

INTERPRETATION OF THE REPORT TO THE PRESIDENT

by

EMERGENCY BOARD NO. 211

**SUBMITTED PURSUANT TO EXECUTIVE ORDER 12562,
DATED JULY 15, 1986,
PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED;
EXECUTIVE APPROVAL TO RECONVENE AND
RENDER INTERPRETATION DATED SEPTEMBER 9, 1986.**

**Investigation of disputes between certain railroads represented
by the National Carriers' Conference Committee of the
National Railway Labor Conference and their employees
represented by certain labor organizations.**

**(National Mediation Board Case Nos. A-11411, A-11536, A-11537,
A-11538, A-11540, A-11543, A-11544 and A-11545)**

**WASHINGTON, D.C.
OCTOBER 22, 1986**

LETTER OF TRANSMITTAL

WASHINGTON, D.C.
October 22, 1986

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On July 15, 1986, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12562, you established an Emergency Board to investigate disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations.

Emergency Board No. 211 submitted its report on August 14, 1986. On September 9, 1986, you approved the National Mediation Board's request to reconvene the Emergency Board for the purpose of interpreting its recommendation which appears in Section V(d)(2)(c)(4), page 15 of the Report and involves the National Railway Labor Conference and the International Brotherhood of Firemen and Oilers.

The Board is pleased and honored to submit its Interpretation of Section V(d)(2)(c)(4) to you which should provide an appropriate resolution of the dispute between the above named parties.

Respectfully,

GEORGE S. ROUKIS, *Chairman*
JOHN B. LAROCO, *Member*
DAVID P. TWOMEY, *Member*

**INTERPRETATION TO SECTION V(D)(2)(c)(4)
OF THE REPORT BY
EMERGENCY BOARD NO. 211**

I. INTRODUCTION

Emergency Board No. 211 reconvened in Washington, D.C. on September 30, 1986 and held further hearings between the International Brotherhood of Firemen and Oilers (IBF&O) and the National Railway Labor Conference (NRLC) concerning the proper intent and meaning of the recommendation found in Section V(D)(2)(c)(4) of our original Report dated August 14, 1986. The parties reached a tentative agreement settling all issues except the gross amount of the lump sums to be paid to laborers excluding power house mechanics and any other craft worker falling outside the scope of Article IV, Sections 1(a) and 1(b) of the tentative agreement. The gravamen of the sole remaining disagreement centers on the following language which appears at page 15 of the Report:

"Therefore, in lieu of percentage rate increases, we recommend that IBF&O employees receive lump sum bonuses during the term of the Agreement. The lump sums should total \$4,290.00 which is the same as the Carriers' Conference negotiated with BRAC [Brotherhood of Railway and Airline Clerks] for intermodal employees. However, the total sum is subject to modification depending on when the bonuses are actually paid and could be correlated to the existing base rate."
[Brackets added for clarification.]

Based on our recommendation, the NRLC offered lump sum payments totalling \$3,790.00 for most IBF&O laborers and \$3,803.00 for IBF&O laborers at intermodal facilities while the IBF&O submits that the proper bonuses are \$4,290.00 for most of the craft and \$4,015.00 for the three workers in intermodal service.

II. THE PARTIES' CONTENTIONS

THE IBF&O's POSITION

The IBF&O relies on the number (\$4,290.00) expressed in the Report. Historically, the Organization argues, laborers have received wage rate increases equivalent to the raises accorded to all shop craft workers. Since the Board, for the first time, deviated from the historical congruity, the IBF&O asserts that laborers must receive a \$4,290.00 bonus to avoid further penalty. Any amount less than \$4,290.00 would aggravate the divergence in rates between laborers and other shop craft employees. In addition, the IBF&O challenges the accuracy of the Carriers' base rate figure for calculating the lump sums under the BRAC formula. Because of the wide variety of jobs performed by IBF&O workers, it is impossible to precisely fix the average wage rate within the craft. Thus, the IBF&O concludes that the Carriers excluded many higher rated IBF&O employees when they arrived at their base rate of \$11.13. In summary, fundamental fairness and the unambiguous language in the Report require that most IBF&O laborers be compensated with \$4,290.00 in lump sum payments during the term of the Agreement.

THE CARRIERS' POSITION

The NRLC contends that the IBF&O lump sums should be computed on the same basis as the lump sums negotiated for service and intermodal employees under the BRAC contract. At the hearing, the Conference provided the Board with the mathematical formula used for computing the BRAC lump sum payments. Assuming a basis wage rate (excluding the cost of living adjustment) of \$11.13, the total bonus due to IBF&O laborers is, according to the Conference's calculation, \$3,790.00. The \$11.13 base represents the average hourly wage of workers in the Interstate Commerce Commission classes of Laborers and Stationary Firemen although, in a technical sense, the higher rated Firemen should have been factored out resulting in an \$11.11 average hourly rate. The BRAC intermodal bonuses were computed on the average wage for the entire craft. So, the NRLC concludes, the average rate for all IBF&O represented employees is \$11.19 per hour which means intermodal IBF&O workers should receive total lump sum payments of \$3,803.00. To mathematically justify the IBF&O's insistence on lump sums aggregating to \$4,290.00, the base rate would be \$13.49 per

hour which is 21% above the existing average hourly wage. The Carriers aver that awarding IBF&O laborers the arbitrary sum of \$4,290.00 would be wholly contradictory to the BRAC formula used to calculate the bonuses for not only some clerical workers but also the lower rated workers, represented by the other shop craft labor organization. Thus, the NRLC submits that the Board recognized that the \$4,290.00 figure should be modified and correlated with existing laborer rates.

