REPORT

OF THE

EMERGENCY BOARD

APPOINTED APRIL 14, 1937, UNDER SECTION 10
OF THE RAILWAY LABOR ACT, MAY 20, 1926, AS AMENDED
JUNE 21, 1934. IN RE THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS
BROTHERHOOD OF RAILWAY TRAINMEN AND
SOUTHERN PACIFIC COMPANY (PACIFIC
LINES) AND NORTHWESTERN PACIFIC
RAILROAD COMPANY

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1937

REPORT OF EMERGENCY BOARD APPOINTED APRIL 14, 1937, UNDER SECTION 10 OF THE RAILWAY LABOR ACT, MAY 20, 1926, AS AMENDED JUNE 21, 1934

In re The Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railway Trainmen and Southern Pacific Company (Pacific Lines) and Northwestern Pacific Railroad Company

The Emergency Board appointed by the President pursuant to the provisions of the Railway Labor Act, and in accordance with his executive proclamation of April 14, 1937, to investigate and report its findings respecting matters in dispute between the Southern Pacific Company (Pacific Lines) and Northwestern Pacific Railroad Company and certain of their employees, convened at William Taylor Hotel, San Francisco, California, on April 20, 1937. All the members of the Board, consisting of G. Stanleigh Arnold, who was elected chairman, Charles Kerr, and Dexter M. Keezer were present. Frank M. Williams was appointed reporter and J. A. Weaver secretary. The Board held public hearings commencing on April 20, 1937, and concluding on May 6, 1937. Appearances in the order in which they were entered were made on behalf of the employees by G. W. Laughlin, 1st Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers; P. O. Peterson, General Chairman, Brotherhood of Locomotive Engineers; C. E. Weise11, Attorney, Brotherhood of Locomotive Engineers; F. H. Nemitz, Vice-President, Order of Railway Conductors; G. G. McLennan, Chairman, General Committee of Adjustment, Order of Railway Conductors; C. E. Weisell, Attorney, Order of Railway Conductors; C. H. Smith, Vice-President, Brotherhood of Railroad Trainmen; C. V. McLaughlin, Vice-President, Brotherhood of Locomotive Firemen and Enginemen; R. J. Brooks, General Chairman, Brotherhood of Rail road Trainmen; M. E. Somerlott, Secretary, General Committee, Brotherhood of Railroad Trainmen; W. E. Jones, General Chairman, Brotherhood of Locomotive Firemen and Enginemen ; C. W. Moflitt, 1st Vice-Chairman; Brotherhood of Locomotive Firemen and Enginemen ; Donald R Rehberg, Attorney, Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Firemen and Engine-

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men. On behalf of both the Carriers, appearances were made by A. T. Mercier, General Manager, Southern Pacific Company; A. J. Hancock, Assistant General Manager, Southern Pacific Company ; Robert McIntyre, Assistant to General Manager; Henley C. Booth, General Attorney; and Burton Mason, Commerce Attorney.

Before the conclusion of the hearings, the officers and counsel of the several Organizations and the Carriers made a determined effort to comply with our request that they eliminate, by compromise or agreement, as many of the forty-one items appearing on the strike ballot as possible. The result was that all of the items in which the Northwestern Pacific Railroad Company was concerned, namely, Cases Nos. 29, 31, and 40, were settled. Of the thirty-eight remaining items, twenty-seven, Cases Nos. 3, 4, 5, 11, 13, 14, 15, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, and 41, were eliminated in the same way.

As to the remaining cases, evidence was submitted and exhibits presented to the Board upon which are based the following Findings and Report.

Upon March 26, 1937, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen circulated a strike ballot among the Firemen, Enginemen, and Trainmen of the Southern Pacific Company and Northwestern Pacific Railroad Company. The strike ballot cited forty-one causes of grievance. Over five thousand men were employed by the Carrier in the capacities named. These employees voted by a large majority to strike.

Of the forty-one items cited in the strike ballot, all except eleven have been amicably settled.

Although the disputes are ostensibly between the two Brotherhoods named above and the Carrier, most of the cases here reviewed arise from inter-organization controversies wherein these Brotherhoods, and the Brotherhood of Locomotive Engineers and the Order of Railway Conductors are involved, as shown in the following discussion of the several cases.

The items as numbered on the strike ballot investigated by us were Cases Nos. 1, 2, 6, 7, 8, 9, 10, 12, 16, 18, and 24.

CASE NO. 1

Request for cancellation of agreement February 28, 1936, secretly negotiated between Carrier and representatives of the Brotherhood of Locomotive Engineers, placing certain restrictions as to handling of cases by the General Committee of the Brotherhood of Locomotive Firemen a nil Enginemen in violation of schedule rules, past practice and the Railway Labor Act, also definite understanding whereby the rights of our organization to represent. its membership shall be protected in accordance with our agreements and Railway Labor Act. (Strike Ballot Statement.)

The Brotherhood of Engineers and the Brotherhood of Firemen and Enginemen each have a contract with the Southern Pacific Company, Pacific Lines.' These contracts embody the rules, resulting from many years of experience, accepted by the contracting parties as the law governing the industrial relationship between the Carrier and Engineers, and between the Carrier and Firemen and Enginemen.

A characteristic of locomotive employment in railway operation is that there are constant changes in the duties to which an employee may be assigned. At all times these changes, due to the nature of the occupation, take place, but the fact is more noticeable in abnormal economic periods. In times of depression, large numbers of engineers are demoted, and, because of their seniority rights, displace firemen. It is quite conceivable, and perhaps has happened, that all employees on a division serving as firemen may be, in fact, demoted engineers. Conversely, in times of prosperity, large numbers of firemen are promoted to engineer service for long or short periods according to the volume of transportation business.

The present dispute is an indirect result of this constant ebb and flow in the nature of the employment. A number of employees are members of both organizations. Some belong to neither, but most of them belong to one or the other. Consequently, when a fireman member of the Firemen's Organization is promoted to engineer service, he works under the contract negotiated by the Engineers' Organization, and is bound by the interpretation placed upon the rules thereof as interpreted by that Organization and the Carrier. A demoted member of the Engineers' Organization is similarly governed by the rules of the Firemen's Agreement.

This situation led to an arrangement of many years' standing, in which the Carrier and both Organizations, concurred, to the following effect :

> The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule involved, is conceded, (Section (a), Article VII.) [2]

'Formerly the Engineers and the Firemen and Enginemen had a joint agreement, known as the Chicago Joint Working Agreement, with the Carrier. In 1927, this agreement was abrogated, and separate contracts were made. Most of the provisions of the separate contracts are taken bodily from the Joint Working Agreement.

[2] Chicago Joint Working Agreement, 1913.

