Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10877 DATED MAY 20, 1960, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate an unadjusted dispute between The Pennsylvania Railroad Company, a carrier, and certain of its employes represented by The Transport Workers' Union of America, Railroad Division, AFL-CIO, and System Federation No. 152, Railway Employes Department, AFL-CIO, labor organizations.

(NMB CASES A-5949, E-134)

WASHINGTON, D.C.
JUNE 24, 1960

(No. 132)

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *June 24, 1960.*

THE PRESIDENT
The White House
Washington, D.C.

MR. PRESIDENT: The Emergency Board created by you on May 20, 1960, by Executive Order 10877, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between the Pennsylvania Railroad Company and certain of its employes represented by the Transport Workers' Union of America, Railroad Division, AFL–CIO, and System Federation No. 152, Railway Employes' Department, AFL–CIO, labor organizations, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

FRANK P. DOUGLASS, *Chairman.*
A. LANGLEY COFFEY, *Member.*
PAUL H. SANDERS, *Member.*

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I. IDENTIFICATION OF PARTIES

This is a dispute between the Pennsylvania Railroad Company, a Carrier, and certain of its employes represented by Transport Workers' Union of America, Railroad Division, AFL–CIO, and System Federation No. 152, Railway Employes' Department, AFL–CIO, labor organizations.

The System Federation is an organization composed of the International Association of Machinists; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; and the Sheet Metal Workers' International Association. These organizations represent the crafts and classes of employes of the railroad designated as machinists, blacksmiths, and sheet metal workers. These comprise approximately 5,000 employes of the Carrier engaged in what are commonly known as shop craft occupations.

The Transport Workers' Union of America represents crafts and classes of employes of the Carrier designated as carmen, boilermakers, electrical workers, powerhouse employes, molders, laborers, and helpers, and the apprentices. Some 17,000 to 18,000 employes of the Carrier are represented in this group. Together with the group represented by the System Federation they are concerned in general with maintenance of equipment.

The Pennsylvania Railroad Company is the largest in the United States with respect to volume of traffic. It maintains approximately 9,500 miles of line and over 22,000 miles of track. It serves 13 States and the District of Columbia, a territory including approximately 50 percent of the total population of the United States. It handles approximately 7½ percent of the freight handled by the Nation's Class I railroads and 12½ percent of the passengers. A statement in January 1960 indicates that for the purpose of providing the above transportation service the Carrier owned 2,748 locomotive units, 3,957 passenger cars, and over 150,000 freight-carrying cars. The same statement indicates a total of approximately 80,000 employes on the company's payroll, or over 9 percent of the total number employed by Class I railroads in the United States.

II. GENERAL NATURE OF DISPUTE

This dispute relates in general to three areas of disagreement remaining in the negotiation of a new agreement between the carrier

and the labor organizations. These areas include: (1) certain work classification rules; (2) the scope rule including the subject of "contracting out" of work; and (3) miscellaneous rules relating to such matters as seniority, grievance handling, leave of absence, etc. This dispute does not involve a wage issue.

III. CHRONOLOGY OF PRESENT DISPUTE

A. Events Prior to Special Board of Adjustment

The present controversy began on June 26, 1957, when the Transport Workers' Union served a so-called Section 6 notice on the Carrier in which they sought to have the existing rules agreement of the organization modified to include a work classification and scope rule, additional advance notice of abolition of positions, and severance pay for furloughed employes. The Carrier made certain counter-proposals.

Subsequent negotiations failed to achieve an agreement, and on October 21, 1957, the Transport Workers' Union set a strike date for November 3, 1957. At this point the National Mediation Board proffered its services, which were accepted by both sides, and a mediator was assigned to the case. During the negotiations, the Carrier advised the Transport Workers' Union that it would be impossible for it to agree on a work classification and scope rule unless agreement could be reached between the Transport Workers' Union and the System Federation No. 152 on the allocation of certain work. Discussions were had between the two organizations during the fall of 1957, culminating in an agreement between them on a proposed work classification and scope rule which would embrace all crafts and classes represented by the organizations involved.

Thereafter, in January 1958, the two organizations made a joint proposal to the Carrier. The Carrier accepted the proposals as constituting a Section 6 notice from the System Federation, waived other procerural requirements, and on January 21, 1958, gave initial consideration to the joint proposals of the two organizations. Mediation was recessed at this point so that the parties could engage in direct negotiations on the joint proposals. These negotiations proceeded throughout 1958 and until early February 1959. The scope of the negotiations was progressively enlarged to cover rule changes on a great number of points. On August 1, 1958, the two organizations tendered their separate proposals for complete revision of the respective agreements. This resulted in the Carrier preparing a complete counter-proposal which indicated the writing of a single agreement covering employes represented by both organizations.

At this stage between 60 and 70 items could have beeen listed as being in dispute.

On February 4, 1959, a joint request was addressed to the National Mediation Board for the resumption of mediation. Meetings between the mediator and the parties continued intermittently until Septembr 23, 1959, at which time the organizations formally requested the National Mediation Board to terminate its services. Arbitration was proffered by the National Mediation Board on October 26, 1959, and on November 9, 1959, the organizations rejected arbitration and announced their intent to strike the property of the Carrier on December 21, 1959.

B. Appointment of Special Board of Adjustment

On November 25, 1959, a conference with the National Mediation Board mediator resulted in an agreement to submit the dispute to an agreed-upon neutral person who would have the authority to conduct an investigation and hold hearings and submit recommendations to the parties "as a basis for reaching an understanding to adjust the dispute, but such recommendations shall not be binding upon either party." The parties agreed to "maintain the status quo" until 30 days after the submission of the recommendations. Mr. Francis J. Robertson was named by the National Mediation Board as the neutral and sole member of Special Board of Adjustment No. 329 on December 4, 1959.

The negotiations and mediation up to this point had produced some agreement on a tentative basis. The Employes submitted as their first exhibit to the Special Board of Adjustment a list of twenty "must rules" and declared that its original proposals were reduced to those presented and discussed before this Special Board. Even prior to this date negotiations had proceeded upon the basis of a single agreement to take the place of the separate agreements of the System Federation and the Transport Workers' Union.

Hearings were conducted by the Special Board of Adjustment between December 14, 1959, and January 14, 1960, resulting in more than 1,500 pages of testimony and discussions and in the introduction of numerous exhibits by both parties. After the completion of the hearings, the neutral member engaged in extensive informal discussions and mediation with the parties extending over a period of several months. He found that there were a number of matters and rules on which the parties were in accord or upon which they could be persuaded to reach agreement as a part and parcel of eventual total agreement. The rules and clauses upon which such tentative agreement was reached (comprising some 50-odd letter-sized pages) were attached by the neutral to his report as an appendix. Included

in this area of tentative agreement was the exchange of various memoranda and letters of understanding with respect to certain rules. At the conclusion of this period of mediation and informal discussion, and after several agreed-upon extensions of time, Mr. Robertson released the report of the Special Board of Adjustment on May 3, 1960, dealing with those items upon which tentative agreement had not been reached.

It was stipulated in the hearings before this Board that items other than those specifically referred to in the Special Board's report can be treated as having been eliminated from this controversy.

The Report carried as its first recommendation that any agreement consummated by the parties should incorporate the rules and clauses as set forth in its Appendix A and that the parties should exchange the memoranda and letters as contained in same appendix. The report then proceeded to deal with other items in dispute by a series of 27 reecommendations.

C. Events Subsequent to the Special Board

The parties met on May 9, 1960, for the purpose of discussing the Special Board's report. At that time the Employes advised the Carrier as to which of the recommendations were acceptable and which were not, and also presented to the Carrier certain additional proposals deemed to be necessary for the purpose of making effective certain of the tentative agreements.

On May 10, 1960, the Carrier advised the representatives of the employes that it would accept the report of the neutral person in its entirety as a basis for settling the entire matter, although it continued to have objections to some of the recommendations separately considered. The Carrier indicated that with the exception of one or two items which might be set aside at the time it was reluctant to make any further concessions to the Employes on the recommendations to which the latter took exception. Subsequent to the receipt of the recommendations there was apparently no substantial attempt at negotiation between the parties on the basis of the report.

On May 11, 1960, the employes advised the Carrier of their intention to strike on June 6, 1960. On receiving notice of this intention to strike, the National Mediation Board took action on May 18, 1960, which resulted in the President creating this Emergency Board on May 20, 1960, by Executive Order No. 10877. Work stoppages among employes represented by the Transport Workers' Union occurred at various locations on May 16, 17, 18, and 19, resulting in an injunction being issued at the request of the Carrier against that organization and certain of its officials by the Judge for the United States District Court for the Eastern District of Pennsylvania (Civil Action

No. 28,084). This Board has not concerned itself with the issues involved in this Court proceeding.

IV. ISSUES BEFORE THIS BOARD

This Emergency Board convened in Philadelphia, Pennsylvania, on June 1, 1960, and conducted hearings extending through June 6, 1960, resulting in a transcript of 483 pages of testimony. There was also incorporated as a part of the record before this Board the complete transcript of the testimony and the exhibits before Mr. Robertson sitting as Special Board of Adjustment No. 329. In addition, seventeen exhibits were submitted directly to this Emergency Board. A five-day extension for the rendering of a report by this Board was agreed to by the parties and made effective by Executive action.

Carrier representatives stated again in the proceedings before this Board that, although reluctant in certain instances, they were willing to accept the Special Board's report in its entirety as a basis for settlement of the entire controversy.

The Employes, on the other hand, indicated before this Board continuing opposition in whole or in part to some 20 of the 27 recommendations embodied in Mr. Robertson's report. In addition, the Employes have reintroduced a major item not specifically dealt with in any of the recommendations by asserting a need for further language in the agreement relating to the subject of "contracting out."

Other items remaining in dispute relate to the Employes' refusal to accept completely the following recommendations in the Robertson Report: Recommendation No. 1(a) and (b), relating to classification of work of sheet metal workers and machinists; Recommendation No. 4, relating to filling of positions solely on the basis of seniority; Recommendation No. 5, relating to the exercise of seniority without expense to the company; Recommendation No. 6, relating to pay for change of position on the same shift; Recommendation No. 7, relating to pay for shift change; Recommendation No. 8, relating to training for new types of machinery and new work methods, Recommendation No. 9, relating to "step-rating" and assigning to jobs; Recommendation No. 10, relating to "service" seniority; Recommendation No. 15, relating to pay for attending court and investigations; Recommendation No. 16, relating to grievance handling and jurisdictional dispute settlement; Recommendation No. 17, relating to pay for local committeemen; Recommendation No. 18, relating to assignment of mechanics' work and the performance of work by foremen; Recommendation No. 19, relating to mechanics performing work of other crafts; Recommendation No. 20, relating to the assignment of welding work; Recommendation No. 21, relating to the use of a

board of doctors; Recommendation No. 22, relating to leaves of absence for committeemen; Recommendation No. 23, relating to restrictions on leaves of absence; Recommendation No. 25, relating to use of wreck train crews.

