Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11115 DATED
JULY 4, 1963, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED

To investigate disputes between the Pullman Co., the Chicago, Rock Island & Pacific Railroad Co., the New York Central System, the Soo Line Railroad Co., and certain of their employees represented by the Brotherhood of Sleeping Car Porters.

(National Mediation Board Cases Nos. A–6794, A–6795, A–6796, A–6797)

WASHINGTON, D.C.
NOVEMBER 2, 1963

(Emergency Board No. 155)

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *November 2, 1963.*

THE PRESIDENT,
The White House.

MR. PRESIDENT: The Emergency Board established by you on July 4, 1963, by Executive Order 11115, pursuant to section 10 of the Railway Labor Act, as amended, to investigate disputes between the Pullman Co., the Chicago, Rock Island & Pacific Railroad Co., the New York Central System, the Soo Line Railroad Co., and certain of their employees represented by the Brotherhood of Sleeping Car Porters, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

J. KEITH MANN, *Member.*
FRANK D. REEVES, *Member.*
JACOB SEIDENBERG, *Chairman.*

EXECUTIVE ORDER 11115

Creating an Emergency Board to investigate disputes between the Pullman Co., the Chicago, Rock Island & Pacific Railroad Co., the New York Central System, and the Soo Line Railroad Co. and certain of their employees

Whereas disputes exist between the Pullman Company, the Chicago, Rock Island & Pacific Railroad Co., the New York Central System and the Soo Line Railroad Co., and certain of their employees represented by the Brotherhood of Sleeping Car Porters, a labor organization; and

Whereas these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

Whereas these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

Now, therefore, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a Board of three members, to be appointed by me, to investigate these disputes. No member of the Board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

The Board shall report its findings to the President with respect to these disputes within 30 days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the Pullman Co., the Chicago, Rock Island & Pacific Railroad Co., the New York Central System and the Soo Line Railroad Co., or by its employees, in the conditions out of which this dispute arose.

JOHN F. KENNEDY.

THE WHITE HOUSE, *July 4, 1963.*

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I. INTRODUCTION

On July 4, 1963, the President of the United States, pursuant to section 10 of the Railway Labor Act, as amended, by Executive Order No. 11115 created this Emergency Board No. 155 to investigate and report on separate but related disputes between the Pullman Co., the Chicago, Rock Island & Pacific Railroad Co., the New York Central System, the Soo Line Railroad Co., and certain of their employees represented by the Brotherhood of Sleeping Car Porters, a labor organization. These disputes, in the judgment of the National Mediation Board, threatened substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

On July 29, 1963, the President appointed as members of the Board: Jacob Seidenberg of Falls Church, Va., Chairman; J. Keith Mann of Stanford, Calif., Member; and Frank D. Reeves of Washington, D.C., Member.

Pursuant to notice and agreement, the Board convened and held 20 days of hearings—in Chicago, Ill., from August 20 to September 6, 1963, and in Washington, D.C., from September 9 to September 20, 1963—which resulted in a record of 3,109 pages of testimony and argument and 68 exhibits. Thereafter, the Board conferred with representatives of the parties to explore possibilities of settling the dispute by mutual agreement. At the conclusion of these mediation efforts the Board went into executive session to study the evidence and arguments and to prepare this report. Because of the seriousness of the dispute, the extensive number of witnesses and exhibits, and the complexity of the issues, the parties agreed to extensions of time to September 19, October 19, and ultimately to November 2, 1963, with the approval of the President.

The Board wishes to express its appreciation for the thorough and painstaking manner in which the parties prepared and presented their evidence and for the courteous and constructive spirit they and their witnesses maintained throughout the proceedings.

II. HISTORY OF THE DISPUTE

The disputes originated on September 1, 1961, when the Organization, pursuant to section 6 of the Railway Labor Act, as amended,

served identical notices on each of the Carriers of its desire to revise and supplement their existing agreements, effective November 1, 1961, as follows:

1. All rates of pay shall be increased by the addition to the rates existing on November 1, 1961 of twenty-five (25) cents per hour, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour.

2. Revise and supplement existing agreements so as to include therein rules requiring that:

> Prior to any reduction in force or any abolition of a position or positions resulting in reduction in the number of employees in any seniority district or other unit covered by a seniority roster, all employees who may be affected by such reduction in force or abolition of position will be given not less than 6 months advance notice thereof. However, this rule shall not operate to require more than 16 hours such advance notice to each employee who may be affected under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exist or cannot be performed. Whenever forces are reduced or positions are abolished with less than 6 months advance notice pursuant to the preceding sentence all employees affected thereby shall be recalled to service as soon as the suspension of the carrier's operations has ceased or the work of the employees affected can again be performed, and any notice of force reduction or abolition of position pursuant to the preceding sentence shall state that employees affected will be so recalled to service. Any rule, agreement or understanding now in effect more favorable to the employee is preserved and undisturbed by this rule.

In these notices the Organization requested a conference to be held with reference thereto "at the earliest practicable date and in any event prior to the expiration of 30 days from the date of this notice * * *," but continued—

> In accordance with established procedure which has been followed for more than 20 years, and on the assumption that an agreement may not be reached in separate system conferences, our organization, in the interest of saving time of Management and the Organization, suggests that the above-mentioned conference be waived without prejudice to the merits of the position of Management or the Organization pending finalization of negotiations upon the aforementioned subject matter by the Employees, National Conference Committee, composed of the Chief Executives of the Cooperating Railway Labor Organizations and the Carriers' National Conference Committee; whereupon the Organization will communicate with Management for conference to discuss application of agreement reached to the employees on your road represented by the Brotherhood of Sleeping Car Porters.

The Pullman Co. on September 11, 1961, and the other Carriers in due course, acknowledged the Organization's notice and reserved the

right "to serve certain proposals for consideration and handling to a conclusion concurrently with your notice" at or before the date of the initial conference.

On March 8, 1962, the Organization served upon the Carriers a further section 6 notice to change the existing agreements covering rates of pay, rules and working conditions of employees, as follows:

Reduce the basic hours of work per month to 173, with maintenance of monthly rates, and with compensation at the rate of time and one-half for all hours worked or assigned in excess of 173 per month; all relevant clauses in the agreement to be modified to conform to this revision.

Add a rule to provide that there will be no future lay-offs, force reductions, or abolition of positions due to mergers, consolidations or transfers of service involving the Pullman Co. and any other carriers or company, or as a result of technological change, excepting such as may be brought about through normal attrition; and that any employee required to move to hold employment, or otherwise affected by any such change, will be granted in full the protection specified in the Washington Job Protection Agreement of 1936.

On March 16, 1962, the Pullman Co., and subsequently the other Carriers, acknowledged the Organization's March 8 notice and again reserved the right to serve certain proposals of their own.

The New York Central System, on September 21, 1961, the Chicago, Rock Island & Pacific Railroad Co., on September 25, 1961, and the Pullman Co., on March 20, 1962, served the Organization with notice of their desire to amend their existing applicable agreements to:

1. Establish a rate of $1.25 per hour applicable to all attendants, porters, maids and bus boys.

Negotiations with the Pullman Co. and the three railroads were initiated in April, 1962. The negotiations were unsuccessful and on July 1, 1962, the Organization issued an explanatory statement and a "Strike Ballot" to its members in service on the Carriers involved in this dispute. The members of the Organization voted to authorize the officers to call a strike over these issues at such time as it should be lawful to do so unless a satisfactory agreement were reached.

