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# Report

TO

# THE PRESIDENT

BY THE

# EMERGENCY BOARD

APPOINTED JULY 10, 1946
UNDER THE PROVISIONS
OF THE RAILWAY LABOR ACT

To investigate and report in respect to the dispute involving the Denver and Rio Grande Western Railroad Company and certain of its employees represented by the Brotherhood of Railroad Trainmen.

DENVER, COLO.

AUGUST 14, 1946

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(No. 39)

## LETTER OF TRANSMITTAL

DENVER, COLO.,
*August 14, 1946.*

Hon. HARRY TRUMAN,
*The White House.*

DEAR MR. PRESIDENT: In response to your creation of an Emergency Board to investigate and report respecting disputes involving the Denver and Rio Grande Western Railroad Company and certain of its employees represented by the Brotherhood of Railroad Trainmen, we beg to present herewith our report.

The members of the Board await your further pleasure.

Respectfully submitted,

JOHN W. YEAGER, *Chairman.*
ROGER I. MCDONOUGH, *Member.*
FLOYD MCGOWN, *Member.*

## Report to the President by the Emergency Board Appointed July 10, 1946, Under the Provisions of the Railway Labor Act To Investigate and Report in Respect To Disputes Involving the Denver and Rio Grande Western Railroad Co. and Certain of Its Employees Represented by the Brotherhood of Railroad Trainmen

The Emergency Board appointed by you on July 10, 1946, in accordance with the provisions of the Railway Labor Act has the honor to submit herewith its report.

The Board consisting of Roger I. McDonough, of the Supreme Court of Utah; John W. Yeager, of the Supreme Court of Nebraska; and Floyd McGown, of Boerne, Tex., convened on July 17, 1946, in accordance with directions in Room 314, Post Office Building, Denver, Colo. John W. Yeager was elected chairman of the Board. Acme Reporting Co. of Washington, D. C., was designated by the board as Official Reporter.

Appearances on behalf of the Brotherhood were made by W. J. Mulligan, deputy president of the Brotherhood of Railroad Trainmen, and R. H. McDonald, general chairman of the Brotherhood of Railroad Trainmen on this carrier.

Appearances on behalf of the carrier were made by B. J. Shorr, assistant to the assistant general manager; L. L. Young, Denver and Rio Grande Western Railroad Co.; H. M. Boyle, attorney, Labor Relations, Denver and Rio Grande Western Railroad Co., and K. L. Moriarty, assistant engineer, Denver and Rio Grande Western Railroad Co.

The Board held public hearings commencing on July 17, 1946, and ending August 3, 1946. Thereafter, the Board held executive sessions and during the executive sessions, in furtherance of directions, held conferences with the parties in an effort to adjust and dispose of the disputes between the parties. The effort in this respect was unavailing.

During the hearing, it became apparent that the Board's report could not be submitted within 30 days from the date of the designation of the Board. In the light of that fact the parties on August 2, 1946, entered into a written stipulation extending the time for report ten days. The stipulation, the original of

which is hereto attached, was read into the record of the proceedings. It is as follows:

BROTHERHOOD OF RAILROAD TRAINMEN AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY (A–2350) IT IS HEREBY STIPULATED AND AGREED by and between the Brotherhood of Railroad Trainmen and the Denver and Rio Grande Western Railroad Company through their authorized representatives, that the thirty (30) day period provided for in section 10 of the National Railway Labor Act for hearing and determination by this Emergency Board shall be extended for a period of ten (10) days or until August 20, 1946. Dated, Denver, Colorado, August 2, 1946.

## HISTORY OF THE DISPUTES

According to information furnished, in November 1945 the Brotherhood had an appeal with the management of the carrier about 271 cases. What they involved was not disclosed to this Board. They undoubtedly included at least some of the disputes presented here. Of this number 198 were listed on a docket and the assistance of the chief executive of the Brotherhood was requested in their handling. What they involved is not made clear but also at least some of these are before this Board.