The Employes accept Recommendation No. 2(a) and (b) relating to the purchase of components or parts, but insist upon additional language related to "contracting out." Similarly, the Employes do not object to Recommendation No. 8 relating to training, provided that a senior employe will receive a trial on the job, which is discussed as a separate issue in relation to Recommendation No. 4. The Employes accept the idea that a junior man should be forced to accept an assignment (Recommendation No. 9), but insist that the Carrier must fill all vacant jobs. There is also a condition attached to their acceptance of Recommendation No. 3 relating to coupling and uncoupling of air hose and comparable duties.

It appears that the Employes have accepted without condition Recommendation No. 11, relating to transfer of work; Recommendation No. 12, relating to right to work when returning from leave and a position has been abolished; Recommendation No. 13, relating to annual notice from furloughed employees; Recommendation No. 14, relating to seniority of supervisors; Recommendation No. 24, relating to the standard 40-hour week and national vacation agreements; Recommendation No. 26, relating to the definition of "assigned laborer"; and Recommendation No. 27, relating to the execution of a draft agreement restoring certain employes to rosters. While the Carrier has indicated its willingness to accept the entire report, it continues to register its opposition on an individual basis to certain of the recommendations such as 2(b), 11, 12, and 13.

V. GENERAL RECOMMENDATION

The members of this Board became convinced in the course of the hearings that the parties had not engaged in serious negotiation subsequent to the receipt of the Report of the Special Board of Adjustment. This Board therefore urged the parties to continue their negotiations and attempted to offer its services informally in an effort at further mediation. The Carrier was willing to engage in these further mediation efforts but the Employes were not willing to accede to the request that additional time be given to negotiations. This Board feels that it is extremely important, in their own interests and in the interests of the general public, that the parties should preserve and complete the very extensive area of tentative mutual agreement that has been achieved by negotiation and mediation over the past three years. That which remains in dispute is nowhere

near as important as that upon which they have already tentatively agreed. It seems highly desirable moreover that both parties should make every effort to accept the recommendations of the qualified neutral person who has spent several months in close contact with the problems involved, and who has obviously given very careful consideration to the practicalities of the situation. If either should be unwilling to accept all of the recommendations produced by the Special Board, the parties should nonetheless proceed to the negotiation of the matters that remain in dispute on the basis of the framework provided by its recommendations. There would appear to be additional areas where there is room for further "give and take," which the parties have not fully explored.

The obvious desirability of preserving and completing the amount of tentative agreement already reached suggests that consideration of the dispute should continue to be focused in terms of acceptance of the recommendations of the neutral person. This is emphasized at this point because this Board has not, in light of all of the proceedings before the Special Board, approached the items that remain in dispute precisely in the manner that it would have if it had not had the benefit of this extensive effort by a Special Board of Adjustment to resolve the controversy. Nevertheless the recommendations contained herein represent this Board's independent consideration and judgmnet.

VI. SHEET METAL WORKERS' CLASSIFICATION OF WORK RULE

The issue with respect to the sheet metal workers' classification of work rule is indicated by the following statement which was submitted by the Employes to the Carrier after the receipt of the Robertson Report.

The Sheet Metal Workers' Classification of Work Rule, as contained in the Recommendations of May 3, 1960, is unacceptable. Specifically the language objected to is contained on page 14 of Appendix "A" to the Recommendations. We quote the language in question below:

"The connecting, disconnecting, cutting and repairing of water lines in shop buildings; similar work in connection with sanitary plumbing (except where required to be performed by licensed plumbers, and there are no employes covered by this agreement so licensed), * * *

"where such work has heretofore been performed by employes covered by this agreement."

We request serious consideration of the following proposed Classification of Work Rule for the Sheet Metal Workers:

Sheet Metal Workers' work shall consist of work in sheet metals, or its substitutes, and pipefitting in connection with this work in or on structures, shops, buildings, yards (which includes car retarder and switch heater systems), in and on all types of locomotives, machines, cars and engines (except pipe work

in connection with air brake equipment on freight cars); refrigerating, air conditioning, heating, steam generator, cooling and ventilating systems, including pipefittings and appurtenances in connection with Sheet Metal Workers' work, in all departments where this work is performed. The inspecting and testing of work performed by Sheet Metal Workers. The fabricating, soldering, tinning, leading, building, assembling, erecting, installing, dismantling and maintaining parts made of sheet metals, or its substitutes, of 10 U.S. Gauge or lighter (the agreement between the Sheet Metal Workers and the Boilermakers, T.W.U. of _____ relative to the gauge of metal to apply between the two crafts). The connecting, disconnecting, removing, applying, clamping, laying out, fabricating, fitting, bending, threading, cutting and repairing of air, water, gas, oil, sand, steam, liquid refrigerant pipes, drain lines, and hand rails on locomotives made of pipe, or its substitutes (not including hand rails used as an electric conduit). The bending of arch tubes. The cutting, bending and threading of reach rods made of pipe. The cleaning and testing of sanders, flushing cooling systems, testing water and applying chemicals to water in the cooling systems on locomotives. The repair and testing of detached superheater units (except the grinding and testing of joints). The operation of babbit fires and pouring of metals (except where the shaft is used as a mandril). The operation of pipe threading machines (except where used for electric conduit or air brake pipe on freight cars). Power driven machinery and other appurtenances used in connection with Sheet Metal Workers' work. Sheet Metal Workers' work on sanitary facilities and built-up roofing on buildings. The insulation of pipes, ducts, manifolds, and steam separators. All brazing, welding, fusing, bonding, bending and cutting of sheet metals, or its substitutes, and pipes with oxyacetylene, electric, thermit or other processes used on work generally recognized as Sheet Metal Workers' work. All other work generally recognized as Sheet Metal Workers' work.

Essentially, the problem presented relates to whether or not pipefitting work is to be allocated to the sheet metal workers exclusively (subject to the Carrier's agreement with other organizations) or whether its allocation is to be limited by past practices on the property. The Robertson Report carries the clause "where such work has heretofore been performed by employees covered by this agreement" as a condition of the contractual allocation to the sheet metal workers of the pipefitting work.

A. Position of the Employes

The Employes object to the quoted clause appearing in the Rule because the effect is to allocate the pipefitting work in question to the sheet metal workers craft only where such work has heretofore been performed by employes covered by the pending agreement.

The Employes argue that the language they recommend represents a standard description; that the recommendation of the neutral will be used by the Carrier to support inroads upon the work of the sheet metal workers craft principally by maintenance-of-way workers; that the Carrier has assigned the pipefitting work in question from time to time to maintenance-of-way employes; that such, in the opinion of the Sheet Metal Workers Association, cannot be justified

on the basis of contracts between the maintenance-of-way organization and the railroad; that the records with respect to which employes performed particular work in any particular plant or shop are entirely within the control of management; that it is difficult if not impossible to combat the "alleged records of the Carrier" in this respect; that it is thus made impossible for the Employes to police an agreement dependent upon past practice.

The Employes further argue that they have no desire to require the Carrier to pay twice for the performance of the same work; that they believe that the Carrier could agree to the type of language proposed by the Employes and still be protected because the scope rule contained in the tentative agreement states the following exception: "It is understood that this agreement shall apply to those who perform the work specified in this agreement on the Pennsylvania Railroad, except where such work, as of the effective date of this agreement, is covered by existing agreements with other Organizations"; that this means that the sheet metal workers could be accorded the pipefitting work in question in the language proposed by the Employes, and that they would have the right to perform such work unless the railroad had an existing agreement with some other group covering the same work; that there is no element of unfairness to any maintenance-of-way employes who may now be performing any of the pipefitting work in shop buildings because the Employes are willing to "freeze" existing workers into their jobs and wait until the jobs are vacant before filling them with sheet metal workers.

B. Position of Carrier

The Carrier argues, and introduced exhibits to show, that both sheet metal workers and maintenance-of-way employes do the work in question at the present time; that while the geographical areas for its allocation to one craft or the other are fairly well defined, there is no apparent pattern as between the pipes that one craft works on in contrast to the other, and that at some locations both organizations are doing the work at one time or another; that practices have become established and many of them are of such long standing that it would appear to be better from a practical standpoint to leave existing allocations alone rather than attempt to dislocate them as would be expected under the rule proposed by the Employes; that giving each organization an assurance that they have the right to retain what they are now doing is the best solution from the practical standpoint; that the maintenance-of-way employes would undoubtedly believe that they were likewise entitled to the work; that continuing unrest would therefore result from the Carrier acceding to the proposal of the Employes here involved; that the

allocation of this work has been established over a long period of years; that some of it was not done by agreement with employes organizations either jointly or separately but was simply established on what was considered a reasonable method of allocation; that there is no foundation for any fear on the part of Employes that the language recognizing existing practice would allow further taking away of pipefitting work from the sheet metal workers craft and allocation of it to maintenance-of-way without regard to previous custom and practice.

C. Board's Findings and Recommendation

The evidence presented before this Board did not show any consistent pattern of allocation with respect to pipefitting work as between the sheet metal workers here involved and the plumbers represented by the maintenance-of-way organization. There does not appear to be any consistent pattern either with regard to the type of line or the geographical location insofar as the existing allocation of work is concerned. In addition, it does not appear that the allocation of pipefitting has occurred by reason of any agreement with a particular employe organization, although the Brotherhood of Maintenance-of-Way Employees have served notice of their claim and objection to the Carrier entering into a rule such as that proposed by the Employes here involved.

The Board believes and finds that the most practical solution is to preserve existing custom, usage and practice in the various localities with regard to the allocation of pipefitting work in issue here, and not to prescribe some rule which would be a continuing source of friction between crafts.

The Board recommends that the parties consummate their tentative agreement with regard to the sheet metal workers' classification of work rule on the basis of wording which will allocate pipefitting work to sheet metal workers in accordance with local custom, usage and practice.

