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Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED SEPTEMBER 19, 1944

Under authority of Section 10
of the Railway Labor Act

To investigate unadjusted disputes between certain common carriers and certain of their employees respecting wage increases, to endeavor to adjust the disputes on the basis of the facts developed, and to make a report thereon within thirty days

OCTOBER 4, 1944

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LETTER OF TRANSMITTAL

OCTOBER 4, 1944.

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

MR. PRESIDENT: The Emergency Board appointed by you on September 19, 1944, in accordance with the provisions of the Railway Labor Act, has the honor to submit herewith its findings and recommendations in respect to the unadjusted disputes existing between the Chicago, North Shore & Milwaukee Railroad Co., the Chicago, Aurora & Elgin Railroad Co., carriers, and certain of their employees represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen.

In substance the Board has recommended that 5 cents an hour on a straight-time basis be added to the wages of the employees involved. This recommendation is based upon your award of 5 cents per hour "in lieu of claims for time and one-half for time over 40 hours and for expenses while away from home" to certain railroad employees involved in proceedings before the Emergency Board appointed May 31, 1943. We are of the opinion that the employees here involved should receive the same type of treatment and that such treatment is consistent with existing stabilization standards established by, or pursuant to, law for the purpose of controlling inflationary tendencies.

The members of the Board await your further pleasure.

Respectfully submitted.

H. B. RUDOLPH, *Chairman.*
W. H. SPENCER, *Member.*
ERNEST M. TIPTON, *Member.*

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REPORT OF EMERGENCY BOARD APPOINTED SEPTEMBER 19, 1944, UNDER AUTHORITY OF SECTION 10 OF THE RAILWAY LABOR ACT

To investigate unadjusted disputes between certain common carriers and certain of their employees respecting wage increases, to endeavor to adjust the disputes on the basis of the facts developed and to make report thereon within thirty days

I. INTRODUCTION

This Emergency Board, composed of H. B. Rudolph, W. H. Spencer, and E. M. Tipton, was established under the provisions of a proclamation of the President of the United States of September 19, 1944, the pertinent provisions of which follow:

WHEREAS the President, having been duly notified by the National Mediation Board that disputes between the Chicago, North Shore, and Milwaukee Railroad Company, the Chicago, Aurora & Elgin Railroad Company, carriers, and certain of their employees represented by the following labor organizations:

Brotherhood of Locomotive Firemen and Enginemen,

Brotherhood of Railroad Trainmen,

which disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, amended, now threaten substantially to interrupt interstate commerce within the States of Illinois and Wisconsin to a degree such as to deprive that section of the country of essential transportation service;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by virtue of the power vested in me by the Constitution and laws of the United States, and by virtue of and under the authority in me vested by Section 10 of the Railway Labor Act, amended, do hereby create a board to be composed of three persons not pecuniarily or otherwise interested in any organization of railway employees or any carrier, to investigate the aforementioned disputes and report its findings to me within thirty days from this date.

The Board met at the Sherman Hotel, Chicago, Ill., at 11 a. m., September 25, 1944. It elected H. B. Rudolph as its Chairman and designated the firm of Frank M. Williams Co. as the Official Reporter of its proceedings.

Following its organization, the Board received the appearances of the parties. The employees were represented by Mr. D. D. Miller, Vice President, Brotherhood of Locomotive Firemen and Enginemen, and Mr. J. A. Zanger, Vice President, Brotherhood of Railroad Trainmen; the carriers, by Attorneys Ralph R. Bradley and Frederick E. Stout.

The Board continued its public hearings through September 28, adjourning on that day at 3:15 p. m. In the course of the hearings it received 624 pages of testimony and argument. The employees submitted 3 exhibits in support of their contentions; the carriers submitted 28 in support of theirs.

After the close of the public hearings on September 28, and again on the morning of September 29, the Board, in pursuance of instructions of the President of the United States, conferred with representatives of the employees and of the carriers in an effort to compose their differences by mediation. These efforts proved fruitless. The Board then convened in executive session to study the evidence and arguments, and to prepare this final report.

II. RAILWAY WAGE SETTLEMENTS OF 1941–44

The present controversies have their origin in the general wage movements and settlement in the railway industry during the period 1941–44.

