Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11101
DATED APRIL 3, 1963, PURSUANT TO
SECTION 10 OF THE RAILWAY LABOR ACT,
AS AMENDED

To investigate a dispute between certain carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America

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WASHINGTON, D.C.
May 13, 1963

(National Mediation Board Case A-6700)

Emergency Board No. 154

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *May 13, 1963.*

THE PRESIDENT
The White House, Washington, D.C.

MR. PRESIDENT: The Emergency Board established by you on April 3, 1963, by Executive Order 11101, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between certain carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Board members Feinsinger and Kerr note their realization that there may be some differences of opinion as to the exact scope of the terminal procedures contained in section 6 of the Report, but express their confidence that procedures for the resolving of any such differences can be developed in the course of the negotiation period.

Respectfully submitted.

NATHAN P. FEINSINGER, *Member.*
CLARK KERR, *Member.*
SAMUEL I. ROSENMAN, *Chairman.*

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REPORT TO THE PRESIDENT BY EMERGENCY BOARD NO. 154

This Nation faces the prospect of a crippling nationwide railroad strike unless the dispute submitted to us for investigation is resolved within the next 30 days.[1] Should this dispute erupt into a general railroad strike or lockout, it would stop all movement on 92 percent of the total railroad mileage within the United States, and render idle 94 percent of the industry's employees. If such a stoppage were to last even a few days, the damage to the Nation would be inestimable. The railroads involved reach into, and affect the life of, almost every county, city, village and hamlet of the United States; and form the arteries of our highly integrated industrial society.

The dispute involves the work rules and pay structure of the almost 200,000 operating employees of 195 of the Nation's major railroads and terminal and switching companies. It had its formal origin in the carriers' proposals of November 2, 1959, to eliminate or revise many long-established and agreed-upon rules and existing practices; and in the counter-proposals of the brotherhoods on Sepember 7, 1960, to revise existing agreements in other respects.[2] Both parties seek to alter the rules and practices which to a large extent determine the wages and working conditions of the employees. Certain rules which the employees regard as essential for their protection against arbitrary, unsafe and unreasonably onerous working conditions, and for necessary security and stability of employment, are regarded by the carriers as requiring the employment of unneeded manpower, and preventing the most efficient assignment and use of manpower.

Prior to serving its November 2, 1959 notice, the carriers had sought "the appointment of a Presidential Commission to study the impact of our present rules on the public welfare." At a later date the brotherhoods sought such a commission because, in their words:

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[1] To forestall such a strike, the President of the United States, on April 3, 1963, pursuant to Executive Order No. 11101 and subsection 10 of the Railway Labor Act, as amended, created Emergency Board No. 154 and appointed as Chairman, Samuel I. Rosenman, Esq., of New York, N.Y., and as members, Dr. Clark Kerr, of California, and Professor Nathan P. Feinsinger, of Colorado and Wisconsin, to investigate and report on this dispute.

[2] The employees are represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America; the carriers by the Eastern, Western and Southeastern Carriers' Conference Committees, and by the National Railway Labor Conference.

These issues are of such breadth and scope, and their investigation necessarily so extensive, that we believe consideration of them can best be given by procedures that will permit full study outside of the usual pattern of collective bargaining in the railway industry.

On October 17, 1961, the parties joined in a formal agreement which submitted this dispute to a Presidential Commission. This Commission, composed of five employee members, five carrier members, and five distinguished public members—each able and experienced—devoted over 13 months of study to the issues. Ninety-six days were devoted to public hearings. The record consists of 15,306 pages of transcript. An additional 20,319 pages of exhibits were received. Staff and independent studies were undertaken; observation trips were made on trains by the public members.

The public members of the Commission filed with the President on February 26, 1962, a 186-page report containing many recommendations. Dissents or separate statements were filed by the employee members. A statement was filed by the carrier members reluctantly accepting in general the recommendations of the Commission.

We have had access to the record of that proceeding. We have also received and examined numerous exhibits, supplementing and expanding the material before the Presidential Railroad Commission.

Although all parties agree that the recommendations of the public members were not a binding arbitration award, the parties have quite contrary views as to the weight to be given these recommendations. In the time allotted to this Board, we could not attempt to redo the work of the Commission. We believed, however, that we could be of maximum service to the parties—and to the country—by attempting to bring about a mediated settlement. We have sought constructive solutions rather than the mere restatement of the previously fixed positions of the parties, and have explored paths which may develop into avenues for settlement.