VII. MACHINISTS CLASSIFICATION OF WORK RULE

The second issue relating to work classification rules results from the proposal of the Employes that there be included in the work allocated to the machinists the erecting, testing and repairing of scales. The Report of the Special Board proposed to deal with this issue by denying the Employes' specific request but recommending that the Carrier and Employes enter into a letter of understanding providing that, as positions of scale erectors and inspectors become vacant or as new ones are created, that these should be filled from

the machinists ranks with an appropriate variation covering the work of inspecting and erecting electronic scales.

A. Position of Employes

The Employes object to the exclusion of the work of erecting, testing and repairing scales from that allocated to the machinists, while requiring that this organization protect the seniority and other rights of these men in case they are bumped back into the classification of work as set forth in the agreement. The Employes assert that what is desired is an understanding making it clear that when the particular jobs become vacant and have to be filled in the future, they will be recognized as within the machinists classification of work; that the equity of those now in the jobs will be protected; that particular employes of the Carrier engaged in the erection and the inspection of scales should not be excluded from the machinists work classification by labeling their positions as supervisory; that the work in question is not that of supervisors, nine-tenths of it being that of a skilled machinist; that supervisors are not excluded from representation under the Railway Labor Act.

B. Position of Carrier

The Carrier objects to the blanket coverage of scale work within the machinists classification of work rule, although it is agreeable to including "the building and repairing of scales if performed in scale shop." The Carrier argues that employes designated as scale erectors and inspectors are salaried men and have had included in their duties the supervision of erection of scales and the inspection of such scales at various locations on the line of the road; that exhibits show that salaried employes classified as scale inspectors and scale erectors are paid at a monthly rate comparable to or above that of assistant car foremen and entirely above that of gang foremen; that these two latter supervisory positions are held by persons who supervise employes represented by the organizations involved in this dispute; that another exhibit shows that the craft and class of employes who perform particular functions with respect to railroad scales on various lines are represented by a number of labor organizations in addition to the machinists; that on other lines such employes are not represented by any labor organization, being treated as supervisors; that it is not demonstrated that the Machinists Organization represents employes engaged in this type of activity in a normal or usual sense.

The Carrier in this case recognized that most of its employes engaged in the work of inspecting and erecting scales on its own

lines or off the Company's property at private industry locations had at one time been machinists. The Carrier stated its willingness to accept the principle contained in the recommendation of the neutral person, although suggesting that the recruitment for such jobs should come normally from employes holding machinist seniority rather than directly from machinist ranks, because the Carrier might wish to promote a gang foreman holding machinist seniority into one of the scale jobs in question and not be required to recruit directly from those in the ranks of the craft at the time.

C. Board's Findings and Recommendation

The Board finds that the Employes have not shown a sufficient basis for requiring that the work of scale inspectors and scale erectors, as these terms are used on this Carrier, should be included in the machinists classification of work rule. Such employes are shown to be salaried and supervisory in character, being paid at a rate in excess of gang foremen who are over employes represented by Organizations here involved.

Furthermore, no consistent pattern of inclusion of this work within the machinists classification of work rule on other carriers is shown.

The Board recommends that the machinists classification of work rule should not include the work of scale erectors and scale inspectors outside of the scale shop. In addition it is recommended that the Carrier and the Employes should enter into a letter of understanding providing for the filling of the positions of scale erectors and inspectors from those holding machinists seniority with an appropriate exception covering the work of inspecting and erecting electronic scales.

VIII. "CONTRACTING OUT" ISSUE

The parties have dealt with the matter of "contracting out" by means of stated exceptions to the general scope rule as set forth in Paragraph I of their tentative agreement under "Scope." This paragraph provides in general that the agreement is to be applicable to "those who perform the work specified in this agreement on the Pennsylvania Railroad."

The same paragraph then states an exception where such work is covered by agreements with other organizations. To understand the scope of the words, "work specified in this agreement," it is necessary to consider all of the details set forth in the various classification of work rules which have been embodied in the tentative agreement.

This scope rule, with its exceptions and special agreements (set forth in ten typewritten pages) is to be regarded as having been

tentatively agreed to by the parties. The Special Board of Adjustment so regarded the matter, except for the details dealt with in Recommendations 2(a) and 2(b) of its report, an item relating to wreck trains, and certain other relatively minor details touched upon in other recommendations. Its Recommendation 2(a) relates to an additional exception to the scope rule relating to purchase of components or parts. The Employes accept this recommendation, although raising some question as to computation of cost. The Employes also accept the recommended limitation on the Company's intention to purchase prefabricated car sides as set forth in Recommendation 2(b).

The Employes, however, on May 9, 1960, insisted that it was now necessary to secure a more emphatic statement of limitation on the power of the Company to contract out work, particularly as related to the sale and leasing back of equipment. Accordingly, the Employes submitted on that date the following proposal:

> The Company will not contract out any work covered by this agreement except to the extent it is specifically permitted to do so herein. The sale of locomotives, cars, and other equipment for the purpose of rebuilding, upgrading, repairing, or reconditioning thereof and the lease back of the same or of other similar units of locomotives, cars, or equipment from the purchaser by the Company shall be considered as contracting out of the work of rebuilding, upgrading, repairing, or reconditioning subject to this agreement.

A. Position of Employes

The Employes insist that no agreement with the Carrier is possible with respect to the matter of contracting out unless they can have due notice, complete information and complete reasons by the Carrier in advance for the necessity of contracting out in a particular situation.

The Employes further declare that the Carrier must agree that disputes over the matter must be submitted to a neutral arbitrator under an expedited procedure so that the problem can be decided before the particular work is undertaken. In this connection, the Employes make reference to the expedited procedure already included by the parties in their tentative agreement, but assert that the limitations on the use of the expedited procedure must be less than those previously described and that the procedure should embrace all categories and types of disputes arising under the contracting out provisions.

Specifically, in this respect the Employes assert that they are unwilling to continue with the memorandum tentatively agreed to which declared that expedited handling was to be applicable, among other things, to "disputes with regard to arrangements made by the Company for major emergency repairs requiring 5,000 or more man-

hours of work"; that it is vitally necessary to prevent the Company from taking away from the employes here involved the work upon which their future livelihood depends; that they do not trust the Carrier to act reasonably to protect the interests of the employes with respect to the work which might be performed through the use of the Carrier's own facilities as opposed to being sent outside or being eliminated by purchase from outside sources.

B. Position of Carrier

The Carrier urges that this area of dispute should be concluded by the matters previously agreed to and the acceptance of the suggestions contained in Recommendation 2(a) and 2(b) of the Robertson Report, although it considers that the limitation as indicated with respect to the purchase of prefabricated car slides is probably too great a concession to the contention being made by the Employes in this case; that the Employes, in effect, have tried in this instance virtually to require the Company to manufacture or service practically every item of equipment that it might need for which it had the facilities and equipment to perform the manufacture or perform the required service.

The Company states that while it is able to and does manufacture many kinds of parts both large and small, it has always been its practice to buy many such articles from outside concerns either in the form of parts or assemblies. The Company declares that it is primarily a transportation agency and not a manufacturer and that it is not obligated to continue in the manufacturing fields for the sole purpose of providing employment when other factors of sound business judgment dictate that it should do otherwise.

In connection with the brief mediation efforts engaged in by this Emergency Board, the Carrier indicated that it was willing to respond to the proposal presented by the Organizations on May 9, 1960, by entering into agreement along the following lines:

> It is agreed that, subject to the exceptions provided in Articles I and III hereof, work specified in the work classification rules (Articles V to XII hereof) will not be contracted to outside concerns without the consent of the organization or organizations representing the crafts affected.

C. Board's Findings

The Board finds that the parties have recognized and already tentatively agreed to language which would permit the Company to secure components, parts and services from the outside where reasonable economic judgment would dictate. The Board finds that the Carrier should be in a position where it can exercise its best judg-

ment in terms of the most economic method of securing supplies, equipment and services. If the Carrier is not permitted to exercise its best judgment in this regard, it will not operate to the long-run benefit of either the transportation system or those who are in the employ of such a system.

At the same time, it is recognized that employes directly involved when faced with shrinking work opportunity cannot but be disturbed when they observe the purchase of parts, components or services from others which conceivably they might have worked upon if Company facilities and employes had been utilized. The utilization of existing Company facilities and employes should be given their full value in judging objectively the economic desirability of securing particular parts and services.

It is reasonable to ask that the Company should not go outside of its own facilities and employes for the sole purpose of reducing the amount of work which would otherwise be available to its own employes. Furthermore, in arriving at an economic judgment of respective costs, every factor objectively entitled to consideration should be taken into account.

In the matter of utilizing an expedited method of handling disputes in this area, this Board believes that the parties should give consideration to lowering the number of man-hours work required for major emergency repairs below the 5,000 mark. In other words, the Board believes that disputes with regard to arrangements made by the Company for major repairs might very well involve a figure lower than that set out in the tentative agreement arranging for "expedited handling."

D. Board's Recommendation

The Board recommends that the Employes accept the Carrier's offer to agree that, subject to the exceptions set forth in their tentative agreement, work specified in the agreed work classification rules will not be contracted to outside concerns without the consent of the organizations representing affected crafts. The Board does not recommend that the parties agree to the requiring of preliminary consent of the Employes prior to the purchasing or "contracting out" permitted in the exceptions to the scope rule to which the parties have already tentatively agreed. The Board does recommend that any disputes in this area should be handled by the expedited procedure already tentatively agreed to by the parties, but the parties should negotiate to enlarge the scope of that procedure for expedited handling so as to permit its utilization where any dispute of substance in this area is involved.

IX. COUPLING ISSUE

The parties are agreed that there should be an exception in the scope rule of their agreement which would recognize an overlap between the functions of the maintenance of equipment employes and the engine and train service employes in the area of coupling and uncoupling of air and steam hose and certain related or comparable duties. Both parties have agreed that this overlap should be recognized, provided that there is not any expansion of the rights of the engine and train service employes at the expense of those employes involved in this dispute.

The recommendation of the Special Board amounted to freezing present rights on "coupling and uncoupling," and, furthermore, recommended the recognition of an exception permitting the Carrier to assign work of the nature involved in its discretion where the work declined to the extent that the services of no such employe under this agreement would be needed.

Apparently, the only area of disagreement remaining is with respect to this matter of the authority of the Company to assign when the work declines. The Employes have declared that in writing a final agreement, the employes represented here would want language which would not enable the Carrier to eliminate carmen on points or on tricks where, when combined with the work of coupling and uncoupling, a need would remain for maintaining an employe. In other words, the Employes assert that if the amount of work ordinarily performed by the carmen plus the amount of work embraced in this term "coupling and uncoupling" would be enough to justify a carman at the particular point or on the particular trick, then the Employes would object to the elimination of the carman and the turning of the entire activity over to train service people.

