

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED MAY 25, 1945
UNDER SECTION 10 OF THE RAILWAY
LABOR ACT, AS AMENDED

To investigate and report on certain unad-
justed disputes between the Illinois Central
Railroad Company and its employees repre-
sented by the Brotherhood of Locomotive
Firemen and Enginemen

JULY 24, 1945

WASHINGTON, D. C.,
July 24, 1945.

THE PRESIDENT,
The White House.

MR. PRESIDENT : The Emergency Board created by you on May 25, 1945, under Section 10 of the Railway Labor Act, as amended, to investigate and report on certain unadjusted disputes between the Illinois Central Railroad Company and its employees represented by the Brotherhood of Locomotive Firemen and Enginemen , has the honor to submit herewith its report and recommendations based upon its investigation of the matters in dispute.

(S) HUSTON THOMPSON, *Chairman.*

(S) GRADY LEWIS, *Member.*

(S) CURTIS G. SHAKE, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD, APPOINTED MAY 25, 1945, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate and report on certain unadjusted disputes between the Illinois Central Railroad Company and its employees represented by The Brotherhood of Locomotive Firemen and Enginemen.

INTRODUCTORY

By Proclamation dated May 24, 1945, the President of the United States created an Emergency Board pursuant to Section 10 of the Railway Labor Act, as amended, to investigate and report on certain unadjusted disputes between the Illinois Central Railroad Company and its employees represented by the Brotherhood of Locomotive Firemen and Enginemen. On the next day, the President designated and appointed as members of said Board Mr. Huston Thompson, of Washington, D. C., Colonel Grady Lewis, of Washington, D. C., and Judge Curtis G. Shake, of Vincennes, Ind.

The Board as thus constituted met at Room 9 of the Palmer House, in the city of Chicago, Ill., at 11 o'clock a. m., on May 31, 1945. It selected Mr. Huston Thompson as its Chairman, and approved the designation of Frank M. Williams & Co. as its official reporter. The Brotherhood of Locomotive Engineers, referred to herein as the Engineers' Brotherhood, filed a motion to be permitted to intervene as a party to the proceeding which, after due consideration, was sustained.

The appearances were as follows :

For the Brotherhood of Locomotive Firemen and Enginemen Harold C. Heiss and Leo J. Hassenauer, Counsel ; W. C. Keiser, Vice-President, Brotherhood of Locomotive Firemen and Enginemen ; and C. A. Tweedy, General Chairman, Brotherhood of Locomotive Firemen and Enginemen, Illinois Central Railroad.

For the Illinois Central Railroad Company : J. H. Wright, Counsel ; C. R. Young, Manager of Personnel, Illinois Central System ; and E. T. Horsley.

For the Brotherhood of Locomotive Engineers : Harold M. McLaughlin and Clarence E. Weisell, Counsel; J. P. Shields, As-

sistant Grand Chief Engineer, Brotherhood of Locomotive Engineers; J. W. Mooney, Chairman, General Committee of Adjustment, Illinois Central Railroad; and H. J. Reise, Chairman, General Committee of Adjustment, Yazoo & Mississippi Valley Railroad,

Public hearings were held at the Palmer House in the City of Chicago on May 31 and June 1, on which last-mentioned date it became necessary for the Board to recess, to reconvene at the Edgewater Beach Hotel in said City on June 25, 1945. Meanwhile, the parties entered into a stipulation agreeing to an extension of thirty days from June 25, 1945, for the Board to complete its hearing and make its report herein. This extension was subsequently, on June 9, 1945, approved by the President.

The Board reconvened at 11 o'clock a. m., June 25, 1945, and conducted public hearings on June 25, 26, 27, 28, 29, 30, July 2, 3, 5, 6, 7, 9, 10, and 11, on which last-mentioned date the evidence, consisting of 1,899 printed pages, and the arguments of counsel, were concluded. Thereafter, on July 12, 13, and 14, the Board conferred with representatives of the parties in an unsuccessful effort to adjust the dispute, Having failed to mediate the controversy, the Board met in executive session at the office of its Chairman at Washington, D. C., to formulate this report,

THE EMERGENCY

On February 19, 1945, the Brotherhood of Locomotive Firemen and Enginemen, hereinafter referred to as the Firemen's Brotherhood, submitted to the employees represented by it on the Illinois Central System a strike ballot, which was subsequently adopted by a substantial majority of such employees. The Illinois Central System, comprising the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad, hereinafter called the Carrier, constitutes one of the largest transportation units in the country. These combined properties serve as common carriers of goods and passengers over a wide area, extending from Chicago to New Orleans, with connecting lines to Omaha, Shreveport, and Louisville. The suspension of traffic on these properties, even temporarily, would not only seriously interrupt interstate commerce but also tragically retard the prosecution of the war in which this nation is now engaged, It is unthinkable that a strike should be permitted to materialize, under the existing conditions.