By agreement of the parties conferences were had between W. J. Mulligan, deputy president of the Brotherhood, and E. B. Herdman, superintendent, on behalf of the carrier to discuss this docket of 198 cases. The conferences began on December 13, 1945 and were carried on intermittently until February 6, 1946, when they were concluded. Of the 198 cases, 46 were allowed, a compromise settlement was made on 19, 17 were withdrawn, 6 were held in abeyance pending decisions from the National Railroad Adjustment Board, First Division, on like cases then before the Board. This left 110 cases of this docket without any type of disposition.

It became apparent that no amicable adjustment could be made of the remaining 110 cases. A strike ballot was then set up by the Brotherhood. The date of the ballot was May 2, 1946. From the oral testimony it would appear that the design was to cover the 110 cases. This is in error since the strike ballot covers only 84 cases. What became of the remaining 26 has not been pointed out to us.

A majority vote on the strike ballot was in favor of a strike for failure of the carrier to allow the claims set forth in the 84 cases. The date for withdrawal from the service by the Brotherhood was fixed as June 22, 1946 at 3 p.m. For reasons which need not be set out here the withdrawal from service was postponed to July 11, 1946, at 3 p.m. The withdrawal date was again

postponed on account of the appointment of this Emergency Board.

The cases on the strike ballot were numbered from 1 to 84 inclusive. Not all but only 23 of them have been submitted to the consideration of this Board. In addition to the 23 cases 10 cases not included in the strike ballot have been presented and considered. The cases presented from the ballot were 10, 18, 20, 23, 27, 30, 31, 33, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 62, 64, 65, and 72. The cases not on the strike ballot were numbered 89, 90, 99, 100, 102, 103, 104, 105, 106, and 108.

The reason we have considered the 10 with the others is that some of them were interrelated and involved similar facts and principles and further the carrier made no objection except that the cases were referable to the National Railroad Adjustment Board for decision. Like objection was made to the cases contained in the strike ballot.

The parties have agreed that the National Railroad Adjustment Board had jurisdiction under the Railway Labor Act to determine and to adjudicate the issues involved in each and all of these cases.

The reason given us by the Brotherhood as to why a strike ballot was taken instead of submitting the cases to the National Railroad Adjustment Board was that the First Division thereof ceased to function in June 1945, and thereafter had functioned only a short time in September, in consequence of which it was reported that there was a great deal of dissatisfaction and unrest on the part of those represented by the Brotherhood on the property on account of delay in settlement or opportunity for adjudication of these cases.

We have recognized and have given due consideration to the earnest contention that these cases should be before the National Railroad Adjustment Board which has jurisdiction to render a valid and binding adjudication in each and every one of them, and though they could and should be there we find in that fact nothing which should deter us in the performance of the duty and function imposed in the creation of this Emergency Board. We have construed it to be our duty to inquire into the facts and conditions constituting this emergency, to report thereon, and to make recommendations which we hope will settle these differences between the parties and avert the catastrophic consequences of a stoppage of work on this important link in the transportation network of this country.

## FINDINGS AND RECOMMENDATIONS

The cases were not presented to the Board consecutively or in the order that they apeared on the strike ballot. They will be dealt with here in the order presented.

Cases herein above designated as numbers 10, 30, 31, and 46, involved the claim of trainmen for a day or days pay on account of such employees being required to handle switches in the yards of the carrier. Insofar as the claims herein asserted are involved, such required service was claimed by the employees to be in violation of rule 9 (b) of the trainmens agreement with the carrier, which rule reads as follows:

Where no rules are in effect covering work performed at Terminals, the practice in regard to the character of work permissible, or duties required at terminals, are not to be extended.

Case No. 10, involves the claim of a named brakeman for a day's pay on each of specified dates because of being required to perform the recited work in departing from the Salt Lake City Union Depot. Throwing and lining of the switches in each case was in connection with the movement of the involved employees own train. It is the opinion of the Board, and we so hold, that the evidence presented is insufficient in case No. 10, to establish that the throwing of switches in the Salt Lake City Union Depot yard as set out in the claim was an extension of the practice in such yard prior to the date of the current trainmens agreement with the carrier. We recommend disallowance.

In cases No. 30, 31, and 46, the handling of switches in the Grand Junction yard was involved. Claims were made for a day's pay at yard rates for days upon which the trainmen were required to line or otherwise operate switches in such yard in connection with the movement of their own train.

