of engine are beneficial to the carrier by expediting its operation and effecting economies in the utilization of the carrier's power; and asserts that the engineers participating in those changes should be permitted to share the benefits of the efficiency effected by the carrier as a result thereof.

Historically, and presently, most engine changes are made in yard service and in local freight service. Rarely are changes made in through freight or passenger service. Similarly, there appears to be no material difference in the burden imposed upon an engineer changing from one diesel locomotive to another than in a change from one steam locomotive to another. If there is any difference in this burden, the change of engines would appear to be less arduous with the diesel locomotives now employed by the carrier, than with the steam locomotives previously used by the carrier.

Changes of engine generally occur in order to employ efficiently the carrier's available power units or to permit refueling and other routine servicing of locomotives. Less frequently, engine changes are required for repairs. The parties are in agreement, and the Board is persuaded, that efficiency of operation is promoted by such engine changes. Undoubtedly, the company benefits from this increased efficiency. However, the mere fact that the carrier directly, and the shipping public indirectly, realize some benefit from this contribution to the carrier's efficiency, does not afford any reason why the engineers involved in those changes should share in the benefits achieved, in the absence of a change of their duties or responsibilities.

Contrary to the claim asserted by the Brotherhood, this Board finds no duties or responsibilities imposed upon an affected engineer by reason of a required engine change additional to the duties and responsibilities normally and historically contemplated by his job content. Changing of engines has been considered by the parties to be a part of the job content of a locomotive engineer, and a factor in general wage negotiations. Therefore, in the opinion of this Board, it does not justify treatment as a new or different activity on account of which an arbitrary payment should be allowed. Present rules protect engineer's pay, when an engine change is required, by providing that he is paid for the entire trip or tour of duty at the highest rate applicable to any equipment operated.

As indicated above, most engine changes are in yard service, where engineers' pay is based on a time basis. Obviously, any delay resulting from an engine change under these circumstances is a matter of concern to the carrier, and not to the engineer whose pay and/or leisure are unaffected.

If, as some evidence suggests, occasional delays attend engine changes in local freight service, occurring between terminals of a run, these delays should properly be considered as a part of the time spent on the job, to be compensated additionally only by the overtime provisions of the current pay structure. Such delays afford no reasonable basis for a contention that all engineers, in all kinds of service, are entitled to an arbitrary amount of compensation for changing engines, regardless of whether or not a delay has occurred in, or resulted from, that change.

Accordingly, it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as Item No. 3.

ITEM NO. 6—GUARANTEE FOR EXTRA ENGINEERS

The Brotherhood of Locomotive Engineers submitted the following proposal as Item No. 6 of its Notice and Strike Ballot:

Organization proposed addition of a new paragraph to Article 7, to be designated as paragraph (p), as follows:

"Engineers assigned to extra lists will be guaranteed earnings equal to the average earnings made by pool freight engineers working on the same district or districts.

"Example 1: An engineer assigned to the San Bernardino extra list will be guaranteed earnings equivalent to the average earnings of pool freight engineers working on the hill and valley pool boards.

"Example 2: An engineer assigned to the Second District, Albuquerque Division, extra list will be guaranteed earnings

equivalent to the average earnings of pool freight engineers working on the Second District pool board."

The record shows that starting in 1913, organizations of railroad operating employes have made proposals for the establishments of guarantee rules. Up to the present time no board has considered it appropriate to recommend the adoption of a guarantee for extra engineers, and no major carrier has such a guarantee in force.

The proposal now under consideration would require that engineers assigned to extra lists receive monthly payments sufficient to raise their earnings to the average of pool freight engineers working in the same district. Engineers' extra lists are maintained by the Carrier's Coast Lines at the division terminals. The function of these lists is to insure a sufficient supply of qualified engineers to meet the needs of increased traffic and to replace regularly assigned or pool engineers who are unavailable because of illness, vacations or other reasons.

The number of extra engineers and the size of their lists are regulated by the mileage limitation rules contained in agreements between the Carriers and the Engineers' and Firemen's organizations. These rules, which have their origin in the Chicago Joint Working Agreement of May 17, 1913, are substantially the same throughout the industry. The rule on the Coast Lines provides that a sufficient number of extra engineers will be maintained to keep the average mileage between 2,600 and 3,800 per month, provided that when men are dropped from the list and it thereafter appears that those on the extra list average 3,100 miles per month, or more, engineers will be returned to the extra list to the extent that such additions will not reduce the average mileage below 2,600 per month. Regulation of extra lists to keep the earnings of the men within the required ranges is supervised by local representatives of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen.