By letter dated September 4, 1962, the Organization invoked the services of the National Mediation Board to assist in settlement of the subject disputes "* * * involving section 6 notices relating to reduction in the work month from 205 hours to 173 hours, job protection and stabilization, and wage increase of 10.28 cents." This application was docketed by the National Mediation Board as Cases Nos. A–6794, A–6795, A–6796 and A–6797, and mediation proceedings were conducted without composing the differences between the parties. On March 22, 1963, in accordance with section 5, First of the Railway Labor Act, the National Mediation Board requested and urged the parties to enter into an agreement to submit the controversy to arbitra-

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tion as provided in section 8 of the Act. On April 1, 1963, the Pullman Co. advised the Board of its willingness "to submit this controversy to arbitration provided a satisfactory arbitration agreement can be reached;" however, on April 18, 1963, the Organization, in writing, declined arbitration and on May 27, 1963, the National Mediation Board closed its file in the case.

On June 24, 1963, the Organization issued a strike call for July 1, 1963; but on June 25 the National Mediation Board certified the dispute to the President and requested the parties to maintain the status quo, to which they agreed. As previously mentioned, on July 4, 1963, the President issued the Executive Order creating this Emergency Board.

III. FRAMEWORK OF THE DISPUTE

The parties to the dispute are engaged in furnishing sleeping car services to the traveling public. The Pullman Co. supplies sleeping car services to the American railroads under conditions hereinafter described while the three railroad parties operate their own sleeping cars.

The Brotherhood of Sleeping Car Porters, a standard railroad labor organization, is the collective bargaining agent of the employees rendering porter services on the sleeping cars of the involved companies. While the sleeping car porter function has been in existence for more than a half century, the Brotherhood was not founded until 1925. The testimony indicated that its total membership is approximately 9,000 organized in 80 local divisions and includes, in addition to sleeping car porters, parlor car and coach attendants, train porters and dining car employees. The first serious attempt to organize sleeping car porters into an affiliated labor union came during World War I when the railroads were under control of the Federal Government, but there were contests for the representation rights which were waged between employee-representation-plan groups and unions affiliated with the American Federation of Labor.

It was not until 1935 that the Brotherhood was certified by the National Mediation Board as the representative of the Pullman porters. The Brotherhood was granted an international charter by the American Federation of Labor in 1936 although the AFL had granted Federal charters to porters as early as 1929. Its first collective bargaining agreement was signed with Pullman in 1937. In 1949 the Brotherhood was determined by the Secretary of Labor to be a national labor organization and therefore became eligible to participate in the selection of members of the National Railroad Adjustment Board. The President of the Brotherhood also became a member of the Railway Labor Executives Association.

The Brotherhood, in addition to the contracts which it has executed with the Carriers involved in this dispute, also has collective bargaining agreements with approximately 35 major railroads covering the several classes of employees it represents.

The relationship of the Pullman Co. to the railroads is a factor in this dispute. The ownership of the Pullman Co. was changed in 1947, when its former owner Pullman, Inc., as a result of a suit instituted by the Department of Justice, was found to be a monopoly in violation of the anti-trust laws by the Federal courts and was ordered to divest itself of either the operation of sleeping car services or the manufacture of sleeping cars. Consequently the capital stock of the Pullman Co. was purchased by 53 railroads and the services and facilities of the Pullman Co. made available to the railroad industry under a Uniform Service Contract, the terms of which were approved by the Interstate Commerce Commission.

The Uniform Service Contract provides, among other things, that any profit derived from the Pullman Co. sleeping car operations on a particular railroad is shared by the Pullman Co. and the railroad on a prescribed basis—25 percent to the Pullman Co. and 75 percent to the carrier. On the other hand, if the revenue received is insufficient to cover the operating costs, the railroad must pay the Pullman Co. an amount sufficient to make up the loss. The burden resulting from the Pullman Co.'s sleeping car operations falls on the particular railroad which has contracted for such services. Under the terms of the Uniform agreement, the Pullman Co. received contract settlements of $18,731,907 in 1962 from the several using railroads to make up its operating losses. During the past 5 years the Pullman Co. has received a total of $82,235,828 from its railroad customers to cover its operating deficits.

In addition to providing for the sharing of profits and losses, the Uniform Service Contract permits any using railroad to sever its contractual relationship with the Pullman Co. upon the serving of notice. Insofar as the Board is informed, any railroad terminating or modifying the Contract with the Pullman Co. may then either operate or discontinue such services in whole or in part.

In recent years certain railroads have taken over from the Pullman Co. sleeping car operations on their own lines, apparently in the belief that they could conduct such operations more economically. For example, the New York Central, on July 1, 1958, and the Rock Island on November 1, 1958, for all practical purposes severed their contractual ties with the Pullman Co. (Both the New York Central and the Rock Island Railroads still utilize the Pullman Co.'s services on some interline operations.) It may be noted that the New York

Central remains the second largest owner (15 percent) of the Pullman Co's capital stock.

The Pullman Co. is the largest supplier of sleeping car services with 2,109 sleeping cars available for operation as of August 1, 1963. Only 382 cars are owned by Pullman and the rest are owned by the railroads and leased to Pullman.

As of March 1, 1963, the Pullman Co. employed 2,008 sleeping car porters on 387 regular operations. A substantial part—approximately 32 percent—of the Pullman Co.'s payroll costs are incurred with respect to the porter group. The New York Central employed 182 porters as of July 1963, and the Rock Island employs 40 porters, while the Soo Line employs 5.

The porters employed by the Pullman Co. have a long record of service. Ninety-seven and one-half percent have more than 15 years service. Of this group, for example, 34.8 percent have 20 to 24 years service, 29.6 percent have 35 to 39 years service, and 0.93 percent have 45 to 50 years service.

The New York Central and the Rock Island railroads began operating their own sleeping car services in 1958. In 1960 these railroads signed their first collective bargaining agreements with the Brotherhood covering sleeping car porters. Over 85 percent of the persons hired by the New York Central and approximately all hired by the Rock Island for the available sleeping car porter jobs were former employees of the Pullman Co. They were hired as new employees and did not carry with them their Pullman Co. seniority.

Evidence and arguments with reference to and by each of the Carrier parties were presented in this proceeding. In addition, counsel for the Rock Island and Soo Line railroads explicitly adopted the position of the Pullman Co. on the issues. While the circumstances of the Pullman Co. and its employees may be considered only relatively representative and typical of all on some of the issues, in the interest of economy of statement the Board's discussion and findings are undifferentiated among the several disputes except as noted. Moreover, the Board has inferred from the presentation that its function of assisting the parties' achievement of an amicable settlement will be duly severed by common recommendations on the issues.

It is within the foregoing framework that the Board undertakes its consideration of the issues in this dispute.

IV. DISCUSSION

A. Wage and Hour Adjustments

1. *Basic month*

The Organization proposes that the hours in the basic month be reduced from the present 205 to 173 with maintenance of take home pay. The Carriers oppose this change.

The current agreement between the Pullman Co. and the Organization provides that 205 hours credited in a calendar month shall constitute a basic month's service. When a regular assignment is less than 205 hours no deductions are made from the established monthly wage, which varies according to the porter's length of service. Ninety-seven and one-half percent of the Pullman porters have more than 15 years service and constitute a substantial majority of the employees involved in the dispute. For these senior employees working a full regular assignment the monthly wage is $430.36 and the pro rata hourly rate is $2.0993, which are the monthly and hourly rate bases used herein for reference and computation, unless otherwise noted.