In June of 1941 the operating employees of the railroads of the Nation requested wage increases of 30 percent with a minimum increase of $1.80 per day. This request finally reached an Emergency Board appointed by the President of the United States on September 10, 1941. After extended hearings the Emergency Board recommended increases of 7½ percent for all operating employees. It also recommended that these increases be regarded as temporary and that they should terminate automatically on December 31, 1942, unless extended by agreement of the parties. The employees involved found these recommendations unacceptable, first, because of the inadequacy of the increases; and, secondly, because of their temporary character.

In these circumstances the President reconvened the Board, directing it to exert further effort to effect a settlement. Through these efforts a mediation agreement, commonly known as the Chicago Wage Agreement, was signed by the parties on December 5, 1941. Under this agreement the employees received a permanent increase of 9½ cents an hour, effective December 1, 1941.

On January 25, 1943, representatives of the operating employees served notice on the railroads, requesting an increase in basic rates of pay of 30 percent with a minimum increase of $3 per day. The brotherhoods incorporated in their notices a request that, in the event settlement could not be reached on the property, the carrier "join with others in authorizing a National Conference Committee to represent them."

Mediation having failed to settle the differences and arbitration having been declined, Mr. Leiserson, then Chairman of the National Railway Labor Panel, upon request of the employees, on May 31, 1943,

appointed an Emergency Railway Labor Panel to investigate and report on the dispute as provided for by Executive Orders Nos. 9172 and 9299 in pursuance of the provisions of the Railway Labor Act. On September 25, 1943, this Emergency Panel, in its report to the President, recommended that the employees in question "receive an increase of 32 cents per minimum basic day or 4 cents per hour, to become effective as of April 1, 1943."

On October 16, 1943, Mr. Fred M. Vinson, Director of Economic Stabilization, issued a statement in which he stated "I will not disapprove the recommendations in this case." He further stated:

> This recommendation is predicated upon the Little Steel formula. That formula permits wage adjustments to the extent of 15 percent over average straight-time hourly earnings on January 1, 1941. These employees received in December 1941 an increase amounting to approximately 10.5 percent. Thus 4.5 percent remains under the permissible limit of "Little Steel" which figures about 4 cents per hour for these employees.

The carriers placed the increase into effect on October 24 in accordance with the Stabilization Order. On October 24 representatives of the labor organizations involved notified the carriers that the settlement was not acceptable and that a strike vote would be taken on new demands made on the carriers, including annual vacation with pay, overtime pay, and away-from-home expenses.

On December 27, 1943, the President of the United States seized the railroads, placing them under the control and management of the War Department. On the same day representatives of the parties entered into an agreement, declaring their "willingness to have the unsettled issues between them determined by the President of the United States in accordance with the law," and to abide by his decision.

The President in his Statement said among other things: "* * * I determine that 5 cents per hour effective immediately shall be paid as the equivalent of or in lieu of claims for time and half pay for time over 40 hours and for expenses while away from home."

The President stated further:

> I further determine that the increases in pay above recited shall be paid until proclamation by the President or declaration by the Congress of the cessation of hostilities; and that the agreement now arrived at in time of war shall be without prejudice to rights of either party at the expiration of the date above stated to seek a change in the agreement which is now made.

Although subject to the Interstate Commerce Act and to the Railway Labor Act, neither the Chicago, Aurora & Elgin Railroad Co. nor the Chicago, North Shore & Milwaukee Railroad Co. was made a party to the proceedings in 1943 when railway employees of the classes and crafts represented in these proceedings received an increase of 4 cents per hour as a result of the recommendations of the Emergency

Railway Labor Panel and 5 cents under the award of the President of the United States.

On January 22, 1944, William M. Leiserson, then Chairman of the National Railway Labor Panel, issued a statement entitled "Permission under Executive Order 9299 for railroad wage and salary adjustments in conformity with national operating and nonoperating agreements." This statement follows:

> In order to avoid intra-carrier and inter-carrier wage and salary inequities and to maintain stabilized wage and salary relationship, it is hereby found to be permissible under the authority of Executive Order 9299 for any carrier covered by title I of the Railway Labor Act (except the Railway Express Agency, Inc.) to adjust wages or salaries of employees and subordinate officials without prior notice or application to the Chairman of the National Railway Labor Panel and without his specific approval, *provided*, the adjustments are in accordance with the terms of agreements of December 29, 1943, January 14, 1944, or January 17, 1944,[1] between the Carriers' Conference Committee and National Railway Labor Organizations representing operating and nonoperating employees and do not exceed the increases provided for in such agreements.
>
> Nothing in this authorization shall be construed as directing or ordering any carrier to grant an increase in any amount, but increases within the limits declared permissible may be made without further approval.
>
> This authorization applies only to employees within the meaning of the Railway Labor Act, which includes subordinate officials. Salary adjustments for persons occupying official positions are subject to approval by the Commissioner of Internal Revenue.