In the year 1928, the carrier directed that train No. 316 be moved out of the Grand Junction yards, by way of a new track therein installed, which movement involved the backing of a train onto a Y in order to reach the main track of such train's run. Such movement involved the lining of some 11 switches and protest was made to the management against requiring the train crews to line such switches. As a result of negotiations subsequent to such protest, an understanding was reached between carrier and the organization that the trainmen in the movement of such train into and out of the Grand Junction yard would open and close the four main line and Y track switches. It is the contention of the organization that subsequent to May 1, 1945, the date of the current agreement between carrier and the organiza-

tion, instructions were issued by the carrier which required trainmen to handle switches in the Grand Junction yard in connection with the movement of such crews own train in addition to those specified in the agreement reached as herein above outlined. The position of the carrier is to the effect that trainmen can properly be required to handle such switches as are necessary to the movement of such train. Carrier's position in this regard is supported under different contracts by certain cited awards of the National Railroad Adjustment Board, First Division. However, none of such awards involved the construction of a rule comparable to 9 (b) of the trainmens agreement, quoted herein above, and this Board concludes on the whole record relative to these cases that the duties of the trainmen involved in these claims was extended in the Grand Junction yard subsequent to the negotiation and adoption of such provision of the agreement. We are consequently of the opinion, and so recommend, that the claims involved in these cases be paid.

Case No. 53 is the claim of train crew consisting of conductor and two brakemen, for a day's pay at yard rates on account of one of the brakemen assigned with said crew on train No. 5, being instructed by the trainmaster to handle switches in the Grand Junction yard in connection with the movement of train No. 7. Section 9 (b) of the current agreement between the organization and carrier, herein above quoted, and article 71 thereof, are cited by the organization as having been thereby violated and as a consequence the crew was entitled to a day's pay for performing such work. Carrier offered to settle this case by the payment of one day's pay to the brakeman who performed the switching service in connection with the movement of train No. 7. Such offer was rejected by the organization on the grounds that the entire crew was entitled to an additional day's pay as the result of one of the brakemen on said crew performing such additional service. Emphasis was placed by the representatives of the organization upon article 71 of the current agreement in support of their position, which article read as follows:

Crew units will not be divided to move trains from one point to another point on the line, except when necessary to double, or in case of emergencies.

The Board is of the opinion that disregarding rule 71 above quoted, by the withdrawal of the brakeman from the crew of train No. 5, in order to perform the recited duties in connection with the movement of train No. 7, there was placed upon the remaining members of the crew of train No. 5, the responsibility of the withdrawn brakeman in connection with the protection

of his own train. As a consequence duties of the remaining members on the crew were extended in violation of article 9 (b). We, therefore, recommend that the claim be paid as requested by the organization.

Case No. 18, involves the claim of assistant terminal trainmaster employed in the Salt Lake-Roper yard for time and one-half for all time worked in excess of eight hours each date, from the time such jobs were assigned and all subsequent dates.

Yardmasters of the carrier are represented by the Brotherhood of Railroad Trainmen and, pursuant to negotiations, an agreement between such organization and the carrier entered into in Nov. 1943. Claims here involved have their basis in the contention of the organization that the assistant terminal trainmasters employed in the Salt Lake-Roper yard are in substance and effect merely general yardmasters and their employment is governed by the agreement negotiated by the organization with the carrier relative to such positions. Since it is provided in such agreement that the basic days work for all yard day's positions is eight hours, or less, and since the assistant trainmasters here involved were required to work in excess of such minimum day, they are entitled to the overtime claimed. In support of such contention, there was cited to the Board, an order of the Interstate Commerce Commission, March 29, 1939, and a mediation agreement of the parties dated March 9, 1940. The referred to order of the Interstate Commerce Commission was made in response to request of the Railroad Yardmasters of America to interpret its orders defining and classifying employees and subordinate officials of the carrier here involved and to determine the status of general yardmasters, terminal trainmasters, trainmasters, and their respective assistants. In response to such request the Interstate Commerce Commission made a determination after hearing, that the work of general yardmasters, terminal trainmasters, trainmasters, and their respective assistants at Denver, Pueblo, Grand Junction, and Salida, Colo., and Salt Lake City and Helper, Utah, points on the carrier's road, were employees within the meaning of paragraph 5, section 1, of the Railway Labor Act, as amended June 21, 1934.