The Organization stresses that the monthly equivalent of a 40-hour week which it is seeking for the porters is the standard work period for 95 percent of all railroad workers and also is the characteristic and typical standard for American industry. It claims the established practice in the railroad and outside industry is that when hours are reduced there is no reduction in take home pay. The Organization contends further that porters work long, continuous, and arduous hours. Under the present schedules they frequently work more hours in one week than the average factory or office worker does in two. These long hours are not only physically wearing but also interfere with if not prevent a normal home life and hinder participation in community and social activities. The Organization asserts that for a public utility the alleged cost of the proposed hours reduction is irrelevant.

The Carriers oppose the Organization's request both for its lack of merit and for its potentially disastrous effects. They state that the porters' compressed work period allows them leisure at least comparable to that of factory and office workers, and produced evidence that many senior men in a position to choose their own runs select long assignments despite the alleged hardships. The Carriers also argue that it is well recognized in the industry that on-train service employees traditionally have worked longer hours than other railroad employees. With one exception, prior public boards have denied requests from on-train service employees for shorter work periods approximating the 40-hour week.

The Carriers maintain that they are operating with large passenger deficits and are unable to absorb any abnormal labor costs and continue their sleeping car business. The Pullman Co. particularly stresses that subjecting it to these increased costs will accelerate the trend of using railroads taking over sleeping car service which will destroy the Pullman Co. and the jobs it now furnishes. The Carriers assert that the Organization's hours reduction proposal would have a heavy direct cost impact from the necessity of putting on additional men and paying higher hourly rates to extra porters. Indirectly, costs would also rise abruptly due to similar demands by other on-train service employees and appeals by craft and office employees for the restoration of pre-existing wage differentials.

In considering the request for the shorter work month, the Board finds, in the light of historical developments, that the 40-hour week is an almost uniformly adopted standard both in and out of the railroad industry. It was adopted as a work period standard as early as the middle 1930's under the NIRA. Emergency Board No. 66, familiarly known as the Leiserson Board, recommended the extension of this principle to railroad nonoperating employees in 1948. Since the recommendations of that Board were accepted the metes and bounds of the normal workweek for 95 percent of railroad workers have become 40 hours. The Leiserson Board said:

> It is deemed unnecessary and inappropriate at this late date to inquire into the theoretical advantages or disadvantages of the 40-hour week. It is now firmly a part of our national industrial policy.

This Board is not aware of any wage and hour developments in the past fifteen years which have eroded the essential validity of the Leiserson Board's statement.

The only employees in the railroad industry who do not now enjoy the monthly equivalent of the 40-hour week are the on-train service group—sleeping car conductors, sleeping car porters and dining car service employees. Within this group there was an important development in December 1961 when Emergency Board No. 139, reviewing the precedents in detail, recommended that the sleeping car conductors' work month be reduced from 205 to 180 hours. However this recommendation has not yet been given effect due to pending litigation as to other issues.

In 1963 the Board finds no justification for denying to sleeping car porters the principle of the 40-hour week. The Carriers did not contend in this proceeding that there are any administrative or operational factors which preclude granting a shorter work month. Nor are we persuaded on the record before us that the mold in which the porters' work month is cast, whatever its relative benefits or burdens,

is a sufficient reason for a special work month. What is compelling is that the porters are asking for what has now become a generally accepted minimum standard.

The evidence before the Board indicates that the direct costs to the Pullman Co. resulting from the reduction to 173 hours with maintenance of take home pay, at the present level of assignments, would be $2,551,000. These come from putting on some 400 additional men and paying a higher hourly rate for extra porters. The similar direct costs for the New York Central would be $280,965. The Board also notes that in the period from 1946 to 1962 the Pullman Co. has undergone a drastic reduction in its operations. Its revenue passengers decreased from 25,948,000 to 3,749,000; its gross revenues went from $132,593,000 to $50,356,000 despite various adjustments in fares and charges during this period; its average number of employees (other than porters) dropped from 24,604 to 3,925. Since 1952 the Company has consolidated many of its operations and, for example, has reduced its regional offices from five to two. Although the number of cars operated from 1946 to 1962 has dropped from 5,531 to 1,114, the deficit per car has grown during the same period from $1,041 to $16,453. In 1962 the Company's operating deficit was $18,328,722. For the Rock Island in the same year the sleeping car deficit was $1,103,208 and for the Soo Line $72,089. In 1962 the New York Central's passenger service net operating deficit was over $15 million. While the Board is aware that the Carriers' accounting procedures are much disputed, nevertheless it believes that these fiscal factors are entitled to weight in framing appropriate recommendations.

The allegation that indirect costs stem from disturbing existing rate differentials, thereby stimulating wage increase proposals from other groups of employees, is next considered. A reduction in hours with maintenance of take-home pay will arithmetically raise the rates. For example, a reduction from 205 to 173 hours raises the present rate of $2.0993 to $2.4876. This increase in the basic rate, as such, does not increase the Carriers' costs except with respect to a higher rate for extra porters, to which the Board has already alluded. As to the issue of changed wage differentials between the porters and other nonoperating groups resulting from this higher rate, it is at best a speculative venture to attempt to determine the effect on nonoperating Organizations' wage movements which might result from any hours reduction gains achieved by porters. The Board does not find any evidence, at least up to the present time, that the nonoperating employees have been influenced in advancing their wage demands by wage levels of porters. Rather the record is clear that, at least up to 1961, the porters have followed and not set the wage adjustment pattern for

nonoperating employees. It must also be noted that although patterns have a special significance in the railroad industry, wage relationships between various groups are not entirely fixed and rigid. It is quite probable that the dynamics of the situation will change them from time to time.

The Board has also examined the contention that the Brotherhood's proposal will directly motivate the dining car service employees to move for comparable adjustments. It is the view of the Board that if there is merit in the proposal for a shorter work month it would not be appropriate to deny it to porters because a related group of employees does not have such shorter hours. Moreover, the Board finds that Emergency Board No. 139's recommendation for the shorter work month for sleeping car conductors has weakened the rationale for refusing it to porters, who are also part of the on-train service group.

The maintenance of take home pay accompanying an hours reduction is a seriously controverted issue. The Board has carefully reviewed the evidence offered by the Carriers to show that the Organization's proposal is not consistent with the precedents in the railroad industry. The Carriers stressed that in 1949 approximately 39 percent of the shop crafts and about 47 percent of the firemen and oilers whose workweek was reduced from 7 to 5 days suffered a 14.3 percent loss in take home pay. In addition, when certain monthly rated telegrapher and maintenance-of-way positions that comprehended more than 204 hours were reduced to 169⅓ hours the incumbents of these positions suffered losses in take home pay ranging from 16.2 percent to 2.2 percent.

The Board believes that the Carriers' examples of loss of take-home pay are distinguishable from the case before us. The sleeping car porters are not seeking to go in one stride from 56 to 40 hours a week as did the firemen and oilers in 1949. The porters received, like other nonoperating employees in 1949, a 35-hour reduction in their work month which approximated a reduction in the workweek from 56 to 48 hours. Now 15 years later the porters are petitioning for a further reduction in hours with no loss in take-home pay. In the judgment of the Board the extended period which has elapsed since the porters received their last hours reduction clearly indicates that the porters' efforts to achieve the monthly equivalent of the 40-hour week have been in two separate and distinct movements.

Most railroad workers followed the same pattern of separate and unrelated movements in proceeding from 56 to 40 hours a week. The first hours reduction in recent railroad industry history occurred immediately after World War I when the railroads were still under the control of the Federal Government. The second movement came, of

course, in 1949. The record indicates that these separate hours reduction movements took place without employees generally suffering loss of take-home pay. It appears to the Board that the sleeping car porters are now seeking the same consideration which was earlier accorded the majority of railroad workers.