III. RECENT WAGE DEVELOPMENTS ON PROPERTIES OF RESPONDENT CARRIERS

Prior to March of 1942 the employees of the Chicago, North Shore & Milwaukee Railroad Co. had been represented in collective bargaining by the Amalgamated Association of Street, Electric & Motor Coach Employees of America, and were working under a closed-shop agreement negotiated by this labor organization with the carrier for the year June 1, 1941, to May 31, 1942.

Even prior to 1939, employees of this carrier who were members of the Amalgamated Association had begun to join the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Rail-

[1] The agreement of December 29 (27), 1943, was entered into by the Carriers involved, and the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen. In this the parties ratified the increase of 4 cents per hour granted by the Emergency Railway Labor Panel on September 25, 1943, as approved by the Director of Economic Stabilization on October 16, 1943, and accepted in terms of the Presidential Award of December 27, 1943. The agreement of January 14, 1944, embodying the same terms as the preceding agreement, was entered into by the Carriers on the one hand, and the Brotherhood of Locomotive Firemen, the Order of Railway Conductors, and the Switchmen's Union of North America, on the other. The agreement of January 17, 1944, was between the Carriers and the Fifteen Cooperating Railway Labor Organizations. The supplementary increases—the increases based on the Presidential Award—were made effective December 27, 1943, in all three agreements.

road Trainmen. On petition of the employees of the carrier, the Interstate Commerce Commission in 1939 ruled that the Chicago, North Shore & Milwaukee Railroad Co. was a "carrier" within the meaning of section 1 of title I of the Railway Labor Act and subject to its provisions. This ruling was affirmed by the District Court of the United States in January 1941, and in July of that year the ruling of the district court was affirmed by the Circuit Court of Appeals for the Seventh Circuit. Petition to the Supreme Court of the United States for certiorari was filed but denied by that court late in 1941.

Following the ruling of the Interstate Commerce Commission that this carrier was subject to the provisions of the Interstate Commerce Act, the representation disputes on the property of the carrier came to the attention of the National Mediation Board in February of 1941. As a result of elections ordered by the Mediation Board early in 1942, the Board in March of 1942 certified the Brotherhood of Locomotive Firemen and Enginemen as the collective bargaining agency of the motormen and the Brotherhood of Railroad Trainmen as the collective bargaining agency of the conductors, collectors, brakemen, and switchmen.

On March 23, 1942, the labor organizations involved served written notice on the carrier that they would be governed by the existing agreement between it and its employees until further notice. On May 1, 1942, the labor organization requested changes in the agreement. Included in the changes requested was one for increases in basic rates of pay for the employees involved in the dispute now before this Emergency Board. The inability of the parties to settle their differences and the unsuccessful efforts of the National Mediation Board to effect a settlement, finally led William M. Leiserson, then Chairman of the National Railway Labor Panel, on March 24, 1943, to select "Richard F. Mitchell (Chairman), Robert D. Calkins, and Walter C. Clephane, members of the National Railway Labor Panel, to serve as an emergency board [2] to investigate said dispute and to report thereon to the President * * *"

The Mitchell Board, after extended public hearings and a thorough study of the evidence and argument, made its report to the President of the United States on June 8, 1943. As to wages it recommended a flat increase of 16 cents per hour for all employees involved with the exception of the switch tenders for whom an increase of 10 cents per hour was recommended.

The Mitchell Board, in its Certification, stated:

> The rates recommended are in our judgment the minimum necessary to restore an approximate equality of wage rates in this area, and to insure efficient and

[2] This Emergency Board is hereafter referred to as the Mitchell Board.

continuous service on a carrier essential for the transportation of greatly enlarged numbers of persons to and from military establishments and war industries. In these respects we believe our recommendations are in conformity with the letter and the spirit of the stabilization program.