Subsequent to this order of the Interstate Commerce Commission, on March 9, 1940, the organization and the carrier entered into an agreement fixing the rates of pay of yardmasters and establishing an eight-hour day for such position. Such agreement contained the following paragraph:

It is agreed that the Supervisory Officers, (regardless of title) in charge of Denver, Burnham, Pueblo, and Salt Lake-Roper Terminals, are excluded from this agreement and recognized by the carrier and organization as officials.

The organization contends that the quoted paragraph should be construed as permitting the appointment by the carrier of but one supervisory officer in each of the designated terminals. They contend further that when in January 1942, the carrier appointed additional assistant terminal trainmasters at Salt Lake City, they thereby violated such agreement. The carrier on the other hand, takes the position that the quoted provision of the agreement should not be so construed and that the number of supervisory officials at the designated terminals or elsewhere must of necessity be dictated by the amount of supervision required at any particular point and that the necessity for such supervision increases or diminishes with the amount of work being done and the number of employees required to do such work.

It is to be noted in connection with the contention of the organization to the effect that the establishment of the position of assistant trainmaster at Salt Lake City was, in effect, merely the establishment of an additional position of yardmaster, that prior to the establishment of such position at Salt Lake City there were but eight yardmasters employed in that yard, while at the peak of the volume of business 13 yardmasters were there employed. It is to be further noted that at the time of the adoption of the yardmasters' agreement in 1943, the positions of assistant trainmasters at Salt Lake City were in existence and that there was written into that agreement in a note to article 1 (b), a part of the scope rule thereof, the paragraph of the mediation agreement of March 9, 1940, herein above quoted, as well as the following paragraph of such agreement:

Term "Assistant General Yardmaster" as used in this agreement shall apply to position having supervision under the Terminal Trainmaster, Assistant Trainmaster, or General Yardmaster, or in charge of Assistant Yardmasters, or Yardmasters during the day, or in charge of the terminals during the night.

In view of the foregoing, the board finds that the appointment of assistant trainmasters at Salt Lake City was not a subterfuge on the part of the carrier, but that such appointments were dictated by the increased volume of business of the carrier and that the organization recognized them as supervisory officials in entering into the agreement of November 1943. We consequently recommend that the claims be denied.

Case No. 20 is the claim of a conductor and two brakemen, for

one-day's pay July 31, 1944, on account of being required to herd engine from the roundhouse to the passenger depot at Pueblo. The crew in question was called on the specified date to handle a troop train to Denver. Troop trains on the carrier's property are handled by pool freight crews, who are paid freight rates of pay. The crew was called to report for duty at 2:20 p.m. to leave at 2:35 p.m. The head brakeman was instructed to herd the engine for such train from the roundhouse to the departing tracks of the Pueblo Union Depot and Railway Co. at Pueblo. It is the contention of the organization that requiring the head brakeman so to do was in violation of article 9 (b) of the Trainmen's Agreement, quoted herein above. It is the contention on their part that theretofore and at the time of adoption of article 9 (b) a crew member had not been required to perform such service where a train in question was to depart from the passenger depot. Carrier takes the position that, since troop trains are handled by pool freight crews and are paid freight rates of pay, they work under freight conditions and consequently are required to get their engine at the roundhouse. It is conceded by the organization that freight crews handling freight equipment from the yards other than the passenger depot, have always been required to get their engine at the roundhouse and that it is proper for the carrier to require brakemen of the crew to herd the engine in such circumstance. The carrier further contends that in handling troop trains out of Pueblo it had always been the practice for a brakeman of the crew to herd the engine, though departure was from the passenger station.

Upon the evidence introduced the Board finds on this issue in favor of the organization and that the duty required of this crew on July 31, 1944, was an extension of the duties theretofore required, and on such findings recommend that the asserted claims be paid.