THE CONTROVERSIES

The strike ballot presented three issues, which will here stated and explained in their order. The first of these is denominated as :

Claim No. 1

Question of establishing date of seniority as engineers by firemen who have qualified and been used as engineers in accordance with Article 40, Paragraph F, of the current schedule on the Illinois Central Railroad,

Paragraph F of Rule 40 of the Firemen's Agreement with the Carrier reads as follows :

Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from first service as engineer when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineer's extra list, or holding a regular assignment as engineer on such seniority district,

This Rule had its inception in the Chicago Joint Working Agreement entered into between the Firemen's and Engineer's Brotherhoods in 1913, for the purpose of adjusting certain matters in respect to which the contracting parties had or claimed to have a mutual interest and providing for the settlement of disputes relating thereto. The Chicago Joint Agreement was never negotiated with the Carrier, but the above provision thereof was ordered into the Agreements of both Organizations by the Director General during the 1918-19 period of Federal control of railroads. The Rule was carried forward in both agreements from 1919 until 1933, although the Engineer's Brotherhood exercised its right to withdraw from the Chicago Joint Working Agreement in 1927. In 1933 the Engineers' Brotherhood negotiated its current Rule, Article 34, Paragraph B, with the Carrier, which reads :

Seniority (except in case of transfer) will be established by the first trip made or days work performed, after having been assigned to the extra board, or to a regular position of an engineer. Emergency service rendered prior to being so assigned will not be considered,

The Carrier has consistently applied the Engineers' Rule and the question presented by Claim 1 of the strike ballot is whether the establishment of seniority dates on the roster of the Engineers' Brotherhood for firemen promoted as engineers is governed by Article 40, Paragraph F of the Firemen's Agreement, or by Article 34, Paragraph B of the Engineers' Agreement,

Claim No. 2

Question of minimum **mileage made** by engineers before demoted engineers will be permitted to return to firing service.

This issue revolves about Article 35, Paragraph B of the Firemen's Agreement and Article 41, Paragraph A of the Engineers' Agreement, both of which read:

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

1. That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month, or those on the extra list in switching service are averaging 26 days per month.
2. That when reductions are made they shall be in reverse order of seniority,

The Firemen's Brotherhood seeks a strict application of the above rule, with particular regard to the maximum and minimum mileage figures at which the number of pooled and extra board engineers may be increased or reduced. The Engineers' Brotherhood relies upon a so-called Interpretation of its Rule, embodied in an agreement with the Carrier under date of January 1, 1931, and providing :

In the regulation of mileage, the local chairman of the engineers, subject to the approval of the General Chairman of the engineers, may regulate mileage in any assigned, pooled or chain gang service on the seniority district to any figure between the minimum and maximum provided in the Wage Agreement,

In conformity with this "Interpretation" the chairmen of the Engineers' Brotherhood, with the acquiescence of the Carrier, have fixed the mileage for the different classes of engineers at definite figures between the maximums and minimums prescribed in Rules 35, Paragraph B, and 41, Paragraph A of the respective Agreements.

Most significantly, the record discloses that at the same time the Engineers' Brotherhood entered into its Interpretation agreement with the Carrier, the Firemen's Brotherhood executed a like instrument containing the precise provision quoted above. The Engineers have embodied their Interpretation in their published schedule, but the Firemen have not ; but no termination of the Firemen's Interpretation Agreement was established at the hearing.

