Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED MARCH 8, 1945

Under Section 10 of the Railway Labor Act

To Investigate and Report on an Unadjusted Dispute Between The Denver & Rio Grande Western Railroad Company and Certain of its Employees Represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Switchmen's Union of North America, and the Brotherhood of Railroad Trainmen

MARCH 29, 1945

DENVER, COLORADO.
March 29, 1945.

THE PRESIDENT,
The White House.

MR. PRESIDENT: The Emergency Board created by you March 8, 1945, under Section 10 of the Railway Labor Act to investigate and report on an unadjusted dispute between The Denver & Rio Grande Western Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Switchmen's Union of North America, and the Brotherhood of Railroad Trainmen, has the honor to submit its report and recommendations based upon its investigation of the matters in dispute.

LEIF ERICKSON, *Chairman,*
RIDGELY P. MELVIN, *Member.*
RUSSELL WOLFE, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED DECEMBER 12, 1944, UNDER SECTION 10 OF THE RAILWAY LABOR ACT

To investigate and report on an unadjusted dispute between the Denver & Rio Grande Western Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Switchmen's Union of North America, and the Brotherhood of Railroad Trainmen.

By Proclamation dated March 8, 1945, the President created an Emergency Board pursuant to the provisions of Section 10 of the Railway Labor Act as amended, to investigate and report on an unadjusted dispute between The Denver & Rio Grande Western Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Switchmen's Union of North America, and the Brotherhood of Railroad Trainmen. On March 8, 1945, he designated and appointed as members of this Emergency Board Judge Ridgely P. Melvin of Annapolis, Maryland, Mr. Russell Wolfe, of Philadelphia, Pennsylvania, and Judge Leif Erickson, of Helena, Montana.

The Board as thus constituted first met on March 14, 1945, at the hour of 11:00 a. m., in Room 314, Post Office Building, Denver, Colorado. It selected Judge Leif Erickson as its chairman, and approved the appointment of Frank M. Williams & Company as its official reporter.

The appearances were as follows: On behalf of the Brotherhood of Locomotive Engineers, G. W. Burbank, Assistant Grand Chief Engineer, Los Angeles, California, and E. O. Frakes, General Chairman, Denver, Colorado. On behalf of the Brotherhood of Locomotive Firemen and Enginemen, C. H. Keenen, Vice-President (also representing Order of Railway Conductors), Salamanca, New York, and A. J. Chipman, General Chairman, Denver, Colorado. On behalf of the Order of Railway Conductors, C. H. Keenen, Vice-President, Brotherhood of Locomotive Firemen and Enginemen (also representing Brotherhood of Locomotive Firemen and Enginemen), Salamanca, New York, and O. E. Sevier, General Chairman, Grand Junction, Colorado. On

behalf of Switchmen's Union of North America, C. E. McDaniels, Acting Vice-President and General Chairman, Salt Lake City, Utah. On behalf of Brotherhood of Railroad Trainmen, J. A. Rash, Deputy President, Frankfort, Indiana, and R. H. McDonald, General Chairman, Denver, Colorado. Appearance on behalf of the Carrier were made by Erskine R. Myer, Denver, Colorado, appearing for Wilson McCarthy and Henry Swan, Trustees of The Denver & Rio Grande Western Railroad Company; J. E. Kemp, Assistant General Manager, Denver & Rio Grande Western Railroad Company, Denver, Colorado; and R. K. Bradford, Executive Assistant to the Trustees, Salt Lake City, Utah.

Public hearings were held at Denver on March 14, 15, 16, 19, 20, 21, 22, and 23. The record of the proceeding, consisting of 682 pages of testimony, is transmitted herewith and made a part of this record.

The unadjusted dispute out of which the appointment of the Emergency Board arose, was based upon eighteen awards of the First Division of the National Railroad Adjustment Board. During the period of the hearings, on several occasions, at the suggestion of the Board, direct negotiations between the parties were resumed. As a result of these negotiations, seven of the disputed awards were disposed of by agreement of the parties, leaving eleven of the awards in dispute, unsettled at the conclusion of the hearing. The Board itself, in several instances, assisted in an attempt to adjust some of the disputes between the parties. The Emergency Board went into executive session in Room 314 of the Post Office Buiding at Denver, Colorado, on March 24, and after reaching its conclusions in a series of executive sessions, prepared this report:

THE EMERGENCY

The President Proclamation of March 8, 1945, creating this Emergency Board, recited that the dispute between the Carrier and the labor organizations above named, threatened "substantially to interrupt interstate commerce within the States of Colorado and Utah to a degree such as to deprive that section of the country of essential transportation services."

The conditions which confronted this Board when it convened in Denver on March 14, 1945, accentuated the seriousness of this emergency. Not only had strike ballots been circulated, as of February 12, 1945, and a favorable vote obtained thereon, but a strike itself had actually gone into effect at different main-line terminals for periods varying from 55 minutes to 8 hours, according to uncontradicted figures furnished at the Board's hearings. The results of this suspension of service, also according to the uncontradicted figures, included the delay of two troop trains at Denver for a total of two and one-half hours,

the delay of western freight trains containing 60 per cent or more of shipments relating to the war effort for a total of twelve and three-fourths hours, and a total of over one thousand man hours lost altogether. The organizations' officers stated that they advised the employees to return to service immediately upon receiving formal notice of the President's Proclamation.

Further light on the nature of this emergency is shown by the character and extent of this particular Carrier's operations. It is essentially a mountain railroad, providing a vital and indispensable part in all transportation service throughout Colorado and in Utah as far west as Ogden, in addition to forming a connecting link with the great transcontinental lines between the East Coast and the West Coast. It has some 785 miles of main line from Denver to Ogden by the "Royal Gorge" route, and 267 miles of main line from Denver to Dotsero by the Moffat Tunnel route, besides having approximately a thousand miles of secondary lines. It has a grand total of over 11,800 employees.

In the territory directly served by this Carrier there are more than 70 United States Government depots, posts, and other installations exclusively related to the present war effort, constantly requiring these transportation facilities for the movement of large shipments of both men and material.

The mere statement of these facts is sufficient to show that the interruption or suspension of this transportation service would create a national emergency which the machinery provided by the Railway Labor Act was especially designed to relieve. The Carrier invoked the services of the National Mediation Board, and conferences between the disputants, with the mediator present, continued rrom February 21, 1945, to March 3, 1945, when they were abandoned.