Extra and pool engineers work on a first in, first out basis. Pool boards are maintained at division terminals to protect unassigned passenger and freight service. Generally the volume of service protected by these boards remains reasonably constant, inasmuch as certain trains are manned by them on a fairly regular basis. Whereas extra lists are regulated on a monthly minimum of 2,600 miles, pool boards are governed by a 3,200-mile minimum. This difference ordinarily results in substantially higher average earnings for pool service engineers. Pool service is a preferred class of work usually held by men with a substantial amount of experience and seniority.

In support of the proposal for a guarantee for extra engineers that

would raise their monthly earnings to the level of the freight pool engineer's average, the Brotherhood maintains that extra men both merit and need the proposed guarantee since they are vital to efficient railroad operations and provide a readily available supply of qualified engineers for the Carrier's use. The Brotherhood emphasizes the uncertainties of extra engineers' employment, the possibility of undesirable hours of service, and the fact that extra men are required to be available at any time on any day of the week. It points out that extra engineers must be ready to serve not only where they reside but elsewhere in the district, and in so doing must absorb away-from-home expenses.

To accept the proposal would insure extra engineers higher earnings than a substantial number of pool engineers enjoy, because approximately one-half of the latter would earn less than the average. Pool engineers are ordinarily senior men, and pool work is traditionally considered preferable service, not only in this Carrier's employment structure but throughout the entire industry. As noted above, no other railroad has a guarantee rule for extra men similar to that now proposed. It is significant that throughout the history of collective bargaining in this industry, guarantee rules for extra engineers have never been recommended by administrative agencies or Emergency Boards.

In our view, the record fails to establish any real need for a proposed guarantee, because extra engineers have a built-in guarantee in the mileage limitation rule and their seniority standing on the firemen's list. There can be no justification for a guarantee by the Carrier to extra engineers when the number on the extra list is controlled solely by this Organization and the Firemen.

While the Brotherhood presented some specific evidence that engineers suffered four or five days unemployment while standing by as extra men, these instances were rare and unusual. Moreover, one of the two Brotherhood witnesses who testified on the point conceded that four days' unemployment was rare and happened but once in a decade. Uncontroverted exhibits of the Carrier show that the men who are thus unemployed, nevertheless, earned substantial compensation during that year and that extra engineers averaged one and a quarter days' compensation for each day they were on the board. Thus there is no evidence of any inequity, lack of earnings opportunity or need for guarantee for extra men.

Accordingly, it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as Item No. 6.

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ITEM NO. 8—BEGINNING AND ENDING OF SERVICE

The Brotherhood of Locomotive Engineers submitted as Item No. 8 of its Notice and Strike Ballot a proposal, the following portion of which is still in dispute:

> "(c) At the conclusion of trip or tour of duty, engineers' time in all classes of service will continue until completion of all necessary reports and registering off duty, but shall not be less than fifteen minutes, at the overtime rate, after engine is placed on the designated track or point where relinquishing charge of same."

Presently the standard rule is in effect, that engineers' time continues until the time the engine is placed on the designated track or they are relieved at terminal. After the engine is so placed or engineer so relieved he spends a few minutes walking to the office, filing his trip report and signing off duty on the Company and the Federal registers. Such duties have always been required and have always been considered to be a part of an engineer's work compensated by his daily rate.

No evidence of any abuse is shown. Rather it shows that engineers on this property generally register off within a very few minutes, substantially less than the 15-minute minimum proposed.

There might be some justification for a proposal that an engineer's time continue until all required duties are completed, but there is no reasonable justification for the requested arbitrary payment of 15 minutes at the overtime rate.

Accordingly it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as Item No. 8.

ITEM NO. 9—EXTENSION EASTWARD OF PAY DIFFERENTIAL PRESENTLY IN EFFECT IN PASSENGER SERVICE WEST OF WINSLOW

By Item No. 9 of its Notice and Strike Ballot, the Brotherhood of Locomotive Engineers proposes as follows:

> "Desire and intent of the Committee to amend the pertinent portion of paragraph (g), Article 12, as follows:"

Item reads as follows and is still in dispute:

> "Eliminate reference to unit rate of pay East of Winslow and in lieu thereof apply unit Diesel-electric passenger rates applicable West of Winslow to East of Winslow territory."

Currently, the Carrier pays to its locomotive engineers in freight service on its Coast Lines a rate of pay conforming to the industry standard. The Carrier pays to engineers in passenger service

throughout its Coast Lines, a rate higher than industry standard and on that portion of its Coast Lines lying West of Winslow, Ariz., an even higher rate.