Subsequently, in each of the separate contracts between the Carrier and each organization, the same provision was in effect preserved.[3]

In the National Railway Labor Act as amended (48 Stat. L. 926, U. S. Code, Title 45, Chap. 8) many of the principles of these and similar agreements between Carriers and the Organizations throughout the country, especially those recognizing the rights of collective bargaining and representation,[4] were embodied in Federal law, and appropriate methods for the protection of these rights were established.

The result of the agreements cited above (which obviously are in accord with the intent and purposes of the National Railway Labor Act) has been that, for over thirty years, engineer members of the Firemen's Organization have been represented by that Organization in cases involving rules in the Engineers' Agreement, subject, however, to the interpretation of the rules as agreed upon by the Carrier and the Engineers' Organization.

On February 14, 1936, the Carrier addressed a letter to the Brotherhood of Locomotive Firemen and Enginemen, which, in part, states :

> * * it has been decided that for cases presented by the Brotherhood of Locomotive Firemen and Enginemen involving rules in the Engineers' Agreement, we must have an interpretation from the General Chairman, Brotherhood of Locomotive Engineers, on such rules as are applicable to the case or cases being so handled. It is hoped that the Brotherhood of Locomotive Firemen and Enginemen will arrange to comply with this requirement if not, it will be necessary for the carrier, before rendering decision, to handle with General Chairman,

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[3] Thus, Article 32, Section 22, of the Engineers' Agreement, effective January 9, 1931, provides :

> The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.
>
> All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.
>
> In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employees either individually or collectively.

Article 51, Section 1, of the Firemens' Agreement, effective May, 1929, provides :

> The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of *his* organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

[4] For example, Section 2 declares one of the purposes of the Act is to "forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization ; to provide for the complete independence of carriers and of employees in the matter of self-organization", and Paragraph J of Section 3 of the Act, which relates to the National

or *by* other representatives as they may respectively elect."

> Brotherhood of Locomotive Engineers, giving him history and facts in the case, with request that he furnish the carrier his interpretation of rules involved.

A similar notice was sent, to the Engineers' Organization.

The Brotherhood of Locomotive Firemen and Enginemen protested that the procedure proposed did not conform to its Agreement with the Carrier, and would, if adopted, seriously modify and impair their members' rights under Article 51, Section 1, of the Firemen's Agreement. The Brotherhood of Locomotive Engineers regarded the assurance given as too indefinite and so notified the Carrier.

Upon February 27, 1936, the following accord was reached between the Brotherhood of Locomotive Engineers and the Carrier:

> * * * when cases are presented to the carrier by representatives of an organization other than the Brotherhood of Locomotive Engineers, involving rules in Engineers' Agreement, the carrier's representative will advise representatives of said organization that it must have an interpretation from the General Chairman, B. of L. E., on such rules as are applicable to the case, or cases, being so handled. If this is not done, the Carrier before rendering decision, will handle with General Chairman, B. of L. E., giving him history and facts in the case with request that he furnish the Carrier his interpretation of the rules involved.
>
> It is understood that. settlements made with said organization involving claims of engineers covered by rules of the Engineers' Agreement will be in conformity with interpretations agreed upon between the General Chairman, B. of L. E., and the Management.

The Firemen's Organization asserts, and it is admitted by the Carrier, that the former had no knowledge of the negotiations leading up to this Agreement other than what might have been inferred from the notice of February 14, 1936, above quoted. The reason given by the Carrier for the accord of February 27, 1936, is that the Brotherhood of Locomotive Engineers had, for a considerable period, been complaining about the handling of cases by the Brotherhood of Locomotive Firemen and Enginemen involving members of the latter organization acting in the capacity of engineers. The basis of their complaint was that the Firemen's Organization, with the Carrier, was mishandling such cases and was thereby seriously undermining the Engineers' Agreement. The Brotherhood of Locomotive Engineers, had, according to the Carrier's representative, applied 'considerable pressure, going to the extent of threatening a strike unless all such cases were submitted to the Brotherhood of Locomo-

tive Engineers before final settlement. Theretofore, the Carrier had assumed no obligation to notify the Engineers' Organization until a case of this nature had been carried to a conclusion, although in many instances it had consulted with that Organization as to the interpretation of rules.

The agreement of February 27, 1936, between the Carrier and the Brotherhood of Locomotive Engineers, as interpreted and followed by the contracting parties, modifies and impairs the right of representation theretofore secured to the Brotherhood of Locomotive Firemen and Enginemen through its contract with the Carrier.

It also offends the objects and principles of the Railway Labor Act and infringes upon the rights intended to be secured by that Act. This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes between carriers and their employees. It was devised by representatives of management, the employees, and the public. It secured the benefits of unhampered collective bargaining to the several crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class in the *making* of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce, through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract.

In Section 2 of the Railway Labor Act, Paragraph 4, it is declared unlawful for the carrier to "influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization." Without finding that the carrier had the purpose of influencing its employees to leave one organization and join another, the Agreement of February 27, 1936, did, as hereafter shown, put serious handicaps upon the power of the Brotherhood of Locomotive Firemen and Enginemen to protect promptly and adequately the rights of its engineer members, and to that extent made membership in the Brotherhood of Locomotive Engineers more desirable.

In the present case, the Carrier, in making the agreement of February 27, 1936, offended not only against the plain intent of the law, but broke its specific agreement with the Brotherhod of Locomotive Firemen and Enginemen, several times reaffirmed, that any engineer member of the latter Organization can have the regularly constituted committee of his Organization represent him in the handling of grievances. There was no restriction in the Firemen's Agreement upon this right. The interpretations of rules were to be made in accordance with the recognized interpretation agreed upon between the Carrier and the Organization holding the contract, but there was no limitation upon the right of an engineer member of the Brotherhood of Locomotive Firemen and Enginemen to have the committee of his Organization represent him in handling the case, under the recognized interpretation of the rule applying to his case.

The agreement of February 27, 1936, as interpreted and as followed by the officer of the Management directly in charge, and by the Brotherhood of Locomotive Engineers, required the Carrier to report the circumstances of *every* case of an engineer member of the Firemen's Organization to the Brotherhood of Locomotive Engineers in every detail, and to refrain from making any adjustment or settlement of the case, until an interpretation of the rule involved had been given by the Brotherhood of Locomotive Engineers. This is inconsistent with the express public policy, as announced by the Railway Labor Act "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Cases arise, of course, where the interpretation of a rule is doubtful. In these cases the Carrier should, in the interest of orderly procedure and for its own protection, seek a correct interpretation before applying the rule, but this is a far different procedure from that to which the Carrier as shown by its practice has bound itself, namely, to submit the case of every engineer who is represented by the Brotherhood of Locomotive Firemen and Enginemen, to the Brotherhood of Locomotive Engineers before making an adjustment or settlement. The record convinces us that in a large number of cases, such submission would accomplish nothing except delay and vexation. The Engineers' Organization insists that every case submitted involves an interpretation of a rule, and this is true, but in many cases the interpretation of the rule is well-recognized and its application is plain. The Engineers' own Agreement explains the recognized interpretation of many of its rules.