The Carrier accepts the recommendation that it not expand the performance of the work here in question by engine and train service employes beyond that which is permissible under its existing agreements with such organization. It has stated its normal reluctance to agree to this type of limitation in the light of the history of overlapping as between the two groups of employes, but considers that the flexibility embodied in the proviso as to the rule obtaining when the need for work declines would make the recommendation acceptable.

A. Board's Findings and Recommendation

The Board finds that there is a recognized overlapping of craft lines with respect to certain tasks of carmen and trainmen. Carmen, at points and on tricks where carmen are assigned, have prior claim to the coupling function so long as carmen are needed for the per-

formance of other work of their craft. The Board recommends that the agreement between the parties should recognize these principles.

X. SENIORITY—TRIAL ON JOB ISSUE

The parties are in dispute with respect to whether or not a senior employe bidding upon a job should be entitled to a trial on the job to demonstrate his qualifications. The Carrier is willing to agree that assignment to positions subject to the agreement shall be based upon ability, fitness and seniority, and that senior employes whose bids are rejected shall be informed in writing of the reasons therefor. The Carrier objects, however, to an agreement which would require it to let the senior employe have a chance on the job to demonstrate he has the necessary ability and fitness.

A. Board's Findings and Recommendation

The record does not reveal any instance of injustice by reason of the absence of any provision in the existing agreements for the senior employe being entitled to a trial on the job. The seniority system on this Carrier is to some extent different from that on other carriers in that employes classified as laborers, helpers and mechanics constitute, in effect, a single seniority pool. There are situations where a trial period by an unqualified senior employe might involve serious risk of danger to machinery, material, or the safety of the employe and his fellow employes.

On the basis of this fact and in the absence of any indication that the Company has arbitrarily bypassed qualified senior employes, this Board recommends that the parties enter into an agreement which would not involve a trial period on the job for the senior employe who bids, providing that proper explanation is given in writing to senior employes whose bids are not honored.

XI. SENIORITY—EXPENSE AND EXERCISING ISSUE

The Carrier desires that the agreement between the parties continue to provide that employes accepting positions in the exercise of their seniority will do so without expense to the Company. The Employes object to this on the theory that it is to the benefit of the Company for an employe to exercise his seniority to accept a position.

The principal point apparently relates to situations where seniority is exercised resulting in the bidder working more than five days or more than eight hours in a 24-hour period.

A. Board's Findings and Recommendation

The Board believes that the normal rule is that an employe exercising his seniority will do so at his own expense and not at the expense of the Company. The Board therefore recommends the continuation of a rule to this effect in the agreement between the parties.

XII. PAY FOR POSITION CHANGE ON SAME SHIFT ISSUE

The Employes propose the payment of an additional three hours pay for an employe's move from one position to another on the same shift at the instance of management. This proposal is opposed by the Carrier as one which is incompatible with the existing practice by which employes are "step-rated" from laborer to helper to mechanic to fill vacancies treated as temporary.

The Employes disagree that the proposal would have any effect upon the Company's step-rating program and that, in any event, they are opposed to the principle of step-rating although obliged to go along with it to a limited extent.

The Carrier asserts that it is inconsistent with the accepted step rating program to step up a man to a higher job at a higher rate of pay and impose an obligation for still further expense to the Company in connection with this move. The Company further asserts that no particular hardship has been demonstrated to the man who is working some higher-rated and compensated job on his own trick and that, therefore, there is no basis for penalty such as is involved in the proposed rule.

A. Board's Findings and Recommendation

Board finds no basis for a proposed rule which would require an additional three hours pay to an employe who moves from one position to another on the same shift at the instance of management, and therefore recommends that the Employes' proposal be withdrawn.

XIII. PAY FOR SHIFT CHANGE ISSUE

The Employes have proposed that those changing from one shift to another are to be paid overtime rates for the first shift of each change. The Carrier has indicated its willingness to accept the proposal for payment at such overtime rates for the first shift of each change at the direction of the Company.

The Employes assert that the rule they have proposed here constitutes a standard rule existing in a great many railroad agreements and that the Carrier should accept such a rule.

The Carrier points out that it has already indicated its willingness to accept a compromise in terms of the Employes' original request, and that the rule as requested would lend itself to abuse by permitting an employe to bid back and forth from trick to trick for the purpose of picking up an extra four hours' pay. The Carrier argues, therefore, that it is reasonable to limit the premium pay to circumstances where the change of trick occurs at the direction of the Company, and if the assignment on a different trick lasted for more than one day, that payment at time and a half be given for the first tour of his return to his regular trick.

A. Board's Findings and Recommendation

The payment of an overtime rate for shift change only when this is at the direction of the Company is not found to be inconsistent with the pattern of agreements on railroads. Accordingly, the Board recommends that the parties adopt a contract provision providing for payment of overtime rates to employes changed from one shift to another at the direction of the Company for the first shift of each change; and that employes, retained for two shifts or more on shifts other than their regular shift and then returned to their regular shift, shall receive the overtime rate for the first regular shift worked upon such return.

XIV. TRAINING ISSUE

The record is not entirely clear as to whether or not the parties are in agreement with respect to the negotiation of an agreement covering the training of senior men on new machinery or new work methods.

The Employes stated before this Board that they are in agreement with the principle set forth in the recommendation of the Special Board on the subject of training where there is a large scale installation of new machinery or large scale institution of new work methods. The Employes declared, however, that they could not accept a proposition that leaves the determination of the qualification of a senior man to the complete discretion of the Company without giving him an opportunity to qualify.

This phase of the dispute relates back to that previously discussed as to whether or not the senior man would be entitled to a trial on the job for which he enters a bid. Since this Board does not find that the parties are in any dispute on the subject of a training program for senior employes apart from the trial on the job aspect, we consider that this phase of the case is controlled by the discussion on that point set out above.

XV. "OFFER" OR "ASSIGNMENT" ISSUE

In connection with the filling of positions or vacancies not subject to advertisement, the Carrier proposed to offer them to senior qualified mechanics employed at a lower rate on the trick at the location and in the craft where the position exists, and if not filled in this manner, then to assign the job to the senior qualified employe.

The Employes, on the other hand, originally sought a rule or the retention of a rule which would call for such vacancies to be "offered" to the employes in seniority order rather than "assigned." The parties have had recommended to them, and they have both accepted, a recommendation that they adopt a rule providing for the forcing of junior qualified employes on the shift or at the location to accept vacancies subject to the "step-rating" program. The Employes assert, however, that their acceptance of the recommendation of the neutral on this point is tied to the condition that the Company fill all such vacancies.

The Carrier asserts that it finds the recommendation of the neutral deficient in that only the junior qualified employe on the trick in the location could be forced to accept the assignment, whereas it does not believe that it should be required to go down throughout the entire available force in order of seniority in order to find someone willing to accept being "step-rated" into the particular job.

The Carrier declares, further, that it cannot agree to filling all of the vacancies because it may not on a particular day actually need all of the regular advertised jobs to be filled; that the rule in question should be operable only if the positions involved are to be filled in the judgment of management.

A. Board's Findings and Recommendation

The Board finds that it is entirely normal practice in labor relations to call for the offering of a job on the basis of seniority followed by a compulsory filling of the job on a reverse seniority basis in the event that the job has not been filled by the first process. The Board understands that both parties are agreeable to this general principle and believe that they should adopt contract language accordingly. The Board does not find that there is any basis for tying this particular matter to a requirement that the company fill all of the vacancies open on a particular day. The number of jobs that it needs to fill by offering to the senior man or assigning to the junior man should be left to the determination of Company management since it is in a better position to judge its needs and these, undoubtedly, vary to some extent from day to day.

XVI. SERVICE SENIORITY ISSUE

The parties are in dispute with respect to the recognition of so-called "service seniority" based on total length of continuous service with the Company. Under agreements made during the 1920's, it appears that this type of seniority was established for a period of time ending around 1925. Its application becomes significant in connection with drastic reductions in force. It has been claimed to have the effect of letting a particular employe who has less seniority in the particular craft bump or roll a fellow member of the craft because the first has a greater length of continuous service with the Company, although that service might have been acquired in completely unrelated occupations.

The Employes argue for the elimination of this so-called service seniority for the reason that its status was unknown to them at the time that they entered into present contractual relationships and for the reason that it is extremely difficult to get any precise idea as to what the terms are for the exercise of such seniority.

The Employes also reject the suggestion of the neutral which would call for the retention of such seniority but confine the exercise of it to displacement of employes in Craft No. 6 (laborers). The Employes reject this idea on the ground that during the period so-called service seniority came into being there was no recognized craft of laborer with a recognized seniority list, and that there should be no right to seniority in a craft or class where a particular employe may have never obtained it.

The Carrier has accepted the recommendation that this so-called service seniority should be given recognition only for the purposes of displacing an employe in the laborer classification, that is, that it should be exercised only as a last resort before a person would be furloughed from employment.

A. Board's Findings and Recommendation

While the record on this subject is in many respects unsatisfactory, it seems to be clear that there was established at some time in the past this concept of "service seniority" based upon total unbroken service with the Company in any capacity. It is clear also that there has been no provision for accumulating such seniority for approximately 30 years. Therefore, the concept will be applicable only to a constantly diminishing group of the Company's older employes.

It is also clear that the contractual arrangements entered into by the Employes and their predecessors with this Carrier have provided that seniority once established was not to be changed by any provision of the particular new agreement.

The Board finds that it is proper and reasonable to utilize this service seniority concept (if it is to be given any recognition at all) only as a last resort before a person is laid off from his employment. Accordingly, it should be operative only at the lowest level of jobs held prior to furlough. In this case, that is the so-called Craft No. 6, or laborer classification.

The Board recommends therefore that the parties provide for the recognition of this so-called service seniority wherever it has previously been applicable, but only as a means of displacing employes in Craft No. 6.

XVII. TRANSFER OF WORK; RIGHT TO WORK ON DAY OF RETURN FROM LEAVE, WHEN POSITION ABOLISHED; OCTOBER NOTICE FROM FURLOUGHED EMPLOYES; AND SENIORITY FOR SUPERVISORS

A. Nature of the Dispute

The parties are in tentative agreement to accept the recommendations of Special Board of Adjustment No. 329 on each of the issues in the grouping above. Carrier's acceptance, however, is conditioned upon the Special Board's recommendations being accepted as a whole. A full and careful review of all the evidence and arguments of the parties is cause to say that their tentative agreements should stand as a basis for final settlement of their dispute over these issues.