As required by Executive Order No. 9299 dated February 4, 1943, we hereby certify that our recommendations, as hereinbefore set forth, in our opinion, conform to the standards prescribed in Executive Order No. 9250, with Executive Order No. 9328, with the general stabilization program made effective thereunder, and with the directives on policy issued by the Economic Stabilization Director.

On July 8, 1943, the Director of Economic Stabilization issued an order disapproving the recommended increases insofar as they exceeded 14 cents per hour. This order was issued on the last of the 30-day period in which the Director of Economic Stabilization was permitted to approve or disapprove a recommended increase in pay. The carrier and labor organizations, proceeding on the assumption that the increases here involved would not be disapproved, entered into a collective bargaining agreement, incorporating in it the increases recommended by the Mitchell Board. On March 2, 1944, the labor organization submitted a petition to the Director of Economic Stabilization, requesting that he set aside his order of July 8. On March 3, 1944, the carrier in a written communication to Director Vinson stated that "the said Trustees of the Railroad Company have at all times been ready and willing to pay the said increases in pay recommended by said Emergency Board if given lawful authority to do so." On March 8, 1944, the Director of Economic Stabilization in a letter to representatives of the labor organizations involved denied the petition, stating that "the reasons for my action last summer remain sound in my judgment." Since July 8, 1943, the carrier has been paying the increases recommended by the Mitchell Board as modified by the Stabilization Order of July 8, 1943.[3]

IV. DEVELOPMENT OF PRESENT DISPUTE

Proceeding on the assumption that Mr. Leiserson's statement of January 22, 1944, permitting certain increases in pay of railway employees, automatically applied to the carriers in this dispute, the labor organizations involved, on February 4, made a request to the Chicago, Aurora & Elgin Railroad for an increase in pay of 9 cents per hour for all motormen, hostler switchmen, conductors, collectors, and freight brakemen employed by the company. On April 6 the labor organizations made a similar request to the Chicago, North Shore & Milwaukee Railroad Co. on behalf of its motormen, conduc-

[3] Although the Chicago, Aurora & Elgin Railroad Co. was not a party to the proceedings before the Mitchell Board, the carrier and the labor organizations involved entered into an agreement similar to that negotiated on the property of the Chicago, North Shore & Milwaukee Railroad Co., as modified by the Stabilization Order of July 8, 1943.

tors, collectors, freight trainmen, and switch tenders. Following a conference between representatives of the labor organizations, the former notified the latter in writing that "we are unable to accede to your request for an increase in wages for a number of reasons, and, among others, we do not believe that we have any legal right to consider any wage increases at this time, and economically such increases are not justified."

On April 26, 1944, the labor organizations invoked the services of the National Mediation Board. The Board was unsuccessful in its efforts to effect a settlement, and so notified the parties. The dispute was referred to the membership of the labor organizations in a strike vote which had been authorized on July 28, 1944. The vote was canvassed on August 21. Following this the parties again unsuccessfully sought to reach an agreement. The Mediation Board again intervened without success. At some stage of its mediatory efforts the Mediation Board suggested that the parties submit their differences to arbitration in accordance with the provisions of the Railway Labor Act. The carriers accepted the tender; the labor organizations rejected it.

The labor organizations finally scheduled the strike for September 18 at 4 a. m. Upon the urgent request of the Mediation Board, the labor organizations postponed the impending strike until the President of the United States could be notified of the emergency and take appropriate action. Acting under the provisions of the Railway Labor Act, the President, on September 19, 1944, issued a proclamation establishing this Emergency Board and directing it to investigate these unadjusted disputes and report to him its findings within 30 days from the date of the proclamation.

V. BASIC ISSUES INVOLVED IN THIS DISPUTE

In view of an amendment, approved June 30, 1944, to the Stabilization Act of October 2, 1942, the scope of the authority of this Emergency Board to act in the dispute before it must be examined. The amendment in question provides:

SECTION 202. Section 4 of such act of October 2, 1942, as amended, is amended by adding at the end thereof the following new paragraph:

"In any dispute between employees and carriers subject to the Railway Labor Act, as amended, as to changes affecting wage and salary payments, the procedures of such act shall be followed for the purpose of bringing about a settlement of such dispute. Any agency provided for by such act, as a prerequisite to effecting or recommending a settlement of any such dispute, shall make a specific finding and certification that the changes proposed by such settlement or recommended settlement are consistent with such standards as may be then in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies. Where such finding and certification are made by such agency they shall be conclusive, and it shall be lawful for the employees and carriers by

agreement to put into effect the changes proposed by the settlement or recommended settlement with respect to which such finding and certification were made."