A second and more definite infraction of the Firemen's Agreement as interpreted by the officer of the Carrier directly in charge of the adjustment of claims and the Brotherhood of Locomotive Engi-

veers is in the matter of compromising claims. The Brotherhood of Locomotive Engineers reserves the right (which it often exercises) to compromise a claim of one of its members operating under its agreement; but now, under the Agreement of February 27, 1936, it denies the Brotherhood of Locomotive Firemen and Enginemen the right to compromise any claim in behalf of one of its engineer members. The right to make a compromise may be a valuable element in the successful handling of a case, and the deprivation of this right,. long recognized as being accorded to the Firemen's Organization under its agreement, is a serious breach of that agreement.

. The Engineers' Organization urged that any compromise constitutes a precedent, or at least may cast doubt upon the proper interpretation of a rule. Since, however, each of the Organizations has la many compromises hitherto made, specifically provided that the =coinpromises are not to be considered precedents, or to be authority for any interpretation of the rules under wick the cases arise, the objection can obviously be removed by similar provisions in all compromises made in future by the Firemen's Organization in cases involving rules of the Engineers' Agreement.

From the foregoing it must be evident that the rights of the Firemen's Oganization to handle effectively the cases of their engineer members were seriously affected by the Agreement of February 27, 1936, and that the Carrier should not have entered into any such agreement without giving proper notice to the Firemen's Organiza-, tion and without having had more definite advice than it apparently. had, as to the agreement's legality.

The contention that the Firemen's Organization, in handling the cases of engineer members, is undermining the Engineers' Agree-. anent to any appreciable degree is not sustained by the evidence. -

Further, it was not shown that the Firemen's Organization has any reasonable incentive to undermine the rules of the Engineers' Agreement. To the contrary, the interests of its members, who sooner or later may become engineers, requires that the Engineers' Contract be sustained. Lastly, a large number of the rules of the Engineers' Agreement are identical with those of the Firemen's Agreement, so that the undermining of the Engineers' rules would be equally injurious to the Firemen's Organization.

The Agreement of February 27, 1936, has, according to the Carrier, proved disappointing in its operation. Because of the eager rivalry between the two Organizations to increase their membership, there is an expressed suspicion on the part of the Firemen's Organization that the Engineers' Organization will use the advantages gained by this Agreement to their detriment. They feel, also, that the deprivation of their formerly recognized right to compromise is, unwarrantable.

We find that--

(I) As interpreted by officers of the Brotherhood of Locomotive Engineers, and certain officers of the Southern Pacific Company, Pacific Lines, the Agreement of February 27, 1936, entered into between the Carrier and the officers of this Organization, has adversely affected rights of the Brotherhood of Locomotive Firemen and Enginemen secured to them by their Agreement with the Carrier in Article 51, Section 1, of the Firemen's Agreement of May 1929, and secured to them by the Railway Labor Act.

(2) The Agreement of February 27, 1936, should, therefore, be cancelled.

(3) The evidence presented in this case indicates clearly that this can be done without adversely affecting the just interests of the parties to the Agreement :

(a) If in conformity with its own understanding of the recognized or agreed upon interpretation of the rule involved, the Carrier promptly makes its awards on claims for adjustment of grievances brought to it by representatives of the persons making the claims.

(b) If the Carrier promptly furnishes copies of its awards to officers of Organizations having an interest in them, either because they hold an Agreement with the Carrier, a rule of which is being applied, or because they represent the party making the claim as a member of their Organization.

(c) If in the event claims are compromised, this fact is clearly noted and as a matter of standard practice, it is stated that compromised awards are made without prejudice to the rule of the working agreement in question.

(d) If the Organization holding the Agreement avails itself of existing remedies to correct any misinterpretation of its rules involved in a settlement made by the Carrier.

CASE NO. 2

Request for cancellation of agreement of October 26, 1936, secretly negotiated between Mr. R. McIntyre and representatives of the Order of Railway Conductors, placing certain restrictions as to handling of cases by the General Committee of the Brotherhood of Railroad Trainmen in violation of many years of past practice and the Railway Labor Act ; also definite understanding whereby the rights of our organization to represent its membership shall be protected in accordance with our agreements and Railway Labor Act. (Strike Ballot Statement.)

In this case, the conflict involves a situation closely resembling that which has been covered in the preceding case, except that the dispute involves the relations between the Carrier and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen;--

Promotions of brakemen to employment as conductors, and demotion of conductors to brakemen occur constantly as in the case of firemen and engineers.

So far as the documents involved are concerned, the principal difference between this case and Case No. 1 is that. the Brotherhood of Railroad Trainmen in its Agreement with the Carrier has made no special provision for representation where a member of its Order is operating as a conductor, instead of as a brakeman or other trainman. However, since for many years members of the Trainmen's Organization, acting as conductors, have been conceded by the Order of Railway Conductors the right to be represented throughout by the Trainmen's Organization, in disputes involving the. Conductors' Agreement, it seems clear that until the present dispute arose, this was the agreed and accepted policy of both Organizations. This right, as shown by Case No. 1, is in accordance with the provisions of the Railway Labor Act.

In 1925 the two Organizations which had previously worked under a single Agreement with the Southern Pacific Company, Pacific Lines, separated their Agreements. Thereafter, for a period of about ten years, their officers sometimes acted independently in the presentation to the Carrier of claims of their members for the adjustment of grievances and sometimes submitted joint dockets. During this period the Carrier freely consulted with the officers of either or both Organizations in the process of adjusting so-called inter-locking claims, e., claims presented by one Organization in behalf of a member working under the Agreements held by another Organization.

In the spring of 1936 the General Chairman, Order of Railway Conductors, asked for an agreement which would give his Organization more control over the adjustment of claims, presented by the Brotherhood of Railroad Trainmen on behalf of its members working as conductors, upon the ground that the Carrier was misinterpretating the rules of the Conductors' Agreement in many such cases.

In amplification of this request, he subsequently wrote in part :

> What I desire is a rule, properly made out and signed, in order that there would be no misunderstanding. As stated to, you over the telephone, *it is my intention to regulate the action of Organizations other than the Order of Railway Conductors,* in submitting claims or complaints to you or other General Officials involving Conductors' Agreement.[5]

On October 26, 1936, an Agreement between the Management and the Conductors' Organization, similar to the Agreement of Feb-

[5] Italics ours.

rum_y 27, 1936, between the Brotherhood of Locomotive Engineers and the Carrier, provided:

> When cases are presented to the Carrier by representatives of an Organization other than the Order of Railway Conductors, involving rules in Conductors' Agreement, the Carrier's representative will advise representatives of said Organization that it must have an interpretation from the General Chairman, 0. R. C., on such rules as are applicable to the case or cases being so handled. If this is not done, the Carrier, before rendering decision, will handle with General Chairman, **0. R.** C., giving him history and facts in the case with request that he furnish the Carrier his interpretation of the rules involved.
>
> It is understood that settlement made with said Organization involving claims of conductors covered by rules of the Con-, ductors' Agreement will be in conformity with interpretations agreed upon between the General Chairman, **0. R.** C., and the Management.

