Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED APRIL 19, 1946, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT AS AMENDED.

To investigate unadjusted disputes between the Chicago, Rock Island and Pacific Railway Company and certain of its employees, represented by the Brotherhood of Railroad Trainmen.

CHICAGO, ILLINOIS

MAY 6, 1946

No. (34)

LETTER OF TRANSMITTAL

CHICAGO, ILLINOIS,
May 6, 1946.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT:

Herewith is submitted a report of the Emergency Board, appointed by you April 19, 1946, pursuant to Executive Order of April 17, 1946, to investigate and report to you respecting a dispute between the Chicago, Rock Island and Pacific Railway Company and certain of its employees, represented by the Brotherhood of Railroad Trainmen.

Respectfully submitted,

[s] GRADY LEWIS, *Chairman,*
[s] HENRI A. BURQUE, *Member,*
[s] ROGER I. MCDONOUGH, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED APRIL 17, 1946, PURSUANT TO SECTION 10, OF THE RAILWAY LABOR ACT, AS AMENDED.

IN RE: BROTHERHOOD OF RAILROAD TRAINMEN and the CHICAGO, ROCK ISLAND and PACIFIC RAILWAY COMPANY

On April 17, 1946, Harry S. Truman, as President of the United States, having been notified by the National Mediation Board, in accordance with the provisions of Section 10, of the Railway Labor Act, as amended, of the announced intention of certain of the employees of the Chicago, Rock Island and Pacific Railway Company, to withdraw from its service, because of unadjusted disputes between said employees and said Carrier, and that said disputes threaten substantially to interrupt the operation of the Chicago, Rock Island and Pacific Railway Company, which interruption would seriously impair interstate transportation, by proclamation created an Emergency Board to investigate said dispute between said Carrier and its employees, and report to him its findings.

Judge Henri A. Burque, Nashua, New Hampshire, Colonel Grady Lewis, Washington, D. C. and Judge Roger I. McDonough, Salt Lake City, Utah, were appointed Members of said Board, and were ordered to organize and promptly investigate the facts as to such dispute, and, on the basis of the facts, make every effort to adjust the dispute, and to make a report thereon to the President of the United States, within thirty days from the date of said Proclamation.

Pursuant to said Proclamation and letters of appointment, the Board met in the Court Room of the United States Customs House, Chicago, Illinois, on April 25, 1946. It organized, by selecting Colonel Grady Lewis to serve as Chairman, and then confirmed the appointment of Frank M. Williams, as Reporter. All members of the Board were present.

Hearings were held commencing April 23, 1946, and continued every day, with the exception of Sunday, until May 1, 1946. During the course of the hearings, and at the close thereof, the Board offered its services to act as Mediation Board, or to assist in any other way to effect a peaceful settlement by parties. To this end, several meetings were held, but the efforts of the Board, in this respect, were fruitless.

During the course of the public hearings, evidence to the extent of approximately one thousand pages of transcript was submitted; exhibits were presented by both sides, and statements and arguments were made to the Board on behalf of the Employees and the Carrier. An opportunity was given to all parties to present evidence and exhibits material to the issues. On the basis of such evidence, exhibits, statements and arguments, we base the following report, findings and recommendations:

DESCRIPTION OF THE CARRIER

The Chicago, Rock Island and Pacific Railway Company is an Inter-State common Carrier, with a trackage of approximately 8,000 miles, extending from Chicago, in the East, to Denver, Colorado and Tucumcari, New Mexico, in the West. It does an extensive and important passenger, freight and express business.

HISTORY OF THE CONTROVERSY

In an effort to amicably adjust a number of disputes between the Carrier and the Employees represented by the Brotherhood of Railroad Trainmen, conferences were held between representatives of the parties, in Chicago, on February 18th to March 7th, 1946, inclusive. While a number of the disputes were satisfactorily settled during such conferences, such result was not effected as to others. The disagreement relative to such disputes resulted in a strike ballot being distributed to the employees of the Carrier, upon which were listed seventeen disputes or grievances. The election held resulted in a majority vote in favor of withdrawal from the service of the Carrier, unless a satisfactory settlement of the listed grievances was effected. Subsequent to the election of aforesaid, the disputes remaining unsettled, this Emergency Board was then appointed by the President, in compliance with the Railway Labor Act As Amended.

THE DISPUTES

The parties to the disputes agree that every claim listed on the strike ballot is referrable to the Adjustment Board. Notwithstanding this, both parties asked this Board to consider and make recommendations in the several cases presented.

There were submitted to this Board for its consideration Cases Nos. 1, 2, 3, 9, 10, 21, 22, 24, 27, 28, 29, 30, 37, 39, 46, 57, and an additional case entitled Award 1927, as listed on the strike ballot.

In our discussion of these several cases, or groups of claims, we will give them the numbers as set out on the strike ballot.

Case No. 1

This case involved only one question, i.e. How should No. 7037 of the First Division, National Railroad Adjustment Board, be applied?