In seeking to find possible grounds for adjustment of this dispute, we have been most deeply mindful of the important human values involved. Workers who have spent a good portion of their working years in this industry are now being faced with the prospect of losing their jobs, and, perhaps, of seeking employment in new fields for which they may not be presently adequately equipped. It is not always enough to provide them with dollars, even in generous amount, and suggest that they are then on their own. The dislocations have come about by fundamental industrial changes—by technology, by reorganization, or by improved efficiency of mechanics and methods. These are changes over which the employees have had no control. The railroads, and society as a whole, have benefited by these changes;

and they should both share generously in the burdens which have been cast upon the workers by the dislocations.

These burdens, in addition to dollar payments, involve education or retraining for new jobs at the expense of the carriers, supplemented by public funds now or hereafter committed to general retraining of displaced manpower. Each worker substantially affected should have not only the privilege but the right to obtain the benefits of continued general education, or to seek retraining for a new job in any field in which experts find him qualified. Only in this way can he continue to live and work with the dignity and respect to which all willing workers in the United States are entitled.

We are mindful also of the necessity for progress in the railroad industry, for efficiency in order to meet the challenge of competing industries. We were impressed with the evidence submitted to us that the vitality and earning capacity of the railroads as a whole are improving, that the productivity of its workers is rising at a rapid rate, and that the industry can face the future with confidence and even optimism.

We have sought by our recommendations to increase these prospects of the carriers, and at the same time to preserve not only strong unions for the employees, but for the individual worker a continued life of usefulness to himself and his family, and to society itself.

These objectives are all equally important. For in our democracy, as has been shown in times of war and peace, our national strength and the strength of our industrial system depend alike upon the vitality of our essential industries and the opportunity for workers to make their full contribution to the wealth and welfare of their Nation.

We are unable to report today the signing of an agreement which will remove from the country the threat of a calamitous nationwide railroad strike. And yet we believe that considerable progress has been made. Positions have softened; the atmosphere has improved; a climate which can support genuine negotiation seems to have been created. Our recommendations are designed to foster and stimulate such bargaining. The issues here involve rules which have been developed by negotiation over a period of decades to meet the needs of both parties as they viewed them at the time they were made. They govern the working conditions of almost 200,000 employees with varied and sometimes conflicting interests. The issues permit more than a single and exclusive solution.

Our recommendations are designed to aid the parties to explore several solutions in order to find those which best fit their vital needs at this time. We have not attempted to specify precise solutions to

these problems. We believe that true collective bargaining will more likely succeed, if we suggest general directions rather than specific solutions.

1. THE FIREMEN'S ISSUE—THE JOB AND THE INDIVIDUAL

a. The Job

The National Diesel Agreement of 1937 established the basis for employment of a fireman on passenger and road freight and yard diesel operations. ("Diesel" is used here to mean "other than steam.") That agreement has been continued through a succession of national negotiations. We do not know what, if any, consideration the carriers received from the brotherhoods for either the initial or subsequent agreements.

It is important to understand the real nature of the dispute on this issue. The carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab. Also, they do not contend that the bulk of the work performed by firemen on freight diesels is not needed—left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions. They contend only that such work can be combined with other work performed by employees in other classifications, and that, in the interest of economy, the job of fireman as such can be dispensed with entirely, without impairing safety or unduly burdening other employees. They believe that two, rather than three men can adequately handle all of the work in the cab except under very unusual circumstances.

On the other hand, the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished. As a matter of fact, just as the carriers, being realists, have suggested that there may be a few freight situations in which the services of a fireman are needed, so the firemen have implied that there may be some significant number of jobs on daylight yard and branch-line freight diesels which can be eliminated.

The basic problem, therefore, becomes one of establishing a procedure for ascertaining those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety, and to prevent placing an undue burden upon the remaining crew members. We believe that a national rule can be negotiated which will provide such a procedure—perhaps along the following lines:

(1) The carrier may eliminate a fireman's job when it becomes vacant, if filling the vacancy would require taking on a new

hire. Notice of its action should be given to the brotherhoods involved.