B. Recommendation

The Board recommends that the tentative agreement on the above issues be incorporated into the rules of agreement as finally settled and agreed upon.

XVIII. COMPENSATION FOR ATTENDING COURT, INQUESTS, OR INVESTIGATIONS ON THE PROPERTY AT CARRIER'S REQUEST

A. Nature of the Dispute

The remaining differences between the parties, after bargaining out others, are largely these:

First. The employe wants to be paid a minimum eight-hour day for time lost during bulletined hours of work, at the straight time hourly rate of pay for his job. Carrier's proposed rule provides that he shall suffer no compensatory loss for time away from his job.

Second. On rest days or holidays, the employe wants to be compensated on a time basis as above, but at one and one-half times his

straight time hourly rate of pay. Carrier would pay for a minimum of three hours and a maximum of eight hours at the straight time hourly rate of pay.

Third. On days of work, but outside bulletined working hours, the employe wants actual time at one and one-half times his job rate. Carrier offers to pay the straight time hourly rate for continuous time, and when not continuous with hours worked, a minimum of three hours and a maximum of eight hours at the straight time rate.

Fourth. The Employes' proposed rules require travelling or waiting time to be considered the same as time worked, to be paid for at the time and one-half rate when outside bulletined hours of work. Carrier is opposed to compensating employes for travelling or waiting time as such but is willing to pay necessary travel expenses.

The Employes believe their proposals are fair, just and reasonable. They believe also that their proposed rule might keep down unreasonable demands upon their non-committed time for purposes not contracted when they hired out at their trade.

The Employes argue that they are being required to take part in proceedings for which they are not trained; to which they are not suited nor adjusted; and, not a part of their regular work, all of which makes for a hardship case according to their point of view.

Carrier objects, first, to attempt by the Employes to combine two present rules into one, thus treating of court proceedings and investigations on the property in the same manner, contrary to popular usage and without regard to notable differences in techniques, practices and purposes to be served.

Carrier disagrees with the Employes' contention that court or other trial experiences are more onerous than on the job work performance. Further, Carrier terms "ridiculous" any demands for a premium or punitive rate of pay for travel on holidays, rest days, or hours not bulletined as a part of the employe's regular assignment, including hours of rest and repose in sleeping accommodations provided by Carrier.

B. Board's Findings and Conclusions

While the Employes argue they are subjected to undue hardships when testifying or otherwise being required to engage in other than their normal duties, it is worthy of note that one point of substantial uniformity between the disputing parties is that they are agreed the employe should suffer no loss of compensation during bulletined hours of work.

The stress and strain that the Employes plead they are under is not the real cause for dispute. The real dispute is over a pay concept that the workers should be regarded as on duty and under pay for

all time utilized or controlled by the Carrier, whatever the services. The Employes, if willing to concede there is a distinction between job rates of pay and compensation for special services, are not willing to take less for one than for the other.

The demand that more time be paid for than actually is devoted to or utilized for special services is punitive in nature, as is the punitive rate of pay (one and one-half times the straight time hourly job rate). Neither can be said to be compensatory in terms of service or work performance, but one or both pay concepts have some recognition and ready acceptance as applied to working conditions that do not conform to the norm. The punitive rate of pay has general and wide acceptance as appropriate compensation for service on rest days, holidays, and during hours not bulletined as part of a regular assignment. Recognition is accorded that principle under parts of the contract now in effect between the parties to this dispute. Therefore, the Employes' demands are not in all things out of bounds.

We agree, however, with Carrier's first premise that a separate rule should govern pay practices involving court and like appearances required under processes, in whatever form and by whomsoever issued, if sanctioned by public authority.

Investigations on the property cover a host of practices, but the parties before us are concerned with trials and appeals in discipline cases, referred to herein as formal investigations.

Carrier does not control court or other proceedings before public bodies, such as investigations, inquests, and other public inquiries, nor is it responsible for the delays that ensue. The employe, even if his appearance is requested by Carrier, is not really in Carrier's service at the time.

The appearance is required in the public interest and to promote the ends of justice. Justice has no price and is not for barter or sale. Therefore, we frown generally upon any form of compensation paid witnesses that makes them suspect as being in the service of either party to litigation, or that might tend to unconsciously color testimony that should be in all things in the public's interest. We recognize there is nothing inherently wrong in paying an employe for time actually off his job to engage in a court or like appearance, but to put an added premium on such time, or to subject his appearance to punitive measures, is basically and inherently wrong and could be looked upon in theory as impeding rather than promoting justice.

Carrier's proposed compensation for court appearances is equitable, honorable and fair. The Employes should agree.

We are aware of and are not out of sympathy with the worker's feeling that, after completing the bulletined hours of his assignment as per contract, his free time should be his to enjoy without inter-

ference from others in similar positions, unless they are willing to see that he is paid the premium he demands for attending formal investigations.

On the other hand, there appears to be in his present demands in this area of dispute, a lack of recognition for the obscure and perhaps hidden value afforded by a fair and impartial trial, and the right of appeal in discipline cases, as provided by a rule, which is employe-inspired and is advocated by him for promoting that maximum job security which is the envy of many in employments outside the railroad industry.

The selfish interest, if none other, that the individual worker has in the proper application of that rule at all times, should inspire him to give willingly and unstintingly of his own time without greater inducement than knowledge that said rule protects him and others against arbitrary and capricious dismissal from service.

If the employe's choice were one of giving up the protection of the rule, or in the alternative, to have the added compensation he stands to gain under the Employes' proposals, we have no doubt he would retain the rule. Therein lies the obscured values we mentioned earlier.

The proposed punitive sanctions are based upon Employe distrust of Carrier's administration of the rule and alleged abuses of the employe's non-working time under it. However, it is not necessarily true that Carrier is guilty of sharp practice because it seeks at times to avoid, not evade, liability under a given rule. The contract is made at arm's length. Both contracting parties are skilled at finding loopholes in their bargain.

Nevertheless, we have taken a close look at what is the basis for Employe concern about being held or called in for formal investigations at times when the workers are scheduled off duty.

When it can be helped, Carrier should not hold hearings that involve continuous time before or after work or on rest days or holidays. It proves impossible on occasions, however, to accommodate the convenience of all who must be present for the trial, within the time allowed by contract.

If the formal investigation is held on the employe's rest days or holidays, the following equities should be observed:

When the recognized holiday, or the day observed, falls on a day the employe normally is scheduled to work, he is paid for eight hours at straight time when no work is performed. In order to retain that pay advantage, the employe, whose presence is requested by Carrier, should be paid for "time worked" within the meaning of and as provided by the holiday pay rule if he stood to be paid for a holiday not worked.

If the absent employe's position is worked by another on his assigned rest day or days, he should be paid the time and one-half rate for hours worked by the substitute on his position.

Carrier's proposals in all other particulars should be accepted.

C. Recommendation

The Board recommends to the parties that they promulgate and agree to rules that incorporate the above principles.

XIX. PROCESSING OF GRIEVANCES AND JURISDICTIONAL DISPUTES OVER WORK ASSIGNMENTS NOT INVOLVING CONTRACTING OUT WORK

A. Nature of the Dispute

The parties are near a settlement on this issue. The remaining difference is whether disputes that are not adjusted on the property should be appealed to a System Board of Adjustment or to the Second Division of the National Railroad Adjustment Board for final settlement.

Carrier and the Transport Workers are tentatively agreed that the present rule, in force and effect between them, which provides for a System Board of Adjustment, should continue in effect. The Federation expresses the desire to continue as in the past, to use the services of the Second Division of the National Railroad Adjustment Board as provided by statute. Since this is its statutory right, the Federation is reluctant, perhaps totally unwilling, to concede there are any advantages in disputes handling by a System Board.

B. Board's Findings and Conclusions

The Transport Workers have representation on the System Board which they do not have on the Second Division of the National Railroad Adjustment Board. The Federation has a member on the Division, but so would it have a member on the System Board. Both are statutory tribunals of like jurisdiction under the Railway Labor Act, as amended. The processes are relatively the same. In cases of deadlock, a neutral person called Referee assists in making a final and binding award.

There will be what amounts to one contract governing all parties to this dispute when a settlement of all issues is reached. Accordingly, disputes arising under the same contract and involving the interpretation and application of its terms, cannot be as well accommodated by separate tribunals as by one, for, manifestly, there will

be greater uniformity of opinion if appeals are made to one and the same Board. Any substantial conflict of opinion over the meaning of language intended to be of uniform application to all who are covered would defeat the very purpose of the one contract.

Additionally, jurisdictional disputes over work assignments deserve the full consideration and prompt attention of persons on the property who are closer to the problems, know more about the work in dispute that needs ready attention, and who will be concerned only with their own contract. These and other like considerations herein mentioned impress us as being in the greater interest of the common good, and to our mind, at least, outweigh what we look upon as little more than the expressed desire of a lone disputant to have its choice recognized and respected.

C. Recommendation

In the interest of a prompt settlement of more controversial issues that are in dispute, the Board recommends that the Federation withdraw its asserted preference for one of the two statutory Boards of equal stature under the law.

XX. LOCAL COMMITTEEMEN NOT TO LOSE TIME AT MEETINGS WITH LOCAL OFFICIALS

A. Nature of the Dispute

The Employes propose that all conferences between local officials and local committees be held during regular working hours without loss of time to committeemen, and such time to be considered as compensated service for both vacation and holiday qualifying time.

Carrier resists the proposal upon grounds that the rule is subject to likely abuses but indicates there is possibility of agreement on its part to a rule that provides for holding conferences between local officials and local committees during regular working hours, insofar as practicable without loss of time to committeemen, if reasonable limitations with respect to place of meeting, number of committeemen and number of hours which may be used without loss of time be contained in any such rule.

The Employes take the position that the number of committeemen whom they need to discuss their business is a matter for them to decide and they are not going to be dictated to in this respect by Carrier. As to Carrier's fear of abuses, the Employes say they will be reasonable and "as long as Carrier is reasonable it has nothing to fear."

Carrier does not propose to deprive local Employe officials and committeemen of their earnings when conferences are arranged by Carrier's officials during working hours, or when meetings are called at the instance of Carrier. As the Carrier puts it, "We do not think we should be obligated to assume any cost of conducting any organizational activities."