The officers of the Brotherhood of Railroad Trainmen did not; participate in the conferences which led. to the Agreement of October 26, 1936, and testified that they were not officially informed about it until much later.

It was made evident that the Agreement has resulted in definite and important changes in the procedure previously followed by the Carrier in adjusting claims presented by the Brotherhood of Railroad Trainmen on behalf of its members working as conductors. In contrast with the Carrier's contention that the Trainmen's Organization was not affected, the officer of the Carrier immediately in charge of adjusting such claims indicated that he construed the; Agreement to mean that he must refer all claims presented by the Brotherhood of Railroad Trainmen on behalf of a conductor member to the officers of the Order of Railway Conductors for an interpretation. This officer also indicated that he construed the Agreement to mean that he would not be free to compromise a claim brought by the Brotherhood of Railroad Trainmen on behalf of a member working as a conductor unless the General Chairman of the Order of Railway Conductors had approved it. These interpretations of the Agreement were insisted upon by the officers of the Order of Railway Conductors. Officers of the Carrier, prior to the making of this Agreement, did not uniformly refer claims for the adjustment of grievances brought by the Brotherhood of Railroad Trainmen on behalf of a member working as a conductor to the Order of Railway Conductors. Also, they had theretofore made compromise settlements of claims directly with officers of the Brotherhood of Railroad Trainmen when presented on behalf of a con-

ductor member. It follows that the Agreement of October 26, 1936, did in fact deprive members of the Brotherhood of Railroad Trainmen of rights of long standing and that they were deprived of these rights by an Agreement about which they were not consulted.

The same reasons, in effect, for the necessity of the new Agreement were advanced in this case as in Case No. 1: namely, that mishandling by the Trainmen's Organization with the Carrier in cases involving conductors was resulting in the undermining of the Conductors' Agreement. The evidence does not indicate the existence of any such danger. Furthermore, the same condition exists between the Conductors and Trainmen as that between the Engineers and Firemen ; e., constantly the trainmen are promoted to be conductors and conductors are demoted to be brakemen so that the breaking down of the Agreement affecting either class would be to the detriment of many future members of that class. Furthermore, the rules in the Conductor's and Trainmen's Agreement are for the most part practically identical.

The same answers are given by the Trainmen's Organization as -were given by the Firemen's Organization in Case No. 1.

We unanimously find that there is no real justification for the Agreement of October 26, 1936, and that it should be cancelled for the same reasons stated in our conclusions in Case No. 1.

BLOCKED CASES

The following case, and several others included in the strike ballot, disclose a serious situation.

The original National Railway Labor Act was amended in 1934 and the National Railroad Adjustment Board was created. This Board consists of thirty-six members, eighteen of whom are chosen by the Carriers, and eighteen by Organizations representing the employees. The Board is composed of four divisions. The first division consists of ten members, five of whom are selected by the Carriers and five by the Organizations. It has jurisdiction over disputes "involving train and yard-service employees of Carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees."

Upon failure of any division to agree upon an award, in any case ,submitted to it, because of deadlock, a neutral person, to be known as "referee" is to be selected to sit as a member of the division.

The National Railroad. Adjustment Board was established, as we understand it, for the purpose of making binding awards in all cases

carrier or carriers growing out of grievances or out of the interpre-

tation or application of agreements concerning rates of pay, rules, or working conditions."

Theoretically, it is possible for the Organization representing an aggrieved employee to secure an enforceable judgment through the Board. We find, however, that, in practice, this remedy is apparently becoming more and more inaccessible in cases where the employee whose grievance is involved, is working under an Agreement of an Organization other than that of which he is a member—a fact which seemed to be conceded and deplored by the very able attorneys who appeared before us in this case.

The reason for this situation is that while the Board represents Carrier and Labor equally, many cases arise where one or another of the labor organizations represented on the Board feels that an award in favor of an employee member of another Organization will re-act adversely to his (the representative's) Organization. So many cases of this kind have arisen that, keen though their rivalry is, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen have apparently agreed among themselves that no case will be presented to the Board by one Organization without the consent of the other [6] and the Board will not assume jurisdiction unless this consent is given. Consequently, not only in the case of the Carrier involved here, but throughout the -whole railway system of the United States, an increasing number of grievances cannot be even heard by the Board. This results in grave injustice to the employee.

This mass of unadjusted cases will continue to grow until the present situation is remedied. They may not involve principles of sufficient importance to cause the circulation of a strike ballot, but when, for some other reason, a strike ballot is taken, the accumulation of these cases will be included in the ballot in increasing numbers.

In the present instance, although the situation has existed for only a short time, there were several of these cases among the forty-one items on the strike ballot. Had it not been for the much appreciated Cooperation of the attorneys and officers representing the Organizations and those of the Carrier, it would have been a physical impossibility for us to have made an examination sufficient to justify a report' within the time allowed by the Act. When, if the present situation continues, strike ballots include all the "blocked" cases which have accumulated, the efficiency of any Emergency Board will be increasingly impaired.

At present one of the principal purposes of the Railway Labor Act, namely : "to provide for the prompt and orderly settlement of

[6] A similar arrangement appears to exist between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

all disputes concerning rates of pay, rules, or working conditions" is being in many cases defeated by the foregoing circumstances.

Unless the Organizations themselves, which have the power to do so, solve this question, it lies within the jurisdiction of Congress to enact remedial legislation.

Meanwhile, this Board must not attempt to usurp the functions of the National Railroad Adjustment Board. The Act contemplates the settlement of disputes through orderly processes, and it is only after any grievance has been reviewed by the appropriate agency, as established by the Act, that an Emergency Board can properly make a recommendation based on the merits of the case.

CASE NO. 6

Claim of Brakeman W. S. Orr, Western Division, for 50 miles runaround, Oakland, July 26, 1935. (Strike Ballot Statement.)

The dispute over this claim arises from disagreement about the status of Mr. Orr at the time the claim originated. Officers of the Brotherhood of Railroad Trainmen contend that while Mr. Orr was assigned as a brakeman in pool freight service and eligible for the next call as an extra conductor, the Carrier used a junior promoted' brakeman as extra conductor and thus became liable to pay Mr. Orr for 50 miles in conformity with Article 23 of the Agreement between the Brotherhood of Railroad Trainmen and the Carrier, providing in part as follows :

> Section (a) Trainmen in pool freight and unassigned service will be run first-in first-out, and if not called in turn through no fault of their own, they shall be allowed 50 miles and stand first out; if not called for service within the limits of eight hours, 100 miles will be allowed and stand last out. Runarounds will be paid at the rate applicable to class of service for which they should have been called.