Claim No. 3

Claim of fireman R. A. Sanaman for one yard day July 15, 1942, and for senior firemen left unassigned on each subsequent date, account engineer J. W. Lins permitted to work as fireman on the yard engine at Freeport, Ill,

This is a specific claim for monetary redress, likewise predicated upon an alleged violation of the Rule relied upon by the Firemen's Brotherhood in Claim 2. The Carrier sought to defend its conduct on the basis of a humanitarian consideration extended to an unfortunate engineer who was physically incapacitated from serving as such but who was, nevertheless, able to work as a fireman. It affirmatively appears that this claim was jointly submitted for determination to the First Division of the Railroad Adjustment Board by the Firemen's Brotherhood and the Carrier and that it was duly docketed and assigned a number by that agency. Thereafter, the parties joined in withdrawing the submission from the consideration of the Adjustment Board "with prejudice" to the claim. On this state of the record it was urged by the Carrier and the Engineers' Brotherhood that the question is now moot and that the Firemen's Brotherhood has foreclosed itself from pressing it here.

We also deem it proper to call attention to the fact that the Chicago Joint Working Agreement entered into by the representatives of the Firemen's and Engineers' Brotherhoods in 1913 contained the following provision for the settlement of what may be termed jurisdictional disputes arising between said organizations :

In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

The relationship established by the foregoing Rule was, of course, brought to an end when, in 1927, the Engineers withdrew from the Chicago Agreement. Subsequently, however, the agreements of both Brotherhoods with this Carrier contained the following :

When a member of either Organization has a grievance which the local committee of his Organization is unable to adjust with the local officers of the company the matter shall be handled by the two General Chairmen, who will work jointly in handling such grievance to its final conclusion.

The above provision was dropped from the Engineers' Agreement, in 1933, since which time that Brotherhood has not committed itself to the joint handling of any disputes. On the other hand, the Rule last quoted is carried in the Firemen's current Agreement and their representatives, as well as the Carrier, expressed themselves as agreeable to the reestablishment of some such arrangement,

We were further advised at the hearing that prior to the appoint-

ment of this Board the controversies here being considered were called to the attention of the Mediation Board in such a manner as to indicate that the only parties to the dispute were the Firemen's Brotherhood and the Carrier; and that the Mediation Board suggested that the services of the National Railway Adjustment Board might be invoked to settle the issues. It was also made to appear, however, that there exists between the two brotherhoods an understanding that jurisdictional disputes will not be submitted to the Adjustment Board.

DISCUSSION

The Parties

The claims were initiated on behalf of the Firemen's Brotherhood against the Carrier. When, at last, the issues came before this Emergency Board, the Engineers' Brotherhood petitioned the Board to become an Intervenor, Its motion was granted, and it took part as an Intervenor-Defendant against the Firemen's Brotherhood. It thus Voluntarily subjected itself to the jurisdiction of this Board.

The Carrier, during the proceedings, announced, with respect to the particular issues involved, that it joined with the Engineers' Brotherhood. It had, however, already stated for the record that it would abide by and agree to whatever findings and recommendation were made by the Board. It, therefore, became a neutral, and as such left the issues to be disputed between the two Brotherhoods. This does not mean that the Carrier seeks to evade its responsibilities as to its part leading up to the joining of issue on the three claims, but simply, that, as to the future, it is willing to abide by the findings, ruling and recommendations of this Board.

The Issues

The issues involved in the strike ballot can be presented in layman's language by three separate questions. They are as follows :

(1) When and by what Organization shall a fireman who has passed his promotional examinations for the position of engineer be placed on, and have the privileges of, the seniority roster of the engineers?

(2) Under what mileage condition will an engineer, who has retained his seniority rights as a fireman, be permitted to return to firing service?

(3) If an employee has been disqualified because of physical disability, for engineer service and if the Carrier places the disqualified engineer in service as a fireman, without agreement with the Firemen's Brotherhood; and if the case proceeds to the point where it is finally presented jointly before the National Railway Adjustment Board by the two Brotherhoods; and if it is withdrawn jointly "with prejudice"

to further procedure; and if the National Railway Adjustment Board then removes the case from its docket; should this Emergency Board recommend that the case be opened for reconsideration?