(2) If the brotherhoods involved file no protest in writing within 5 days after such notice, the job remains blanked.[3]

(3) If a brotherhood does give such notice, it must be prepared to establish that the discontinuance of the job in question would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibilities formerly performed by the firemen.

(4) After such notice the parties will attempt to resolve the dispute through negotiation.

(5) If the dispute is not resolved within 15 days from the receipt of the notice, it shall be submitted in accordance with a special procedure hereinafter discussed in section 6 for a definitive disposition within 15 days.[4]

(6) The job shall remain vacant during the course of this procedure.

Properly administered, these principles can be applied so as to prevent or correct abuse by one party through arbitrary elimination of jobs on the one hand; or abuse by the other party through a flood of grievances known to be baseless, on the other. It should be possible, with the assistance, perhaps, of a third party neutral, serving as a special referee or by other suitable title, to establish certain categories of jobs or situations the elimination of which by the employer would probably be protested on the basis of safety or undue hardship. These could be designated as key jobs, with the understanding that the settlement of one would settle all the others in the same category. As with almost every issue discussed in this report, the success or failure of such a procedure would depend entirely on the attitude of the parties and their willingness to cooperate with the neutral. The essence of our suggested procedure is that "safety" and "hardship" are merely words except as they take on meaning in actual situations. Safety and hardship are related to time and place; and we know of no way to abstract them from time and place. However, we do not wish to impose on the parties an unnecessary burden of grievances. The selection of key situations is the way to avoid a hailstorm of grievances while providing assurance that safety is protected and hardship avoided.

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[3] We agree that no yard diesel should be operated with only one man in the cab unless the locomotive is equipped with a "dead man's control" or other appropriate safety device.

[4] If as a result of this procedure, the number of firemen in passenger, road freight and yard service should be insufficient to supply efficient adequately trained engineers, the parties should negotiate a training program to insure an adequate supply of qualified engine service employees.

b. The Individual

Constructive change is the source of progress. The benefits of change are shared by the employee, the employer and society generally; similarly, the burdens of dislocations should be equitably shared. The railroads and the brotherhoods have been in the vanguard of those who have recognized this principle, and provision for displaced rail employees has become increasingly prevalent since the historic Washington Job Protection Agreement of 1936 was negotiated to assist employees adversely affected by mergers and consolidations.

The important protective provisions of the Washington Agreement are: displacement allowances for those reduced to a lower paying job to guarantee former earnings for a period; furlough allowance payments or lump-sum separation options for those who are entirely deprived of employment; and relocation expenses and indemnification against real estate losses for those required to move.

In this case the carriers have recognized the need for some form of security. They have expressed a willingess to grant extensive financial aid and preferential rehiring for the men with less than 10 years' seniority, and to rely on natural attrition and promotion for the termination of those with more than 10 years' seniority.

We recommend:

(1) No new hiring of firemen need take place except as provided in this report.

(2) Those firemen who obtained employment after some reasonable date when it may be presumed that they were on notice that their jobs might not be permanent may have their employment terminated.

(3) Those who have been employed in recent times as firemen but on an irregular basis, and who consequently have not been able to rely upon the carriers as their primary source of livelihood, may have their rights terminated with a severance allowance equal to some percentage of their recent earnings as a fireman or they may choose to remain on a seniority list with preferential hiring rights for such jobs as may become available and for which they are qualified.

(4) Firemen who have not been employed in recent times shall be treated as the group in (2) immediately above.

(5) The remaining employees with less than 10 years' seniority should retain their rights to firemen's employment unless and until offered, by the carrier involved, another comparable job for which they are, or can become, qualified.[5] This job offer should

[5] We note, for example, that 6,000 new brakemen were hired in 1959.

carry with it relocation expenses if moving is involved, and the continuation of his accumulated seniority rights toward such purposes as vacation and other appropriate benefits. A displacement allowance similar to that provided by the Washington Job Protection Agreement should be made to protect such employees against loss of earnings for a period not exceeding 5 years. Such offers of bona fide jobs shall be posted and made available to all qualified firemen in order of seniority.[6] If no senior man elects to transfer, the most junior man on the firemen's roster must accept the transfer or resign with one-half the severance allowance. Educational scholarships and retraining allowances of the type mentioned above, or the provisions of the Washington Agreement, should be options to be chosen promptly by the employee involved upon the conclusion of an agreement settling this dispute.