It will be remembered that prior to the present emergency, findings and recommendations of emergency boards appointed under the provisions of the Railway Labor Act were made directly to the President of the United States. On October 2, 1942, Congress enacted the Stabilization Act, designed to stabilize wages, salaries, and prices. On October 3, 1942, the President issued Executive Order 9250, elaborating and implementing the Stabilization Act. Section 1 of title II of this order provides that without exception wage increases may not be granted unless approved by the War Labor Board. Executive Order 9299, issued February 4, 1943, prescribed regulations and procedures with respect to wage and salary adjustments for employees subject to the provisions of the Railway Labor Act. This order provides that such wage adjustments recommended by emergency boards are subject to the (approval or) disapproval of the Director of Economic Stabilization, within 30 days from date on which such recommendations are filed with the President of the United States.

It is clear that Congress in amending the Stabilization Act in the manner indicated intended to restore the preemergency procedures for the adjustment of wage disputes arising under the provisions of the Railway Labor Act. It is equally clear that it did not intend to give to agencies dealing with such wage disputes a completely free hand. The Congress laid upon such agencies a definite obligation, in making adjustments, to "make a specific finding and certification that the changes proposed by such settlement or recommended settlement are consistent with such standards as may be then in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies." The amendment in question does state that "where such finding and certification are made by such agency, they shall be conclusive, and it shall be lawful for the employees and carriers, by agreement, to put into effect the changes proposed by the settlement or recommended settlement with respect to which such finding and certification were made." In the opinion of the Board, the amendment binds the conscience of an agency functioning under the Railway Labor Act to observe the national stabilization program.

It is appropriate next to examine the contention made on behalf of the employees that Mr. Leiserson's statement of January 22, 1944, per se justifies the requested increase of 9 cents per hour for these employees. In substance, the labor organizations make this statement of their case:

Nine cents an hour were granted to operating employees of railroads subject to the provision of the Railway Labor Act. Mr. Leiserson has said that railroads subject to the act which have not granted this increase may do so without apply-

ing to him as Chairman of the National Railway Labor Panel for permission to make such increases. We are employees of railroads subject to the provisions of the Railway Labor Act, and our employers have not made the increase in question. We are entitled to the increase of 9 cents an hour.

This contention, however, ignores the circumstances under which the employees of railroads generally received the 9-cent increase. Four of the nine cents came as a result of the recommendation of the Stacy Emergency Board, established May 31, 1943, in its report of September 25, 1943. This exhausted the possibility of further increase in wages under the Little Steel formula for those employees since, as previously pointed out, they had already received 9½ cents an hour in December of 1941. The Stacy Board in its report said:

> Hence, in order to give effect to the full 15 percent increase of the Little Steel formula they [employees] are entitled to a further increase of 4½ percent of the base rate, which increase amounts to 4 cents an hour.

At the time when the employees of the railroads generally were seeking entire fulfilment of the Little Steel formula before the Stacy Emergency Board, the employees of the carriers here involved were seeking and gained the same ends in separate proceedings before the Mitchell Board. If the carriers here involved had been parties to the proceedings before the Stacy Board, there is no reason to assume that these employees would have received less increase in pay than they received from the Mitchell Board.

Application of the Little Steel formula to the hourly wage rate (78 cents per hour) of January 1941 of these employees would have made an increase of 11.70 cents per hour. Actually, an increase of 14 cents per hour was approved by the Director of Economic Stabilization—2.30 cents per hour more than that permissible under Little Steel. It would appear, therefore, that the amount of increase over and above that permitted by the Little Steel formula can be justified only as an allowance to bring the wages of these employees into line with sound and tested going rates.

In the circumstances, it is the opinion of the present Board that Mr. Leiserson's memorandum must be interpreted to mean that carriers whose rates of pay had not been adjusted in accordance with the National Stabilization Program might add the 9 cents per hour without permission from him as Chairman of the National Railway Labor Panel.

But it was vigorously urged, on behalf of the employees involved, that to correct gross inequities in wage rates, they are entitled not only to the increases recommended by the Mitchell Board on June 8, 1943, as modified by the Stabilization Order of July 8, 1943, but also to the 9 cents granted to operating employees of railroads by the wage agreements of December 27, 1943, and January 14, 1944. This con-

tention leads to a consideration of the really fundamental difference of opinion which separates the parties in this controversy.