Historically, the higher rate for service West of Winslow was supported by both logic and necessity. In the late 19th century and in 1909, when the present differential was initially applied, the Carrier's line negotiated mountainous terrain West of Winslow, and the grades were time consuming. Particularly was this true with steam equipment which required frequent fuel and water stops. In addition, the same characteristics made that portion of the line more hazardous. Moreover, the far western part of the United States was undeveloped, thinly populated, expensive to live in and generally a less desirable and less attractive area in which to live and work.

Higher than standard rates were established in 1909 in both passenger and freight service of the Coast Lines. The higher rates have continued to the present time in passenger service West of Winslow. With the replacement of steam equipment by diesel equipment, the preference was abandoned in freight service West of Winslow. Current rates in diesel freight service both East and West of Winslow are those generally applicable in the industry throughout the country. Rates in passenger service on the Coast Lines East of Winslow have been higher than standard rates of pay since about 1909. Rates in passenger service West of Winslow have been even higher than those existing East of Winslow.

The reasons for the differential are no longer valid. Dieselization of the Carrier's power equipment eliminated the frequent fuel and water stops which delayed steam powered units. Changes in the carrier's track, its condition, and its roadbed engineering and layout, have virtually eliminated difficult grades. It appears that upon completion of improvements currently in process, no grade will exceed 1.43 percent West of Winslow. Delays formerly experienced in necessary use of helpers over mountainous areas are now infrequent. The improvements in grade, together with improvements in braking facilities, have substantially reduced safety hazards. No longer is the Far Western Area desolate and unattractive.

With these general observations and with the resulting conclusion that the reasons for the differential no longer obtain, the parties are in substantial agreement. They differ only with respect to the Brotherhood's proposal that the appropriate method of eliminating the differential is to raise the rate for operations East of Winslow.

The record does indicate that, despite the difference in unit rates which prefer passenger service West of Winslow, no significant inequity results. Characteristics of the passenger service assignments

East of Winslow are such that the rates East of Winslow produce higher earnings per hour on duty than the rates in effect for passenger service West of Winslow. Similarly, annual earnings of the engineers comprising the respective groups are reasonably comparable.

The Board is of the opinion that elimination of the differential by "standardizing upward" the rates East of Winslow would be inappropriate.

For the foregoing reasons, this Board recommends that the Brotherhood withdraw its Item No. 9.

ITEM NO. 10—RADIO-TELEPHONE FACILITIES

The following is the proposal set forth in Item No. 10 of the Brotherhood of Locomotive Engineers' Notice and Strike Ballot:

> Organization proposes addition of a new paragraph to Article 13, to be designated as paragraph (d), as follows:
>
> "Engineers in all classes of service required to operate engines, or motor power, equipped with radio-telephone facilities will be paid three (3) hours at the overtime rate for class of engine used, in addition to all other allowances paid for the day or trip."

The use of the radio-telephone on locomotives has become prevalent on most American railroads. In general, the industry, including this Carrier, has never paid additional compensation to locomotive engineers for the use of that equipment. The exceptions are only the Southern Railway, the Birmingham Southern, and the Reading Company where an allowance is made for such use in yard service.

The contention of the Brotherhood is that it is improper not to compensate the engineer for his use of radio-telephone equipment, when such use benefits the Carrier and requires the engineer to perform new work in addition to his established duties and responsibilities. It also contends that particularly in yard service continual noise from the radio speaker subjects the engineer to considerable annoyance.

That this improved communications facility has benefited the Carrier cannot be seriously disputed. There is no question that it has helped make railroad operation more efficient and safe. The fact that the Carrier has been benefited, however clear it may be, is not standing alone an appropriate basis for additional compensation to the employes. The equipment was installed at Carrier's expense and the resulting contribution to Carrier's service is attributable to capital investment rather than to any change in the engineers' functions.

The fact that the radio facility may play a part in expediting train movement by avoiding some stops and delays due to prior less effective

means of communications is not a sufficient ground for the proposed allowance. The Brotherhood has expressly disavowed that its claim is predicated on increased productivity, though it relies on benefits to the Carrier to support its proposal.

The dual system of compensation which is based on both mileage and time spent on the job insures engineers increased pay opportunities or leisure time with faster train movement due to the use of the radio-telephone. Yard engineers, of course, are not affected by increased speed because their pay is based on time rather than mileage.