In the presentation of the case to the Board, the issue was: Should Article 6 (d) or Article 5 (h), of the Trainmen's agreement be applied? The Employees contended that Article 6 (d) was the controlling rule, while the Carrier contended that Article 5 (h) was. The Division held that Article 6 (d) was applicable, and that claims asserted in the docket were to be adjusted thereto. The Carrier accepted the finding, and is willing to adjust the claims in conformity therewith, but the Employees now contend that Article 5 (h) is also applicable in part, and that the claims should be adjusted as combination claims, under parts of both articles; thus, the parties are deadlocked. In view of this, the Carrier has applied to the Adjustment Board for an interpretation of its Award. The Employees are undertaking to circumvent the interpretation by the Board, and are asking us to interpret the finding.

We do not feel that this is our province or duty. The matter is already decided, and it apparently not being satisfactory and fully understood by at least the Employees, the Adjustment Board is the proper tribunal to appeal to for further direction as to how the Awards should be applied.

We recommend this.

Case No. 2

The claims involved in this case were stated on the strike ballot as follows:

"Claims of train crews of the old Nebraska Seniority Division for an extra trip before starting, or after completion of regular trip, on Diesel Doubleheader trains out of Council Bluffs Terminal on Des Moines Seniority Division to first station east of Council Bluffs terminal freight yard and return to Council Bluffs terminal."

As part of its railroad system, the Carrier here involved operates a line between Des Moines, Iowa, and Fairbury, Nebraska. The territory between these points is divided into two freight train operating districts. Between Des Moines and Council Bluffs, Iowa, freight trains are manned and operated by crews holding seniority on the Western District, referred to in the claim as the old "Nebraska Seniority Division".

At Council Bluffs, the Carrier has two yards—the "West Yard" and the "East Yard"—both located within the general terminal and switching district, which extends from a point just east of Council

Bluffs, to Albright, Nebraska, a distance of approximately twelve miles. Within this switching district, the yard work is performed by "switchmen" under a contract between the Carrier and the "Switchmen's Union of North America". The distance between the east switch of the East Yard, and the west switch of the West Yard is approximately two and one-fourth miles.

The "East Yard" was built in 1911, and since its construction, trains arriving at Council Bluffs from the east have on many occasions been yarded on one of its tracks, the conductor and rear brakeman being released from their duties at the yard. In the outbound movement of trains, it has been the practice since the two yards have been in existence to make up trains for Des Moines district crews in either the West Yard or the East Yard. In the outbound movement of freight trains to the Western Division, most of such train's run, during the existence of the two yards, have been taken by road crews from the West Yard. However, during the past few years, long trains westbound have been handled from the East Yard, which is better adapted for handling long trains by Western District crews. The taking of the trains out of the East Yard by Western Division crews is the basis of the claims made in the instant case, it being the contention of the Employees that the operation of a train out of the East Yard by a Western Seniority District crew constitutes an extra trip before starting a regular trip, the starting point of which is in the West Yard; and that such trip entitles the crew to an extra day. Furthermore, the making of such extra trip by a Western District crew outside of its territory, and on the Des Moines Seniority District, requires payment of a run around to the crews holding seniority rights in the latter district.

The validity of the claims thus asserted depends upon whether within the Council Bluffs Terminal there is a division line between the two Seniority Districts. If there is such a dividing line somewhere in the terminal between the West switch of the East Yard and the east switch of the West Yard, it is conceded that the claims here involved should be paid. The contention of the Employees is that what they designate in the record as "Council Bluffs train yard", viz. what is termed herein above as the West Yard, is the dividing point between the Des Moines Seniority Division and the Western Seniority Division. They further contend that the "outside" terminal train yard switch has been recognized by both Management and Employees as the point where "terminal" and road time begins and ends. Since the crew manning a train over the Western Seniority District started the trip east of the outside switch of the West Yard, they maintain that they were then on road time; therefore, on an extra trip before starting the regular run.

It is the contention of the Carrier that insofar as seniority rights of roadmen are concerned, a terminal is common territory; that whatever the practice may be as to starting road time at a designated point within a terminal a road crew may initiate or terminate a run at any yard within such terminal without infringing on the seniority rights of the road crew of any seniority district running into or out of such terminal.

We are of the opinion that the record supports the position taken by the Carrier.

While it is true, as recited, that prior to the last few years, Western District crews started runs in the West Yard, it has been the practice since the establishment of the East Yard to make up trains for Des Moines District crews in either yard. It is difficult to understand how there could be a dividing line between the Seniority Districts somewhere between the two yards or within one of them; and at the same time concede that, as to the crews of one District, their seniority rights are in common with the rights of the crews of the other District as to both yards. The practice followed indicates clearly that no infringement of the rights of crews of the Western District resulted by starting outbound movements into the Des Moines District from the West Yard.

The Employees point to Awards of the Railway Adjustment Board as supporting their claim. They cite Awards 7003, 6964, 7014 and 7018. We shall not undertake to discuss such Awards and distinguish each from the claims here made. Suffice it to say that none of them involve the movement of a train by a road crew within a terminal.