Officers of the Order of Railway Conductors contend that the, claim of Mr. Orr is invalid because (1) the Agreement of the Conductors' Organization governs any failure to call in for service an extra conductor, and, (2) for the territory in question, the Order of Railway Conductors has an agreement with the Carrier of July 13, 1935, governing lay-overs under which Mr. Orr could not properly make a claim for a runaround payment.

The Brotherhood of Railroad Trainmen has sought to refer the claim to the National Railway Adjustment Board, Division 1, but the officers of the Order of Railway Conductors have refused to permit such reference on the ground that the claim was properly settled under the Conductors' Agreement, and hence there is no dispute which is properly referable to that Board.

Your Board feels that this case which, in the general issue involved, closely resembles Case No. 8, following, should be referred to the National Railroad Adjustment Board, Division 1, and that the blocking of such reference is ill-advised. The question of when a trainman, in shifting to employment as a conductor, and vice versa, is properly subject to a particular agreement with the Carrier is one which the National Railroad Adjustment Board, Division 1, is particularly well equipped to settle because of its familiarity with precedents and satisfactory practice on railroads through the country. Also the question is one to which the Organizations involved might easily offer a general solution adequately protecting their interests as well as those of the Carrier in this and other similar cases. We recommend that, to avoid needless delay and inconvenience, they proceed to a solution through agencies specially constituted to handle such matters and available to them.

CASE NO. 7

Protest against engineers being permitted to take assignments as firemen after giving up their road rights and accepting permanent assignments as fixture yard engineers.

When during the depth of the depression the working lists of switch engineers were reduced, several engineers who were removed from these lists secured working assignments as road firemen.

The officers of the Brotherhood of Locomotive Firemen and Enginemen contend that such assignments were made in violation of Section 18, Article 28, of their Agreement with the Carrier (first incorporated in May 1910 as Paragraph E, Section 13, of their Agreement at that time) providing that:

> A fireman, or a promoted fireman returned to firing service, under Section 36 (a), bidding for and accepting assignment to the position of switch engineer, thereby forfeits all seniority rights as fireman.

Officers of the Brotherhood of Locomotive Engineers contend, on the contrary, that in taking positions as switch engineers, the engineers in question did not forfeit their seniority rights as firemen. In support of this contention, they cite Section 6 (a), Article 32, of their Agreement with the Carrier, providing :

> When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions.

The Carrier contends that since the engineers in question were in service as engineers when they accepted assignments to yard service, Section' 18, Article 28, of its Agreement with the Brotherhood of Locomotive Firemen and Enginemen does not apply, it being properly applicable only to firemen or promoted firemen returned to firing service.

The switch engineers whose assignments as road firemen gave rise to the protest of the Brotherhood of Locomotive Firemen and Enginemen in this case are at present working again as switch engineers. Consequently, the protest is not aggravated by their current displacements of firemen. However, the case does present a clear-cut conflict over the proper interpretation of provisions in working agreements. As such it is properly referable to the National Railway Adjustment Board, Division 1, for decision, but representatives of the Brotherhood of Locomotive Firemen and Enginemen stated that such reference is blocked by the unwillingness of the officers of the Brotherhood of Locomotive Engineers to permit it.

If we were called upon to settle the conflict over, the proper interpretation of the rules in question, we would decide that the Carrier did not violate Section 18, Article 28, of its Agreement with the Firemen's Organization in assigning these switch engineers to service as road firemen. We were pursuaded by the evidence presented that this rule was not designed to deprive engineers of their seniority rights as firemen upon their acceptance of assignments as switch engineers, but for another purpose. However, the proper solution of this problem is to be found by referring the case to the National Railway Adjustment Board, Division 1. If it is true that it was impossible to have this case presented to that Board, the extent to which the purposes of the Railway Labor Act are being frustrated is here well illustrated.

CASE NO. 8

Claim of Brakeman Rito Frain, Los Angeles Division, for 131 miles, July 18, 1929. Similar claims and cancellation of an agreement dated September 28th, 1929.

The claims involved are based on Section (a), Article 42, Trainmen's Agreement, reading:

> When trainmen are held waiting for their own crews, after having been taken off regular runs and sent out on special or other trains, they will be paid full compensation for such time as they are so held.

And there are a large number of these cases unsettled pending settlement of this dispute. The Brotherhood and Conductors' Committees appealed a number of claims as involved in this case, and in each instance claims were submitted on basis Section (a), Article 42, Trainmen's Agreement was applicable.

Without conference and agreement with the Brotherhood's Committee the Carrier made an agreement with the Conductors' Committee on September 28th, 1929, setting aside the Trainmen's rule and providing for rules and pay-

ment of 100 miles at brakemen's rate in lieu of mileage of the assignment (for example, Rito Frain case, 131 miles), on basis Article 46, Conductors' Agreement was applicable.

The Jurisdiction Committees of the two Organizations (Brotherhood of Railroad Trainmen and Order of Railway Conductors), on April 2nd, 1932, decided that payments should be made under Article 42, Trainmen's Agreement.

This case also involves the principle of the Carrier eliminating schedule rule from Trainmen's Agreement without conference and agreement with the General Committee of the Brotherhood of Railroad Trainmen. (Strike Ballot Statement.)

This is a claim made by the Brotherhood of Railroad Trainmen on behalf of brakeman Rito Frain, Los Angeles Division, who held a regular through freight assignment between. Los Angeles and Indio, a distance of 131 miles. Just prior to July 18, 1929, Frain was called to serve as conductor between Indio and Calexico. At the conclusion of his tour, July 17, he deadheaded to Los Angeles. On the morning of July 18 he was marked as brakeman on the Los Angeles board. He lost one day in Los Angeles awaiting the return of his regular assigned crew.

He made claim for 131 miles through the Chairman of the Brotherhood of Railroad Trainmen and was allowed 100 as a brakeman.

The two rules involved are :

Section (a), Article 46, Conductors' Agreement which provides :

> When conductors are held waiting for their own crews, after having been taken off regular runs and sent 'out on special or other trains, they will be paid full compensation for such time as they are so held.

Article 42, Section (a), Trainmen's Agreement contains the same provision relating to trainmen.

The Chairman of the Brotherhood of Railroad Trainmen presented Mr. Frain's claim for 131 miles to the Train Service Board of Adjustment, Western Region. It was later transferred to First Division, National Railroad Adjustment Board.