In summarizing the several disputed aspects of the hours reduction proposal, the Board finds that the 40-hour week, or its monthly equivalent, is now the minimum work period standard for the majority of employees both in and out of the railroad industry; that the hours reduction movements generally have been effected without loss of take-home pay; that no causal relationship has been demonstrated to date between the wage demands of the porters and those of skilled craftsmen and clerks; and that it would be inappropriate to deny a shorter work month to the porters, otherwise entitled to it, because another segment of the on-train service group does not possess it. The Board, on the other hand, finds that there is a substantial direct cost impact resulting from a shorter work month and that the condition of passenger service operations continues to be unfavorable.

In consideration of these findings the Board is of the opinion that a work month of 180 hours with maintenance of take-home pay, to be reached in several steps over a prescribed period, is appropriate for sleeping car porters.

Both because of the financial implications of the hours reduction proposal and because Emergency Board No. 139's recommendation of 180 hours is the initial departure from the traditional pattern of longer hours for on-train service employees, the Board believes that 180 rather than the proposed 173 hours is indicated in this case. However derived, the 180-hour standard must be viewed in light of the close working relationship between porters and sleeping car conductors.

In suggesting a reduction of the basic work month to 180 hours in several steps, rather than the one step recommended in 1961 by Emergency Board No. 139, this Board observes that in that case there was an appreciably smaller number of men involved with a significantly lesser cost impact, that there was no contemporaneous wage proposal, and that the downward trend in sleeping car revenues has not been arrested.

2. *Wages*

The Organization's proposal is that all rates of pay be increased by 25 cents an hour effective November 1, 1961. The Carriers oppose the Organization's proposal and, with the exception of the Soo Line, make a counterproposal to establish a rate of $1.25 per hour.

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As previously stated, the current basic rate of pay for 97.5 percent of the Pullman porters is $430.36 per month or $2.0993 per hour. These rates have prevailed since July 1, 1960. The Organization's wage proposal is identical to the one which was served by the 11 cooperating nonoperating Organizations. As a result of the recommendations of Emergency Board No. 145, issued on May 3, 1962, the railroads and the nonoperating employes reached an agreement on a wage increase of 4 cents an hour retroactive to February 1, 1962, and 6.28 cents per hour retroactive to May 1, 1962, with a moratorium on wage adjustments to May 1, 1963. Since 1937, the porters have processed their general wage demands upon the Pullman Co. pursuant to the pattern of the nonoperating Organizations' settlements and have received the identical cents per hour wage increases.

The Brotherhood insists that the porters now are entitled to a 25 cents an hour adjustment in order to correct a gross wage inequity to which they had been subjected prior to 1937. Before that date the porters never had negotiated nor been covered by a bona fide collective bargaining agreement and thus, it is urged, they did not receive the same wage adjustments between 1919 and 1937 as did organized nonoperating employees. Consequently the identical adjustments received since 1937 have not corrected the prior existing inequity. The Organization contends that between 1919 and 1929 the minimum monthly rate for organized sleeping car conductors increased by $45 as compared to the $17.50 increase in the porters' minimum, increasing the differential by $27.50. Similarly a $10 differential in favor of express messengers was increased to $19.70. It further maintains that if not denied the same wage progress that was made by organized railroad workers, the porters' present hourly rate of $2.0993 would be close to $2.83, the rate currently being received by express messengers.

The Carriers counter that no wage inequity exists now or existed prior to 1937. They state that between 1918 and 1929 (there being no wage increases in the railroad industry between 1929 and 1935) the porters' monthly wages were increased from $48.88 to $88.50, an increase of 81 percent, which should be compared with the adjustments received by sleeping car conductors during the same period which were from $131.75 to $193 per month—an increase of 46.5 percent. In 1937 the porters' rate was 45.9 percent while at present it is 76.3 percent of the conductors' rate. The Carriers also urge that since 1949 the porters have received larger monthly increases than the other nonoperating employees because their identical hourly increases were multiplied by 205 hours and the others by 173.

The Pullman Co. poinits out that in 1958 when the New York Central and the Rock Island railroads took over their own sleeping car

services these railroads paid porters a lower rate and even today they pay a rate which is $11 a month less than the rate it pays. It stresses that the proposed increase of 25 cents an hour, without any reduction in hours, would produce a monthly rate of $481.61 instead of the present $430.36 and an hourly rate of $2.3493, 11.9 percent higher than the present rate of $2.0993. Such an 11.9 percent increase in the hourly rate would exceed by far the 4.9 percent which represents for the porters the 10.28 cents per hour adjustment given to the nonoperating employees in 1962. The Pullman Co. estimates that the proposed 25 cents an hour increase based on the 205-hour month annually would cost $1,413,800 and the New York Central estimates that its annual costs would be increased $138,216.

The Board finds that it is in disagreement with the Organization's contention concerning a gross inequity. It is unable to conclude that because porters have been receiving since 1937 the same cents per hour adjustments as other organized nonoperating employees, they were the subject of a gross wage inequity during the period when they were unorganized and did not receive the same wage increases. The fact that porters received different and lower wage increases than did, for example, sleeping car conductors and express messengers during the years in question, may connote a difference in the content of these job categories warranting variant wage treatment. Too many variables pertaining to wage adjustments between 1919 and 1937 would have to be taken into consideration to hold on this record that the porters were the subject of a wage inequity. The Board must also note that the Brotherhood has been engaging in collective bargaining with the Pullman Co. since 1937 and it appears somewhat late to raise this issue after 24 years of negotiations.

As previously mentioned the record discloses that since 1937 the Organization has followed the pattern of wage increases granted to the nonoperating employees. If there were no issue of hours reduction in this dispute it would have been consistent with the pattern for the parties to have settled the wage issue for the same 10.28 cents per hour awarded nonoperating employees. However, since the Organization has sought and this Board is recommending an hours reduction, it does not seem reasonable to require the Carriers to assume the full burden of the 10.28 cents per hour wage increase contemporaneously with initiating action to effect a shorter work month. There is precedent for sharing the cost of a reduced work period. When the Leiserson Board recommended the 40-hour week it reduced the wage increase to 7 cents an hour for the nonoperating employees despite the fact that the operating employees had received 10 cents an hour and employees in outside industry were receiving 10 to 13 cents an hour as

a result of the third round post World War II adjustments. If the nonoperating employees assumed part of the cost of the hours reduction in 1948 when the financial posture of the railroads was more favorable than it is at present, it does not seem unreasonable to suggest that the employees share part of the cost of the hours reduction at this far less favorable juncture. While it is true that the cost of the wage adjustment will be reduced because the proposed cents per hour increase will be initially calculated on a smaller number of hours than the present 205, nevertheless there will be an increase in the payroll costs. It is the judgment of the Board that an increase of 5.14 cents per hour represents a reasonable disposition of the wage adjustment issue.

When the wage and hour issues are considered together in light of the total discussion, the Board is led to recommend an hours reduction scheduled over a period of 30 months, with maintenance of take-home pay, and the indicated wage increase. In an effort to balance the economic aspirations of the employees with the fiscal realities confronting the Carriers and to give recognition to the interest of the traveling public in continued efficient passenger rail facilities, the Board's detailed recommendations on the wage and hour adjustment proposals are:

1. A basic work month ultimately to comprehend 180 hours, with maintenance of take home pay, to be accomplished in accordance with the following schedule:

   a. An initial reduction in hours from 205 to 195, operative not later than 1 month after the effective date of the new agreement;

   b. A second reduction from 195 to 190 hours, effective 1 year from the date of the reduction to 195 hours;

   c. A third reduction from 190 to 185 hours, effective 1 year from the date of the reduction to 190 hours;

   d. A final reduction from 185 to 180 hours, effective 6 months from the date of the reduction to 185 hours; and

2. A wage increase of 5.14 cents per hour over the present rates computed on the basis of and effective concurrently with the reduction to a 195 hour month.