III. DISCUSSION

Before issuing our Report, the Board was not privy to the underlying formula utilized to compute the lump sum payments for BRAC service and intermodal employees. We derived the \$4,290.00 amount from the BRAC settlement. However, during the July, 1986 hearings, neither party proffered the BRAC wage rates which provided the starting point for calculating the total amount of the lump sums or, if such figures are hidden in the mountain of data presented to the Board, the BRAC hourly rates were not presented to the Board in the context of determining the bonuses. Since we were uncertain concerning whether or not the \$4,290.00 BRAC lump sum was readily adaptable to the IBF&O craft, the Board observed that the actual sum "... is subject to modification... and could be correlated to the existing base rate." Our intent was that the parties should use the same mathematical methodology for ascertaining the IBF&O payments as was used to formulate the lump sums in the BRAC contract (and the same method later used to formulate the lump sums payable to certain groups of electricians, machinists and carmen). When the Board issued its Report, we could not predict if the parties would, utilizing the BRAC formula, adjust the recommended figure upward or downward. But, absent equal hourly wages between clerks and IBF&O laborers, we recognized that the bonus would be subject to substantial modification. We specifically recommended that the IBF&O laborers receive lump sum bonuses "... in lieu of percentage rate increase..." which inherently means that the amount of the lump sum payments must be correlated to the aggregate compensation laborers would have accrued through hourly wage increases. Application of the formula demonstrates that the lump sums will be less than the figure expressed in our Report.

Our recommendation on IBF&O wages took into account the new, different wage stratification for IBF&O laborers as opposed to other shop craft employees. Also, the recommendation must

be construed as a whole rather than piecemeal. The Board decided against a two tier wage system contained in the BRAC settlement and instead, favored an end of term 2% basic wage increase which, we understand, has been incorporated into the tentative agreement. This rate increase serves to partially offset the small wage divergence created by the lump sum payments. Finally, the Board realized that the IFB&O represented power house mechanics should "... be treated as if they were craft journeymen..." Thus, where rational, the Board maintained the traditional relation between the wages of laborers and shop craft employees. Moreover, giving laborers a lump sum which far exceeds the amount accorded other shop workers (such as Coach Cleaners) would not only result in wage inequities among the crafts but also be inconsistent with the overall wage recommendation in our Report.

While we intended for the parties to apply the BRAC formula when calculating the lump sum payments due to laborers, the next question is whether the Carriers correctly fixed the average basic wage rate (excluding the COLA) for all laborers (\$11.19) and the mean wage rate (also without the COLA) for those IFB&O employees within the purview of Article IV, Section 1(a) of the tentative agreement (\$11.13). Setting the average basic wage rate for IFB&O employees escapes precision because of the variety of classes and jobs composing the IBF&O craft. Nonetheless, we must settle upon an average wage rate for the practical purpose of calculating the lump sum payments. Although the IBF&O declared that it was unable to estimate an average national laborer wage, the IBF&O used \$11.26 per hour (including the COLA) as a representative wage during the July, 1986 hearings. When the COLA is deducted, the IBF&O figure coincides with the Carriers' \$11.13 average rate. However, upon further research following the September 30, 1986 hearing, the Carriers determined that the rate might be \$11.15 per hour if 144 additional IBF&O workers, with higher than average rates, are included in the computation. In addition, the Board is not certain of the exact parameters of the group of laborers exempt from the lump sum provisions contained in the tentative agreement. Even though it may be unfeasible to determine the average IBF&O wage with absolute exactness, \$11.19 per hour is clearly a realistic, if not an accurate, average wage. As discussed above, we did not intend to establish a multi-tiered wage structure among laborers. Therefore, when calculating the lump sum payments for laborers, the parties should start with the average basic wage for the entire craft. A great preponderance of the craft will receive lump sum payments and

so the average craft wage is a more reliable figure than a calculation which attempts to exclude a small but inexact number of higher rated workers. Placing most laborers on a equal plane with IBF&O intermodal workers complements the intent of our recommendation on compensation for IBF&O workers.

INTERPRETATION TO RECOMMENDATION IN THE REPORT

The total lump sum payments due to IFB&O laborers within Article IV, Section 1(a) of the tentative agreement is \$3,803.00.

The total lump sum payments due to IBF&O laborers in intermodal service is \$3,803.00.

Respectfully submitted,

GEORGE S. ROUKIS, *Chairman*
JOHN B. LAROCO, *Member*
DAVID P. TWOMEY, *Member*