Accordingly, the ultimate question in this matter is whether or not additional responsibilities or duties were imposed on engineers by the introduction of radio-telephone communications.

We believe it fair to say that the engineers' responsibilities for safe and efficient operation remain unchanged. Communications have always been of compelling importance and concern to the transportation industry generally, and to locomotive engineers in particular. Formerly, the latter were dependent for communication upon the use of flags, wayside lamps, flares, hand signals, word of mouth, call boxes, air line, and the emergency air valve. At times these methods, with their obvious shortcomings, were not practicable and the engineer was required to feel his way into sidings, over bridges and along the road. With the installation of the radio-telephone facility he can make inquiry and receive promptly, without any more effort than the pushing of a button, critical information regarding train movement, hot boxes, dragging, brake rigging, and other such emergency conditions.

The record when viewed in its entirety fails to establish that the installation or use of the radio-telephone subjects the engineers to substantial annoyance or requires any special skill, training, or physical effort. It also appears that its use reduces their exposure to inclement weather to effectuate communications. The engineers have always had communications responsibilities, and the use of the radio facility is simply a substitute for duties that appear to have been more onerous and unpleasant and, at the same time, less reliable.

We are satisfied that the use of radio-telephone communications has benefited engineers by making their work safer and more comfortable.

This discussion has dealt with the use of the radio-telephone and the proposal can not be recommended even if it were based on such use. We note, however, that the proposal was worded to require payment to an engineer who operates an engine equipped with a radio-telephone, whether or not in use. Such a proposal could not, of course, be justified on any ground.

Accordingly, it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as **Item No. 10.**

ITEM NO. 11—LOCAL FREIGHT RATES

The Brotherhood of Locomotive Engineers submitted as Item No. 11 of its Notice and Strike Ballot the following proposal:

Organization proposed amendment of paragraphs (a) and (c) of Article 15, as follows:

"(a) Rate of Pay—For local or way-freight, switch or tramp run service 56 cents per one hundred (100) miles or less shall be added to the yard rates according to class of engine; miles over one hundred (100) to be paid for pro rata."

Interpretation No. 2 to Supplement 24: Question 8—What rates shall apply to engineers where, under schedule provisions or accepted practices, conductors and trainmen receive local freight rates?

Decision—Where under schedule rules or accepted practices a part of the crew receives local rates, the entire crew will receive not less than the local rates.

"(c) Overtime—For engineers on locals, way-freight, switch or tramp runs of one hundred (100) miles or less, overtime will begin at the expiration of eight (8) hours on duty. On assignments of more than one hundred (100) miles, overtime will begin when the time on duty exceeds the miles run divided by twelve and one-half (12½) but in no case will less than bulletined miles of assignment be paid. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used."

1. The proposal to amend paragraph (a) is to establish the local or way-freight rate of pay at 56 cents per 100 miles above the yard rate according to class of engine, instead of the present rate of 52 cents per 100 miles above the through freight rates.

The present relationship between local and through freight rates of pay is standard throughout the industry and such a relationship has existed, at least, since World War I. During most of that time yard rates were lower than either through or local freight rates of pay. Beginning in 1945 the Engineers' Organization inaugurated national movements to obtain special increases in yard rates. In 1948 it sought parity between local freight and yard rates of pay. Emergency Board No. 57 recommended increasing yard rates to equal through freight rates and such increase was adopted.

In 1949 other operating organizations sought a 40-hour week with a 20 percent wage increase to maintain take-home pay for yard employees. The Engineers did not request a 40-hour week but did seek the same 20 percent wage increase for yard engineers. After

protracted negotiations and strikes, agreements were reached in 1951 and 1952 which resulted in yard rates exceeding both through and local freight rates.

Now this local group contends that such national movements by their own national organization have created an inequity. Such a proposition could only result in a continuous game of leapfrog and cannot be accepted. If there is any inequity, it has been forced upon the Carrier by the Engineers themselves and it would be wholly unconscionable to use it as a springboard for wage increases to other groups of engineers. If the correlation between local freight and yard rates is inequitable, then the remedy, under these circumstances, is to reduce the yard rates and not to upset the long existing relationship between through and local freight rates of pay.

It appears that the real problem from which this proposal arose is an increased number of road switcher assignments, which are mostly time jobs like yard jobs rather than mileage pay runs. The great similarity between many of those switcher positions and yard positions may well deserve consideration and it is probable that an equalization of those rates would be reasonable, but that does not in any way justify the proposal as made.