Much is made by the employees of a bulletin issued in March, 1938, by a Superintendent of the Carrier, which was later cancelled by a bulletin of July, 1945. The 1938 bulletin was to the effect that a switch near the east end of the West Yard marked the dividing point between road and terminal time. It pointed out that East Yard is shown in the time table as a separate station, and that trains picking up, or setting out, at this station, would be subject to the conversion rule; the rule under which a crew of a freight train being paid through freight rates of pay are paid the higher local freight rate if they perform station switching, or set out or pick up at more than four stations enroute. Thus, under the bulletin, a Des Moines Division road crew would be required to do station switching at the East Yard, subject to the conversion rule; while if East Yard be not regarded as a station, but part of the terminal, no switching could be there required of a road crew. Under such bulletin, the road time of a westbound Des Moines Division crew would continue until the designated switch near the West Yard was reached.

The bulletin is conceded by the Carrier as improper, and it offered

during the hearing to pay under the proper rule for any switching done at East Yard by a road crew.

The bulletin was undoubtedly an improper one under relative Awards of the Adjustment Board, notably Award 1842. The Carrier could not by such bulletin convert a recognized yard within a terminal to a station on a run. To recognize its right to do so would in effect concede it the right to change working rules *ex parte.*

We find the claims asserted in Case No. 2 unsupported in the record, and recommend that they be denied.

Cases Nos. 28, 29 and 30, will be considered as a group.

"*Case No. 28 (a)*—Claim of Conductor Schlimm and Brakeman C. B. James and J. I. Gilbert for one day at yard transfer rates account of being required, after arriving at Burr Oak (Chicago) final terminal yard, to move train of 20 empty passenger cars from Burr Oak yard to 51st Street Yard, March 14, 1944.

(b)—Claim of Conductor Hook and Brakeman McIntyre and Gilbert for one day at yard transfer rate account after completing its road freight trip into Burr Oak (Chicago) terminal yard, to move a train of empty passenger equipment from Burr Oak yard to 51st yard June 18, 1944.

Case No. 29 (a)—Claim of Switchmen Hilborn, Grams and Billings for yard day account of road crew, Conductor Hedrick and brakemen, being required to handle 20 empty passenger cars from Burr Oak final terminal yard to 51st St. yard July 17, 1943.

(b)—Claim of Conductor R. L. Hedrick and brakemen for one day at yard transfer rates account after completing road trip into Burr Oak (Chicago) terminal yard, required to move 20 empty passenger cars from Burr Oak terminal yard to 51st St. yard, July 17, 1943.

Case No. 30 (a)—Claim of Switchmen Farner, Hilborn and Strohm for one day at yard rates account of road train crew in charge of Conductor Holland and brakemen being required after completing their road trip into Burr Oak (Chicago) terminal yard, to then move 10 empty passenger cars from Burr Oak terminal yard to 51st St., July 29, 1943.

(b)—Claim of Conductor Holland and brakemen for one day at yard transfer rates account being required after completing their road trip into Burr Oak (Chicago) final terminal yard, to move 16 empty passenger cars from Burr Oak terminal yard to 51st St. yard July 29, 1943.

Cases Nos. 28 (a) and (b), 29 (b) and 30 (b) are claims by road crews for additional day's pay at yard transfer rates of pay because of handling their train which they had brought in on a road trip from Rock Island, Illinois, through Burr Oak Yard at Blue Island, to 51st Street Yard at Chicago. Cases Nos. 29 (a) and 30 (a) assert

claims in favor of certain switchmen holding seniority rights as switchmen on the Chicago Terminal Division for a day's pay, by reason of the road crew having handled the run from Burr Oak Yard to 51st St. Yard, thereby depriving them as switchmen of such work.

These cases involve a move within a terminal similar to that involved in Case No. 2. However, here a yard day, rather than a road day, is claimed for being required to make the run to 51st Street Station, thus infringing on the territory of the yard crew. Different seniority districts are not here involved.

Through freight crews are operated from Silvas, Illinois to Chicago Terminal, and generally such crews leave and take their trains at the Burr Oak Yard. For years past, it has been the practice for road crews handling empty passenger equipment to yard their train in the 51st Street yard, as part of their road trip. The road crews have been paid for the additional mileage involved in running their trains through Burr Oak Yard to 51st Street yard, a distance of about ten miles, as part of their road trip. Burr Oak Yard and 51st Street yard are both located in the Chicago Terminal district.

The Brotherhood contends that Burr Oak is the divisional home freight terminal and hence the additional run to 51st Street station was an extra trip and constituted transfer work properly belonging to yard men and not to road crews. In the Chicago Terminal District the yard work is handled by the "Switchmen's Union of North America" under a contract with the Carrier.

On behalf of the "Switchmen" involved in claims 29 (a) and 30 (a), it is contended that Article 9 (d) of the Switchmen's contract was violated. This article provides that all transfer trains doing work "exclusively within switching limits" will be handled by switchmen when available. Without venturing to construe the Carrier's agreement with a Union not a party to this dispute, it is clear that the movement of a train of cars from a point outside of the Chicago Terminal District to a yard within such district is not a movement exclusively within switching limits. That movement here questioned is road service within yard limits is supported by Awards 1927, 6980, 7418 of the Adjustment Board, and is further supported by the practice extending over many years of computing road time to whatever yard within the Terminal District may be designated by the Carrier as the terminal of a road trip.