In the two strike ballots which were distributed (they were identical in substance), 18 awards or causes of grievances were cited. These were designated as Awards Nos. 6582, 6583, 9267, 9341, 9342, 9365, 9380, 9383, 9416, 9614, 9531, 9532, 9601, 9698, 9700, 9705, and 9798, as rendered by the First Division of the National Railroad Adjustment Board.

Cases Settled by Agreement of the Parties

In order to show the nature of these awards and the manner of disposition, we set out here, briefly, a summary of the dispute involved in each one of the Adjustment Board dockets upon which the awards were based, together with a copy of the agreement reached:

Award No. 9267

In this case, claim was made by a conductor for runaround pay because not used as pilot on Colorado & Southern trains run over the

Carrier's branch through the Trinidad yard. The claim of the conductor was sustained. In settlement of the dispute as to the application of the award, the parties agreed, "Record of C. & S. trains operated over this piece of track will be checked and a conductor will be paid for each eight-hour period starting at midnight, during which a C. & S. train was detoured over this particular piece of track."

AWARD No. 9365

In this case claim was made by an engineer for freight rates instead of passenger rates for service on a certain date from Helper, Utah, to Grand Junction, Colorado. The claim arose because in the "consist" of the particular train handled there were certain cars containing equipment belonging to troops. The claim was sustained.

In settlement of the controversy as to the application of the award, the parties entered into a written agreement as follows:

"It is hereby understood and agreed that the Carrier will check and determine from its records effective from and including April 2, 1943, all instances wherein a freight car (or freight cars) has been handled in a passenger train, and in each such instance enginemen will be paid not less than freight rates, instead of passenger rates.

"It is hereby further understood and agreed that the Carrier shall notify each employee, in writing, of the total amount of money he is entitled to receive hereunder, and the Carrier shall also prepare and submit to the Committee a statement, showing the name of each employee involved, the total amount of compensation he is entitled to receive, and the total amount all employees are entitled to receive. Should a question arise as to whether any particular employee has been properly paid hereunder, the Carrier shall check and prepare from its records a statement, showing the amount accruing to that employee on each date on which he is entitled to receive compensation."

AWARD No. 9380

In this case claim was made on behalf of a switchman for certain extra compensation and overtime arising out of difference in starting time between certain switch-engine assignments. The claim was sustained by the Adjustment Board. In settlement of the disputed application of the award, the parties signed the following agreement:

"In accordance with our understanding, the claim as outlined in Mr. McDonald's letter of August 9, 1944, quoted below, will be paid:

"'Request that all yardmen in the Pueblo Terminal performing service on the Minnequa drag engine on dates subsequent to May 2, 1938, when engine was started in violation of Article 7(b) of the yard schedule, be compensated on the same basis for service performed from 8:00 a. m. to 1:00 a. m., as other members of the crew under National Railroad Adjustment Board, First Division, Award No. 9380.'"

AWARD No. 9383

Claim was made in this case for additional compensation for train crews required to report one hour in advance of the leaving time of their trains on certain dates, at Grand Junction, Colorado. The claim was for 45 minutes' additional compensation. The Adjustment Board, in its award, recommended that the disputed claim be settled by negotiation between the parties.

In settlement of the dispute, the parties signed an agreement as follows:

"Forty-five minutes additional time will be paid passenger train crews involved in consolidation of trains 1 and 5, at Grand Junction, during the period in question—December 4, 1938, to June 11, 1939."

AWARD No. 9531

The claim in this case was on behalf of certain switchmen, because supervisory officers of the Carrier were operating certain ground-throw switches within the Salt Lake City-Roper yard. Findings were made by the Adjustment Board as to the facts, and the claim was sustained "to extent of and per findings."

In settlement of the disputed application of the award, the parties signed the following agreement:

"Instructions will be issued calling attention to Scope Rule of S. U. N. A. Agreement and employes not covered in the Scope Rule will be instructed not to do work covered by S. U. N. A. Agreement, except in an emergency, as defined in Aticle 32."

AWARD No. 9532

The claim in this case is on behalf of a certain switchman for the difference in rates of pay on certain dates between the position of switchman and that of relief yardmaster. The controversy between the parties in the case, as presented to the Adjustment Board, hinged on the filing of applications for the position of relief yardmaster. The Adjustment Board, in its award, in effect, directed the parties to settle the matter, based upon certain facts to be developed by investigation on the property.

The controversy was settled and the dispute eliminated by the signing of an agreement by the parties as follows:

"Instructions have been issued that employes coming within the scope of the Agreement with the S. U. of N. A., when placing bids for permanent positions, will transmit their bids in duplicate to Engine Dispatcher or Yardmaster, who is designated to receive such bids, who, immediately following date of expiration of the bulletin, will transmit duplicate to Engine Dispatcher or Yardmaster, who is designated to receive such bids, who, im-

mediately following date of expiration of the bulletin, will transmit duplicate copy to local Chairman of the S. U. of N. A."

AWARD No. 9601

In this case claim was made on behalf of certain conductors for pay as sleeping-car conductors, in addition to their regular compensation as train conductors on certain dates, when they were required to perform duties ordinarily performed by sleeping-car conductors. The Adjustment Board sustained the claim as to the conductors involved except one. In settlement of the controversy, the parties signed the following agreement:

"The record will be checked by the Carrier and all conductors performing work of Pullman conductors, as described in Award 9601, will be paid.

"The Carrier will advise the Organization the total amount so paid to each individual, and furnish this same information to the individuals."

The above dockets, all having been satisfactorily settled by agreement of the parties, are eliminated from further consideration in this report.

We have indicated heretofore that this emergency arose because of a dispute between the parties as to the proper application of certain awards of the National Railroad Adjustment Board, First Division. The Railway Labor Act, U. S. Code, Title 45, Chapter 8, provides the machinery, as indicated by its preamble, for "the prompt disposition of disputes between carriers and their employees." In order to carry out this expressed purpose, Section 3 of the Act sets up the National Railroad Adjustment Board for the determination of disputes between carriers and their employees. Subsection (n) of Section 3 provides that the awards of this Board shall be final and binding upon both parties to the dispute.