B. Board's Findings and Conclusions

The merit or lack of merit in the proposed rule has been lost sight of by the parties in an atmosphere of mutual distrust and acrimony, which unfortunately permeates the entire scene and is the real crux of many of the areas of dispute.

The record shows that prior to somewhere among 1953 or 1954, Carrier did pay Employe representatives for attendance upon scheduled monthly meetings with master mechanics, superintendents and general managers. It gives as its reasons for discontinuing the practice that "few committeemen, if any, missed the opportunity to take a day off at the company's expense to attend the meetings."

It does not appear that Carrier has ever invoked any general policy or hard and fast rule where a shop representative stopped in a foreman's office or master mechanic's office for a few moments to discuss some problem with him or to call his attention to some incipient grievance. According to the record, Carrier's refusal or failure to pay for attendance at such meetings has not unduly interfered with the progressing and handling of grievances.

Some Employe organizations, notably the Engine and Train Service Employes, refuse to accept any pay from the Carrier for their representatives attendance at such meetings. Such an attitude seems to be consistent with present day policy to recognize a separation of powers between management and labor.

In view of present attitudes and some real difficulties in reducing to concrete terms, satisfactory to all persons, the conditions for payment or protection against loss of time on the part of local committeemen, in connection with meetings with local officials, we think it best to leave the matter of arranging, holding and attendance upon local grievance meetings in the hands of the Employes' local officers and committees and Carrier's local officers, without attempting to spell out contract provisions for them in that regard.

C. Recommendation

The Board recommends that the Employes withdraw their proposal.

XXI. ASSIGNMENT OF MECHANIC'S WORK; PERFORMANCE OF WORK BY FOREMEN

A. Nature of Dispute

The dispute here is over work assignments in craft employments. Basically, there are two areas of dispute:

1. Carrier's right to require a mechanic to perform work classified for pay and other purposes as helper's work and other incidental tasks, such as policing his work area.

2. A present rule, that permits foremen to perform mechanic's duties as necessary at points where qualified employes are not employed or are not immediately available, and in cases where the exigencies of the service demand, is under attack by the Employes who propose that "None but mechanics or apprentices employed as such, shall do mechanic's work as per special rules of each craft."

The Employes seek a more rigid adherence to craft lines for mechanics and others of the shop crafts. Apparently, they do not concede, whether or not they seriously dispute, that, in railroad employments, there must be a relaxation of the strict work classification rules when applied to shop crafts so as to accord realistically with work requirements and practices. All else considered they do dispute the need for a rule. They fear the loss of jobs will result from comingling job duties if recognition is accorded the right to do so by rule.

Carrier maintains it wants no more by rule than the right to preserve, in principle, the results of an arbitration award that allows for mechanics to do some of the lower grade work, minor in amount, that is incidental to the more skilled work of the craft, although when performed to any substantial degree, the lower grade of work makes up a substantial part of the job content of the lower wage rated job of "helper" or "laborer."

Carrier's proposal would include, among other things, the policing of his own immediate work area by the mechanic, such as sweeping up around his workbench.

There is some showing in the record that the parties have found a basis for working out all differences save the one that permits a foreman to perform mechanic's duties as contemplated by the present rule, and there is further but some less likely promise of agreement in that regard.

The Employes express a willingness to write a rule which will permit Carrier to utilize a foreman to perform mechanic's duties at outlying points where mechanics are not regularly employed. Carrier naturally would like to keep the added advantages, if there are any, in the present rule but these possible advantages are what cause

the Employes to look with suspicion upon Carrier's insistence that it be permitted to use foremen on mechanic's work "when the exigencies of the service demands."

The Employes' expressed fear is that Carrier will abolish mechanics' jobs and use foremen in their place. Carrier maintains that such fears are not justified, and challenges the Employes to show on the record where there have been any such abuses as they claim.

The Employes respond in only a general way to say it has been done and is occurring at this very time.

B. Board's Findings and Conclusions

Unlss the processes of collective bargaining, as between these disputing parties, have broken down entirely, and there is some evidence that is the case; there is still room for a trade with some little give and take being all that is required. One side or the other, or both, could only be borrowing trouble if they do not compose their differences over this rule.

The Employes show concern, on the one hand, that Carrier is practicing rigid economies at the expense of needed services on the part of skilled crafts that are being reduced in number, and at the same time would have us believe that the same economy-minded management is going to load the skilled and higher paid jobs with a lot of low grade work and inconsequential duties so as to reduce the work forces at the lowest employment level. Such false economies do not long endure and are seldom practiced by an enlightened management.

We have the notion, based upon some little experience, we can rely upon Carrier's representation to us that it wants the words "any work of craft No. 6 incident thereto" written into the rule to avoid future controversy over a principle that was authoritatively settled in arbitration, and not for purposes of practicing abuses or for other advantage at the expense of unsuspecting persons, of whom there are few left on the property where this dispute exists. Carrier's proposal should be adopted.

On the other hand, Carrier may be able to reassure its employes that mechanics' jobs are not going to be discontinued where and when there is work to be done and foremen substituted, by agreeing to delete from proposed Rule 5–F–1(c) the words "in cases where the exigencies of the service demand." The Employes are entitled to this assurance.

We can see no actual harm to the contract, or the individual, for the mechanic to do a little housekeeping at and around his workbench during his bulletined hours of work.

C. Recommendations

The Board recommends that a settlement be made by agreement upon a rule negotiated within the framework of the discussion above; or, by taking the rule as presently written and administering it accordingly.

XXII. MECHANICS PERFORMING WORK OF OTHER CRAFTS

A. Nature of Dispute

This issue deals with Carrier's proposed Rule 5–F–2, and also two other somewhat related matters that originally were proposed by Carrier as exceptions to the Scope Rule.

In conferences arranged to consider all proposals it was agreed to bring these particular scope-related matters under 5–F rules, as they are called, and where said proposals more approximately belong. The first inquiry under 5–F–2 has to do with assigning mechanics to perform the work of other than their own particular craft when the work to be performed is not sufficient to warrant the use of additional employes.

The first of the above-mentioned exceptions to the Scope Rule proposed by Carrier would allow the employe of any craft to perform the work of another craft when necessary in connection with the employe's own work.

Carrier's other proposed exception to the Scope Rule, and which, again, has provoked serious controversy, provides:

> Employe of a craft covered by this agreement, while assigned to operate a machine, may be used to perform any work which is done on such machine.

Leaving, for the moment, Carrier's proposed exceptions to the Scope Rule, a rule almost identical with Carrier's proposed 5–F–2 is in the Transport Workers' agreement, and a similar rule is in the Federation's agreement. This part of the dispute comes about over dissatisfaction with purported usage under the controlling language. The Employes object to it being applied at other than small outlying points where there is an unusually small work force. Carrier's alleged resort to the rule where there is a much larger work force is assigned by the Employes as their reason for insisting upon language that would apply only at outlying points, subject to agreement after it first has been mutually determined that there is not sufficient work to justify employing a mechanic of each craft. Carrier is opposed because it says it can visualize some of the difficulties that would be encountered in trying to reach agreement upon outlying points.

Carrier's first proposed exception to the Scope Rule is objected to by the Employes on grounds that it is too broad and, again, should be confined to points where there are an insufficient number of employes of each craft assigned.

Carrier holds that some such exception to the Scope Rule as it proposes is needed because of the narrow view that the Employes have taken in times past of work that is necessary for purpose of permitting the employe to perform work of his own craft—a view so narrow that Carrier had to seek and obtain awards from Adjustment Boards, of appropriate jurisdiction, approving in principle Carrier's right to use an employe to remove hatches or coverings to get at the work he has to perform, in opposition to the claim that such work was covered in the job duties of another craft.

Carrier's other proposed exception to the Scope Rule above-mentioned, is opposed by the Employes as serving to break down craft lines. Carrier argues that it would be ridiculous to require employes of different crafts to take their turns in using a machine to perform a given operation.

The merits of the dispute over Rule 5–F–2 already have been carefully inquired into and a recommended solution of like disputes is to be found in the report of Emergency Board No. 106.

The rule there recommended was for industry-wide use on the part of individual Carriers who wanted to adopt it. The Transport Workers were not involved in those negotiations. Carrier, at the time, considered the rules in effect on its property more favorable and did not exercise its option to take the recommended rule. Events since occurring caused some dissatisfaction with the rule presently in effect and the Employes proposed, what Carrier looks upon as a diluted version of the rule recommended by Emergency Board No. 106. Carrier would favor that Board's recommended rule over the Employes' so-called diluted version.

B. Board's Findings and Conclusions

The dispute over the Scope Rule, to which Carrier's proposed exceptions would apply, is the real sore spot between the parties. The Employes want all of Carrier's work but at the same time are not willing to give Carrier the flexibility that would result from some relaxation of strict classification lines.

The Employes, as a class, perhaps could retain, perform, and bring more of Carrier's work under the contract if they could see the wisdom in Carrier's proposals now at issue. The flow, distribution, and separation of work should not be nearly so important to the Employes as it is to retain as much as possible of the work for performance on the property.

Now that the parties are in substantial agreement on job classifications, work processes and job descriptions, some such language as that proposed by Carrier in connection with Rule 5-F is almost a must. Certainly it will help to keep more of the work under and subject to the contract with which we are dealing if an employe of one craft may perform some incidental and relatively small amount of work of another craft when necessary in connection with his own work.

The truth of the matter is, there will be little or no crossing of classification lines where basic skills are involved. A carpenter's skills will not qualify him as a boilermaker, for instance, nor will a machinist be able to displace a welder.

Carrier's proposal for using the same employe to do all the work on a given machine is a little too difficult for ready understanding. If it relates only to a machine operator classification it poses no real difficulty or problem, but if related to different crafts and all work there is some cause for the Employes' concern. On the other hand, there are many machines and tools of common usage among different crafts. In such instances, the full utilization of Carrier's machines to all possible advantage of Carrier's investment therein must be recognized. Also, the skills required are related to a machine-tooled operation as distinguished from those skills that are peculiar to hand crafts to which tools of the trade are peculiarly adaptable.

In any event, it does prove impractical and unrealistic to require employes of different crafts to take their turns in using a machine on machine-tooled jobs when the process is continuous and skills of the craft being only of secondary consideration.