2. The proposal to amend paragraph (c) differs from the present rule only in the insertion of the phrase "but in no case will less than bulletined miles of assignment be paid". It appears that payment is presently made on that basis under the rules. Thus it is obvious that this part of the proposal would accomplish nothing and, the Brotherhood conceded that, it is insufficient to accomplish the purpose intended.

Accordingly it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as Item No. 11.

ITEM NO. 12—GUARANTEE FOR YARD ENGINEERS

The Brotherhood of Locomotive Engineers submitted, as Item No. 12 of its Notice and Strike Ballot, the following proposal:

Organization proposed addition to paragraph (o), Article 19 (page 68), and add a new paragraph (r), reading as follows:

"An engineer working overtime will be entitled to a second meal period, or if not taken payment of 20 minutes in lieu thereof, beginning 5 hours and 40 minutes following completion of the first meal period."

"(r) Engineers regularly assigned to shift in yard service, who are available for service and who do not lay off of their own accord, will be guaranteed not less than six days per week. In

computing weekly guarantee for six-day assignments, the week will begin on day following regular lay-over day.

"In making up guarantee, payment so allowed will be made at the rate applying on the locomotive on which last used.

"In cases where an extra engineer is sent to an outside point where extra list is not maintained to fill vacancy or regular assignment in yard service, guarantee will apply to such extra engineer during period he is filling such vacancy.

"In the application of the foregoing rule, regular assignments will not be discontinued to avoid payment of the guarantee."

At the hearing, the Brotherhood withdrew this Item, and no action by this Board is now required.

ITEM NO. 13—DEADHEADING PAY

The Brotherhood of Locomotive Engineers submitted as Item No. 13 of its Notice and Strike Ballot, the following proposal:

"Desire and intent of the Committee to amend the provisions of paragraph (a), Article 25, as follows:"

Item reads as follows and is still in dispute:

"(a) Engineers deadheading on Company business will be deadheaded on passenger trains and will be paid for the actual miles at the same rate of pay as per class of engine as the engineer working the train.

"Engineers may be deadheaded on other trains in emergency and will be allowed payment of actual miles at the same rate of pay as per class of engine as the engineer working the train; provided that regardless of how deadheaded, a minimum day will be allowed for the deadhead trip if no other service is performed within twenty-four hours from time called to deadhead.

"An engineer deadheading under the provisions of this article on a bus or by automobile, or similar means of transportation, or a combination of any two or more of these, will be considered, for the purpose of compensation, as deadheading on a train and will be allowed the same mileage between points deadheaded that would have accrued had the deadheading been performed on a train via the shortest available route."

The applicable provision of the present contract is for payment for actual mileage accomplished deadheading at a flat rate of 19.33 cents per mile, for deadheading on passenger trains; and 20.42 cents per mile, for deadheading on other trains.

The proposal would change the existing rule to provide:

(1) for payment for actual miles accomplished at the rate of pay of the engineer actually operating the engine; and

(2) for restriction of deadheading to passenger trains, buses or automobiles (eliminating freight trains) except "in emergency".

The gist of the main proposal is to equate the compensation of the deadheading engineer to the pay rate of the actual engineer working the subject train.

The working engineer is then engaged in the process and function of transportation, beset by the attendant responsibilities, physical labor and discomforts which the Brotherhood is the last to deny. The deadheading engineer concurrently is subject to none of those duties and responsibilities. There is no reason why the compensation of the latter should be measured by that of the former. There are substantial reasons to the contrary. Generally on the Carrier's Coast Lines, the passenger service assignments are the preferred jobs and are filled by engineers with substantial seniority. Presumably, the deadheading engineer would be his junior. By definition, the deadheading engineer would be without work or responsibility. But, under the proposal, the junior "non-working" engineer would be compensated equally with the senior working engineer. This result demonstrates its impracticability from the standpoint of employee morale and with respect to foreseeable demands from engineers working those trips that they receive additional pay for services rendered while the deadheading engineer was idle.

We find nothing inadequate in the current rate of pay for deadheading. The Brotherhood argues that Extra and Pool Board engineers, who operate on a first-in-first-out basis are necessarily deprived of a more lucrative assignment possibility when required to deadhead. We regard this argument as fallacious. If he does not perform service within 24 hours from his call, he is guaranteed a standard day's pay. When he does perform service, it is a matter of chance that the assignment may be equally, or more, lucrative than the assignment he would have otherwise received. In addition, he would receive his deadheading pay without the time being subject to the hours of service limitation.

Likewise, we are unpersuaded that the parties should adopt a prohibition, excepting only "emergency" conditions, which would prohibit the Carrier from directing deadheading on freight trains.