3. *Overtime*

In conjunction with its request for reduction in the hours of the basic month from 205 to 173 the Organization proposes that compensation for overtime be at the rate of time and one-half for all hours worked or assigned in excess of 173 per month, thereby eliminating the existing 35-hour margin of pro rata overtime.

Under the present agreement between the Brotherhood and the Pullman Co., a porter receives pay for all time credited. When his credited hours exceed 205 in a calendar month, the hours in excess of 205 and up to and including 240 are paid for on the straight time or

pro rata hourly basis. Hours in excess of 240 are paid for at 1½ times his hourly rate.

The 35-hour margin of pro rata overtime was negotiated with the Brotherhood effective September 1, 1949, when the basic month for porters was reduced from 240 to 205 hours. Prior to that date the porters had a 10-hour margin of pro rata overtime from 240 to 250 which had been in effect since October 1, 1937.

In summary, the Organization contends that the practice of maintaining a margin of pro rata overtime, referred to as "leeway," was discontinued many years ago for other classes of railroad employees and for employees in other industries facing similar problems; that the Carriers' inability to schedule precisely the assignments of all their employees to the number of hours in the basic workweek or work month for which a guaranteed wage is paid, with the result that some employees may receive the guaranteed wage while working fewer hours than the basic period, does not justify denying premium overtime payment to those who work in excess of the basic period; and that the present rules for pro rating hours provide the Carriers with built-in leeway greater than the 35-hour margin provided in the existing overtime rules.

The Carriers insist that there are conditions peculiar to on-train passenger service employment which justify a margin of pro rata overtime. Notwithstanding the Carriers' efforts to schedule porter assignments within the basic month, the fluctuation between 30- and 31-day months, delayed train arrivals, and certain rules in the existing agreements, over which the Carriers and particularly the Pullman Co. have no control, will necessarily result in overtime. Thus, the basic principle underlying punitive overtime is inapplicable and leeway provisions have been traditionally applied to all Pullman and railroad employees who are engaged in passenger service on the trains. In addition, the Pullman Co. offered evidence that eliminating pro rata overtime, in connection with reducing the basic work month to 173 hours, would necessitate the services of 25 additional men and increase payment to extra men at an estimated annual cost of $267,395.

The Board recognizes that the ideal situation would be one in which it were possible for the Carrier to assign porters, both regular and extra, to hours which in each month equal the basic month. This is usually possible in industrial employment and in some carrier operations in which the conditions of work permit the work force to be relieved at a fixed time. However, the work time of on-train service employees is necessarily fixed in relation to train schedules, which are governed by railroad operating conditions and public convenience. These are often affected by Acts of God and other contingencies be-

yond the control of both railroad management and employees. For example, evidence adduced by the Pullman Co. shows that in the month of March 1963, 20,364:40 hours of overtime was paid in regular porter operations, of which 6,183:50 hours were chargeable to late arrivals of trains, in the operation of which Pullman has no responsibility.

The evidence also shows that all regular assignments are scheduled on the basis of a 30-day month. In each 31-day month the average number of credited hours of every run is increased by one-thirtieth. Therefore, in 7 months of the year a regular assignment with a schedule of 205 hours produces 211:50 hours of credited time. All regular assignments of 198:15 hours or more produce some credited overtime in the seven 31-day months of the year, due to the additional day in the month. Moreover, the existing agreement between the Brotherhood and the Pullman Co. contains several rules which make it impossible to schedule some regular assignments at or close to the 205 hours of the present basic month and a comparable situation will obtain under a reduced basic month.

The ability of the Pullman Co. to minimize overtime is restricted by the provision in the present agreement which requires that extra porters shall be assigned "first in, first out" on the basis of expiration of layover from their preceding trip. Thus, an extra porter, who near the end of the month draws a long assignment on which he will accumulate a large number of hours, must be given that assignment although he may already have 205 credited hours for the month and will accumulate substantial overtime in that month.

The foregoing conditions peculiar to on-train service employment have been recognized by previous public boards as a proper basis for distinguishing such employment from other railroad employment in applying the principle underlying penalty pay. Thus, the U.S. Railroad Labor Board in its decision No. 2052 dated December 4, 1923, established a rule for Pullman conductors providing 30 hours leeway. And the Leiserson Board, although recommending a 35-hour reduction in the basic month for dining car waiters, continued the existing 35-hour leeway, stating: "This is definitely a situation in which penalty pay will not serve to shorten the hours, unless service is to be curtailed." Consequently, since September 1, 1949, dining car cooks and waiters have been paid on the basis of a 35-hour margin of pro rata overtime, similar to porters. Pullman conductors have had a 10-hour margin of pro rata overtime since 1945, which was not at issue in the Emergency Board No. 139 proceedings resulting in a recommendation for reduction of the basic month from 205 to 180 hours. And the dining car stewards, whose present 205-hour basic month became effective

October 1, 1950, have been subject to a 15-hour margin of pro rata overtime since December 18, 1947. There is no apparent relationship between the length of the basic work month and the margin of pro rata overtime.

In recognition of the impossibility of precise scheduling of porter assignments due to contingencies and conditions peculiar to on-train service employment, all beyond the Carriers' control, and the limitations imposed by provisions in the existing agreements, the Board finds that it would be inequitable and would not necessarily result in the elimination of or a reduction in overtime to require premium payment for all time worked or assigned in excess of the basic month.

The Board is not persuaded, however, that the existing 35-hour leeway is necessary or justified.

None of the Carriers has claimed that its regular assignments cannot be adapted to a reduced basic month. The Pullman Co. introduced evidence to show that its regular assignments as of March 1, 1963, ranged in length from 142 hours to 225:50 hours per 30-day month and that the weighted average of the scheduled length of all regular assignments as of that date was 207:16 hours. In addition, a certain protection against the payment of excessive overtime by Pullman inheres in the proration rule. Under that rule, which is not at issue in this proceeding, the service hours per month are calculated by prorating the hours. This proration applies to trips which are started near the end of 1 month and results in the hours actually credited for that trip in the current month being limited to 6:50 hours per day (205 hours divided by 30 days) regardless of the number actually worked, with the balance of the trip hours being carried over and credited in the following month. The Board also notes the apparent long accommodation of the Carriers to 15- and 10-hour margins of leeway for dining car stewards and Pullman conductors, respectively, whose working conditions are similar to the porters.

These considerations convince the Board that the existing 35-hour margin of pro rata overtime should be reduced to 10 hours. The Board therefore recommends that the parties negotiate a modification of the present rule to provide for payment of overtime at pro rata hourly rates for the first 10 hours above the basic month and at a rate of time and one-half for hours in excess thereof; provided however, that the parties also negotiate a corollary revision of existing rules directed toward minimizing the amount of overtime which may be accrued pursuant to the present provisions for operation of the porters' extra board.