C. Recommendations

The Board recommends that the parties now adopt and put into effect on this property the rule recommended by Emergency Board No. 106, but limit its application to outlying points as that term is recognized in railroad parlance. There should be the condition, however, that Carrier's first proposed exception to the Scope Rule be adopted as a part of this same rule for application at outlying and all other points; and, appropriate language should be negotiated into the rule that will afford Carrier effective and efficient utilization of machines and other tools that are not peculiarly the tools of one craft, but at the same time recognizing the equities of all crafts.

In the alternative, we recommend that present rules remain in effect but subject to principles heretofore recognized by Adjustment Boards of competent jurisdiction for interpreting and applying said rules.

XXIII. ASSIGNMENT OF WELDING WORK; WELDING POOLS

A. Nature of Dispute

Welders now are assigned and work out of a pool made up of craftsmen who are selected on the ratio of other craft work to the total of all work that is to be performed by welders. Carrier would retain the claimed efficiency and proven economies that result from pooling welders. A Carrier witness testified without the Employes having been given the opportunity to fully investigate and to refute said testimony, if they could, that the elimination of the pooling arrangement would cause Carrier to hire at least 100 additional employes at an annual expense of $700,000, and possibly more. The Employes want welders assigned according to classification of work in order to show greater recognition for craft assignment and to reduce what it says is constant wrangling over ratio of assignments in the pool to craft work.

B. Board's Findings and Conclusions

The record shows that the practice of assigning and working welders out of pools has been in effect on this property since 1935. Save for the problem of adjusting ratios when work increases or decreases, there is no evidence that the present practice has been especially troublesome or bothersome during twenty-five years of usage. That is not to say that the Employes have no right to seek a change now to some greater advantage, as Carrier proposes to do in connection with other rules, but we cannot lend our help to either party for gaining advantage for the sake of advantage alone.

Welding is recognized in the trade movement generally as a craft unto itself, subject to more recent refinements not here pertinent. So any implications to the contrary notwithstanding, this is not a dispute over craft but involves the class or grade of work to which welders are assigned and which has been protected successfully over these many years out of a pool. As long as equitable ratios are maintained by agreement between the parties, there is no cause for dispute over work opportunities and for protection of the work to the welding craft.

It is something less than persuasive that to do away with the pool will make jobs for a substantially greater number of employes; since no showing has been made before us that there will be any value therein to Carrier, but to the contrary it will prove to be a more expensive operation.

The difficulties the parties have experienced over reaching agreement on ratios is not necessarily peculiar to the pool assignments

but are common to the process of increasing or decreasing the working force. The elimination of the pool is hardly calculated to eliminate the problem. On the other hand, there would be greater cause than there is now for jurisdictional disputes arising and causing greater problems.

C. Recommendation

The Board recommends that the Employes withdraw their opposition to the pooling of welders.

XXIV. PHYSICAL FITNESS; BOARD OF DOCTORS

A. Nature of Dispute

Carrier proposes the rule presently in the Transport Workers' agreement. The rule provides for appointment of a Board of Doctors to review cases where an employe is withheld from service on advice of Carrier's medical director and where the Employes challenge the findings of the Medical Department.

One doctor would be selected by Carrier, one by the Employes, and third by the other two. The findings of the three-man board would be final as to whether or not the employe was physically fit to resume work.

B. Board's Findings and Conclusions

This is not a vital issue. We do not fully understand the Employes opposition to a proposal from Carrier that impresses us to be eminently fair, sensible and practical as an expeditious way to settle major disputes of grave importance to the real party in interest by enlisting the aid and assistance of knowledgeable persons who, as experts, are best qualified to pass judgment on the vital question of physicial fitness, although concedely one might question at times their judgment as to the controlling relationship between job content and physical fitness.

Carrier's interest in the rule is genuine; but, as it says, it is not willing to force same upon the Employes.

C. Recommendation

The Board recommends Carrier withdraw its proposal if the Employes continue to oppose the rule.

XXV. GRANTING LEAVES TO COMMITTEEMEN

A. Nature of Dispute

A Carrier proposal would take away the free transportation that is provided for committeemen under existing rules when delegated

to represent other employes, and further would make all leaves subject to requirements of the service.

The Employes propose to retain all the advantages of the present rule. Although of no likely significance, the present rule in the Transport Workers' agreement provides:

> The Company shall not discriminate against any of the *employes* who are selected as representatives of the Union who, from time to time, represent other employes. (Emphasis supplied.)

The term "committeeman" now is used in place of "employes" in all proposals, and whether or not the suggested change is important depends upon how one views the attitude of the parties with respect to the trouble Carrier says it has been having with the rule.

Carrier holds, in effect, that the Employes have forfeited the privileges it now seeks to withdraw by reason of alleged advantage that has been taken of the rule to promote work stoppages and other interruptions to the service by the devious means of collective action under pretense of need to withdraw from service "to represent other employes."

The Employes respond in kind by heaping abuse upon Carrier and accuse it of having been guilty of sharp practices that provoked the actions about which Carrier complains.

B. Board's Findings and Conclusions

We are back in an area where all reason has been sidetracked and replaced by some disposition to resort to name calling and other forms of vilification as a substitute for good common sense and the duty to bargain.

The Employes owe the Carrier the utmost good faith in demands made under this rule. No matter what the provocation, the rule was never designed to take the place of democratic and orderly processes for redress of wrongs; neither does the rule go so far in protecting against precipitant and ill-advised action as some may think.

The other side of the story, according to the Employes, is that men always have reacted in kind; good treatment often begets good treatment, and bad begets bad. More need not be said by us about what has gone on in the past. Our office is not to condone nor condemn, but only to look to the equities and to recommend as between the parties what appears to be an honorable and just settlement on the basis of the entire record.

We think Carrier's proposed withdrawal of free transportation may be in the extreme. There is greater appeal in its proposal to grant leaves only as service permits. Most certainly, it is under no obligation to shut down operations or to be crippled while those persons who are dependent upon it for a livelihood pursue other

business in their own or others' interest. But where, as here, the person is under dual obligation and subject to conflicting demands upon time and energies, the difficulty is one of attempting to say what constitutes a reasonable demand upon either service. It may help for planning and programming the work, however, for the Employes to place on file with Carrier, at least 90 days before or as far in advance as possible, the names of its committeemen for whom leaves will be requested.

The same separation of powers about which we spoke earlier in this report otherwise require that the Employes be left reasonably free of Carrier domination and control, to pursue their organizational activities. If the grant of privilege (and that is what a leave is as distinguished from a right) is abused, Carrier retains the greater right to say who shall remain in its service, subject only to the same limitations upon abuse of power as applies to the Employes.

C. Recommendation

The Board recommends that the Employes' leave proposal for committeemen as qualified herein be adopted and the free transportation which Carrier is in a position to offer consistent with normal practices, be spelled out in the rule; all parties to be subject to the greater rule of reason for abiding its terms.

XXVI. LEAVE OF ABSENCE RULE

A. Nature of Dispute

This is another facet to the dispute over leaves of absence involving here four types of leave:

(a) Leaves to engage in other work.

(b) Leaves for persons elected or appointed to a public office for which a competitive examination is not required.

(c) Leaves for employment by government agency that handles railroad matters.

(d) Leaves for persons appointed from the ranks for supervisory positions or to other appointive office in Carrier's service.

The Employes want to approve leaves if required to maintain and recognize the seniority rights of the individual who has withdrawn from service but may later return and bump other employes from their jobs.

The remaining aspect of the leave problem involves the question of whether or not an employe who has taken leave to become a supervisor, or other Carrier officer, should be required to maintain his membership under the Union Shop Agreement and to pay dues

as a condition for retaining and accumulating seniority while out from under the agreement.

The Carrier is opposed to the Employes having and taking any part in the matter of leave for public officials, because of the possibility that a leave might be opposed for political purposes or reasons. The opposition assigned by Carrier to the dues-paying requirements for its supervisors and others promoted from the ranks is that:

(1) Sometimes promoted employes would be required to maintain membership and pay dues under more than one contract, thereby working a hardship on the individual and making it hard to get persons to accept promotion.

(2) The legality of such requirement is open to serious question.

B. Board's Findings and Conclusions

The Employes now have, and, in our opinion, they should retain equal voice with Carrier in approving leaves of absence for purposes of the employe engaging in other work within contemplation of (a) above. To recommend differently would be to say the Employes should contract away some voice which is inherent in both parties to the contract until they agree differently.

We find it difficult to reason that there is any difference in the employe leaving the railroad to engage in public service or to take other work, although there is the distinction that one is a public and the other is a private employment. Whether the distinction is one without a difference depends upon motives that are not the same in every case.

Those public spirited citizens who, without hope of personal gain or greater reward, enter public service, would, perhaps, as willingly and knowingly, pursue that course even though it meant giving up other job security. Those who would seek, obtain, and hold public office only upon being guaranteed other job security should not find themselves in the position where they would be under obligation to one party to the contract and not to the other.

Carrier's contention that the Employes might withhold approval for political reasons, or other selfish purposes, smacks of a "holier-than-thou" attitude. All ends would be better served to provide automatic leave for one under the contract who wants to campaign for public office, and, in case of his election (same to be true of an appointment), said leave to extend automatically for not more than a four year term, subject to extension or renewal upon approval by both parties to the contract.

Carrier's opposition under (d) above, in its legal aspect, is upon advice of counsel whose views are influenced some by the Kaiser Steel Corporation case before the National Labor Relations Board,

reported at 125 NLRB No. 100, and the general tenor of other decisions affecting employment and the conditions imposed thereon by courts and other tribunals to conform generally to the public policy of some states and federal statute.

We are not willing to accept the Kaiser Steel Corporation case as binding in a dispute over which the National Labor Relations Board has no jurisdiction, and nothing has been brought to our attention to prove that the Employes' proposal does not square with the Railway Labor Act, as amended.

The employe, upon being promoted from the ranks, is to maintain membership as a dues-paying member if he wants his seniority rights maintained for him under the contract while he no longer is subject to its terms. We are not impressed that this is contrary to or extends union shop principles under a union shop contract.

Carrier also apparently loses sight of the fact, up to a point, that membership in these trade unions, organized along craft lines is, in a great measure, membership in a fraternal order or lodge. Many in management circles, including some in high executive positions, still carry their cards and pay dues for the privilege. The distinction, of course, is that those are voluntary memberships and Carrier's objection goes to the compulsory features of the Employes' proposal; but, there remains, nevertheless, room for compromise.