The Engineers' Brotherhood insists that a strict line of demarcation can be drawn and that neither one of the Brotherhoods shall cross the line into the seniority domain of the other. The Firemen's Brotherhood maintains that the moving forward from the firemen's roster to the engineers' roster, and back again to the firemen's roster, makes it essential to have some cooperative procedure,

The Report of an Emergency Board appointed by the President, on December 15, 1944, under the provisions of the Railway Labor Act, following the language of an opinion of a United States District Court on this subject, said:

(1) That there exists with respect to this Carrier and its firemen and engineers, a system of seniority employee rights under which promotions are made of its firemen and engineers according to their priority of employment. In locomotive employment with this Carrier, as with other Carriers, there are constant changes in the duties and status of the engine employees, as determined by such seniority rosters, with a constant ebb and flow between the craft of engineers and firemen, The number of engineers in this carrier's service varies with fluctuations in volume of its traffic, seasonal and otherwise, and the number of firemen in its service varies for the same reasons, When its volume of business increases, furloughed engineers and qualified firemen are called to service as engineers. When, under such seniority system traffic declines, engineers are demoted and almost all of them displace firemen ; firemen so displaced in turn displace other firemen their juniors on the firemen's seniority list and firemen with the least seniority are released from work,

The Firemen's Brotherhood, on the other hand, declares that it has the right to dictate the conditions under which the fireman progresses until the Engineers have granted the promoted fireman a position on their seniority roster.

It further points to the terms negotiated with the Carrier in Section F of Article 40, on which a fireman, having passed his promotional examination, shall obtain a seniority position on the Engineers' roster. This provides that a fireman, having qualified by examination as an engineer, should receive promotion and the establishment of a date of seniority as engineer from the first service as engineer when called for such service, provided there are no demoted engineers back firing.

Question No. 1

Under Claim No. 1 this Board points out that when the Carrier agreed to abide by whatever decision this Board should make, eliminated the Carrier as an active litigant, and left the issues be-

tween the two Brotherhoods, eVen though the Carrier openly declared on the record that it believed the Engineers' Brotherhood to be right in the defense it made to Claim No, 1,

The issues involVed under Claims No, 1 and 2 reVeal conditions where each Brotherhood seeks, under certain circumstances, to step outside the scope of its respectiVe jurisdiction to inVade the domain of the other,

In Claim No. 1 the Engineers' Brotherhood maintains that under the Railway Labor Act it has the exclusive right to dictate the terms upon which a fireman, who has passed his promotional examinations, shall be placed on its roster, Its position is that a majority of the engineers' craft haVe Voted that it shall have control as to the terms upon which a fireman should be placed on that roster.

Legally speaking, there is a conflict between the respectiVe Agree-ments of the two Brotherhoods with the Carrier on the subject of the obtaining of seniority rights on the Engineers' roster.

Section 2, Paragraphs Fourth and Ninth declare that the majority of any craft or class of employees shall have the right to determine who shall be the representatiVe of the craft or class for the purposes of this Act. Where there is a dispute as to who are the representa-tiVes of such an employee, it shall be the duty of the National Media-tion Board, upon the request of either party to a dispute, to determine what organization has been authorized to represent the employee and certify the same to the Carrier.

The Engineers' craft, being in the numerical superiority as to the negotiation and interpretation of its Agreement with the Carrier, is the bargaining agent for Engineers in this case, and, legally speak-ing, should negotiate the terms upon which a promoted fireman should enter the seniority roster of the Engineers,

From the record before us it appears that at the time of the sub-mission of these claims to the National Mediation Board, it was not made clear to that Board that the questions raised were largely "juris-dictional," Had this situation been made clear to that Board, we are of the opinion that the differences could then haVe been resolved by the National Mediation Board under the proVisions of Section 2, Para-graph Fourth of the Railway Labor Act,

Justification for such belief is found in the language of the Supreme Court of the United States, speaking through Mr, Justice Douglas, in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association, Petitioner v. Missouri-Kansas-Texas Railroad Company et al.*, 320 U. S. 323, 64 S. Ct. 146, wherein it is said :

Congress did not leave the problem of inter-union disputes un-touched. It is clear from the legislatiVe history of 2, Ninth that it

was designed not only to help free the unions from the influence, coercion, and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees. H. Rep. No. 1944, *supra*, p. 2; S. Rep. No. 1065, 73rd Cong., 2d Sess., p. 3. However wide may be the range of jurisdictional disputes embraced within 2, Ninth, Congress did not select the courts to resolve them, To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board.