In our consideration of the facts and of the recommendations to be based thereon, we are limited to a consideration of the awards themselves, for, under the Railway Labor Act, manifestly we may not retry the issues involved in the original presentation to the Adjustment Board. Our inquiry must therefore be concerned, first, with the directions contained in the particular award, and, second, with the question whether or not the award has been properly applied. We consider it important to emphasize this limitation upon the scope of this Board's function and authority in view of the provisions of the Railway Labor Act.

As we read the Act, if an award be ambiguous, the proper procedure requires reference of the dispute to the Adjustment Board for interpretation of the award in question (Section 3, Subsection (m)). From this it follows that this Emergency Board must determine, in each instance, whether or not the particular award is clear, and in the event

any of the awards be ambiguous or so uncertain that we cannot say how it should be applied, then we must of necessity recommend reference of the disputed award to the Adjustment Board for interpretation.

With these general observations in mind, we approach consideration of the awards remaining in dispute at the end of the hearings.

Cases in Which, During the Course of the Hearings, Direct Negotiations Were Had and Proposals and Counterproposals Exchanged, but Which Did Not Result in the Execution of Formal Agreements in Settlement

AWARD No. 9341

Claim was made in behalf of a certain conductor for payment of freight rates instead of passenger rates for mileage between Salida and Grand Junction, Colorado, under Article 19(c), which reads:

"Soldier or Navy trains, C. C. C. Specials, Silk and Cherry trains, consisting of passenger equipment, will if handled by passenger crews pay passenger rates. When consisting of any revenue lading in freight cars, will pay freight rates. If handled by freight crews, will pay freight rates."

In the presentation of the claim, only freight cars equipped with high-speed trucks, steel wheels, and steam and signal lines were directly dealt with. The finding of the Adjustment Board was that the conductor named should, under Article 19(c), be paid freight rates between Salida and Grand Junction instead of passenger rates, the award being, "Claim disposed of per Findings."

The Brotherhoods contended that the application of the award extended to all instances wherein passenger crews in service specified in Article 19(c) of the conductors' agreement and in Article 19(c) of the trainmen's agreement, operating between Salida and Grand Junction, have moved cars *similar to those* involved in Award No. 9341 containing revenue lading, and that the Carrier pay in such cases as may be found, not less than freight rates, according to the articles mentioned above.

The Carrier's position was that the award in its broadest interpretation should apply only to the particular type of car described in the presentation of the claim on which Award No. 9341 was based or on *similar* cars, provided further that these cars contained *freight* revenue lading.

After a lengthy discussion taken on the record of the proceedings of the Emergency Board, the parties endeavored to negotiate; and after

each side had debated several formal proposals and counterproposals, the following proposal was finally submitted by the Brotherhoods:

"It is hereby understood and agreed that the Carrier will check and determine from its records, effective from and including October 26, 1943, all instances wherein passenger crews in service as specified in Articles 19, Paragraph (c) Conductors' and Trainmen's Agreements, operating between Salida and Grand Junction, Colorado, have moved car or cars similar to those involved in Award No. 9341, containing any revenue lading, and pay, in such cases as may be found, not less than freight rates, according to the provisions of Articles 19, Paragraph (c) of the two Agreements mentioned.

"It is hereby further understood and agreed that the Carrier shall notify each employee, in writing, of the total amount of money he is entitled to receive hereunder, and the Carrier shall also prepare and submit to the Committee a statement, showing the name of each employee involved, the total amount of compensation he is entitled to receive, and the total amount all employees are entitled to receive. Should a question arise as to whether any particular employee has been properly paid hereunder, the Carrier shall check and prepare from its records a statement, showing the amount accruing to that employee on each date on which he is entitled to receive compensation."

The Carrier agreed to accept this formal proposal provided the following condition was incorporated therein: "This settlement is not an admission on the part of the Carrier as to the type of car involved"—which reservation was unacceptable to the Brotherhoods."

The failure of the parties to reach complete agreement necessitates exploration by this Emergency Board of the question as to the applicability of Award No. 9341. Without examining in detail the respective positions of the employees and of the Carrier before the Adjustment Board, we believe that the application of Award No. 9341 extends not only to the freight cars precisely equipped as were those in the claim presented, but to all freight cars that have been similarly converted for use in passenger trains between Salida and Grand Junction. In reaching this conclusion, we are not considering, in this particular case, such cars as are claimed to be in the category presented in the items of the strike ballot covering Awards Nos. 6582 and 6583.

Although the Carrier, in the argument in its behalf taken on the record, seemed to indicate that the awards should apply only if the revenue were derived from freight lading, there is nothing therein to indicate that it is to be so restricted. Rule 19(c) in both schedules employs the words "when consisting of any revenue lading in freight cars."

Accordingly, this Emergency Board recommends that the Carrier apply Award No. 9341 by checking its records from and including October 26, 1943, and determining from this check all instances wherein passenger crews in the services specified in Article 19(c) of both the

conductors' and trainmen's agreements, operating between Salida and Grand Junction, Colorado, have moved a car or cars similar to those involved in the said award containing any revenue lading, and that it pay, in such cases as may be disclosed from such check, not less than freight rates according to the provisions of Article 19(c) of the two agreements referred to.

AWARD No. 9705

Claim was made before the National Railroad Adjustment Board, First Division, for payment of through freight rate instead of passenger rate of pay to a certain engineer and his firemen for service rendered between Salida and Minturn, Colorado, under Article 17 of the contract current on March 10, 1942, which reads:

"Enginemen and helpers on mixed trains will be paid through freight rates per class engine. When one or more freight cars are handled in any train, enginemen and helpers will be paid through freight rates per class engine."

The Adjustment Board, in its conclusion, stated:

"In view of the fact that the Carrier concedes that the same question was involved in Docket No. 16994 (Award No. 9365) on its own road, a similar award is in order."

It entered as its award, "Claim sustained."

It is to be noted that Award No. 9365 was one of the items on the strike ballots and was included among the cases before this Emergency Board. This case was one of those settled by agreement between the parties, as hereinbefore appears. However, it is not within the purview of this Emergency Board to draw any conclusions from the fact of settlement itself in determining the scope of Award No. 9704.