Those who are promoted to a supervisory or other official position with Carrier should be accorded the same seniority rights under the contract, on the same terms and conditions, with the same rights and privileges, as are granted to those who withdraw from Carrier's service to enter upon and engage in employments with the labor organizations, no more, no less. While they are so engaged, both are out from under the terms of the contract. All should be treated alike, as to what rights they retain thereunder, and as to what extent, and upon what terms, those rights can be exercised upon resuming employments that are subject to the contract.

C. Recommendation

The Board recommends that the dispute at issue be settled in accordance with the principles and on the terms as above set forth.

XXVII. STANDARD FORTY-HOUR WEEK AND NATIONAL VACATION AGREEMENTS

A. Nature of Dispute

The Employes propose that the standard Forty-hour Week Agreement and the National Vacation Agreement apply to all employments under the contract.

Carrier proposes:

(1) To assign other than Saturdays or Sundays as rest days for any position established for the inspection and running repair of locomotives and cars at engine houses or other inspection and repair facilities, CP yards, cars, stations, repair of tracks or repair to cars in transit or at points where traffic requirements are such that such equipment subject to inspection or repair is idle on Saturdays and Sundays but normally is in service on other days.

(2) That Carrier might require all or any number of employes in any plant, operation or facility who are entitled to vacations to take vacations at the same time.

B. Board's Findings and Conclusions

Carrier's proposal for assigning other than Saturdays and Sundays as rest days is entitled to consideration as part and parcel of any settlement for adoption, or for extension of the standard 40-hour work-week to employes not covered, but bears a more direct relationship here to Rule 5–A–1(d) proposed jointly by all parties to this dispute, and which reads:

> On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

When the needs of the service require, provision also is made by rule for six-day and seven-day positions.

We find some merit in Carrier's proposal, but the parties are in a better position to compose their differences by resorting to the above mentioned rules, than is this Board on the basis of the record before us. We believe the problem needs their further attention, but failure on their part to agree should not stand in the way for applying the 40-hour week agreement to employes represented by the Transport Workers.

The vacation problem does not appear to be acute. The scheduling of vacations and vacation relief always involves a conflict of interest and being confronted, as we are, with the whole package of the National Vacation Agreement, those things this Carrier now finds objectionable must be written off by us as a part of the whole bargain that was made when the agreement was entered into.

We are not prepared to say that the Employes did not give up something more desirable to them, or that they did not agree to something to which they first objected in order to gain some voice about when and how vacations would be scheduled. We fear it is not possible now to make a deal to keep what Carrier finds good in the rule and at the same time to be rid of some that it holds to be bad.

C. Recommendation

The Board recommends that, subject to qualifications above noted, Carrier withdraw its proposals.

XXVIII. WRECK CREWS AND WRECK SERVICE

A. Nature of Dispute

The dispute is over grade and class of work; crew assignments; scope; and contracting out of work that is subject to, or to be made subject to rules now under consideration for completing an agreement.

Carrier proposes that all parties now contract as per Rule 8–F–1 (a) (Transport Workers' agreement) and this would pose no problem if the Employes could be reassured that Carrier will not undertake, pursuant to the language of said rule, to change or enlarge upon present authorized practices, and will not further undertake to introduce new methods and work procedures, contrary to the original purpose and intent of said language, in order to adjust to changing times and conditions of work.

The disputed rule now simply provides, in substance, when a Maintenance of Equipment wreck train is dispatched to points outside of the yard, shop or engine house territory, all members of regularly assigned wreck crew will accompany it. We understand Carrier does not object to using a full crew now or in the future under the express conditions recited in said rule, since said wreck train may be in continuous service from one point to another on the line of road to clear more than one wreck before returning to headquarters, and it proves advantageous to have the full crew accompany the train at all times under those conditions because of time factors for assembling and dispatching crews to meet the varying needs of irregular and emergency wreck service.

Carrier contends, however, that when a heavy-duty truck is dispatched with wrecking equipment on it, such as blocks, jacks, and materials of that sort, a full crew is not needed. The Employes, perhaps, would concede that point if they did not see a threat to their job security when carmen are not sent along with the equipment to handle it and to do the wreck work. Most all wreck trains, as such, are manned by carmen; but, at one or two other points wreck trains in that territory have been manned by maintenance-of-way employes "from the beginning of time."

The Employes do not propose to disturb that practice but want to protect all new work for their craft in the future. They insist that the contract fully evidence the intent that other and additional

work trains, placed in service by Carrier, will be manned and protected by their craft. The Employes represent they do not propose to take away any work from maintenance-of-way people where crews of that class or craft are now established, but they want the work of re-railing cars, and such, protected under their agreement instead of by maintenance-of-way workers.

Carrier continues to be concerned that the Employes' real objective is to require the use of wreck forces for performance of all wreck service, even minor derailments inside yard limits or on the line of road, such as that almost uniformly practiced by engine and train service employes for re-railing a car or re-tracking the engine.

The Employes maintain that they do not object to engine and train service employes re-railing a car or re-tracking an engine without assistance; but, when assistance is needed it should be drawn from the regular work force of employes under their contract. They also complain that Carrier is using maintenance-of-way employes to re-rail a car or cars and to perform other wreck service at points not under their contract, by using a heavy truck or bulldozer in the operation.

The Employes protest vigorously against any practice by which outside contractors, with their equipment and employes, are used in Carrier's service to help clear wrecks.

Carrier wants the right by contract to press into service the wreck equipment of another Carrier or Carriers to be manned by the other Carrier's employes, in place of dispatching its own equipment and employes under circumstances that prove less expedient to do so on account of emergency conditions existing and by reason of the proximity of the equipment and employes of other Carriers to the wreck situs.

The Employes say no, and mean it, if workers under their contract are to be deprived of their work without penalty upon the Carrier. The Employes point to the fact that Carrier's wreck crews are on call at all times, must be available on short notice, and are subject to discipline if they do not respond readily to a call when able; the employe's personal convenience or other personal privileges alone notwithstanding. This calls for Carrier reciprosity in paying time claims for leaving its own crews laid in while others protect in emergencies, as the Employes view it. Carrier acknowledges that its wreck crews have no peer in the industry but insists the Employes are not being practical nor reasonable in their demand, and, moreover, they lose sight of some work they get from other Carriers, under the arrangement for substituting crews and equipment.

B. Board's Findings and Conclusions

The equities between the parties are pretty evenly divided; neither stands to be charged with being unfair because of reluctance to give ground. The stakes are high and the underlying considerations are important.

Carrier understandingly wants out from some of the restraint imposed by contract and seeks relief from costly penalties that have been imposed down through the years to uphold and maintain the sanctity of contract, and without which there likely would be no more to the contract than a statement of principles that could be enforced only by pressures which would keep the railroad tied up most of the time. Protection of work and, in turn, job security is the real value the Employes see in these contracts.

The emergency nature of work is what makes for the real problem. Who does the work remains some less than important to Carrier, but we are confident it prefers its employes over others when the demands of the service permit. However, the shortage of manpower and equipment is not the Employes' responsibility and, of course, neither Carrier nor the Employes have any control over when and where a wreck may occur. The Employes make the only contribution they can to irregular and emergency service by contracting to be, and remain, on call and available on short notice.

Again, it is some less than important to Carrier who, of its own employes, does the work, but it does find it difficult to distribute and apportion its own work on its own property under different contracts with different Employes who have been accorded some rights by operation of law to lay claim to the work.

Carrier has some less right, however, to contract unilaterally with other Carriers or outside contractors for work that already is under contract to its own employes. But historically and traditionally, it always has done so. It will continue to do so in the future when service can be protected only by violating the contract, knowing at the time of violation and being some secure in the knowledge that the Employes' only redress is to make time claims for a breach of contract, not to cancel nor to interfere with performance by others.

The foregoing principles are valid considerations that must be taken into account and weighed carefully. We conclude on the basis thereof as follows:

Save and except for a portion of the work which already is under contract to maintenance-of-way employes, as shown by this record, and for which the Employes before us are not contending, wrecking service on this property is work of carmen as by contract provided, and should be, and remain under their contract.

Conventional work trains, when operated out on the line of road, should be manned by a full crew as in the past. Wrecking service within yard or switching limits should be manned only in accordance with needs of the service. When a truck or other equipment is substituted for the conventional wreck train, a full crew need not accompany it when the work does not require.

When assistance is needed by train service employes in re-railing a car derailed by them, or for re-tracking their engine within or outside switching limits, at points where maintenance-of-way wreck crews are not now established, the work belongs under the contract for carmen.

Employes of outside contractors should not be used in this Carrier's wreck service without the Employes' consent. The parties hereto should undertake to contract on a reciprocal basis with other Carriers and their employes for performance of wrecking service at points where the service can be more readily protected by foreign line crews and equipment, approximately assigned or headquartered nearby. The Employes, nevertheless, are under some duty and remain bound by the good faith obligation entered into as a proposed exception to the scope rule, reduced to writing and agreed to by them (Appendix "A") in connection with the use of employes and equipment of other Carriers in wreck service.

C. Recommendation

The Board recommends that the parties to the dispute should promulgate and adopt a rule consistent with the principles and like considerations above discussed.

XXIX. DEFINITION OF "ASSIGNED LABORER"— FUEL TRUCKS

A. Nature of Dispute

This dispute deals with the question of including in the definition of "labor," under the agreement, those of Carrier's employes who are assigned to "fuel trucks."

Carrier apparently does not intend to use employes not under this agreement to operate "company-owned" trucks. The Employes want the definition "labor" broadened to include "company-operated" trucks, whether owned or under lease.

B. Board's Findings and Conclusions

The practice of renting or leasing equipment in place of taking title thereto is a growing one, but in either event control over the

equipment is ordinarily the same. Accordingly, the parties already appear to be in substantial agreement on this issue.

C. Recommendation

The Board recommends that persons from the laborer classification, under the subject agreement, be assigned to "company-operated" trucks, whether owner or under lease.

XXX. CONCLUSION

It needs to be repeated in closing that the parties have made a tremendous amount of progress and achieved a very substantial area of mutual understanding in a thorough-going review of all their rules of agreement lasting over a three-year period. What remains in dispute in our opinion, can be resolved rather quickly if all concerned will lay aside recriminations and work diligently to complete the job of preparing a fair and workable body of rules. The parties must do this final bit of hard work themselves. Ultimate resolution of these problems can not be avoided and no one else can do for them what the parties themselves must do.

FRANK P. DOUGLASS, *Chairman.*
A. LANGLEY COFFEY, *Member.*
PAUL H. SANDERS, *Member.*

WASHINGTON, D.C., *June 24, 1960.*

U.S. GOVERNMENT PRINTING OFFICE: 1960