B. Employment Stabilization and Income Protection

The Brotherhood has filed two section 6 notices directed at alleviating the job insecurity its members undeniably face. The first, filed in September, 1961, proposed a rule requiring not less than 6 months advance notice to employees affected by any reduction in force or abolition of positions, excepting emergency conditions. The second, served in March, 1962, proposed a rule that would stabilize employment by limiting to normal attrition [1] "future lay-offs, force reductions, or abolition of positions due to mergers, consolidations or transfers of service involving the Pullman Co. and any other carriers or company, or as a result of technological change * * * " and granting to "any employee required to move to hold employment or otherwise affected by any such change" the protections specified in the Washington Job Protection Agreement of 1936.

Little time need be spent in describing the decline in the volume of passengers service on the American roadroads or the impact of competition from automobiles and from increasingly available and less expensive air transportation. Nor is there any question that sleeper accommodations have been particularly vulnerable to the inroads of economy air travel and the ubiquitous motel.

The record before the Board is replete with testimony and exhibits indicating the contraction in sleeping car service and the accompanying reduction in employment of sleeping car porters. The policy of Pullman Co. historically has been "one car, one porter," and the decline in the demand for Pullman Co. services is partially reflected in the figures on employment of porters. From a predepression average of 10,000 porters employed and a war time high of over 14,000, the figures for porters now employed by Pullman Co. have dropped to slightly over 2,000 in March, 1963.[2] Pullman exhibits indicate that between January 1, 1961, and August 31, 1963, a total of 111 lines have been discontinued and not reestablished, eliminating assignments for 456 porters. The 1958 take over of sleeping car operations by New York Central and Rock Island resulted in a substantial decrease in the number of porters employed by the Pullman Co., but due to the hiring of Pullman porters by these railroads, there was a limited net disemployment of porters. Employment of regularly assigned porters on the New York Central has dropped from 376 in July, 1958, to an apparent plateau of 182 since 1961.

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[1] Departures from the work force resulting from death, retirement, resignation, or discharge for cause.

[2] Employment figures actually fail to reflect a portion of the decline in business, since as previously noted the average occupancy of sleeping cars has fallen from about 12 per car in 1947 to 9.22 per car in 1962.

The Organization has attributed part of the blame for the decline to the Carriers, but there is no controversy over the reality and seriousness of the loss of passenger traffic or its impact on employment.

Witnesses for the Brotherhood have spoken eloquently of the problems of sleeping car porters, men whose long years of service bespeak a commitment to the railroad industry and a general age level that makes retraining difficult and reemployment uncertain. The Organization has emphasized the fact that many porters lack transferable skills because of limited educational opportunities and because of the discouragement inherent in past and present discriminatory employment practices against even skilled Negroes. Certainly employment discrimination has existed and continues to exist, and employment alternatives are particularly restricted for older Negroes. The impasse faced by many of the Nation's older workers as they are threatened by the sweep of changed job patterns is more serious still for the senior sleeping car porter.

The job insecurity of porters is rooted in the downward trend of public use of sleeping car facilities and the resulting contraction in sleeping car schedules described above. In the case of railroads operating their own sleeping car service, the impact is immediate; contraction of schedules is reflected in the abolition of regular porters' positions and ultimately in the furloughing of the most junior members on the porters' extra board. As has been noted, the majority of sleeping car porters are employed by the Pullman Co., rather than directly by the railroads.

Under the Uniform Service Contract, the Board has been informed, a customer railroad may curtail or completely discontinue its use of Pullman services. The Uniform Contract contains no requirement for advance notice of curtailment of services, although in practice using railroads have given the Pullman Co. from 10 to 30 days notice of elimination of cars and runs and longer notice of substantial curtailments or take overs. (Under the Uniform Contract, Pullman must receive 6 months notice from a railroad of intent to discontinue completely its services.) As in the case of railroad-employed porters, elimination of cars or runs results in the furloughing of Pullman porters, and take overs, in the absence of absorption of the men by the railroad, would have an even greater impact on the employment opportunities of Pullman porters.

1. *6 months advance notice of job abolition*

The 6 months advance notice proposal is the companion to the identical demand made in 1961 by the 11 Organizations representing the nonoperating railroad employees. In the present dispute, it has been

opposed by all of the three railroads on the ground that it is basically a 6 months "job freeze" and rejected with particular vigor by the Pullman Co. Pullman argues that since its contract with the using carriers contains no requirement for advance notice from customer railroads of curtailment or partial take over, it realistically cannot be subjected to a general requirement to give advance notice to its employees.

Although the Organization presented some arguments supporting the need for long term notice of reductions in force, testimony on its behalf conceded that the genesis of the demand was more a technique for opening negotiations with regard to employment stabilization than an accurate reflection of the Organization's expectations.

There is no doubt that employees should be informed as early as possible of proposed reductions in force, but either is there evidence that the Carriers have been dilatory in this respect. The record indicates that the Pullman Co. has been prompt in posting the notices it receives from customer railroads, and the Board assumes that this record of diligence will be maintained for the protection of affected employees.

The notice demand by the nonoperating Organizations was considered by Emergency Board No. 145, which found that it was an inappropriate solution to the problems of job insecurity and recommended that in general 5 working days advance notice be given to regularly assigned employees prior to abolition of their positions. The nonoperating Organizations have entered into agreements incorporating this recommendation.

The contract arrangements under which the Pullman Co. now operates make a mandatory provision for long term advance notice impracticable. However, it is the view of the Board that a rule requiring notice comparable to that covering the nonoperating employees would not place an undue burden on the Carriers and represents a reasonable minimum period of protection to the employees. The Board therefore recommends that the parties adopt a rule requiring 5 working days notice of abolition of positions to regularly assigned employees and negotiate any adaptations in the definition of "working days" necessitated by the scheduling arrangements peculiar to sleeping car service.

2. *Employment stabilization*

There was disagreement between the representatives of the Organization and the Carriers with respect to the scope of the proposed rule as stated in the section 6 notice. However, the hearings clearly developed the intent of the Organization to limit and cushion employee

displacements from all causes, including take overs under the Uniform Service Contract and decline in the volume of business, which it attributes to and equates with "technological change." The Pullman Co. and the participating Carriers construe "technological change" more narrowly and have argued that the section 6 notice does not cover reductions in force resulting from decline in volume of business. They nevertheless argued the merits, or demerits, of the proposal as interpreted by the Organization; and it appears that the interests of both sides to this dispute will be better served if the Board addresses itself to the substance of this request.

The main thrust of the Organization's notice is to limit the rate of job abolition to the rate established by normal attrition and to guarantee to employees adversely affected by rearrangements contemplated by the proposed rule the protection contained in the Washington Job Protection Agreement. The proposal is an amalgam of employment stabilization and income protection provisions, the first aimed at maintaining positions to accommodate porters presently employed; the second concerned with ameliorating economic loss.

Although security has always been one of the principal goals of this and other Organizations, traditionally wages and hours and fringe benefits have provided the path to that goal. But now, money and hours themselves are not considered adequate by them; for obviously if the job disappears, the money disappears. Porters are finding that their old jobs cease to exist, and no new ones spring up in the same locale or at the same skill level. Thus they have served notice that the job itself must be made more secure; and this demand comes, not surprisingly, at the very time when the Carriers feel under increasing pressure to eliminate jobs.

Basically the employment security technique proposed by the Brotherhood is natural attrition—a program of relating the rate of job reduction to natural departures from the work force. In some circumstances the adoption of natural attrition as a measure for reductions in the work force may provide a proper balance between the incumbent employees' needs and expectations and the employers' plans and interests. It may be possible to devise a program which will both strengthen job security and in some important respects increase employer efficiency. Each situation must, however, be examined on its own to determine whether a natural attrition formula is feasible and will prove mutually beneficial.