After rather elaborate argument had been placed upon the record by both parties, several formal proposals were exchanged by the Brotherhoods and the Carrier. The negotiation reached the stage where a memorandum in settlement was offered by the employees, which reads as follows:

"It is hereby understood and agreed that the Carrier will check and determine from its records, effective from and including March 10, 1942, all instances wherein a freight car (or freight cars), including those of the type referred to in 'EMPLOYES' STATEMENT OF FACTS,' Award No. 9705, as 'freight cars CB&Q Nos 31067 and 30042,' has, have been, or may be, moved in passenger trains, and the engineers and firemen of such passenger trains, shall be paid not less than freight rates.

"It is hereby further understood and agreed that the Carrier shall notify each employee, in writing, of the total amount of money he is entitled to receive hereunder, and the Carrier shall also prepare and submit to the

Committee a statement, showing the name of each employee involved, the total amount of compensation he is entitled to receive, and the total amount all employees are entitled to receive. Should a question arise as to whether any particular employee has been properly paid hereunder, the Carrier shall check and prepare from its records a statement, showing the amount accruing to that employee on each date on which he is entitled to receive compensation."

The ony condition to acceptance of the foregoing was the incorporation, in behalf of the Carrier, of the following proviso: "This settlement is not an admission on the part of the Carrier as to the type of car involved."

Inasmuch as there was no actual meeting of the minds of the parties on the question raised by this award, it is incumbent on this Emergency Board to construe and apply Award No. 9705 as if no approaches toward settlement had been made.

An examination of the award shows that it definitely followed the same principle as that in Award No. 9365 to the effect that a through freight rate of pay must be made to engineers and firemen on passenger trains when freight cars, including those of the type described in the employees' statement of facts, have been moved therein.

A study of the record discloses that the Carrier lay too much emphasis on the possibility that hereafter claims involving types of cars that may be developed for the rail transportation industry in the future might cite the application of this award. Likewise, the Brotherhoods seemed too insistent on having the award apply to instances arising later of the use of cars of new construction or complete rehabilitation that might be classified by the railroad equipment experts as passenger-train equipment. As a result, not very much light was thrown on the present situation actually within the scope of Award No. 9705. But, after a study of the award and of the statements of record, this Emergency Board finds that this award contemplates all instances wherein a freight car or freight cars, including those of the type referred to in the employees' statement of facts in Award No. 9705 as "freight cars CB&Q Nos. 31067 and 30042," have been or may hereafter be moved in passenger trains, and accordingly recommends that the Carrier check its records from and including March 10, 1942, and determine all such instances and pay to the engineers and firemen of all passenger trains involved not less than freight rates.

We are not considering in this case the types of cars that the Brotherhoods claim are in a category or categories involved in the items on the strike ballots covering Awards Nos. 6582 and 6583.

AWARD No. 9798

In this case claim was made for a yard crew in connection with the interchange transfer from the Union Pacific Railroad to the Denver & Rio Grande Western Railroad to the Salt Lake-Roper Yard. Certain cars were handled in this yard by the Union Pacific Railroad switching crews. The question turned on whether Track No. 5 in the yard was an interchange track.

The findings of the Adjustment Board read:

"This claim turns on the point whether track No. 5 was an interchange track. Carrier states positively that it was. This Committee does not deny it. If so, the movement of the two Union Pacific cars as described was not improper. See Award No. 4687."

The award is, "Claim denied."

As the facts were developed before this Board, it appears that the contention of the Brotherhood is that the award has not been properly complied with because the Carrier has not designated Track No. 5 as the sole interchange track in the Salt Lake-Roper Yard. As we read the findings and the award, there is no requirement contained therein that the Carrier designate Track No. 5 as the permanent and only interchange track.

In the course of the negotiations which occurred during the hearings, the Carrier made the following offer as a settlement of the controversy involving the application of the ward:

"This award reads as follows: 'Claim Denied.'

"The Carrier has advised the Union Pacific that passenger deliveries from that company will be received in the passenger yard at Salt Lake, and not on the so-called 'fence track.'"

The Board finds as a fact that the award has been complied with, and recommends to the parties the acceptance of the offer made by the Carrier in settlement of the controversy.

Cases in Which, During the Course of the Hearings, No Formal Proposals and Counter-proposals Were Exchanged Hostling Cases

AWARD No. 9354

This claim arose out of the discontinuance of a hostling shift at Durango, Colorado. It included a request for the restoration of the assignment together with pay for the time lost by the fixture hostler and firemen displaced when the shift was abolished.

Article 13 of the current agreement between the Carrier and the employees represented by the Brotherhood of Locomotive Firemen and Enginemen covers the matter of hostling service. Subsection (d) of that article provides:

"When 25 per cent or more of a roundhouse employe's time is consumed in handling engines, such employe will be considered a hostler and will be paid $6.83 or $7.47 per day of 8 hours or less. An employee handling 5 or more engines in any 8-hour shift will be paid hostler's rates."

Subsection (g) of that article (note 3) reads:

"Roundhouse foremen, traveling engineers and other supervisory officers should not be used to do the work that others should perform, especially that of hostlers. If others than hostlers, under emergency conditions (which means when the hostler is not available), move an engine undergoing repairs from one engine house track onto turntable and back into engine house on another track, or move an engine already in the house ahead or backward on track then occupied; or move an engine ahead at water crane to permit another engine to take water, such movements will be permissible under the rule, but the performance by officials and others than hostlers of the regular work of hostling, such as the ordinary and usual movements to and from the engine service track and the roundhouse, is prohibited."

In their presentation of this matter to the Emergency Board, the parties disagreed as to the application of these portions of Rule 13. The Brotherhoods took the position that Subdivision (d) was merely a rate-of-pay rule, while the Carrier took the view that that subdivision was the guide to be used in determining whether or not it was necessary to maintain a hostling shift. They also disagreed as to be application of note 3, Subsection (g).

The question involved in Award No. 9354 had previously been presented to the First Division of the Adjustment Board, and resulted in Award No. 2375. The Adjustment Board in that case applied Subdivision (d) of Rule 13, and, in its findings, said:

"* * * it is the judgment of this Division that the carrier did not have the right to abolish one hostler position on April 1, 1931, unless it could have been shown that less than 25% of a hostler's time was consumed in handling engines, or that less than five engines were handled within the meaning of Article 13(d) of Agreement in evidence in one of the two 8-hour shifts."