(6) Those employees with 10 years or more seniority should retain their rights to firemen's employment, with the possibility of withdrawing and receiving an educational or retraining scholarship, special severance allowance, or a special early retirement plan to which the Carriers should make an additional special contribution.

We believe that within this general framework, peaceful and private collective bargaining should be able to produce agreement.

2. CREW CONSIST

(a) Road and Yard Crews (Other Than Engine Service)

As a general rule, road and yard train service crews consist of three men, one of whom is a conductor or foreman. The consist is not now the subject of a national rule, but is governed by numerous local agreements, rules, regulations and practices, and in several states by statute.

This issue involves the choice of the most appropriate mechanism for adjusting any undermanning or overmanning of individual crews which may exist. Neither side purports to desire the maintenance of dangerously undermanned crews or the retention of unnecessary crew members.

We believe that this is essentially a local problem which can be best handled by local negotiations. It should be possible for the parties in direct bargaining to establish guidelines nationally to provide overall direction for these local negotiations. These guidelines ought to be based on considerations of safety and efficiency and of

[6] Such jobs should first be posted for bidding in the appropriate seniority district.

undue burden on other members of the crew. Alleged violation of these guidelines would then be discussed locally. Should such negotiations fail to resolve the matter within 5 days, a grievance may be filed in accordance with the special procedures hereinafter discussed in section 6.

We believe that no force reductions in this area should be made except by natural attrition. Educational scholarships, retraining allowances and severance options should be available not only in justice to the workers involved but also to accelerate attrition.

(b) Manning of Self-Propelled Vehicles

This issue involves the use of operating employees upon self-propelled machines employed in maintenance, repair, construction, or inspection work.

We do not believe there is a need for operating personnel upon such vehicles when they are being used for the purpose intended. However, operating personnel should be employed on such machines, in accordance with existing rules, if they are used to move or switch other cars or machines except when no more than two such cars or vehicles are used exclusively in hauling material in connection with the work to which the self-propelled machine is assigned. Some provision to prevent abuse of this rule may be appropriate.

Since dislocations and displacement of personnel are likely to be occasioned by application of the new rules, adequate protections such as those discussed elsewhere in this report should be provided.

3. INTERDIVISIONAL RUNS

Because interdivisional runs go through normal crew-change points without changing crews, such runs permit the carriers to expedite service. Because the institution of such runs also affects total compensation and work opportunities, this issue is related to the compensation issue.

At the present time, there is a national rule concerning interdivisional runs, but it establishes only a procedure for negotiating them; it does not give the carriers the right to institute them. The carriers seek this right.

Clearly, to the extent that such runs permit the carriers to compete more effectively by providing faster service, the interests of the carriers and the brotherhoods coincide. But to the extent employment opportunities and conditions are adversely affected, their immediate interests diverge.

We believe an accommodation is possible. The brotherhoods offered a proposal in Chicago in mid-1962 which would establish guidelines within which the carriers will have the right to establish interdivisional runs. Although those specific guidelines were not satisfactory to the carriers, the basic procedure of establishing guidelines appears sound.

4. COMBINATION OF ROAD AND YARD SERVICE

Involved here is the extent to which road crews should be permitted to perform work in connection with their own trains within switching limits.

We believe that a rule can and should be negotiated which would permit a more flexible use of road and yard crews, while preserving the basic distinctions which are reflected by the existence of separate seniority rights. Attention must be directed to devising limitations which will prevent abuse by employers while permitting the desired flexibility.

The negotiation of specific rules to limit carrier abuse and the development of protections for employees adversely affected by changes in operations occasioned by any new rules in this area, should allay the fears of the employees and make possible the resolution of this issue.

5. COMPENSATION (WAGE STRUCTURE AND FRINGE BENEFITS)

Both parties seek to modernize the present pay structure. We believe that this is long overdue. Our suggestions are designed to ease the path to this goal, without undue impairment of the equities and legitimate expectations of incumbent employees.

The compensation system for the railroad operating crafts is one of extreme complexity. It has grown up over the years and has generated new inequities and aggravated old ones. Technological change has greatly increased earnings and reduced hours for some, with little effect upon the earnings and hours of others.