The virtues and limitations of the natural attrition approach have been carefully considered by Emergency Board Nos. 147, 148, and 151 in connection with disputes involving the telegraphers and the clerks. Prerequisites to test the viability of a natural attrition formula in

particular circumstances emerge from the thinking of these Boards. In essence, these are the existence of a reliably predictable rate of employee attrition that approximately matches the rate of job abolition required by management's efforts to maintain a tenable competitive position; employment circumstances that are sufficiently varied and flexible to permit the shifting of displaced employees; limitation of employment protection to permanent employees; and development of a formula for excluding from the attrition limitation reductions in force necessitated by declines in business beyond the control of the employer. An additional factor suggested by the Board in the Southern Pacific-Clerks dispute was that the financial condition of the carrier involved be relatively stable.

In the situation at hand, the proposed attrition formula would limit the abolition of positions to a rate that is not based upon the Carriers' actual or potential need for porters. The Organization's proposal is somewhat less restrictive than the stabilization demands of the sleeping car conductors, which were considered and rejected by Emergency Board No. 139. However, it is still subject to the basic objection voiced by that Board, that an effort to maintain a level of employment without regard to the availability of work does "not represent a constructive approach to the problem. It will not preserve work for conductors, but it is more likely to destroy the company and all conductor work along with it."

Here the future rate of job elimination, quite apart from the past ratio between employee attrition and job abolition, is highly unpredictable due to the contingency of take overs. The Pullman Co. does not act; it is acted upon. For example, if the Pennsylvania Railroad consummates its partial take over of sleeping car service, as it has notified Pullman it intends to do, about 250 of the 2,000 Pullman porter jobs will be immediately lost. Nor are there other apparent employment opportunities with Pullman for the absorption of the employees. There is not, nor has there been for a considerable period, any new hiring in the craft. Intra-company transfers, with or without retraining, have not been remotely suggested. A careful study of the needs of each party and of the facts of the relationship demonstrates that attrition is not a fitting solution, even if it be recognized that efficiency is not the only standard. The goal of job security must be kept in perspective.

The Board concludes that the limitation of job abolition by the rate of natural attrition is not economically practicable in the face of the conditions surrounding sleeping car service, and that current practice in the railroad industry gives no support to its adoption as a pattern form of protection.

3. *Income protection*

Insofar as the Organization's notice is directed toward income protection, it is a fact that for over three decades the railway industry has led in the development of arrangements to cushion the impact on employees of the vast and essential changes that have taken place in the organization and technology of the railroads. The Washington Job Protection Agreement of 1936 provides income protection for employees adversely affected by rail coordinations on the theory, now generally accepted, that the benefits of reorganization should not be reaped by the carriers alone while the economic burdens are borne by displaced and distressed employees. The theory and the fact of income protection have since been extended to line abandonments and consolidations within a single carrier, and more recently to displacement caused by technological or organizational change.

Witnesses for the Organization expressed concern as to whether sleeping car porters are included within the scope of the protection afforded by the Washington Agreement. The Brotherhood of Sleeping Car Porters did not achieve recognition as a bargaining representative until 1935, and their first collective bargaining agreement with Pullman was not signed until 1937. The Pullman Co. filed notice of its intention and became a party to the Washington Agreement in 1952. The Brotherhood of Sleeping Car Porters is not a signatory to the Agreement, and for historical reasons the Agreement contains no provision for the addition of unions as it does for carriers. In 1961, the Brotherhood of Sleeping Car Porters and three other Organizations requested inclusion as parties to the Agreement, but were notified that there is no authority to alter the Agreement by adding a union party.

As this issue was developed in the course of the hearing, it appears to the Board that sleeping car porters are protected by the Washington Agreement to the extent that they are adversely affected by a "coordination" to which their employer is a party. The Agreement provides that no "coordination [i.e., "joint action by two or more carriers whereby they unify, consolidate, merge, or pool their * * * facilities * * * operations or services"] involving classes of employees not represented by any of the organizations parties hereto shall be undertaken by the carriers parties hereto except in accord with the provisions of this agreement * * *." Porters who are directly employed by a railroad are clearly covered when affected by a merger or consolidation. Similarly Pullman employees would be protected in the event that the Pullman Co. were a party to a merger or consolidation.

The difficulty is not that the porters do not enjoy the protection of the Washington Agreement, but that its scope is only marginally

adapted to their problems. The significant threats to the job security of sleeping car porters stem from unilateral action by a using railroad to take over Pullman operations on its lines, or from contraction of service due to decline in passenger demand, neither of which is encompassed within the protection offered by the Washington Agreement.

In December 1961, Emergency Board No. 139 disapproved the extension of "severance allowances" to sleeping car conductors displaced as a result of decline in passenger demand. The Board found at that time "no example in the industry of severance allowances to employees who lose their jobs due simply to declining railroad business [and saw] no reason for recommending that Pullman conductors be afforded severance pay benefits not generally available in the industry."

The Organization has urged this Board to consider anew the request for income protection as a result of decline in the demand for sleeping car service. The Organization points to agreements recently negotiated pursuant to the recommendations of Emergency Boards that have modified the accepted notion that economic protection of displaced employees is essentially a charge against the savings envisaged through consolidation or, more recently, technological or organizational change. Emergency Board No. 147 recommended that income protection for telegraphers employed by the Chicago and Northwestern Raiyway be extended to all regular employees displaced or adversely affected by permanent elimination of positions regardless of the reasons for such elimination. A similar recommendation was made by Emergency Board No. 148, considering a dispute between the Telegraphers and the New York Central. Emergency Board No. 151, dealing with a dispute between the Southern Pacific and the Brotherhood of Railway Clerks, recommended that income protection be extended to employees without regard to the reason for the displacement, but suggested that the level of benefits to all displaced employees be measured against the savings accruing from technological and organizational change. That Board concluded "In sum, the fate of the company must, to a considerable extent, be the fate of the employees."

Certainly, there can be no argument that the hardship suffered by a displaced employee is in any way extenuated by the reason for his displacement. But the Emergency Boards referred to above were dealing with railroads engaged in large scale readjustments that yielded the benefits of modernization at the same time that they risked loss or decline in business from competing forms of transportation.

The Pullman Co. has been particularly emphatic in its opposition to both the attrition formula and the proposal for income protection. The Company argues with considerable force that it experiences a net

loss in business and income from both a curtailment in use and a take over of service by customer carriers, with no resulting savings or benefits that might fund the retention of employees or the payment of protective allowances. Such contractions in service are unaccompanied by compensating improvements or efficiency in operations. Although the testimony before the Board indicated some economies resulting from improved yard and servicing arrangements, the basic trend in the income of the Company and the productivity of its employees has been downward.

It is the opinion of the Board that the financial position of the Pullman Co. and the economic state of sleeping car services operated by the other Carriers distinguish the present dispute from the framework in which Emergency Board Nos. 147, 148 and 151 made their recommendations. Although regretfully cognizant of the insecurity faced by sleeping car employees, the Board must conclude that at this time it cannot recommend the granting of the Organization's proposals for income protection.

It should be noted, however, that there are now pending in the railroad industry various protection proposals served by the nonoperating Organizations which in the foreseeable future may establish a pattern responsive to the needs of the sleeping car porters. The porters have followed the pattern of the nonoperating unions in wage increases for a long period of time. Should new protective conditions be established for the nonoperating employees, it will be a more fitting season for joint consideration of the application of such conditions to the characteristics of the sleeping car business.