It then held:—

"* * * that the parties shall make a joint check of time consumed in handling engines * * *, and if such joint check shall show two or more hours' time consumed in handling engines, or that five or more engines were handled within the meaning of Article 13(d) of Agreement in evidence in said 8-hour period, the second hostler shift shall be assigned."

Subsequent to that award, the parties entered into an agreement dated May 1, 1939, which, among other things, provided:

"That a second hostler's shift will be assigned for not less than sixty days during the three months period, September 1st to December 1, 1939, i.e., this coming fall."

and that:

"After December 1, 1939, the necessity for a second hostling shift shall be determined in accordance with the application of the hostling service rule, Article 13, or whatever further arrangements we may be able to agree upon."

The Adjustment Board. in making its findings and award in the case before us, said:

"First Division Award No. 2375 and settlement thereof bearing date of May 1, 1939, negotiated by and between the parties to this dispute are held to be controlling here."

Then the Adjustment Board set out the provisions of the provisions of the agreement of May 1, 1939, hereinabove quoted, and concluded its findings of fact by saying:

"The parties are here directed to adjust the dispute presented in this docket, including payment of time lost, if any, in accordance with the terms of the agreed upon settlement of May 1, 1939, hereinafter cited."

and, in its award provided, "Case disposed of per Findings."

After this award was rendered, the Carrier made a check of the time consumed in hostling engines and of the number of engines handled under Subdivision (d) of Article 13, and determined that under the rule it was not required to have a regular second-shift hostling assignment at Durango.

The sole question of fact presented concerns whether the determination of this question may be unilateral. A reading of the award indicates that bilateral action, either through a joint check or negotiation, is contemplated.

The National Railroad Adjustment Board was preceded historically by the Train Service Board of Adjustment. The general question presented in the case out of which Award No. 9354 resulted, had been presented to the Train Service Board of Adjustment in Western Region Decisions Nos. 2196-3316. These decisions were cited to the National Railroad Adjustment Board in the submission which resulted in Award No. 9354.

In Western Region Decision 3316, that Board said:

"* * * that Decision 2196 reading, 'The Board decides that on such dates as Article 13, Paragraph (D), or the second note [now, the third note] under-Paragraph (G), was violated, the claim is sustained,' clearly makes it necessary for *the parties* to determine the dates when Article 13 requires the use of hostlers." (Underscoring ours.)

In National Railroad Adjustment Board Award No. 2375, the Board ordered in its findings:

"* * * that the *parties shall make a joint check* of time consumed in handling engines on the part of all employes between the hours of 4 o'clock p.m. and 12 o'clock midnight, and if such *joint check* shall show two or more hours' time consumed in handling engines, or that five or more engines were handled within the meaning of Article 13(d) of agreement in evidence in said 8-hour period, the second hostler shift shall be assigned." (Underscoring ours.)

It is our conclusion on the facts that this award contemplates, by its general language and its reliance upon Award No. 2375 and Train Service Board of Adjustment, Western Region Decisions 2196-3316, and the agreement of the parties of May 1, 1939, joint action in the determination of the question of whether the hostling assignment should be abolished, and, clearly, that check should be made prior to the abolition of the assignment.

It is, therefore, our recommendation that the assignment be re-established to continue until a joint check shows, under Rule 13, that the Carrier is not required to maintain it, or until, by mutual agreement, the assignment is abolished, and that the claims of the displaced fixture hostler and firemen entitled to this service, be paid.

AWARD No. 9698

In this case the claim before the Adjustment Board upon which Award No. 9698 is based read:

"Grievance of the firemen, account discontinuance of a hostling assignment at Bond * * *; request restoration of the service discontinued, with pay for all time lost by firemen entitled to perform hostling work * * *, and protest of enginemen account not relieved by hostlers on arrival at Bond, in accord with Article 49 current Enginemen's Contracts."

The findings of the Adjustment Board were:

"It affirmatively appears from the record that on the dates these engines were handled, the roundhouse employes were not qualified as hostlers under Rule 13(D), consequently they, with the enginemen who performed what is admittedly hostlers' work is prohibited by Note 3, Paragraph G of Article 13 of the Agreement.

"The attempted discontinuance of the hostling assignment should have been negotiated, and it is so ordered."

The award was, "Claim sustained as per Findings."

In the submission to the Adjustment Board, the Joint Statement of Facts quoted circulars dated September 30 and October 1, 1939, which set up the method to be pursued in handling through-road engines on the main-line tracks in Bond by the road engine crews in spotting and moving their engines for water, coal, and sand. Various specific in-

stances of movements of engines which the committee complained of as being hostling contrary to the rules were set up in the employees' position in the committee's formal written statement in support of its claim before the Adjustment Board. The movements so described in detail were those wherein an engine was taken to or from the roundhouse, and it is not possible to tell from these specific examples whether any of them corresponds to the spotting and shifting of engines for service by road engine crews on the main line as required in the circulars.

The hostling service at Bond has been re-established and employees have been paid for all movements of engines complained of as hostling other than those movements on the main line of through engines as required by the circulars. The sole dispute concerning the application of the award presented to this Emergency Board is as to whether the award sustains the protest of the enginemen against being required to move and spot road engines on the main line. In other words, the question is: Did the Adjustment Board hold that the road engine crew could not properly be required to spot and shift cars on the main line at Bond for engine service, and did it hold that firemen who otherwise would have done this work if it were hostling were entitled to pay for work on the dates road enginemen made the moves in question?

In 1936, some three years before the issuance of the circulars requiring road enginemen to spot and shift their engines for coal and water on the main-line tracks at Bond, the Carrier required through passenger enginemen to perform the same service for their engines on the main-line tracks there. Claim was made to the Adjustment Board based on the contention, as here, that the work was hostling under the rules cited to the Adjustment Board in the particular case.

The Adjustment Board, in Award No. 2323, denied the claim. There apparently is no substantial difference in the principle involved between the situation in Award No. 2323 and that presented in Award No. 9698, and therefore if the Brotherhood is right in its position before this Emergency Board, Award No. 9698 overrules Award No. 2323.