After exploring the many ramifications of this problem with the parties, we propose the following recommendations, which differ in two respects from the report of the Presidential Railroad Commission:

(1) A modest increase in average compensation is a normal accompaniment of a thorough wage structure revision. While individual adjustments will vary greatly in such a revision, and average increase of about 2 percent is frequently associated there-

with. We recommend that a full 2 percent be used in working out the adjustments in this case. This would make possible a further correction of compensation inequities among the various crafts and classes of service; and assist in meeting the transitional problems which are the subject of the next recommendation. It is unfortunate that these adjustments cannot be part of a general wage movement, but we would expect, of course, that consideration will be given by the parties to the impact of these wage adjustments when they next consider such a movement which is even now in the early stages of processing.

(2) Reductions as well as increases in rates are a normal and expected result of wage structure revision. Where these reductions are more than nominal, we suggest two possible approaches, as illustrations, designed to insure that individual, incumbent employees will not be unduly affected by the structural changes. First, that a very long service employee might be allowed, as a matter of individual choice for himself alone, to elect once and for all either to go on the new pay structure or to remain on the old pay structure for the duration of his employment, which would, of course, maintain his earnings opportunities.

Second, that a monthly or other periodic guarantee be developed assuring an opportunity for the appropriately covered employees to approximate their current earnings, provided they are not the result of unduly long hours. However, the carriers shall be given significantly greater flexibility in making assignments so that this guarantee can be met through actual work performed within a normal number of hours. Such a guarantee would not relate, of course, to prior arrangements of the parties to provide for movement from a 6- to a 5-day week for certain employees.

6. SPECIAL PROCEDURES

The need for the help of neutrals will not terminate with the overall settlement of this dispute. In various instances we have recommended the negotiation of guidelines or criteria to implement general principles set forth in this report. Disputes may arise over the establishment of the guidelines or the application of these guidelines, once established, to particular cases.

Disputes such as those concerning firemen, crew consist, interdivisional runs, combination of road and yard service, and pay structure should be the subject of negotiations. If these negotiations do not result in reasonably prompt resolution, the disputes should be quickly and definitively resolved by submission to a special referee procedure.

7. RELATED ISSUES

There are at least two issues which are not formally part of the dispute, but which relate to certain aspects of it. This dispute already has plenty of issues combined within it; but we believe that the overall dispute might be easier of solution if these two additional issues were open for discussion:

(1) The parties will shortly consider the matter of a general wage increase. Wage structure revision would be subject to easier solution in the context of a general wage increase.

(2) If provisions for early retirement were subject to current negotiation, the problems of attrition might be more readily solved—especially if the carriers were to contribute some additional funds for this purpose.

CONCLUDING OBSERVATIONS

The parties should arrange for immediate negotiations for the purpose of completing agreement on all of the issues, using the foregoing recommendations to the extent they may prove helpful.

Recent years have been years of progress and innovation for the carriers. Technological and organizational changes have been many and far-reaching. Forty percent fewer employees than were employed at the beginning of this decade now handle substantially the same volume of traffic. Productivity gains have outstripped those in industry generally by a wide margin.

Unfortunately the industry's techniques for collective bargaining have not made similar advances. This dispute is now over 3½ years old. We believe progress towards solution has been made and that both sides have stepped away from their former, doctrinaire positions. But the passing of time has not generally worked to make this dispute easier to resolve—quite the contrary.

The next 30 days will be important not only to the parties, but also to the Nation and to the future of collective bargaining as an effective method of disputes settlement. Although the general public is not a formal party to this dispute, each citizen of the United States has an acute interest in its resolution.

There has been an unfortunate tendency in this industry to postpone real collective bargaining until the final hour. That hour is about to strike.

Each of the parties should reexamine its responsibilities not only to itself, but to the Nation. Each must take a long, not a short-range, view. Realism will need to be combined with ingenuity; courage

with tolerance. If the parties approach the bargaining table in this spirit, and will immediately undertake serious negotiations, we believe that the difficulties raised by the number and complexity of the issues and by the number and diversity of the parties can be overcome. This dispute can and must be resolved, promptly and constructively, peacefully and privately.

NATHAN P. FEINSINGER, *Member.*
CLARK KERR, *Member.*
SAMUEL I. ROSENMAN, *Chairman.*

WASHINGTON, D.C.,
May 13, 1963.

U.S. GOVERNMENT PRINTING OFFICE: 1963