The claims here involved we find not supported by the record, and we recommend they be denied.

Case No. 3 (a)—Claim of all conductors and brakemen handling express trains during the month of December, 1943 for through freight rates instead of passenger rates as paid them.

The claim involves the application of Article 33 (h) of the Trainmen's Contract, reading as follows:

"(h) Passenger trains (except regular assigned runs, and troop, immigrant and laborers' trains) will be handled first in, first out by chain gang freight trainmen, who have provided themselves with uniforms, except on the Illinois, Iowa, Missouri and Kansas Divisions, where such movements can be protected by the regular extra passenger trainmen. This does not prohibit the selection of certain trainmen for the handling of special passenger service, such as officers' and fraternal organization trains.

"Trainmen used under this rule will be paid through freight rates per Article 4 (g) and will receive no less compensation than they would had they remained on their freight assignments and will not again be placed in freight service except at their home terminal.

"Troop, immigrant and laborers' trains will be handled by non-uniformed chain gang freight crews first in, first out."

During the war emergency, the Carrier operated an unusually large number of extra trains handling only passenger cars loaded with mail, express and baggage. Under provisions of above article, these trains were operated as extra passenger trains, and were manned by chain gang freight trainmen, who had provided themselves with uniforms. On account of irregularity of movements, disagreements ensued as to the application of the rule in certain instances. It was agreed by the parties that the Carrier would issue a rule providing that at least during the emergency extra trains handling passenger equipment without civilian passengers would be handled by chain gang crews.

Ruling: Extra trains consisting entirely of passenger equipment and subject to Article 18-D Conductors' and Article 33-H Trainmens' schedules will be handled as outlined below, effective at once.

1. All such trains handling civilian passengers will be handled by uniformed passenger conductors and brakemen selected in accordance with the provisions of their respective schedules.

2. All such trains not handling civilian passengers will be handled by pool freight crews.

3. Furloughed members of the Armed Forces, and inductees will not be considered civilian passengers in the application of the foregoing.

4. The addition of cars containing baggage and/or revenue express will not effect the classification of the train as determined by the application of paragraphs 1, 2 and 3:

5. The above will apply to all divisions regardless of passenger extra being maintained.

6. These instructions do not affect regular assigned passenger runs.

During the Christmas season, even in normal times, there is a heavy increase in the movement of mail, baggage and express to be handled, and it was forecast that there would be an abnormal amount of such business moving during the 1943 Christmas season, beginning about December 1st. This business was expected to move in both directions, and be regular each day, and the Carrier decided that since the trains were to be operated regularly, assigned crews would be used to operate this service, generally operating as second sections of passenger trains.

Pursuant to the above, the Carrier bulletined the trains to be operated in the month of December as follows:

"Bids will be received in writing in Office of Trainmaster, Des Moines, until 9:00 A.M., December 9, 1943, for:

"Two passenger conductors and four passenger brakemen handle mail, baggage and express, second 5 and second 22 between Des Moines and Omaha, service commencing about December 10, 1943. The train second 5 will leave Des Moines about 9:15 A.M., arriving Omaha about 2:00 P.M. Train second 22 will leave Omaha about 2:30 P.M., arriving Des Moines about 7:00 P.M. Rear brakemen on second 5 and second 22 will assist pilot in backing equipment to Council Bluffs, and also Council Bluffs to Omaha.

"It will not be necessary for these crews to wear their passenger uniforms.

This was done under authority of Article 19 (a), which reads:

"RUNS BULLETINED: Vacancies, change of runs, establishment of new runs or regular work train service will be bulletined within three days for a period of five days. The senior trainmen making written application for same will be assigned thereto, within five days from close of bulletin.

The contention then resolved itself to this: Were these trains extra or regular assigned passenger trains? Passenger trains are defined and recognized as trains carrying passenger equipment. The trains involved in this dispute were trains consisting of passenger equipment, viz. mail, express and baggage cars, but carried no civilian passengers. They were run on schedule time and regular days for a period of more than seven days. It was regular service. The men must have understood they were bidding in that kind of service, and that, consequently, they would be paid passenger service rates. The trains were sometimes run as second sections of regular passenger trains.

The Organization takes the position that passenger trains are trains carrying civilian passengers, and manned by crews in uniforms. They lay great stress on the fact that the bulletin stated "It will not be necessary for these crews to wear their passenger uniforms." We are told by the Carrier that the reason for this provision was that

some men who might be successful in bidding the runs might be men in freight service, not equipped with uniforms. This seems logical enough, and as there were to be no civilian passengers carried on these trains, we see no reason why the provision should make any difference. It certainly cannot be controlling.