Study of the argument of the parties, of the exhibits, and of Award No. 9698, leaves this Emergency Board in serious doubt as to the meaning of the Award so far as the particular question remaining in dispute is concerned.

The original claim and the joint statement of facts tends to indicate that the principal question to be adjudicated in the submission to the Adjustment Board was the one now remaining in dispute. The circulars themselves are set out in full, as has been indicated, in the Joint Statement of the Facts. However, when we come to the employees'

position in the formal presentation to the Adjustment Board, we find that the specific examples relied on by the employees are of engine movements not contemplated or covered by the circulars.

The findings are clear and explicit in their reference to the claims for movements generally set out in the specific fact examples, and the findings are also clear to the effect that the hostling assignment must be re-established; but we cannot find in the language of the Adjustment Board in its findings of fact or its award specific, definite language dealing directly with the main-track movements covered by the circular. It would seem that if it was the intention of the Adjustment Board to overrule Award No. 2323, it would have said so in so many words or would have used language which would be clear and unambiguous on that point. This alone would raise some doubt as to what the Adjustment Board intended by its award.

Further than that, however, the award, which sustained every other feature of the claim, had in it language which suggests that it was not intended to sustain every feature of the claim as it was made. In making the award the language used is, "Claim sustained as per Findings." The reference to the findings in the claim would seem to indicate some reservation on the part of the Board in making its award.

It is our conclusion, therefore, that the award is uncertain and that the case comes within Subsection (m) of Section 3 of the Act and we recommend that the parties join in a reference of the dispute to the Adjustment Board and secure an interpretation of the award as to this point which is now in controversy between the parties.

Award No. 9700

The claim before the Adjustment Board in this case protested the use of switch crews in handling the passenger train "The Prospector" from the passenger depot at Salt Lake to the back shop and from the back shop to the passenger depot. Claim was made for pay for the hostler and hostler helper who should have performed the service, and the claim concluded with the request that the practice be discontinued.

The Adjustment Board in its award held that the "handling from passenger depot to back shop and return was hostler's work," and the claim was sustained. The Carrier has paid hostlers on the basis of one day for each date on which switch crews performed the service in question. The sole dispute now is as to whether two crews should have been paid rather than only one crew. "The Prospector" arrived at Salt Lake City at 8 o'clock in the morning and left at 7 o'clock in the evening.

It is the position of the employees that two violations occurred in each day rather than one. They point out that more than eight hours elapsed between the time the train was taken from the depot to the back shop and the time the train was taken from the back shop to the depot.

The Carrier relies upon the language of the claim, which would seem to indicate that the round trip was one movement, in support of its position that it should be required to pay only one day for each of the dates involved in the Employees' Statement of Facts. In their submission to the Adjustment Board, however, it is clearly shown that, as the matter was presented to the Board, it was the employees' position that each movement was a separate violation of the agreement. A reading of the award in the light of the submission, and in view of the fact that the two legs of the movement were so widely separated in point of time, indicates that the award has not been complied with by the Carrier by the payment of only one crew on each date involved. "The Prospector" ran for but a few months ,and the question will not again arise.

The Board recommends that the Carrier ascertain what employees are entitled to compensation under the view we take of the application of the award, and compensate them in accordance with what is said herein.

Work Train Service—Self Propelled Maintenance of Way Equipment—Rotary Runarounds

Under these subheads come the cases embodied in

AWARDS NOS. 9416 AND 9514

The former is based upon the claim of Conductor Lovejoy and Brakemen Bills and McCall, for payment of one day's pay for pool crew standing first out but not called for temporary work train service, and for other crews on account of "runaround" and not being placed at the foot of the list.

On the day in question (April 1, 1940), a conductor pilot was furnished with a self-propelled maintenance of way machine, to wit, a pile driver, for work on the Marysvale Branch between Thistle and Indianola. This machine was not bulletined and was dealt with by the Carrier as work train service; consequently, the crews on the pool freight board at the terminal were not called, and said crews who were available at the terminal on April 1, 2, and 3, 1940, filed claims for one day's pay each, for alleged runaround. These claims were denied by the Carrier.

In Award No. 9514, the claim was for one day's pay for Conductor

Croft and crew and other pool freight crews at Helper, Utah, September 22, 1943, and all subsequent dates on which a self-propelled machine, to wit, a Burro crane, was operated in work train service when not manned by pool freight crew. The basis of the claim is that, by not using Conductor Croft's crew, which was "first out" on the pool freight board, there was a runaround within the meaning of the schedule rule (Article 13(a)), and that when this runaround crew was not placed at the foot of the list, all crews which were available for service at that time were runaround.

The basic and controlling questions in both of the above-cited cases were:

(1) Is the operation of a self-propelled maintenance of way machine, such as a pile driver in No. 9416, and a Burro crane in No. 9514, "work train service" within the meaning of the rule (Article 22)?

(2) If so, does this service apply to a branch line as well as to the main line? (This inquiry is applicable only to No. 9416, as the operation in 9514 was on the main line.)

(3) Was there a rotary runaround within the meaning of the rule (Article 13(a))?

All of these points were expressly and directly raised in the proceedings before the Adjustment Board in the above-cited cases. The contention made by the Carrier in No. 9416 was that the rules do not require the assignment of a full train crew of a conductor and two switchmen to any self-propelled maintenance of way machine used in work service under the rule, and that the Carrier's failure to so apply this rule (Article 22) caused a runaround under another rule (Article 13(a)).

The employees also relied on a settlement with the Carrier under date of May 21, 1930, in which it was stipulated:

"* * * in the future when necessary to build up a crew for work train service on any branch line territory, that it would be necessary to furnish a conductor and two brakemen."

Article 13(a), above referred to, which directly applies to these two cases, states:

"Crews, except those assigned to regular runs, will be called first in, first out. When called out of turn, except as provided above, the crew due first out and runaround will be allowed one day's pay and placed at the foot of the line at the time of call."

Article 22, identified as the work-train-service rule, in Subsection (e) reads:

"All work train crews will consist of conductor and two brakemen."

Also before the Adjustment Board at the time its awards in Nos. 9416 and 9514 were made were the proceedings and the award of that Board in No. 9398, involving a similar state of facts, and the rules applicable thereto.