It seems obvious from the situation here presented that this is a jurisdictional controversy between the two Brotherhoods, even though the proceeding that eventuated in moving this Board was originally brought by the Firemen's Brotherhood alone, against the Carrier, Assuming that this conclusion is correct, then we would suggest that this case, covering Claim No. 1 of the strike ballot, could well have been submitted for determination to the National Mediation Board under Section 2, Paragraph Fourth of that Act.

If, as the record shows, in some instances firemen who had passed their promotional examinations to become engineers and had in some instances acted as engineers, were not accorded a place on the Engineers' seniority roster in five, ten or even twenty years, then the Board thinks it would be only reasonable that the Engineers' Agreement with the Carrier should be relaxed to rectify this situation,

Question No. 2

This question also deals with the ebb and flow of engineers and firemen to each other's rosters, However, there is this difference in the approach of the respective Brotherhoods under Claim No, 2, as in counterdistinction to their respective positions in Claim No. 1.

Under Claim No, 1 the engineers sought to prevent encroachment into their territory by the firemen, whereas in Claim No, 2 the firemen seek to prevent invasion of their territory by the engineers.

Simplified to the ultimate, the engineers claim that under Article 41, Paragraph A of the Engineers' Agreement with the Carrier (the Firemen's Agreement contains the same terms in its Article 35, Paragraph B) that they have, and require a certain flexibility between a maximum and minimum of mileage run by the engineers within which to say when an engineer shall move from his roster to fireman's work, For this purpose the Engineers' Brotherhood have negotiated an Agreement under which they maintain they have the right to determine when a reduction of engineers should be made, and they have had in force for a long time a plan whereby they operated between a maximum and minimum mileage in moving an engineer down to a fireman's work.

Engineers, as to their work, are classified as (1) those regularly assigned, (2) those in the pool, and (3) those on the extra list.

The Firemen's Brotherhood takes the position that not until the mileage of the engineers on the extra list falls to the minimum named in each Agreement should engineers be permitted to invade the ranks of the firemen,

The basis for the grievance of the Firemen's Brotherhood as submitted by Strike Ballot Question No. 2 is the retention and application of the so-called Interpretation of Agreement Covering Regulation of Mileage. This provision is identified under such designation in the Engineers' Schedule of Wages for the Illinois Central Railroad Company immediately following Article 41, and in such schedule for the Yazoo and Mississippi Valley Railroad Company immediately following Article 38. Its provisions are further identified, as affecting engineers, in Carrier's Exhibit T, and as affecting firemen, as Carrier's Exhibit U,

The application of the rule established by such Interpretation Agreement has been generally beneficial to orderly regulation of the mileage of the members of both crafts of employees. The flexibility permissible under its provisions has been especially helpful in the spreading of work during times of depression in the industry,

Although its terms are not embodied in the printed schedules for the firemen, no abrogation of the Agreement, agreeable to Paragraph 6 of Carrier's Exhibit U, was ever had, Indeed, the proof showed that the firemen are employing its provisions when they seem desirable. This situation calls for attention in our Recommendations and Findings.

Question No. 3

The claim presented under this question grew out of the employment by the Carrier of a physically disqualified engineer as a fireman, Such employment displaced another fireman, regularly employed. The Firemen's Brotherhood, upon behalf of the displaced fireman, filed a claim against the Carrier for the wages lost by reason of the employment of the disqualified engineer. The Carrier declined to pay the regular fireman for time lost by the employment of the disqualified engineer.

The issues thus joined were submitted jointly by the Carrier and the Firemen's Brotherhood to the National Railway Adjustment Board for determination, where the case was duly docketed. Subsequently, both parties in writing requested a dismissal "with prejudice" to the claim by the National Railway Adjustment. Board, On this state, of the record the Board is of the opinion that the Firemen's Organization has foreclosed itself from further pressing this claim.

FINDINGS AND RECOMMENDATIONS

Upon a full consideration of all the evidence and historical data submitted, this Board finds :

1, Question No. 1 of the Strike Ballot :

That, while the so-called ebb and flow from one craft to the other of a large part of the men of the two crafts existed and was a matter of general notice when Congress passed the Railway Labor Act and its amendments, it did not specifically provide for control of such ebb and flow, Upon the contrary, Congress gave to each craft control of its members so far as concerns craft conditions,

The Board finds that the Act contemplates that the dividing line of jurisdiction to control craft conditions is at the point of imposing conditions of entry into the one craft or the other. It, therefore, follows, and the Board so finds, that any provision contained in the Schedule of either craft organization that seeks to prescribe conditions of such entry into the other craft is nugatory and not enforceable.