The record indicates that currently 85 percent of all deadheading on the Coast Lines is done on passenger trains and some significant portion of the remaining 15 percent is done via bus and passenger automobile. While deadheading via freight train caboose is not as comfortable as deadheading via passenger train, nothing in the record suggests that the Carrier has presently, or in the recent past, required

deadheading on freight trains, arbitrarily or because of indifference to the comforts of the engineers. But, on occasions it is necessary to meet the requirements of the service. Those occasions, though avoided when practicable, are more frequent than could be protected by the suggested right of the Carrier to make an exception "in emergency". Even if the definition of "emergency" were precise, it would be too restrictive to meet the requirements of the service in all instances.

To assure the continuation of the present practice of the Carrier, we suggest that the parties incorporate into their rules a provision requiring that deadheading be accomplished on passenger trains when available to meet the requirements of the service. Otherwise, the Board recommends that the Brotherhood withdraw its proposal designated Item No. 13.

ITEM NO. 14—RUNAROUND PAY AND HELD FROM SERVICE RULES

The Brotherhood of Locomotive Engineers submitted as Item No. 14 of its Notice and Strike ballot the following proposal:

Organization proposed amendment of paragraph (b) Article 26, as follows:

"(b) Engineers in service which operates on a first-in, first-out basis, who are runaround by another engineer or engineers, at a terminal, either district terminal or terminal by assignment, shall be allowed one (1) day's pay at the applicable rate for the engine used and class of service for which the engineer runaround stood, for each time runaround and stand first out. This applies to each man losing a turn.

"Engineers who are not used in service to which entitled under the rules because of the use of an engineer from another class of service, shall be allowed an amount equivalent to what he would have earned had he not been deprived of said service, in addition to any other earnings he might be allowed on that date. Said engineers will retain their position on the list to which assigned in accordance with the applicable rules."

1. The first paragraph of the proposal would rewrite the present runaround rule. Under the terms of the rule now in force, engineers who are runaround are paid prescribed hourly rates for each hour of time that elapses between the time runaround and the time of departure from the yard. The proposed rule would require that they be given a day's pay each time they are runaround.

The Brotherhood maintains that the hourly rate is too low and opens the door to abuses of the first in, first out principle. No appre-

ciable showing, however, has been made of any abuse by the Carrier of that principle or its corollary, the runaround rule.

It appears, however, that the Conductors' Agreement contains more favorable pay provisions than the present rule applicable to the engineers. Considering the historical relationship between pay and benefits accorded to conductors and engineers as members of the same train crew, it seems reasonable to extend to the engineers the same provisions that are now applicable to conductors.

2. The second paragraph of the proposal is a request for a penalty pay rule. The Organization argues that the proposed rule is necessary to prevent the Carrier from deliberately violating the distribution of work rules in order to save deadhead pay. The evidence does not sustain that argument.

The Organization witness cited a couple of instances where pool engineers were used for extra service at Barstow instead of calling an extra engineer from Needles several years ago. The Carrier presented evidence showing that only three instances of the use of pool engineers to perform extra service at Barstow occurred between December 1, 1959 and May 31, 1960. In one instance it was impossible to deadhead an extra engineer to Barstow in time to perform the service after the Carrier was informed of the vacancy. In such a case an extra engineer would have no valid claim to perform such service. In another instance a clerk permitted an extra engineer who was to be reduced to fireman to go back to Needles before actually so reduced, and when a vacancy occurred there was not time to obtain another extra engineer from Needles to fill it. In the third instance a clerk failed to order an extra engineer from Needles to fill a Barstow vacancy. Meanwhile, in excess of 1,900 pool engineers were dispatched east out of Barstow. The number affected is obviously so infinitesimal as to be considered de minimus.

Thus there is no evidence of abuse by the Carrier of the distribution of work rule. Since most, if not all, of the complaints involve Barstow, the real solution to the problem, if one exists, is the establishment of an extra board at Barstow—not a penalty rule. If any pay rule is considered necessary the only thing justified would be to make the engineer whole for any loss of earnings, or, in the alternative, to consider him as being runaround and apply the rule thereon.

Accordingly it is the recommendation of this Board that the parties adopt a runaround rule comparable to that in effect for conductors and that the Brotherhood withdraw the remainder of the proposal designated as Item No. 14.