In determining whether the rates of pay of these carriers are sound and tested going rates within the meaning of the National Stabilization Program or whether increases are justified to correct gross inequities, the rates of pay here involved must be compared with some standard or standards.

The employees insist that the wages on the properties of these carriers should be compared with the wages of the railroad industry generally, particularly with the wages of employees operating on the electrified portion of standard railroads. They point out that these carriers are subject to the provisions of the Interstate Commerce Act and of the Railway Labor Act. They further point out that the electric trains of these carriers operate at high speed, on some runs attaining a speed of 85 miles an hour. They also point out that these carriers handle freight traffic and some interchange passenger traffic and that the Chicago, North Shore & Milwaukee Railroad Co. on some of its runs between Chicago and Milwaukee provide bar and dining-car service.

The carriers, on the other hand, insist that the wages of the employees here involved must be compared with the wages of the Rapid Transit and the Surface Lines of Chicago. Indeed, they point out that these two carriers originated as local transportation agencies and argue that they are now merely an extension of Chicago's local transportation system. They introduced a considerable amount of evidence with respect to the character and volume of their traffic, their physical equipment, their schedules and operating problems, all tending to support their contention that they are engaged largely in local transportation.

Without examining the evidence of the carriers in detail, the Board expresses the opinion that, for purposes of this investigation, they must be treated as a part of the railroad industry and not as part of the local transportation system. They operate high-speed trains, they handle freight traffic, and some inter-change passenger traffic.

Although they may have originated as local transportation agencies, they are now operating many trains, not only between many cities but also between two different States. While in many respects they resemble local transportation agencies, in many other respects they resemble standard railroads. Indeed, they resemble standard railroads as closely as many carriers in the so-called short-line group resemble class I railroads. They are not fundamentally different from the electric suburban trains operated on the Illinois Central Railroad. In most fundamental respects, they very closely resemble the Chicago, South Shore & South Bend Railroad Co. which was a party to the

proceedings before the Stacy Emergency Board and which, immediately following the national wage agreements of December 27, 1943, and January 14, 1944, granted to their employees the 9 cents an hour which the employees here are requesting. It is true that the South Shore and South Bend transports a substantially larger volume of freight than either of these respondent carriers. The fact remains, however, that the carriers involved here hold themselves out as freight carriers and accept all the freight traffic they can get.

It is true, as pointed out by the carriers, that for a number of years, the rates of pay of their employees have approximated the rates of pay of comparable employees of the Rapid Transit System and the Surface Lines in Chicago. In this connection, however, it must be remembered that for a number of years, the employees of the carriers here involved belonged to the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, which also represented the employees of the Chicago Rapid Transit and Surface Lines. Moreover, during this period, while the capital structure of the Rapid Transit System and the Surface Lines of Chicago and the carriers here involved have been and are now separate and distinct, there has been much common management of all of them through receiverships and trusteeships. These factors inevitably tended to establish definite wage relationships on all the properties in question.

In this connection, it is important to note that the Interstate Commerce Commission, with the approval of the Federal courts, has ruled that the carriers here involved are subject to the provisions of the Railway Labor Act. This ruling does not per se change the nature of the carriers or their operations. Legally, however, it definitely brings them into the railroad industry of the Nation. Grievances of the employees here involved, when they cannot be adjusted on the properties of these carriers, go to the National Railroad Adjustment Board for adjustment, the same Board to which employees of railroads generally go for the adjustment of their grievances. And as is obvious from the record of this investigation, all other disputes of these employees fall under the jurisdiction of the National Mediation Board which exercises jurisdiction over similar disputes of all employees of the railroad industry. This change, in the legal status of the carriers, entitled the employees here involved to ask for representation in collective bargaining by the railway labor organizations and to have their disputes handled under the provisions of the Railway Labor Act, and this privilege they gained under elections conducted by the National Mediation Board.

Attention is again called to the statement of Mr. Leiserson, Chairman of the National Railway Labor Panel, issued under authority of Executive Order No. 9299, permitting carriers covered by title I of the Railway Labor Act to make voluntary adjustments in the wages

of their employees "*provided* the adjustments are in accord with the agreements of December 29 (27), 1943, January 14, 1944, or January 17, 1944, between the Carriers Conference Committee and the national railway labor organizations representing operating and nonoperating employees and do not exceed the increases provided for in such an agreement." This statement by Mr. Leiserson clearly authorizes wage adjustments, in accordance with the agreements mentioned, if they have not already been made, and in the Board's opinion, authorizes it to recommend that the 5-cent award of the President to be made to the employees of the carriers here involved since they are covered by title I of the Railway Labor Act.