The Organization further takes the position that, in view of the fact that these trains were extras, the Carrier has no right to assign them as regular runs. No rule is cited by it to sustain the contention, and we find none that could prohibit the Carrier to assign them as regular runs. Article 19, as we have seen above, permits bulletining "new runs", "regular work", "train service", "vacancies" and "change of run". Award 7075, First Division of Railroad Adjustment Board, says "The articles of the agreement do not prohibit assigning regular crews to regular established runs."

It being agreed that any run that is to be regular for seven days or more can be designated and bulletined as a regular run, and as the work in question in this case was to be regular for more than seven days, the Carrier was within its right to so designate and bulletin it.

We recommend that the employees' claims be disallowed.

"Case No. 37—Claim of Conductor Hitchcock and Brakemen Admire and Bland, Conductor Arednt and Brakemen Admire and Ross; freight crews for additional days run through Council Bluffs final freight terminal to Omaha, December 11 to, and including, December 16, 1943."

It is agreed that if we decide Case No. 3 as we have, this case is to be governed by it.

We recommend the same recommendation as in Case No. 3.

DISCIPLINE CASES

Case No. 9—Claim for reinstatement and pay for all time lost of E. L. Farrell, Dining Car Steward.

The claimant is charged with discourtesy to a passenger in the dining car. The occurrence happened July 31, 1945. Claimant was held out of service pending investigation under Article 12 (d). An investigation was held August 16, 1945, The complaint was made by the passenger, who, however, did not attend the investigation. Without stating in detail the charges presented at the time of hearing, the pertinent facts agreed to by the claimant are as follows: The passenger in question had finished his meal, paid his check, after which waiter removed the man's glass of water, which had not been fully emptied. The passenger asked the waiter for another glass of water, which the waiter refused to give him. The passenger reported the matter to the steward, who took the matter up with the waiter,

telling the latter "to give him one—maybe he was one of those old crabs,—give him a glass of water—that doesn't cost anything". The steward then went back to the passenger and told him "the waiter will give you another glass of water". The passenger then said "you are no better than the damn nigger—you cooperate right with them." The following is taken verbatim from the steward's testimony—"and I said I don't think I do, and I don't appreciate your making that kind of a remark to me either—I asked him to leave, as he was hurting other passengers who were waiting." The passenger said he "would sit there all night until he got a glass of water." Then he added that he "would like to give me a good thrashing" whereupon I replied "if he felt that way, to come out in the baggage car—we had a lot of room. I told him I was not going to argue about it, but I would ask the train conductor, who was in charge of the train, to take care of his passengers."

On the strength of the above testimony, we cannot say that the charge of insubordination was not sustained, and that the dismissal from the service was not warranted.

The main complaint on the part of the Organization is that the complaining witness did not testify at the investigation. We do not see why this was necessary. The steward's own testimony was apparently sufficient to sustain the charge. We cannot recommend reinstatement. The matter must necessarily remain in the hands of the Carrier.

Case No. 10—Claim for reinstatement and pay for all time lost in favor of A. C. Thom, Dining Car Steward.

Succinctly, the facts as developed in the investigation are these: This steward claims he had for sometime before the date in question missed money from his cash drawer. He suspected the second cook of being the one who was taking the money. On September 3, 1945, he laid a trap to find the culprit. He deliberately left his cash drawer unlocked, with some change in it, before train time, got off the train, left a watch to see if anyone would get in the diner, returned later, inquired of watch whether anyone had boarded the diner, and upon being informed that the second cook had, went in to see if there was any money gone, and found there was. He reported the matter to the dining car commissary, who sent for the second cook, inquired of him if he had taken the money, which he denied, and told the steward to get the watch. The steward went out looking for him, but reported that he could not find him, whereupon the second cook was allowed to return to the diner. The steward was informed that without further evidence, the second cook could not be deemed guilty, and consequently would remain on the job. The steward then said he would not work with a dishonest man, and refused to make the

run, thus necessitating substitution of another steward. Upon these facts, the steward was found to have been insubordinate, in that he refused to protect his run, and he was kept out of service.

The investigation was conducted September 10, September 20—the General Chairman appealed to the General Manager for reinstatement. A conference was held, and on October 1, the General Manager informed the General Chairman that if he would have Mr. Thom report to his immediate superior, and assure him he would comply with the Carrier's rules in the future, he would arrange for reinstatement. Nothing came of this. Further conferences were held, communications exchanged, with the continued kept-open offer to reinstate the steward without pay for time lost. The steward has not availed himself of the offer. We do not see that we can recommend the Carrier to do any more than it has offered to do.

Case No. 57—Reinstatement and pay for all time lost of Mr. R. B. Sullivan, switchman of Chicago Yards, dismissed January 2, 1946.

Claimant was charged with violation of Rule "G", and also with insubordination while on duty January 2, 1946.