It is claimed by the General Chairman, Order of Railway Conductors, that Frain retained his status as conductor during the waiting period, and that the recognized interpretation of the Conductors' Agreement must govern. The Brotherhood of Railroad Trainmen contends that he resumed his status as a brakeman during the waiting period.

There is a conflict of jurisdiction between the Brotherhood of Railroad Trainmen and the Order of Railway Conductors as to which should represent Frain. On this question the Jurisdiction Committee of the Order of Railway Conductors and Joint Relations Committee of the Brotherhood of Railroad Trainmen, and President Berry, of the Order of Railway Conductors, and President Whitney, of the

Order of Railroad Trainmen, rendered a decision on August 3, 1932, which was as follows:

> DEcisioN.—/t *is decided that when a trainman is used as a conductor for a trip or trips and then is relieved as a conductor, he automatically reverts to the jurisdiction of the Trainmen, thereby sustaining the Trainmen's contention that they had the right to submit their claim to the train service board.*

The representative of the Conductors' Committee refused to comply with this decision, and on January 16, 1936, President Phillips, of the Order of Railway Conductors, withdrew his approval of the submission to the Adjustment Board.

Since, in the opinion of this Board, the question involved is simply as to when a brakeman assigned to duty as a conductor resumes his status as brakeman, the National Railroad Adjustment Board, Division 1, should take jurisdiction.

Our comment and recommendation in Case No. 6 are applicable to this case.

CASE NO. 9

Protest against the use of Shasta District, Sacramento Division, engineers on Portland Division out of Klamath Falls when Portland Division firemen (demoted engineers) are available at Klamath Falls, in violation of agreements with the Brotherhood of Locomotive Firemen and Enginemen providing that when train service is available engineers and firemen from Eugene extra list will be dead-headed from Eugene to Klamath Falls to perform work on Portland Division, also agreement with the Brotherhood of Locomotive Firemen and Enginemen that when train service is not available Portland Division firemen (demoted engineers) will be used out of Klamath Falls when no regular or extra engineers are available. (Strike Ballot statement.)

The Portland Division and the Shasta District are separate and distinct seniority districts. The Portland Division extends from. Portland to Klamath Falls and the Shasta District, of the Sacramento Division, extends from Klamath Falls to Gerber.

On November 26, 1926, representatives of the Brotherhood of Locomotive Engineers and, the Brotherhood of Locomotive Firemen and Enginemen entered into an agreement with the Carrier which provides, among other things, that "in case Portland or Shasta extra lists at Klamath Falls should become exhausted, men from either extra lists may be used."

This arrangement continued in effect until April 1927, when a closed pool arrangement was put into effect for the firemen between Klamath Falls and Crescent Lake, and subsequently adopted by the engineers with some slight modifications.

There was much confusion as to what actually occurred in this case, and apparently considerable misunderstanding up to the time

that it was presented to this Board. It appears that the representatives of the Carrier in a number of instances made use of men not eligible for service under the firemen's and the engineers' agreements above noted, thereby saving dead-head mileage. At first when the attention of the Carrier was called to these cases proper restitution was made to the employees whose places had been improperly taken. Later the firemen's organization, understanding that the engineers' organization had canceled its agreement with the Carrier and was allowing the use of engineers from the Shasta Division upon the Portland Division out of Klamath Falls, filed its protest with the National Mediation Board.

It developed at the hearings, however, that the agreement of the engineers' organization and the Carrier had apparently never been abrogated. The dispute as shown in the strike ballot consists of a claim upon the part of the firemen's organization that the Carrier had broken its agreement with the firemen's organization with regard to using engineers. As presented to this board, however, the contention now is that there was a joint agreement between the firemen's and engineers' organizations with the Carrier.

Our finding is that there was no such joint agreement, since the engineers entered into their agreement with the Carrier independently and several months after the firemen's organization had made its agreement. When the engineers' organization made its contract all employees serving as engineers were, of course, bound by the terms of the agreement. The organization had the same right to cancel its agreement, and if it had done so, all engineers, whether members of the firemen's organization or not, would have been bound by the cancellation.

There is no similarity between this case and cases numbers 1 and 2. No right of representation is here involved. Our finding would have been the same even had it not developed that the engineers' organization had not canceled its agreement with the Carrier.

CASE NO. 10

Claim of Conductor C. Oilman and crew, Sacramento Division, for additional compensation while engaged in fire train service, May 15th to November 20th., 1926, except May 29, October 6 and 9, 1926.

This conductor member filed claim for additional compensation for each date he performed fire train service, May 15th to November 20, 1926. He was paid for three dates, May 29th, October 6th and 9th, 1926, but Carrier declines payment for other dates account alleged objection from another organization. (Strike Ballot Statement.)

In this case, conductor Oltman, a member of both the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, presented through officers of both Organizations claims for extra

compensation for himself and crew while engaged in fire train service. Through officers of the Order of Railway Conductors, the extra compensation sought was awarded by the Carrier for the dates October 6 and 9, 1926. Through officers of the Brotherhood of Railroad Trainmen, the extra compensation sought was awarded for the date May 29, 1926.

It is the contention of officers of the Brotherhood of Railroad Trainmen that on eighty-five other days between May 15 and November 20, 1926, conductor Oltman and his crew performed fire train service of the same kind as that for which extra compensation was awarded to him through their Organization for May 29, 1926, and that consequently, he and his crew are entitled to the extra compensation sought for the eighty-five additional days in question.

Officers of the Order of Railway Conductors join with the Carrier in contending that the claim of conductor Oltman is invalid because it was not presented before April 1934, when in the process of revising the fire train rule of the Conductors' Agreement (Article 30) they reached an understanding that the Carrier would not be obligated to pay claims for additional compensation arising under that rule in addition to those already presented to it. Also, officers of the Order of Railway Conductors contend that the claim of conductor Oltman's crew for added compensation is invalid because it is contrary to a similar understanding between the Carrier and officers of the Brotherhood of Railroad Trainmen reached during the process of revising the rule in the Trainmen's Agreement applicable to fire train service (Article 27) settling existing claims for added compensation on account of fire train service. The Carrier contends that the claim of conductor Oltman and crew is further invalidated by the fact that the service performed on the eighty-five days for which additional compensation is sought was not the same as that performed on May 29, October 6 and 9 for which additional compensation was granted,. but evidence to support this contention was not presented.

This case results from the fact that conductor Oltman was a member of both organizations and courted complications when he filed claims through each of them. However, the rule is, as we understand it, that when an interpretation of a rule is agreed upon and a case settled accordingly, an employee is entitled to have the same settlement applied with reference to subsequent services of the same character as that in which the settlement was reached. In this case the interpretation of the rule was agreed upon by the conductors organization and the Carrier with reference to the services of October 6' and 9, 1926. It was applied to the services of May 29, 1926, as to which conductor Oltman was represented by the trainmen's organization. We believe that he is entitled to similar compensation for all

like services up to the time when the Carrier and conductors organization agreed to change the rule, April 10, 1934.