Both from a factual and a legal point of view, the Board concludes that these carriers are a part of the railroad industry of the Nation and that their employees here involved are entitled to have their wages adjusted under the procedures of the Railway Labor Act and in the light of wages in the railroad industry.

But it does not follow from this conclusion that the employees involved are at this time entitled to the full 9-cent increase. In the period from January 1, 1941, through September 25, 1943, the operating employees of railroads generally had a 9½-cent increase and a 4-cent increase, or a total increase of 13½ cents, in fulfilment of the Little Steel formula. In the same period, by virtue of the recommendation of the Mitchell Board, as modified by the Stabilization Order of July 8, the employees of the respondent carriers have had an increase of 14 cents an hour. This increase the Director of Economic Stabilization did not find inconsistent with the Stabilization Program as of July 8.

It follows from what has been said that as of September 25, the wages of employees of railroads generally and the wages of the employees of the carriers here involved have had their wages adjusted in accordance with the Little Steel formula. It is true that the Mitchell Board, in making its recommendations, compared the wages of these employees with those of the comparable employees of the Rapid Transit and Surface Lines of Chicago. It may be assumed, however, that if these carriers had been made a party to the proceedings before the Stacy Board, as they might have been, they would have been entitled to substantially as much as was recommended for them by the Mitchell Board. If, therefore, nothing had occurred in the railway wage movement subsequent to September 25, 1943, the employees of the carriers here involved would not have been entitled to any further adjustments in wages.

But something did happen subsequent to September 25, 1943. The President of the United States, acting in the capacity of an arbiter between certain railroad labor organizations and carriers, awarded to

the employees of those carriers 5 cents per hour "in lieu of claims for time and one-half pay for time over 40 hours and for expenses while away from home." It is true that these carriers were not parties to the proceedings before the Stacy Board and, therefore, were not parties to the submission in arbitration to the President of the United States out of which the award of 5 cents came. These carriers, however, as previously found, are factually and legally a part of the railroad industry of the Nation and are, in the opinion of this Board, entitled to the 5 cents awarded to operating employees on railroads generally by the President of the United States.

It is true, of course, as pointed out by the carriers, that little or no away-from-home expense is incurred by their employees. It is also true that by agreement these carriers pay their employees time and one-half for hours worked over 9 hours a day. On the other hand, it is equally true that large numbers of employees of standard railroads to whom the 5-cent increase was granted incur no away-from-home expense. It is also true that the overtime pay for the employees of the carriers which were parties to the arbitration by the President could not be and was not determined with mathematical precision. It would seem, therefore, that the award of the President of the United States was an equitable determination. It is the opinion of this Board that the operating employees of the carriers here involved are entitled, as all other employees of carriers subject to the provisions of the Railway Labor Act, to the 5-cent increase awarded by the President.

The Board entertains no doubt as to the present ability of each of these carriers to meet the increase of 5 cents per hour herein recommended. It is, of course, true, as indicated by the evidence presented by the carriers, that prior to 1941, their financial condition was most precarious. The Chicago, Aurora and Elgin has been in the hands of receivers for a number of years. The Chicago, North Shore and Milwaukee, after being in receivership for a number of years, is now under trusteeship being reorganized under the Chandler Bankruptcy Act. The financial condition of the latter became so bad in the period from 1939–40 that the carrier and its employees entered into an agreement with an esculator clause permitting the carrier, depending upon its revenue, to reduce wages as much as 10 percent. At one period, the carrier was able to meet its pay rolls only by anticipated revenue from the sale of commutation tickets. At another period, this carrier was under the necessity of meeting a part of its pay roll in receiver's script. While the carrier eventually redeemed this script in full, many of the employees, in order to finance themselves, were required to sell the script at a discount.

In the period from 1941–43, largely due to the rapid expansion of military establishments at Fort Sheridan and at the Great Lakes

Naval Training School on the lines of the North Shore and Milwaukee, and to the substantial expansion of war industries in the territory served by both carriers, the financial condition of each has greatly improved. The evidence of record indicates that the financial condition of the North Shore and Milwaukee has improved by a much larger ratio than that of the Chicago, Aurora and Elgin.