Rule "G" prohibits the use of intoxicants while in service. The investigation was conducted January 5th. Three witnesses (two railroad officials, and a shipper) testified that claimant was intoxicated, that he had a strong breath of liquor, that his eyes were bleary, that his speech was unnatural, that he was a little unsteady, and that he was not his normal self. The third official stated claimant looked to him as if he had been drinking, that his features were a little as tho he had been under the weather, but that he could not get quite close enough to his face to detect the odor of liquor. Claimant denied he had been drinking, and four of his co-employees, members of his crew, testified they did not smell liquor on his breath, nor detect any signs of intoxication.

On the above evidence, claimant was found to have been intoxicated. We can not say that there was not sufficient evidence to warrant the trier of fact to find the charge of intoxication proven.

The claimant was further charged with insubordination. The Superintendent being satisfied in his own mind that the claimant was not in a fit condition to remain at work, requested him to leave the job, to quit the property, to get in his car (the Superintendent's) and that he would take him home. This is corroborated by another official. Another official made a similar request, but in each instance, claimant refused. Claimant undertakes to excuse himself for not complying with the request, on the grounds they were not orders, and also on the ground that operating rules required a whole crew to be on the job, and that he was one of the crew.

It is not for us to say whether the request was sufficiently emphatic to amount to orders, so we express no opinion on this point.

Discipline is always a delicate matter to handle. Many Awards have recognized this, and in handling cases involving impositions of discipline have emphasized the fact that the safe conduct and operation of railroads is the responsibility of the Carriers. To effect that end, they must resort in many instances to disciplinary measures. The imposition must of necessity be within their discretion, and if such is exercised judiciously, without malice, bias, or prejudice, and without tinge of unfairness and bad faith, such exercise of judgment must not arbitrarily be tampered with. Appropriate expressions to that effect will be found in Awards 71, 232, 375, 419 of the Third Division of Railroad Adjustment Board, opinions of well recognized capable referees, likewise, in Awards 7182, 9542 of the First Division.

Cases Nos. 21 and 22 were presented jointly. They involve identical claims in two seniority districts. The claim is for an additional day's pay for trainmen at Sayre, Oklahoma Divisional Terminal, on account of being required to perform Carmen's work, such as couple hose, inspect trains, etc. beginning July, 1945.

Car inspectors were employed on three shifts at the terminal in question, prior to July 1945. These carmen coupled hose and inspected trains, and trainmen were not obliged to do so. During July, however, one of the carmen was taken off and trainmen were required to couple hose and inspect trains during the shift when no carmen were employed and on duty. The claim seeks pay for an additional day, for performing such duty each day. The Railroad Carmen of America holds the contract with the Carrier covering services of carmen. As to that organization, it has been held by the Adjustment Board that coupling air hose, and making the usual air tests incidental to the duties of train service employees is not in violation of the Carmen's agreement. The Brotherhood here has cited no rule of Trainmen that is claimed to be violated by this situation. Their rule 33 (d) provides that trainmen will not be required to couple or uncouple air hose, or chain cars at points where carmen are employed and on duty. When carmen are "employed and on duty" trainmen do not do the work complained of, and that rule does not provide for the payment of an additional day's pay, in event of its violation.

The Board cannot recommend payment of these claims.

Case No. 24—Claim of switchmen of the Chicago Yards on various dates account of yardmaster bleeding air on cars brought in to the yard by yard crews; this being done to expedite the work in the yard. Claim is supported by Award 8547.

We are informed that the submission of this case is already filed in complete form with the First Division of the National Adjustment Board. Tho we are asked to make findings of facts and recommendations, we do not feel we should do so in this case. We are of the opinion that the case being in the hands of the Adjustment Board, the filing of the case with them removes it from the Strike Ballot, and, therefore, takes it out of our hands. Further, our findings and recommendations, in the event they did not coincide with the views of the members of the Division, and of a Referee, in case one may be called in to decide the case, might serve only one purpose, that of embarrassing and probably prejudicing the Division.

Case No. 27—Claim of conductors and brakemen for additional time account of the Carrier violating Doubleheader Rule by the use of two or more Diesel electric engines coupled with automatic couplers.

In this particular case, trains were being operated by one four-unit Diesel engine, in charge of one engineer and one fireman. Two units can be operated jointly or separately; by that, it is meant that a control station and auxiliary unit can be operated independent of other control station and auxiliary unit. The Organization contends that this constitutes one locomotive, and that if a second other control station with auxiliary unit is coupled with the first control station and auxiliary unit, even tho no other engineer and fireman is needed to operate the second control station, the combination constitutes two locomotives. In other words, that each control station constitutes a locomotive without regard to whether the control station is operative or not. It is true that there are two control stations in the four-unit Diesel, but only one of them can be operated at a time. They can not both be operated.

The Doubleheader rule was adopted long before Diesel engines were thought of. Its application could refer only to the then existing use of steam locomotives. Steam locomotives must necessarily be operated separately, each one by, and under, control of an engineer and fireman. There cannot be any question of the applicability of the rule where two steam locomotives are coupled together and used. Not so, however, when we deal with the use of four-unit Diesels, two of which are control stations.