The conductors organization had no right to agree (nor do we believe that it intended to agree) that Oltman's claims for the period. May 29–October 6, to which he was represented by the trainmen's organization should be waived. It was apparently a matter of oversight that he and his crew were not safeguarded when the two organizations agreed with the Carrier to change the rule. If the trainmen's organization had waived his rights even unintentionally, or if the conductors' organization had had the right to do so, he would have had no recourse. Neither of these circumstances existed, however, so far as we can discover. He still has the right to be represented by the trainmen's organization in accordance with the accepted interpretation of the rule as agreed upon by the conductors' organization and the Carrier up to April 10, 1934. To find otherwise would be to find that the conductors' organization had the right to compromise the claim of an employee represented by the trainmen's organization.

The Board recommends that the Carrier should negotiate with the trainmen's organization alone with regard to this case.

The contention was raised that the services here involved were different from those which were settled, but nothing was presented in the testimony tending to offset the positive evidence offered in behalf of Oltman. If there is any substantial evidence showing that the character of the employment for the period covered by the present claim is different from that as to which claims were allowed, it can, of course, be considered in the negotiations or presented in subsequent proceedings.

CASE NO. 12

(Mediation Case A-85.) Cancellation part-time mileage agreement date& March 21st, 1933, effective April 1st, 1933, and Carrier's instructions December 22, 1934, making effective Conductors' Mileage Limitation Agreement of March 17th, 1933, applicable to part-time men.

This dispute involves the action of Carrier in agreeing to place part-time mem under the Order of Railway Conductors' Mileage Agreement without the concurrence of the Brotherhood of Railroad Trainmen's Committee notwithstanding such part-time men worked a portion of each month under the Brotherhood of Railroad Trainmen's Schedule. (Strike Ballot Statement.)

On March 17, 1933, the General Chairman, Order of Railway Conductors, and the Assistant to General. Manager, Southern Pacific Company, Pacific Lines, made what was known as the "Monthly Maximum Mileage Agreement."

By this Agreement, part-time conductors, i. e., trainmen working part of the time as conductors, were made subject to the provisions

for mileage limitation in the Conductors' Agreement with the Carrier.

On March 21, 1933, the General Chairman, Order of Railway Conductors, joined with the General Chairman, Brotherhood of Railroad Trainmen, and the Carrier in making a joint Agreement governing the mileage of part-time conductors.

On August 21, 1934, the General Chairman of the Order of Railway Conductors served notice on the other parties to it of the desire to cancel the Agreement dated March 21, 1933. On December 22, 1934, the Carrier, feeling that by its terms the Agreement must be cancelled upon proper notice from one of the parties, gave notice to the Brotherhood of Railroad Trainmen that the Agreement had been cancelled, and instructed all superintendents that "until further advised, the Agreement reached March 17, 1933, with the General Chairman, Mr. McLennan, 0. R. C., covering conductors, will apply also to part-time conductors."

The General Chairman, Brotherhood of Railroad Trainmen, protested this action, contending that its concurrence must be had to validate any agreement "effecting trainmen working regular or extra, and who are used as conductors any portion of the month" because they properly come under the mileage limitation provision of the Trainmen's Agreement with the Carrier.

This case involves the question of whether a part-time conductor is properly subject to the mileage limitation provisions of the Conductors' Agreement with the Carrier or subject to the mileage limitation provision of the Trainmen's Agreement with the Carrier.
However, this question was not pressed when the officers of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen entered jointly upon the Agreement of March 21, 1933, regulating, in their common interests, the mileage of men shifting back and forth between employment as conductors and trainmen. We feel that they were well advised in taking such an attitude.

The Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen had a dispute in Cases No. 11 and No. 29 involving, as we understand it, the same general question before us in this case. They settled it amicably upon a basis which seems equitable to us. We recommend therefore that the several interests in this case settle it upon a similar basis. If there are differences in principle between this case and Cases No. 11 and No. 29, the case should be resubmitted to the National Board of Mediation since we believe that the question may have been simplified by the compromise made in these and other cases during the hearing.

CASE NO. 16

(Mediation Case A-139.) Request of Committee for withdrawal of formal thirty (30) days' notice by the Carrier of May 14th, 1935, of intention to abrogate Section (b), Article 32, Trainmens' Agreement.

Upon receipt of formal thirty days' notice from the Carrier the representatives of the Brotherhood invoked the services of the National Mediation Board, file A-139.

This case involves the principle as to the right of the Carrier to cancel of abrogate this schedule rule, or other schedule rules without an agreement with the Brotherhood's Committee.

The B. R. T. Committee contends that if any changes, such as zoning, etc., are to be made, it should be by negotiations with such committee and not with or by request of some other organization, in that the rights of trainmen to perform service in accordance with their choice and seniority is involved. (Strike Ballot Statement.)

Section (b), Article 32, of the Trainmens' Agreement with the Carrier, against the abrogation of which the officers of the Brotherhood of Railroad Trainmen protest, makes the following provision :

> A trainman with sufficient seniority as conductor to enable him to hold regular assignment as such on his seniority district, will not be permitted to perform service as brakemen, either regular or extra.

Virtually, the same provision is made by Section (b), Article 36, of the Conductors' Agreement with the Carrier, which states that :

> A conductor with sufficient seniority as conductor to enable him to hold regular assignment as such on his seniority district, will not be permitted to perform service as brakeman, either regular or extra.

Under these rules, an employee eligible to hold a regular assignment as a conductor may be forced to take an assignment distant from his home and otherwise inconvenient to him, when he would prefer work as a brakeman on a more convenient run. Consequently, on May 1, 1935, the General Chairman of the Order of Railway Conductors served the customary (30 days) notice on the Carrier that his Organization wished to eliminate Section (b), Article 36, of its Agreement with the Carrier. Since this rule is virtually identical with Section (b), Article 32, in the Trainmens' Agreement, the Carrier, to keep uniformity in the two Agreements, and also because the rules in question had not been applied satisfactorily from its point of view, on May 14, 1935, gave the General Chairman of the Brotherhood of Railroad Trainmen the customary notice of its desire to eliminate Section (b), Article 32, of its Agreement with the Trainmen's Organization. It is the withdrawal of this notice which the Brotherhood of Railroad Trainmen seeks.

According to the Carrier, the rules in question at present apply to only 2,495 miles of the total of 7,841 miles in its system, having either been waived, or superseded by the creation of so-called seniority zones through its Agreement with the Organizations affected. The Carrier and the officers of the Brotherhood of Railroad Trainmen have also agreed upon additional seniority zones which, if adopted, would, together with waivers, supercede the application of the rules in question over its entire system. On this basis, the Carrier is willing to withdraw its notice to the Brotherhood of Railroad Trainmen of its desire to eliminate Section (b), Article 32, of the Trainmens' Agreement. Officers of the Order of Railway Conductors, however, object to such a settlement of this controversy.