Although the Board cannot endorse the Organization's proposal for job stabilization or protective allowances, it is impressed by the fact that porters have no shield from the job insecurity posed by transfers of service under the Uniform Service Contract. In the past, Carriers who have taken over sleeping car operations have hired substantial numbers of former Pullman porters. However, they are not contractually obligated to do so, and there is no guarantee to the porters that this will be the pattern of the future.

The Pullman Co. has argued that it should not and cannot bear the burden of funding loss of income caused by transfers of service over which it has no control. Although the Board has sustained this position, it feels that the matter cannot equitably be left with Pullman's disclaimer. However, any recommendaion that the Board might effectively make would be directed only against the Pullman Co. and the three carriers that currently operate their own sleeping car service: the carriers that use the Pullman Co's services and whose policies have such an immediate impact on Pullman employees are not before

the Board at this time. The Board cannot agree with the Brotherhood that the relationship of the Pullman Co. and the using railroads is such that we may properly make recommendations concerning their employment policies to carriers not parties to this dispute.[3] Neither can it ignore the fact that the Organization has no present bargaining relationship covering the class or craft of sleeping car porters with carriers which do not now operate sleeping car services, and therefore has no forum in which to seek relief from the insecurity inherent in prospective take overs.

The principles of employee protection in this industry would support, subject to legal limitations, the establishment of an employee preference for Pullman porters displaced by a service take over. The railroad community, both carriers and employees, has an interest in the maintenance of maximum employee security consistent with continued operations, existing contractual obligations, and legislative guides. Only with the cooperation of all can this humane and practical result be achieved.

Although the Pullman Co. has emphasized its inability to furnish income protection to its sleeping car porters disemployed through transfers in service, it can be asked to make every effort to protect such employees in an appropriate and realistic fashion. Accordingly, the Board recommends that the Pullman Co. and the Brotherhood agree that promptly after the settlement of the present dispute they will together urge each railroad customer of Pullman potentially involved in a transfer of service, in hiring sleeping car porters for the service so taken over, to accept and to consider, in preference to other applicants, applications from these porters who are then on Pullman seniority rosters, provided however, that no railroad shall be urged to take any action which would violate any provisions of the Railway Labor Act or any agreement with the Brotherhood or any other labor organization.

C. Retroactivity

It is apparent upon the record in this case that had there been no issue between the parties other than the proposed 25 cents per hour wage adjustment, the pattern since 1937 would have indicated a settlement upon the same basis as the identical wage adjustment proposal was settled between these carriers and their other nonoperating employees. Presumably a wage increase of 10.28 cents per hour would

[3] Two Emergency Boards, Nos. 127 and 139, have considered this procedural impasse in connection with the problems of Pullman Co. sleeping car conductors, who have suffered substantial unemployment as a result of take overs. Since the Report of Board No. 139, the Pullman Co. and the Conductors have been unable to agree on a joint proposal to customer railroads for the protection of conductors, and there the matter rests uneasily at this time.

have been agreed upon with 4 cents effective as of February 1, 1962, and an additional 6.28 cents effective as of May 1, 1962.

However, the processing of the instant dispute, in which there is no evidence that either party has been dilatory, has deferred a separate adjustment of the wage issue. As recommended by this Board, that issue would now be adjusted on the basis of a 5.14 cents hourly increase in consideration of the concurrent adjustment of the hours reduction issue. The date from which any lump sum retroactive payment should be calculated is the question now to be resolved.

The porters have worked and the Carriers have had the advantage of their labors during the period that other nonoperating employees have had the benefit of the 10.28 cents increase. Equity requires that the porters receive retroactivity to the same time the nonoperating employees obtained their wage adjustment. The Board therefore recommends a retroactive lump sum wage payment computed on the basis of the 205-hour month as follows: 2 cents per hour from February 1, 1962, and an additional 3.14 cents per hour from May 1, 1962, to the date of the reduction to a 195-hour basic month.

V. RECOMMENDATIONS

In summation, Emergency Board No. 155 recommends that the dispute committed to its investigation should be resolved as set forth below:

1. A basic work month ultimately to comprehend 180 hours, with maintenance of take-home pay, to be accomplished in accordance with the following schedule:

   a. An initial reduction in hours from 205 to 195, operative not later than 1 month after the effective date of the new agreement;

   b. A second reduction from 195 to 190 hours, effective 1 year from the date of the reduction to 195 hours:

   c. A third reduction from 190 to 185 hours, effective 1 year from the date of the reduction to 190 hours;

   d. A final reduction from 185 to 180 hours, effective 6 months from the date of the reduction to 185 hours; and

2. A wage increase of 5.14 cents per hour over the present rates computed on the basis of and effective concurrently with the reduction to a 195-hour month; and

3. Negotiation of a rule reducing the existing 35-hour margin of pro rata overtime to 10 hours and providing for the payment of overtime at pro rata hourly rates for the first 10 hours above the basic month and for time in excess of this margin at one and one-half times the hourly rate; provided however, that the parties also negotiate a corollary revision of existing rules directed toward minimizing the amount of overtime which may be accrued pursuant to the present provisions for operation of the porters' extra board; and

4. Adoption of a rule requiring 5 working days notice of abolition of positions to regularly assigned employees and negotiation of any adaptations in the defini-

tion of "working days" necessitated by the scheduling arrangements peculiar to sleeping car service; and

5. Agreement by the Pullman Co. and the Brotherhood that promptly after the settlement of the present dispute they will together urge each railroad customer of Pullman potentially involved in a transfer of service, in hiring sleeping car porters for the service so taken over, to accept and to consider, in preference to other applicants, applications from these porters who are then on Pullman seniority rosters; provided however, that no railroad shall be urged to take any action which would violate any provisions of the Railway Labor Act or any agreement with the Brotherhood or any other labor organization; and

6. Payment of a retroactive lump sum computed on the basis of the 205-hour month as follows: 2 cents per hour from February 1, 1962, and an additional 3.14 cents per hour from May 1, 1962, to the date of the reduction to a 195-hour basic month; and

7. Withdrawal of the Organization's notices of September 1, 1961, and March 8, 1962, and the several Carriers' notices of September 21 and 25, 1961, and March 20, 1962, in favor of a settlement on the basis of the foregoing recommendations, the parties making such other changes in their existing agreements as may be necessary to conform thereto.

* * * * * * *

Lastly, this Board requests the parties to arrange for prompt meetings for the purpose of implementing these recommendations and completing agreements on all open issues, with such assistance by the National Mediation Board as may be appropriate under the Railway Labor Act and the National Mediation Board's usual practices.

Respectfully submitted.

J. KEITH MANN, *Member.*
FRANK D. REEVES, *Member.*
JACOB SEIDENBERG, *Chairman.*

WASHINGTON, D.C., *November 2, 1963.*

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Thomas E. Specht, vice president and comptroller.
F. J. Boeckelman, assistant vice president, operating.

On behalf of the New York Central Railroad Co.:

Professional:

McMann, Lyons & Allen, by Joseph B. Allen, counsel.

Officers:

L. B. Fee, vice president, employee relations.
Norman J. Hull, Jr., assistant comptroller.
Ira L. Austin, assistant manager, dining car department.

On behalf of the Chicago, Rock Island & Pacific Railroad Co.:

Professional:

E. D. Curlee, general attorney.

Officers:

Guy E. Mallery, vice president, personnel.
J. C. Gilkerson, labor relations office.

On behalf of the Soo Line Railroad Co.:

Professional:

Miller, Gorham, Wescott & Adams, by Marvin F. Metge, counsel.

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