The net result of the Adjustment Board's deliberations in the premises was to decide that the operation of a self-propelled machine, such as that involved here, is "work train service" within the meaning of the rule. This point was expressly decided in No. 9398, and the finding in No. 9416 was in these words:

"In the light of Award No. 9898 (Docket No. 11,555) as applied to the facts presented in this docket, it is held that an affirmative award is warranted.

AWARD

Claim sustained."

In the other instant case, No. 9514, the Adjustment Board was even more specific in its findings, it being held that:

"In the light of Award 9398 as applied to the facts presented in this docket, it is held that the operation of the self propelled machine here involved [a burro crane] was in work train service and that under Article 22(E) a full train crew consisting of a conductor and two brakemen should have been used."

The further finding was that the claims presented would be sustained pursuant to Article 13(a) cited from the agreement between the parties. This is the runaround rule above referred to.

From the aforegoing statement of these two cases, it will thus be seen that before this Emergency Board was created the respective parties had already had their "day in court" for the trial of the identical issues here involved. Moreover, these issues had been determined by the only tribunal having authority to adjudicate them, and whose decision under the statute is final and binding upon both parties to the dispute.

It is, therefore, not within the power of this Emergency Board to go behind these awards, or within its prerogative to criticize the rules under which, as now worded, it is possible to impose severe and harsh penalties upon the carrier whenever this use of self-propelled equipment necessitates a full train crew taken from the pool freight board. As far as we can go is to state the facts as we find them upon a careful investigation of the whole record, and make such recommendations thereon as we deem appropriate.

These facts call for the payment of the claims as submitted in Awards Nos. 9416 and 9514—which has already been done by the Carrier—and the payment of such other claims as come within this same classification

of self-propelled maintenance of way machine engaged in work-train service within the definition given by the Adjustment Board. We, therefore, recommend that these awards be applied accordingly.

We are impressed, however, with the earnestness of the offer made by the Carrier not only to settle all pending claims in accordance with the awards, but to seek a common understanding for the practical operation of this self-propelled equipment which would be in compliance with the spirit of the various awards heretofore made by the Adjustment Board, and, at the same time do substantial justice and equity to both the employees and the management.

This offer was based upon the following suggestions, as submitted at the hearing before this Board:

"1. When self-propelled equipment, moving on rails, is used for switching in yards, a crew should be provided, without rotary or any other run-around.

"2. When a conductor-pilot alone is used on this self-propelled equipment moving on rails outside of yards, the Carrier should be required only to pay two extra board brakemen and then with due consideration for earnings elsewhere.

"3. When the railroad uses self-propelled equipment operating on rails outside of yards with no conductor, trainman or brakeman, a rotary run-around should be allowed, with full penalty in such cases being exacted from the Carrier."

We feel that the practical details of railroad operation involved in these two cases fully justify reciprocal efforts to reach an agreement which would remove any doubt as to the feasibility and fairness of any method of procedure for the future to be adopted by the Board.

We have, therefore, embodied in this report, without comment, the Carrier's suggestions above quoted, as affording a possible basis for amicable conferences on this subject, to the end that the purpose and spirit of the Railway Labor Act be still further served.

Freight Cars in Passenger Trains

AWARD NO. 9342

Claim was made by a certain passenger conductor and his crew for payment at freight rates under Article 20 of the outstanding schedule on the ground that the Carrier's property, such as commissary supplies, locomotive and equipment parts, etc., were moved under baggage checks in baggage cars in passenger trains, contending that such shipments were really less carload freight.

The National Railroad Adjustment Board, First Division, disallowed Article 20 as a basis of payment, but found that the special agreement

of April 14, 1939, applied, and, therefore, the one-cent-per-mile additional compensation therein provided for should prevail. The finding read:

"Upon the facts of record it is held that claimants should be paid in addition to their passenger pay one cent per mile for miles the l.c.l. freight was handled as provided for in Special Agreement dated October 14, 1939."

The award was, "Claim disposed of per Findings."

Just what persuaded the Adjustment Board to define company property so moving in passenger train equipment is not clear, but this Emergency Board is not empowered to modify the actual findings in the awards that come before it, even if the reason is not convincing.

The actual controversy appearing as one of the items on the strike ballots arose because the Carrier felt itself entirely within its right in changing, on June 11, 1944, after 20 days' published notice, the billing of these commissary supplies and equipment parts so that thereafter they were moved in its baggage cars in passenger trains as non-revenue express lading. The railroad management contends that this reclassification obviates the applicability of Award No. 9342 to such express shipments in baggage cars in passenger trains. The Brotherhoods, on the contrary, take the position that this alteration in fact is merely one on paper and had for its purpose the evasion of the award.

An analysis of the movement of the commodities so billed shows that only in the phases of actual pick-up for loading and of final handling at terminal points is there change in the conditions and circumstances attending those shipments. The booking entries, at the outset, may differ, and the employees who receive the company commodities and equipments as billed are accountable to the express agency rather than to the Carrier. The same observation is probably true of the personnel who receipt for the company supplies at the termination points. However, in the train movement itself the same tasks devolve upon the train employees as were performed prior to June 11, 1944.

The spirit and intent of Award No. 9342 is that if the commodities consisting of the Carrier's materials, commissary supplies, and equipment parts move in baggage cars in passenger trains, the train crew is entitled to the compensation stipulated under the special agreement of October 14, 1939, regardless of the clerical procedures and methods. The fact that the express agency is the custodian of this property in a technical sense throughout the movement of the train is not controlling.

This Emergency Board accordingly recommends that the Carrier check its records from June 11, 1944, for all instances of such non-revenue express billing of company property of any character in which the same

moved in baggage cars in passenger trains, and pay the crews involved the one-cent-per-mile additional compensation provided for in the special agreement of October 14, 1939, and continue to pay such compensation so long as the method of billing and shipment set forth in the Carrier's Bulletin No. 528, dated May 21, 1944, remains in effect.

It might be observed in conclusion that this Emergency Board has not accepted the statement of the Brotherhoods that the recourse sought by the Carrier with respect to shipments of company supplies, equipment parts, etc., was a violation of good faith. Although adequate and proper compensation of railway employees is a prerequisite to wholesome conditions of railroad transportation, the Carrier is justified in aiming, at the same time, at sound freight-rate and passenger-rate structures. The interests of the vast shipping and traveling and consuming public must also be kept in mind. No information was produced by the Brotherhoods to indicate that the expedient adopted was conceived in bad faith; mere assertion that it was a subterfuge does not make it one.