Case Nos. 23 and 106 involve the claims of crews because of being required, in the first cited case, to couple and uncouple steam hose when setting out or picking up cars at Glenwood Springs, on trains 19 and 20, and in the second of these two cases, because of the named crew being required to couple air hose and make air test of train at Walsenburg, Colo. It is the organization's contention that requiring such service of a train crew was in violation of article 27, of the trainmen's agreement effective May 1, 1945. This article reads:

> Trainmen will not be required to couple or uncouple steam hose or air hose or test air at Terminals where car men are employed.

Article 27 in the agreement in effect prior to May 1, 1945, was the same as in the current agreement except that steam hose was not therein mentioned. At both Glenwood Springs, and Walsenburg, car men were employed by the carrier during certain portions of the 24-hour period but in neither locality were car men on duty when the work here involved was required of the train crew. The organization takes the position that in article 27 of the agreement, the word "employed" should be given the meaning of "maintained" and they directed the attention of the board to article 50 (a) of trainmen's agreement in effect prior to May 1, 1945. That provision reads in part as follows:

Trainmen will not be required to go under car to adjust slack or piston travel, or to perform duties of car men where car men are maintained.

The contention is made that it was the intent in negotiating article 27 of the contract, to make it as broad as the portion of article 50 quoted. We are of the opinion, and so hold, that their contention in this regard cannot be sustained. Article 27 of the previous agreement was to all intents and purposes the same as the above article quoted from the current agreement. The word "employed" was therein used and the word "maintained" as in article 50. The intendment of article 27 is that when car men are on duty they should do the work designated in that article as theirs but that it is only when car men are on duty that the crews are relieved of performing the services recited in the claim. Article 50 clearly refers to duties not encompassed within article 27, nor do the provisions of article 50 comprehend those referred to in article 27. We are unable to read into the agreement any undertaking upon the part of the carrier to have a car man available for 24 hours of service if the carrier in its judgment determines that the services of such employee are required only for part of that time. We find claims involved in cases 23 and 106 not sustained by the rules or the record, and therefore recommend they be disallowed.

Cases 27, 99, and 100 involve an alleged violation of article 19 (d) of the current trainmen's agreement. This agreement insofar as is pertinent reads:

Soldier or Navy trains, CCC Specials, Silk and Cherry trains, or similar business consisting of either passenger or freight equipment and will be handled by freight crews and will be paid freight district rates.

Case Nos. 27 and 99, involve claims of crews in pool freight service for a run around by passenger crews handling soldier cars.

Case 100 involves the claim of a pool passenger train crew for

freight rates of pay instead of passenger rates on specified dates when such passenger crew was required to handle a train the consist of which included some passenger cars occupied by members of the armed forces. The substance of the contention of the organization is to the effect that when a train consist, a part of which is passenger cars occupied by members of the armed forces, is delivered to the carrier for transportation further on towards its destination, such cars may not be handled as part of a regular passenger train and in consequence by a passenger crew. In the cases here involved the troop cars in question were delivered to the carrier by a connecting road either as a special train or as an extra on a regular run. The organization contends that if a consist of a train received from a connecting carrier is made up wholly of passenger cars loaded with members of the armed forces, such train when received by them must be handled by pool freight crews under the agreement, and further that if such consist is consolidated with a regular passenger train the crew of such passenger train are entitled to freight pay. We are unable to construe article 19 (d) so as to require this carrier to handle passenger cars loaded with troops as a special troop train solely because cars were moved by a connecting carrier as a troop train. By the provision referred to, the carrier agrees to handle soldier or navy trains made up by the carriers by freight crews and to pay freight district rates to such crews. When a consist of troop cars is delivered to this carrier by a connecting road, it thereupon in our opinion ceases to be a train, and is not such until so made up by this carrier. It is inconceivable that by the adoption of such article the carrier undertook to have the discretion of its supervising officers dictated by the judgment of the officers of a connecting carrier or to allow the connecting carrier to determine the make-up and character of this carrier's trains by the exigencies confronting such connecting road. In light of our construction of the article in question, it is our opinion that the claims involved in cases 27, 99, and 100 should be denied and we so recommend.

Case Nos. 33, 103, and 108, involve the claims of certain specified crews, for 100 miles on specified dates when it is contended by the organization that such crews were required to start work in advance of regular starting time. When the particular runs involved were bulletined there was no specified starting time designated in the bulletin.