We, accordingly, recommend that : Article 40, Paragraph f, appearing in the Schedules for wages of Locomotive Firemen of both the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company be wholly stricken therefrom and that no other provision be placed in the firemen's contracts in lieu thereof,

While fully recognizing the right of the engineers to establish conditions for entry into that craft, the Board is of the view that Article 34 B, of the Schedule of wages of Locomotive Engineers on the Illinois Central Railroad Company and the companion rule, found in Article 31 b, of the Schedule of wages of Locomotive Engineers on the Yazoo and Mississippi Valley Railroad Company is unduly restrictive in its requirements to be conducive to the most cordial understanding and workable conditions of the two crafts and of Carrier,

The Board recommends that, to accomplish that end, said Article 34 b and 31 b should be amended by adding to each of them the following provisions : *"Provided:* If a promoted fireman performs emergency service as engineer at a time when there are no demoted engineers back firing, and within a minimum period of time is not assigned to the engineers extra list or to other assigned service, then upon the expiration of *two* years period of time he will be accorded a date and rank of seniority as of that date.

"Provided further: When a promoted fireman in any 30 day period, and at a time when there are no demoted engineers back firing accumulates one-half of the maximum mileage allowable for extra engineers, he will be accorded a seniority date and rank as engineer as of the date of the accumulation of this mileage. This date and rank to be accorded to the senior promoted fireman,"

Agreeable to such belief, the Board recommends adding such provisions to the mentioned Articles.

In the defining of a jurisdictional dividing line, consistency requires, and the Board recommends, that Article 41, Paragraph (a) of the Schedule of Wages of Locomotive Engineers for the Illinois Central Railroad Company and Article 38, Paragraph (a) of the Schedule for Locomotive Engineers for the Yazoo and Mississippi Valley Railroad Company be deleted and stricken from those Articles and that no other provisions be substituted for them.

2. Question No. 2:

The Board finds the "Interpretation Agreement," hereinbefore referred to, to be a present provision of the existing Schedules on both railroads for both crafts,

The Board recommends the retention of the "Interpretation Agreement" in all Schedules, subject to the following amendment : Place a period after the word "service" in the third line of paragraph c of the Agreement as shown in the Engineers' Schedule for the Illinois Central Railroad Company, and as shown in the third line of paragraph (3) of the Agreement in the Engineers' Schedule for the Yazoo and Mississippi Valley Railroad Company, Delete from both Schedules the words "and engineers assigned to the extra board" that follow immediately after the above-described word "service."

By so doing, no engineer could go back firing until the average mileage of engineers assigned to the engineers' extra board had been reduced to the actual fixed minimum figure set by the respective Engineers' mileage schedules,

3. Question No. 3:

The Board finds that the National Railroad Adjustment Board, First Division, created by the Railway Labor Act, is endowed with suitable jurisdiction to hear and determine the complaint of any named employee, It further finds that under date of March 30, 1943, representatives of the Carrier and firemen employees jointly submitted this identical grievance, in form of a claim, to such Adjustment Board, The claim was duly docketed by the Adjustment Board under its Docket No. 16515, Thereafter, and on January 3, 1944, the petitioners agreed to withdraw the claim and requested its removal from the said Docket, "it being mutually understood that such withdrawal is made with prejudice to the claim."

By reason whereof, the Board finds that further adjudication of the claim is foreclosed and it presents no complaint that may be addressed to this or any other Board or tribunal, It follows that no action can be taken with respect to this grievance, and we so recommend.

SUPPLEMENTARY OBSERVATIONS

While the foregoing Findings and Recommendations provide a basis for adjusting the concrete questions submitted, the Board believes that a full and complete discharge of its duty will not have been accomplished unless attention be drawn to the established agencies, other than Emergency Boards, for resolving controversies of this character,

1. The Board construes Section 6 of the Railway Labor Act, as amended, to afford an adequate remedy for the orderly settlement of Question No. 1 of the strike ballot. This is certainly true insofar as it relates to the privileges of the Carrier. Apparent and actual conflict in the provisions of Seniority rules of the Firemen's Schedule and the Engineers' Schedule for firemen promoted to engineers has existed since 1933. Inasmuch as the Carrier did not propose to enforce the provisions of the Firemen's Schedule, but intended to operate under the requirements of the Engineers' Schedule, thereby announcing "an intended change in agreements affecting rates of pay, rules, or working conditions * * *," insofar as the firemen were concerned, notice agreeable to terms of said Section 6 might well have been served upon the representatives of the affected employees for final action by the Mediation Board, as required by Section 5 of the Act.