In 1941 the total operating revenue of the Chicago, Aurora and Elgin Railroad amounted to approximately $1,880,000. In 1942, this had arisen to $2,319,000 and to $2,730,000 in 1943. In the same period the operating expenses of the carrier increased from $1,987,000 in 1941 to $2,770,000 in 1943.

In 1941, the total operating revenue of the Chicago, North Shore and Milwaukee amounted to $4,500,000. This arose to $6,900,000 in 1942 and to $8,547,000 in 1943. During the same period the operating expenses of the carrier arose from $4,150,000 to $6,782,000.

The Chicago, North Shore and Milwaukee, with the approval of the Federal Court, during the past year or year and a half, has authorized the expenditure of something more than 2 million dollars in the improvement of its property and in the acquisition of new equipment. The Chicago, Aurora and Elgin, with court approval, has authorized the expenditure of approximately 500 thousand dollars for similar purposes.

The carriers insist, however, that the prosperity which they are presently enjoying is due wholly to the war and that when the war is over, they will fall again into financial doldrums unless they are permitted during this period to put the properties of the carriers in such condition as will enable them successfully to compete with steam railroads and private automobiles for business in the post-war period. They are particularly apprehensive about increases in wages at this time, feeling that wage increases which are now granted will tend to become permanent.

The Board, however, is of the opinion that at this time each of the carriers can meet the increase recommended without any serious embarrassment. Possible embarrassment in the post-war period as a result of current increases in wages is a matter which will have to be taken care of by negotiation or by adjustment when and if the carriers here involved sustain reductions in revenue. Moreover, the President of the United States, in making his award of an increase of 5 cents an hour, stated:

> I further determine that the increases in pay above recited shall be paid until proclamation by the President or declaration by the Congress of the cessation of hostilities; and that the agreement now arrived at in time of war shall be without prejudice to rights of either party at the expiration of the date above stated to seek a change in the agreement which is now made.

VI. FINDINGS AND RECOMMENDATIONS

On the evidence of record, the Board makes these findings of facts:

1. The carriers herein involved are subject to the Interstate Commerce Act, and in the matter of wage adjustments, subject to the provisions of the Railway Labor Act.

2. That under the Stabilization Act of October 2, 1942, as amended by section 202, approved June 20, 1944, this Emergency Board has final authority to make findings and certifications with respect to whether its recommendations for increases in wages are consistent with such standards as are now in effect or such as have been established by or pursuant to law for the purpose of controlling inflationary tendencies.

3. That this Emergency Board, in the making of its findings with respect to increases in pay is bound by such standards as are now in effect or such as have been established by or pursuant to law for the purpose of controlling inflationary tendencies.

4. That the employees herein involved received an adjustment in wages fulfilling the requirements of the Little Steel formula by virtue of the recommendations of the Mitchell Board of June 8, 1943, as modified by the Stabilization Order of the Office of Economic Stabilization on July 8, 1943.

5. That the employees here involved are entitled to have their wage adjustments made under the provisions of the Railway Labor Act and in the light of comparable wages in the railroad industry of which these carriers factually and by law are a part.

6. That as members of the railroad industry these carriers, although not parties to the arbitration award of the President of the United States on January 27, 1943, are entitled to the 5 cents increase granted by the President in his award of December 27, 1943.

7. The Board finds that the increases granted to these employees in the period from January 1 down to and including recommendations of this Board are consistent with current stabilization standards established by or pursuant to law for the purpose of controlling inflationary tendencies.

On the basis of the foregoing findings, the Board recommends that 5 cents an hour on a straight-time basis be added to the wages of the employees herein involved, effective as to each carrier on the date when the request was made for the increase, in accord with the conditions laid down by the President in his Statement of September 27, 1944.

CERTIFICATION

In accordance with the provisions of the Stabilization Act of October 2, 1942, as amended by section 202, approved June 30, 1944, this Board certifies that, in its opinion, the increase of 5 cents an hour herein recommended is consistent with existing stabilization standards established by or pursuant to law for the purpose of controlling inflationary tendencies.

Respectfully submitted.

H. B. RUDOLPH, *Chairman*,
W. H. SPENCER, *Member*,
E. M. TIPTON, *Member*.

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