ITEM NO. 15—FINAL TERMINAL DELAY

By Item No. 15 of its notice and strike ballot, the Brotherhood of Locomotive Engineers proposes as follows:

"Desire and intent of the Committee to change the provisions of paragraph (a), Article 33, as follows:

Item reads as follows and is still in dispute:

"(a) Final terminal delay will be paid for the full delay at the end of the trip, regardless of the mileage made thereon, on the minute basis. If road overtime has commenced, terminal overtime shall not apply and road overtime will be paid until engineer is relieved from duty.

"In passenger service final terminal delay shall be computed from the time train reaches terminal station; provided that should train be stopped behind another train standing at or waiting to reach such point, or be held out of or away from that point for any reason after entering final terminal, final terminal delay shall be computed from the time first so stopped.

"In freight service final terminal delay shall be computed from the time engine reaches designated main track switch connection with the yard track or is stopped at signal governing terminal switch because of inability to admit the train to the yard; provided that if train is stopped before reaching designated main track switch connection with the yard track due to any of the following circumstances:

"1. By a preceding train standing between said designated main track switch connection and the train stopped;

"2. To meet or permit a superior train to pass;

"3. Pending availability of a yard track to receive the train;

"4. For the purpose of making set-out or permitting a yard engine to make change in the consist of the train;

"5. When held at a point prior to reaching the heading in switch if such is done for the purpose of avoiding the blocking of a crossing;

"6. After engine reaches or passes a recognized point or location within a distance of not to exceed three miles in advance of the designated main track switch connection with the yard track and is stopped for any reason, final terminal delay will be computed from the time the train is first so stopped."

The proposal of the Brotherhood is directed to three purposes:

1. To eliminate the present provision which, in those cases where the final terminal delay does not exceed thirty minutes, leaves without separate compensation the first 29 minutes of final

terminal delay time. In this connection, the proposal would have all final terminal delay time compensable on the minute basis.

2. To adopt, in the form of the suggested "six circumstances," amended points of origin to define under certain circumstances an earlier point of incidence for final terminal delay time. At the hearing, the Brotherhood clarified its intent to be that these changes should be effective only within terminal limits.

3. To remove that limitation which excepts from application of the rule providing compensation for final terminal delay those terminals where a switch engine is not employed.

It has long been an accepted principle that some reasonable period of time is necessary to effect the yarding of the locomotive, as an integral part of the duties of a road engineer for the daily compensation provided, without an additional arbitrary compensation allowance. This Board is of the opinion that the long-accepted thirty minute period of delay is not unreasonable.

The proposal of the Brotherhood that there be adopted the suggested "six circumstances" to liberalize the designated point beyond which final terminal delay shall be separately compensable must be viewed in the light of the letter agreement dated April 23, 1917, between the parties. That letter provides, as modifications to the rule defined in the present agreement, the following situations as circumstances under which final terminal delay pay begins:

(a) When a train is stopped at an outlying signal governing the designated switch, provided such stoppage is due to inability to admit the train into the yard. (Compare circumstance No. 3 of Brotherhood's proposal re freight service.)

(b) When the delay is caused by a preceding train being held at the designated switch due to yard congestion. (Compare circumstance No. 1 in the organization's proposal re freight service.)

(c) When the train is stopped within the switching limits to avoid blocking of street crossings between the stopping point and the designated switch, if such stop is due to a congested yard condition. (Compare circumstance No. 5 in the Brotherhood's proposal re freight service.)

The additional circumstances proposed are numbers 2, 4, and 6. There is no evidence to show any substantial delays caused by stopping to meet or permit a superior train to pass. The only evidence with respect to making a set out involved a point where the engineers receive additional compensation when such is done. The effect of No. 6 would be to establish the point of beginning three miles from

the designated main track switch instead of at the switch. This would result in additional compensation for the performance of yarding the engine, which historically has been regarded as part of the engineer's job, absent delays recognized by present rules. Negotiated general wage increases effected during past years have been justified in part on the basis of the total job content including the yarding of engines, attended by terminal delays, as it sometimes is. The Board is of the opinion that the present effort to treat such delays as separately compensable is not logical or reasonable. The proposal would tend to afford multiple compensation for time on duty, which is a principle which the Board believes should be avoided.

The Brotherhood expressed the theory and purpose of this proposal as being to impose upon the carrier the requested punitive rate as a sanction. The theory of the Brotherhood is predicated upon the premise that substantially all final terminal delays are the result of management inefficiency and, by stricter care to the details of scheduling and routings, such delays almost invariably could be avoided. The Board regards this premise as invalid. It seems almost too obvious to justify reiteration that the operation of a railroad system is too complicated, especially during seasonal periods of heavy traffic volume, to run with exact precision. Completely to avoid final terminal delays, as the Brotherhood suggests be done to increase the leisure of the engineers, would require installation of sufficiently expanded terminal facilities to handle without hesitation all terminal-bound traffic during sporadic periods of maximum traffic. The Board deems this prospect neither practical nor justifiable.