The dispute has already arisen, and has been the subject of previous Awards. The First Division of the National Adjustment Board Award 1829 denies the claim that the electric locomotives composed of more than one unit were separate locomotives. Award No. 5605 holds that Diesel electric locomotives manned and controlled by one engine crew is one locomotive. Award 8769 held that a three-unit Diesel engine constituted but a single operating unit, and should be

considered as an engine. Award 8790 held that a two-controlled section type Diesel, that could be operated in either section, was an engine. Awards 9463, 9464, 9465 and 9466 denied the Employee's claims that four-unit Diesel engine, when coupled and operated together, constituted two engines. Award 9830 held that electric units, connected together and operated by one engine crew, are considered for operating purpose, one engine.

In the Awards 9463, 9464, 9465 and 9466, reference is made to the ruling of an Emergency Board, appointed by the National Railway Panel, February 20, 1943, that only one engine crew is necessary on a four-section Diesel engine.

In view of these above findings and rulings, it would seem to be well settled that a four-unit Diesel electric, operated as one engine, is to be considered as one locomotive, and that being so, the Double-header rule does not apply. We do not feel we can make a different finding and ruling. We recommend the claim be disallowed.

Case No. 39 is a claim for a trainman for deadhead time from his home terminal to away-from-home terminal.

The pertinent facts are, that a brakeman, Sedoris by name, was called by the Carrier to deadhead from his home terminal in Fairbury, to Council Bluffs, for the purpose of attending a Carrier investigation, on account of some irregularity in which Sedoris was not involved. The call came to Sedoris on his day off. In obedience to the call, he went, spent the night in Council Bluffs at his own expense, and deadheaded back to Fairbury on the first available train the next day, but arrived at his home terminal too late to catch his run.

The Carrier has paid the employee for time lost on his run, and the Brotherhood invokes the provisions of the so-called "deadhead rule" which is Article No. 13 of the Trainmen's schedule, as the basis for the claim, for time spent attending the investigation. The Carrier takes the view that Article 23 (d) of the schedule is the only article providing for pay for time lost attending an investigation.

A strict interpretation of the meaning of the term "time lost" in Article 23 (d) requires a finding that what is meant is "working time". In such case, the Carrier's contention would be correct. A like interpretation of Article 13 requires a finding that the employee was "required to deadhead" regardless of why. The difficulty there lies in the fact that should he, or another employee, be required to attend an investigation at his home terminal on his day off, he would not be "called to deadhead" and could not claim pay for time spent attending the investigation, under the rule here relied on.

We, therefore, conclude that no rule cited fits this case precisely. We believe one should be drawn by the parties that would. That

rule, when drawn, should provide for some suitable basis of pay for any employee required to attend an investigation on his day off when he is not involved. We, accordingly, recommend that such a rule be incorporated in the schedule of rules.

Pending the insertion of such a rule in the schedule, we recommend that the Carrier pay this claim, not under any rule, but by the dictates of fairness to the employee. Nothing in Article 23 (d) precludes such payment, and equitable dealing requires it.

Case No. 46 is a claim for a lap back, or side trip, on freight train 435, from Garner to Titonka, and return to Garner, from April 9 to August 26, 1940.

Train No. 435 runs from Iowa Falls, its initial terminal, to Garner. At Garner, a part of the train is left and the balance of it proceeds to Titonka, leaving the main line at Hayfield Junction, some 2.2 miles beyond Garner. At Titonka, the train is disposed of and the engine is turned around, and proceeds back to Garner, where the engine is again turned around, coupled onto the train and proceeds on to the town of Latoka. This trip from Garner to Titonka was scheduled for three days a week. On other days, the train proceeded directly from Iowa Falls to Latoka.

The Brotherhood relies upon Award 7020, of the Adjustment Board, as supporting their claim for lap back, or side trip pay. We do not so read that Award. In that case, a crew was ordered by special message from the Chief Dispatcher to spot a car on a mine spur track off their main line, and outside their regular schedule. Here, the alleged side trip was on the regular schedule of the train, the three days a week it made the trip. The schedule for such trip was made by bulletin advertising for bids on the identical runs that were made. The bulletin was offered in evidence by the Brotherhood.

Our understanding is that where such facts exist, no claim for lap back, or side trip, is valid.

We do recommend.

Award 1927—"Claim of passenger trainmen and suburban service Chicago Terminal Division, for additional day at conductor's rate, each time required to take that train from LaSalle Street Station, Chicago to Storage Yard (located between 14th and 16th Streets) and likewise each time they are required to accompany their trains from said storage yards to LaSalle Street Station, in absence of the conductor."

This claim was the subject of an Award by the National Railroad Adjustment Board, First Division, rendered the 20th of April, 1937. The Award finds that the practice complained of, and upon which the claim was based, is violative of Article 12 (a) of the Trainmen's agreement.

The practice of the Carrier, upon which the Award was made, was protested by the Brotherhood as early as 1923. It was the subject of protest and discussion again in 1926 and 1933, when the Brotherhood's Official agreed to hold the claim in abeyance.

The matter was revived in 1935, and, by the Brotherhood, submitted to the Adjustment Board, which, thereupon, rendered its Award 1927.