The Board is of the opinion that employment of the services of the Mediation Board for dealing with such question might have obviated the necessity of resort to any other forum to dispose of the grievance.

Similar notice might have been served upon the Carrier by "representatives of the employees" when the Firemen wished to abrogate the "Interpretation of Agreement covering Regulations of Mileage", the basis of grievance in Question No. 2. The Board believes that like results might here, also, have been obtained.

2. The complaining Firemen's Brotherhood "declined to submit the matters in dispute to the National Railroad Adjustment Board" in accordance with the recommendations of the National Mediation Board, They so declined by reason of an agreement between them and the Engineers' Brotherhood to refuse to invoke the jurisdiction of the National Railroad Adjustment Board in any "jurisdictional" dispute,

Since these Brotherhoods have declined to avail themselves, in such so-called "jurisdictional" cases, of the services of a competent and adequate public tribunal, designed to adjudicate such controversies, it is recommended that an agreement be entered into by the Brotherhoods creating a private agency empowered to dispose of such cases,

As a suggested outline for such an agreement, we recommend the inclusion in the Schedules of both Brotherhoods of the provisions of Article II of the "Chicago Joint Agreement", as it appears in the revised Schedule of that Agreement of May 1, 1923.

We believe these observations demonstrate that the Railway Labor Act proVides adequate methods for adjusting all matters here in dispute without the necessity of creating a national emergency during the time of war,

In conclusion, the Board wishes to take this opportunity to express its grateful appreciation to counsel and the parties for the many courtesies and fine professional attitude manifested throughout the hearing,

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 changes in rates of pay, rules, and working conditions herein recommended for the settlement of the issues in dispute are consistent with stabilization standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Dated at Washington, D. C., this 24th day of July 1945.

(S) HUSTON THOMPSON, *Chairman.*

(S) GRADY LEWIS, *Member,*

(S) CURTIS G. SHAKE, *Member,*

APPENDIX

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE ILLINOIS CENTRAL RAILROAD COMPANY AND ITS EMPLOYEES

WHEREAS a dispute exists between the Illinois Central Railroad Company, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce within the states of Illinois, Wisconsin, Iowa, Nebraska, Indiana, Missouri, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana to a degree such as to deprive those states of essential transportation services :

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate the said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier,

The board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the Illinois Central Railroad Company or its employees in the conditions out of which the said dispute arose.

THE WHITE HOUSE,

HARRY S. TRUMAN,

May 24, 1945,

CONCERNING EXECUTIVE ORDER OF THE PRESIDENT DATED MAY 24TH, 1945 (ILLINOIS CENTRAL RAILROAD COMPANY)

EXTENSION OF TIME FOR THE BOARD TO INVESTIGATE DISPUTE AND REPORT ITS FINDINGS TO THE PRESIDENT

Upon recommendations of the members constituting the Emergency Board appointed by the President of the United States by Executive

Order on the 24th day of May 1945, and with the approval of the President, the hearing is continued until the 25th day of June 1945, at which time the Board will reconvene, and the time for concluding its investigation of the facts in dispute and its effort to adjust the dispute and the presentation of its report of its findings to the President, shall be extended thirty days from said June 25th, 1945,

The parties to the dispute hereby agree to the above extensions and stipulate that if the report of the Board is made prior to midnight of July 25th, 1945, it shall not be challenged or objected to by any one of the parties to the dispute on the ground that it was not made within thirty days after the creation of said board.

(S) JOSEPH H. WRIGHT,
Attorney for Illinois Central Railroad Company.

(S) HAROLD C. HEISS,
*Attorney for Brotherhood of
Locomotive Firemen and Enginemen.*

(S) HAROLD N. MCLAUGHLIN,
*Attorney for Intervener,
Brotherhood of Locomotive Engineers.*

Chicago, Illinois, June 1, 1945,

Approved June 9, 1945,

(S) HARRY S. TRUMAN.