We feel that such hardships as may be imposed upon employees eligible to hold regular assignments as conductors by the rules in question can be eliminated by the adoption of appropriate seniority zone arrangements. Whether or not the arrangements agreed upon by the Carrier and the officers of the Brotherhood of Railroad Trainmen are proper, we do not know. If not, we feel it incumbent upon the officers of the Order of Railway Conductors to join with the officers of the Brotherhood of Railroad Trainmen in work toward an agreement on proper seniority zones to supersede the rules in question upon that minor portion of the Carrier's Pacific Lines where they still apply.

Officers of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen cooperated in placing the rules in question in their Agreements and so placed them over the objection of the Carrier. They should cooperate in removing them or superseding them by appropriate zoning arrangements. In the meantime, 'we do not feel that the Carrier, having reached an Agreement with officers of the Brotherhood of Railroad Trainmen on a mutually acceptable -solution of the problem presented should press its request that Section (b), Article 32 of its Agreement with the Trainmens' Organization be eliminated.

CASE NO. 18

Claim of Yardmen E. L. Corbett, R. Nichols, E. G. Van Scoy, and R. A. Smith, Tucson Division, for one hour March 23, 1934, and claim of Yardmen E. L. Corbett, R. C. Mullins, R. Nichols, and H. L. Kiser, for one hour July 11, 1934 ; also request that check-back be made to corer yard crews who were required to go beyond Mile Post 986 from January 1st, 1926, to date of settlement of this case. Similar case is pending from the yardmen at Watsonville Junction, Coast Division (Docket Case No. 284).

On January 1st, 1926, the Carrier extended Yard Limit Board at Tucson and dispute was submitted to Train Service Board of Adjustment, and on February

This controversy involves the right of the Carrier to change switching limits without regard to schedule provisions covering payments in road

service. The Board has heretofore expressed its opinion on the expansion or contraction of switching limits in the following language :

"The Board decides that the location or relocation of yard limit boards is a managerial prerogative, but that yard limit boards do not necessarily designate switching limits. It is believed changing switching limits should properly be subject to negotiations between the Management and interested employees because rates of pay and rules are involved." .

In this particular case the Board does not understand that the switching limits were changed in accordance with the above quoted decision, and the case is therefore remanded to the parties at interest to dispose of in accordance therewith.

The Carrier agreed with the Firemens' Committee to grant an increase in rates of pay to Firemen where required to perform service beyond the former location of the yard limit board, with provisions for retroactive payment to January 1st, 1926.

The Carrier declines to negotiate settlement or grant yardmen the same consideration afforded firemen. (Strike Ballot Statement.)

In support of these claims the officers of the Brotherhood of Railroad Trainmen contend that several years ago the Carrier arbitrarily extended the yard limits at Tucson, Arizona, and Watsonville Junction, California, and thus became liable to pay yard crews extra com pensation for every time they passed the old yard limits. In support of this contention they cite Article 15 of the Yardmens' Agreement with the Carrier, as follows :

> Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.

The Carrier contends that there is nothing in its Agreement with the Yardmen which restricts in any way its right to extend yard limits; that such an extension is distinctly advantageous to yard crews in enlarging the volume of work available to them; and that hence there is no basis in any existing Agreement with the Brotherhood of Railroad Trainmen or in equity for the claim of added compensation for Yardmen on account of extension of yard limits in the cases in question. There is no evidence showing that the extension of the yard limits was not reasonable or that it was made for the purpose of using Yardmen for actual road service.

Since the officers of the Brotherhood of Railroad Trainmen predicate these claims upon an interpretation of the Yardmens' Agreement with the Carrier, which the Carrier does not accept, the cases should he referred to the National Railroad A.djustment Board, Division 1.

CASE NO. 24

Claim of Brakeman J. H. Carter, Coast Division, for double miles, San Luis Obispo-Santa Barbara and Santa Barbara-San Luis Obispo, June 20, 1934, and dispute as to elimination of helper district involved.

At the time the helper district was agreed to, there were two grades on this district in excess of one per cent, but they were eliminated in 1928 and since that time the Carrier has operated double-headers from terminal to terminal, holding that the second engine was a helper, and have handled far in excess of the tonnage of one engine or tonnage that had been previously handled by engine and helper ; in fact, they are handling approximately the rating of two engines over the district. (Strike Ballot Statement.)

In this case the officers of the Brotherhood of Railroad Trainmen supported the claim of brakeman Carter for double miles San Luis Obispo-Santa Barbara and Santa Barbara-San Luis Obispo by the contention that the Management has so reduced the grades in the territory in question that it is no longer properly classified as a helper district. The Carrier disputes the facts presented by the officers of the Brotherhood of Railroad Trainmen in support of their contention. In the meantime, the Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company, Pacific Lines, provides, in Article 26, that Santa Barbara-San Luis Obispo is helper territory. There has been no careful joint inquiry by the Carrier and the Brotherhood of Railroad Trainmen directed to the question as to whether the Agreement should be revised in this regard.

As a claim arising under the Agreement of the Brotherhood of Railroad Trainmen, we fail to see where the claim of brakeman Carter has merit, since it seems to be directly contrary to the applicable Article of this Agreement. However, the National Railway Adjustment Board, Division 1, is available to decide this question.

On the question of whether, in fact, the territory Santa Barbara-San Luis Obispo is helper territory, we suggest that negotiation between the Carrier and the Brotherhood of Railroad Trainmen would be appropriate, and that successful negotiation might be facilitated by establishment of a Joint Committee of Inquiry to report on the physical facts involved which are currently in dispute.

CONCLUSION

The controversies, on which we have made findings and recommendations in this report, arise primarily from failure to observe carefully the explicit provisions and the spirit of the Railway Labor Act. Strict observance of this Act would reduce the array of controversies we have reviewed to trivial proportions. We earnestly commend the parties in conflict to such observance.

Toward the close of our hearings a national officer of one of the four labor organizations involved in these disputes asserted, without challenge, "this is not a strike against the Southern Pacific Railroad, it is a fight between these organizations." Though we feel that the management of the Southern Pacific Company, Pacific Lines, by greater certainty and centralization in its handling of claims for the adjustment of grievances, would have mitigated the conflict, we found that there is much truth in the statement quoted above. We feel that these four great railroad employee organizations owe it to their members, to their admirable history, and to the public to settle their interorganization disputes without any such threatened interruption of inter-state commerce as that which caused you to create this Board.

Respectfully submitted.

(S) G. STANLEIGH ARNOLD.
(S) CHARLES KERR.
(S) DEXTER M. KEEZER.

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