The Carrier took the position that, by reason of the fact that no effective date was fixed for the applying of the rule announced in the Award, the fixing of such a date was a suitable subject for negotiation between the parties.

Other Awards of the Adjustment Board, affecting other Railroad Brotherhoods provoked like discussion.

The difference between the parties was finally resolved in an agreement between the Chief Operating Officer of the Carrier and a Vice President of each of the five Railway Brotherhoods, including the Vice President of the Brotherhood of Railroad Trainmen. All cases were handled jointly, and unanimous agreement of all the Brotherhoods was required. This agreement is evidenced by a letter of the Chief Operating Officer of the Carrier, under date of September 30, 1937, describing the terms of settlement of the various Awards. The letter was addressed to each of the five Vice Presidents, and was, by them, accepted over their respective signatures. Award 1927 was included in the list of cases.

As to that claim, it was agreed that an additional day at conductor's rate for each day required to perform such service during the period February 1, 1935 to April 30, 1937, less compensation, if any, allowed at brakeman's rate would be paid by the Carrier. In keeping with the agreement, the Carrier paid trainmen involved, between the agreed dates, some $52,000.00.

The Vice President of the Trainmen's Brotherhood who negotiated said settlement of Award 1927 addressed a letter to the Chief Operating Officer of the Carrier, under date of July 1st, 1938, wherein he asked for a conference, for the purpose of discussing the subject of Award 1927. The Carrier's officer declined, July 18, 1938, to consider the request for reopening or changing the settlement. The request for a reopening was again submitted to the Carrier representatives for discussion in 1943, 1944 and 1945. It was not a subject of discussion in the Conferences of 1946, the failure of which led up to the present strike ballot.

This Board cannot recommend a reopening of the settlement of Award 1927. Under the admitted facts, representatives of the employer and representatives of the employees met in conference and settled a dispute. The employee representative was an officer of the

organization chosen by the craft membership to be its sole representative concerning pay, rules and working conditions. That designation is a legal one, under the Railway Labor Act. The Carrier's representative was estopped by law from negotiating with any other organization. An "across the table" dispute was settled in good faith, and a considerable sum of money paid out agreeable to the terms of that settlement. We understand such negotiations and such settlements to be "collective bargaining" not only within the common acceptation of the term, but within the clear terms of the Railway Labor Act.

To recommend that either party to such an agreement be allowed to rescind it would be a very definite step toward the destruction of the Railway Labor Act, and the principle of collective bargaining vitalized by that Act.

The Brotherhood finds justification for its requested recision by reason of some provisions of its Constitution authorizing its Board of Appeals and General Committee to repudiate settlements—apparently without any time limit—made by an officer of the Brotherhood, assigned to the purpose. The claimed provision was not exhibited to the Board.

The fact that the Brotherhood may have some organizational rule that purports to limit the efficacy of an act of an officer assigned to a bargaining conference does not alter the case. When an organization becomes a legal bargaining agency, responsibility for commitments made while so bargaining is as inescapable as its privilege to bargain.

Private regulations of a benevolent order may not be substituted for, nor should they be confused with, legal exactions of a contract making body.

CONCLUSION

This Board feels it would not be doing its full duty to all concerned unless it again, specifically, call attention to the fact that: **Every case assigned as a grievance by the strike ballot is one that is submittable to some one of our four Divisions of the Adjustment Board.**

The Railway Labor Act is the law designed by representatives of the Carriers, and the Employee Organizations to effect orderly negotion and settlement of their disputes.

A suitable forum for dealing with every situation that might arise in labor-management disputes is provided for by that Act. One of the most important of those forums is the Adjustment Board with its four divisions. To deliberately ignore that forum and its function is to sabotage and ultimately destroy the Act.

It was never intended, and the Act does not contemplate resort to

a strike ballot to force Emergency Board action under Section 10, until all other remedies have failed.

Emergency Boards, created under Section 10, are not, and cannot be, endowed with power to properly dispose of cases referrable to the Adjustment Board.

To deliberately create an emergency by threat of strike, not only lessens the usefulness of Emergency Boards, but it lowers the dignity of strike votes, and cheapens Labor's immemorial right to strike.

The fact that delay is experienced in processing claims through the First Division of the Adjustment Board is no justification for ignoring its existence. The delay there is largely functional, rather than organic. An active willingness on the part of the Brotherhoods and of the Carriers to vitalize that Division would go far towards removing the delay.

We, therefore, earnestly urge and recommend strict observation of the specific provisions of the Act by all parties affected, to the end that its full benefits may be had.

CERTIFICATION

In accordance with the provisions of Section 202, of the Amendment approved June 30, 1944, to the Emergency Price Control Act of 1942, This Board finds and certifies that its recommendations do not involve a wage increase, but an interpretation and application of the existing agreements between the parties and its findings are consistent with the standards now in effect, established by, or pursuant to law, for the purpose of controlling inflationary tendencies.

[s] GRADY LEWIS, *Chairman,*
[s] HENRI A. BURQUE, *Member,*
[s] ROGER I. MCDONOUGH, *Member.*

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