Claims in case No. 33 are predicated on the assumption that since the normal starting time during the course of the run had

been 8 a.m., the crews were entitled to an additional day's pay for each day they commenced work prior to that time. The same situation exists as to case No. 103, the usual starting time being claimed by the organization to be 10:30 a.m., and the claims being for dates on which the crews therein specified were required to start work prior to that time. In case 108, however, the claims are made for each date subsequent to May 1, 1945, when the specified crews were called in advance of the starting time for the crews' respective assignments as shown in a circular subsequently issued by the carrier and dated September 4, 1945. Prior to September 4, 1945, this train had no designated starting time.

Prior to the current trainmen's agreement the schedule of agreement effective December 16, 1940, was in effect, article 64 of such agreement provided as follows:

> In establishing new runs the proper general officer will notify the general chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service. This rule not to prevent the Railroad of taking care of the demands of the service.

Under the current agreement, dated May 1, 1945, article 64 was amended to read, insofar as pertinent to these disputes, as follows:

> The Company is not prohibited by any Article or Provision of this agreement from establishing new runs or new assignments. Notices calling for bids on any new run or new assignment must state definite limits and must show number of days per week (six or seven) to be worked, and the time crew will go on duty.
>
> NOTE: Time for crews to go on duty will not be changed without at least 48 hours notice. When time to go on duty is changed, one hour or more, the assignment will be rebulletined.

Subsequent to the adoption of article 64, as contained in the current agreement, the organization requested the carrier to fix a starting time on old runs and old assignments, where a starting time had not been fixed by the bulletin creating them. Pursuant to negotiations carried on relative to this request of the organization, carrier agreed to comply with the request and during the months of September and October 1945, specified starting times for the old runs and old assignments. The claims here involved are for days worked on these old runs and old assignments subsequent to May 1, 1945, the date when amended rule 64 became effective, and prior to the time when the carrier bulletined a starting time for such runs. It is clear that the amended rule 64 had reference to new runs or new assignments and made no reference

to runs or assignments that were theretofore created or established.

The note to article 64 clearly has reference to notice required in case a change is made in a bulletined starting time. Rule 64 of the scheduled agreement effective prior to the current agreement specified that in establishing new runs, rates and conditions to cover the service would be negotiated with the general chairman of the organization.

It is the contention of the organization that, since the carrier did not negotiate conditions to cover this service, it was not in fact properly bulletined in the absence of a specified starting time under cited applicable rulings of the National Railroad Adjustment Board. However, the record before us does not in fact show that at the time of the establishment of these runs the rates and conditions to cover the service were not in fact negotiated with the general chairman of the organization. At least one of these assigned runs, the one known as the Pando Tramp assignment, was not established until June 18, 1942, which was subsequent to the schedule of agreement of December 16, 1940. Consequently rates of pay and other conditions of the employment were not fixed in such agreement, as they were with respect to runs established prior to December 16, 1940. It is inferable that, as to that run, negotiations were had with the organization relative to those matters and presumably the starting times of these runs were not fixed because the validity of an indefinite starting time was recognized by both parties. Furthermore, the agreement reached subsequent to the effective date of the current agreement is evidence of the fact that as to these old runs or old assignments there was no recognized starting time.

In light of this negotiated agreement and the action of the carrier in fixing starting times for these old runs, in accordance therewith, we think the claims in cases 33, 103, and 108 should be denied and we so recommend.

Case Nos. 47, 48, and 49, involve claims of named train crews for additional pay because of the crews being called for a time later than the scheduled time, or of the recognized starting time of the run in question.

Case No. 47 involves the claim of a train crew assigned to main line passenger trains Nos. 8 and 5 between Salt Lake City, Utah, and Grand Junction, Colo. On the date specified in the claim departure of train No. 5, from Grand Junction was delayed some 12 hours from the time train was scheduled to depart. This delay in departure was occasioned by delay in the arrival of trains

on connecting lines due to conditions beyond the control of the carrier here involved. The claim was for 12 hours additional terminal delayed time. The crew of No. 5 had been notified prior to the time scheduled for the departure of the train that its departure would be delayed and hence did not report for duty at the scheduled time.