AWARDS Nos. 6582-6583

The cases embodied in these two awards relate to special types of cars carrying freight in passenger train service. They may be considered together, for while the claims are on behalf of different classes of employees and the rates of compensation differ the determining question is the same in both cases. The employees based their respective claims on the provisions of their applicable agreements. In the case of the employees covered by the Trainmen's agreement compensation is claimed under Article 20 in that agreement, which provides:

"Passenger crews handling freight in freight cars will be paid the freight rate provided on the district freight is moved, for the actual distance freight cars are handled, with a minimum of 12½ miles, or one hour, without deduction from passenger pay, except between Leadville and Malta."

In the case of the employees covered by the Enginemen's agreement, the claim is made under Article 17 in that agreement, which provides:

"Firemen and helpers on mixed trains will be paid through freight rates per class engine. When one or more freight cars are handled in any train, firemen and helpers will be paid through freight rates per class engine."

The particular cars involved in both cases are flatcars converted for normal operation in passenger trains. The cars were loaded with semi-trailers containing l.c.l. freight.

The Carrier contended that it was not obligated to pay under the rules above cited but that it was obligated to pay only as provided in an agreement between the parties dated October 14, 1939, the relevant paragraph of which reads:

"1. When baggage cars (including types of freight cars converted and equipped for normal operation in passenger trains) loaded with freight are handled in passenger trains one cent (1c) per mile will be paid each member of the engine crew (but not the helper engine crews) and the train crew for the actual miles such loaded cars are moved in the train, as an arbitrary allowance in addition to earnings accruing for the trip or day's work under passenger rates of pay and rules applying in the respective contracts for the class of employees covered by this memorandum agreement."

The Adjustment Board ruled adversely to the Carrier's contention and allowed the claims. So far as the cases where the converted flat-cars were handled is concerned, the Carrier has paid the claims of the employees. The Brotherhoods before this Emergency Board have argued that proper application of the award requires similar payment under the applicable rules in all cases where any converted freight car was handled.

In its findings the Adjustment Board said:

"The Carrier contends that the language in the preamble and in rule one of the special agreement to-wit: 'When baggage cars (including type of freight cars converted trains),' authorizes this movement as within the special agreement. To construe the rule as the Carrier contends would be in effect to eliminate therefrom the words 'including types of' and leave it so as to read 'when baggage cars and freight cars converted and equipped,' etc. Obviously that is not its meaning. The part included in the parenthesis is at best but an extension of the normal meaning of the words 'baggage car' to include freight cars 'converted and equipped for normal operation in passenger trains' as *baggage cars.*"

The Board then quotes other language of the agreement to show further that the agreement applies only to baggage cars or cars converted for normal use in passenger trains as baggage cars.

It will thus be seen that so far as these awards are concerned the Adjustment Board, while putting a strict construction on the Special Agreement, did not hold that a converted car could not in any case come within the agreement. The agreement involved in these awards does not cover all of the lines of the Carrier but only a rather limited section of them, and it must be borne in mind that the only question in these awards concerns the application of this special agreement.

In their presentation to this Emergency Board no specific cases were presented by the Brotherhoods wherein they claimed payments had not been properly made under Awards 6582 and 6583. It did appear that other cars converted and equipped for normal operation in passenger trains have been pressed into service by the Carrier since these claims were originally made to the Adjustment Board, but no details were given us concerning them. Absent facts to which the awards may be

applied, we cannot say whether the awards have been complied with by the Carrier or not.

The awards are clear and unambiguous on all points embraced within the facts therein dealth with. They are also clear as to the general principle that before a car comes within the agreement it must be a baggage car. It is, therefore, the duty of the Carrier to pay under these awards any claims arising out of the use of converted freight cars which are not converted for normal operation in passenger trains as baggage cars.

There is, however, in our opinion, real and substantial doubt as to how far the award may be applied to particular cars involved in other cases not even mentioned in the record before us. To extend the application of these awards to other cases not presented where the facts are unknown, would be beyond the scope of this Emergency Board functions and authority. It would be exclusively within the province of the Adjustment Board to determine the extent of the applicability of its own Awards based on the facts and descriptions of cars as they may later be presented by the parties to any dispute.

We recommend that a check be made and that payments be allowed under the schedule rule in all cases that might be found where freight is handled in the territory covered in the submissions in converted freight cars which are not cars converted for normal operation in passenger trains as baggage cars.

If there should be any cases which are not settled either by payment already made or in accordance with the above recommendation, we further recommend that the proper procedure would be to make a joint admission of the facts to the Adjustment Board under Subsection (m) of Section 3 of the Railway Labor Act so that the awards may be interpreted in the light of the facts presented.

CONCLUSION

Having discussed in detail the cases cited on the strike ballot, we are led to the general conclusion that the Railway Labor Act provides adequate and ample methods for adjusting all matters in dispute between these parties without the necessity of creating a national emergency, which not only threatened to interrupt movements of troops and war material, but actually did so for an appreciable period of time.

Arbitration and mediation are available under the statute; and the awards of the National Railroad Adjustment Board, though final and binding, are always open to petition for clarification whenever the parties, or any of them, consider its terms ambiguous.

We earnestly recommend that these methods of adjustment, exclu-

sively, be invoked, and that additional encouragement to do so be given by the national Government by providing means for expediting the processes of the Adjustment Board. The First Division, in particular, is so overloaded with cases that, in spite of the utmost diligence on the part of its members and staff, long delays in the actual rendering of awards are inevitable. The need for the services of this Board is constantly increasing ,and has now become so urgent that the national interests require, in our judgment, the adoption of measures that will adequately equip the Board for the more prompt disposition of the claims referred to it.

CERTIFICATION

In conformity with the provisions of the Stabilization Act of October 2, 1942, as amended by Section 202 of the Act approved June 30, 1944, this Board finds and certifies that the agreements reached and the recommended settlements involved in this proceeding are consistent with the stabilization standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Respectfully submitted,

LEIF ERICKSON, *Chairman.*
RIDGELY P. MELVIN, *Member.*
RUSSELL WOLFE, *Member.*

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