We are of the opinion that the parties should retain the limitation which excepts from application of the rule those terminals where a switch engine is not employed. It appears that the majority of runs so affected are local road switchers which may have a considerable amount of work to perform at the terminal. Moreover, this exception has been in effect throughout many years on this and other railroad properties and there is no evidence whatever of any inquity to engineers thereunder.

Accordingly, this Board recommends that the Brotherhood withdraw its proposal designed Item No. 15.

ITEM NO. 18—ASSIGNED ENGINEERS USED IN OTHER SERVICE

The Brotherhood of Locomotive Engineers submitted as Item No. 18 of its Notice and Strike Ballot the following proposal:

Organization proposal for new rule to read as follows:

"An engineer holding a regular assignment or turn and used at the instance of the Company, in other service will be paid therefor not less than he would have received had he remained on his regular assignment or turn, in addition to the compensation earned in the other service.

"If his regular assignment or turn does not operate during the time he is being used in other service, he will be paid the earnings of the additional service. If prevented from being used on his regular assignment account hours of service law following his use off his regular assignment or turn, he will be paid the earnings of his regular assignment for that trip, in addition to the compensation earned in the other service."

This proposal is related to the second part of Item 14 and is simply a request for double pay, the earnings of one's regular assignment or turn plus earnings in service performed, when an engineer is diverted from his assignment to perform other necessary service. The discussion of the evidence under Item 14 as to frequency of occurrence need not be repeated here. As noted, there is no evidence of deliberate diversion by the Carrier for any improper purpose, but only on rare occasions to provide required service when another engineer was unable to work due to illness, death, and other reasons, and when the need was not known in time to obtain an extra engineer from a distant point.

No such double pay proposal has ever been recommended by any impartial tribunal and there is no evidence that any such rule has ever been adopted in the industry. That shows a recognition by employees and employee organizations that in this industry, the requirements of the service to the public are a part of one's job, and it has usually been recognized that one diverted from his assignment for such purpose is entitled to be made whole, but not to receive a windfall of double compensation for work not performed plus that for work performed.

On the evidence adduced there is no basis for the argument of the Organization, that such a penalty rule is necessary to assure that the distribution of work rule will be honored in its observance rather than its breach. Such an unsupported charge really demonstrates the lack of any reasonable basis for this proposal.

Accordingly it is the recommendation of this Board that the Brotherhood withdraw its proposal designated as Item No. 18.

CONCLUSION

Counsel for the Organization called attention to the fact that this Board has no power to adjudicate the issues, but only to recommend terms of settlement under the Railway Labor Act, as amended. We are cognizant of our responsibilities and it seems evident that the purpose and intent of the Act are to assure a reasonable and common-sense evaluation of the proposals of the parties by disinterested persons. Such has been the consistent practice thereunder. All emergency boards have considered the issues and made their recommendations on the basis of their judgment of whether the proposals are reasonably justified. Recommendations not based on logic, reason, common-sense or industry practice could not be persuasive or acceptable. Hence, we have followed that practice.

We are aware of the fact that the real stumbling-blocks to a negotiated settlement are the proposals of the Organization for an arbitrary payment to engineers operating locomotives equipped with a radio-telephone and a guarantee for engineers on the extra board. We are also mindful that the Carrier has offered, in an attempt to settle the dispute, more than we can justify on any reasonable or common-sense basis on some of the other issues.

Our investigation has led to a firm belief that, absent the radio-telephone and extra board guarantee proposals, the remaining items would be readily resolved on bases already discussed between the parties or suggested herein. We have found those two proposals to be wholly unjustifiable. Recognizing that persistence in those unreasonable demands can only result in an interruption of vital transportation service and that absent those demands such result can certainly be avoided, we are led to the following recommendation:

RECOMMENDATION

1. That the Organization withdraw forthwith its demands for an arbitrary payment to engineers operating locomotives equipped with a radio-telephone and for a guarantee to extra engineers.

2. That the parties then meet and resolve the other issues by agreement.

Respectfully submitted.

DUDLEY E. WHITING, *Chairman.*
HAROLD M. WESTON, *Member.*
R. W. NAHSTOLL, *Member.*

WASHINGTON, D.C., *July 15, 1960.*

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