Case No. 48 originally included claims for a specified crew operating on a branch line out of the Salt Lake Terminal being called prior to the agreed starting time, as well as claims for days upon which they were called subsequent to the agreed starting time. This branch line run was not established until May 7, 1945, subsequent to the effective date of current agreement but prior to any scheduled starting time having been fixed by the carrier. By reason of the fact that the run was established subsequent to the negotiation of article 64, carrier agreed to pay the claim of the assigned crew for dates on which they were started in advance of the crews agreed to starting time. The other claims involved therein are submitted to this board.

Case No. 49 was a claim for additional payment to a crew on account of an assigned run being called, subsequent to May 1, 1945, later than the regularly recognized starting time. The claim was for continuous time from the time crew normally went on duty until relieved from duty on such dates. Article 64 of the current agreement, herein above quoted, was cited in support of the several claims.

In addition to article 64, cited by the organization, our attention is directed by the carrier to paragraph A of article 10, of the current schedule, which reads:

(A) In all classes of service men's time will commence at the time they are required to report for duty and shall continue until the time they are relieved from duty.

It is the organization's contention that under the last cited rule the bulletined scheduled time, or the agreed starting time, or the usual starting time is in fact the time the crew are required to report for duty. However, the record before us reveals in each of the instances here involved that the crews were notified prior to any such recognized starting time of the delay and hence did not report for duty. Notice was thereafter given of the time they were required to report for duty. Payment has been made on the basis of actual call for duty.

In view of our construction herein above of the note to article 64 of the current agreement and of the application of rule 64 made in the three previous cases, as well as in the light of article

10, paragraph (A), of the current schedule, we are of the opinion that these claims are not supportable. Absent rule 64 this opinion is supported by National Railroad Adjustment Board Awards Nos. 3784, 3905, 4176, 10420, 3523, 10600, 10601, and 10666. Consequently we recommend the aforesaid claims be denied.

Case Nos. 50, 51, and 52, include claims of train crews who were alleged to have performed services on specified days off their assigned territory and also off their seniority district. Claims were for additional day's pay under the basic pay rule for each time such service was performed. Claims involved in cases 50 and 52 are with reference to service required of the crew in performing certain switching in the Geneva Steel Plant yard at Geneva, Utah. During the construction of the steel plant in question carrier's crews handled cars of materials to the plant area but after the construction period ended the Geneva Steel Co., took over all intraplant switching. This intraplant switching is now, and was on the dates in these claims involved, being done by crews under a contract between the Geneva Steel Corp., and the Brotherhood of Railroad Trainmen. Neither that contract nor the substance thereof, was introduced in evidence and we are consequently not advised as to its terms.

Since the time when the Steel Co. took over intraplant switching the carrier has been requested to place incoming loads on any free track in the receiving yard and the carrier was advised that the Steel Co. would place out-bound loads in the same yard. The cars were handled to and from this receiving yard by plant switch engines manned by plant employees. At times, such employees, in setting out the out-bound cars in the receiving yards, placed cars that were not entirely empty with a string of empty cars. At times there were "bad order" cars among the out-bound cars, and at other times there were "no bill" cars and/or cars consigned to other carriers. Carrier's crews switched these cars out before leaving with the out-bound loads.

The Railroad intraplant facilities at the Geneva Plant are not incorporated or organized as a railroad, but the work as noted above, is handled by employees of the Geneva Steel Plant Corp.

The claim in case No. 51 is for switching performed by the crew named therein in the United States Navy Yard at Clearfield, Utah, in connection with the cars to be picked up from the Navy Yard transfer. The position of the organization in these cases is that requiring the crews in question to do the described switching at the Naval Supply yard and the Geneva Steel Plant required them to go off their assignment and likewise out of their seniority

district. The position of the carrier, on the other hand, is that both the Naval Supply Station and the Steel Plant are but industrial plants on their line, the only difference between these and other industrial plants being in their size. It is conceded by the organization that assigned freight crews can be required in connection with their assignment to do necessary industrial plant switching and this is true as revealed by the record even though a switch engine or switch engines are maintained and operated by the industry for intraplant work. The organization, however, takes the position that the mere fact there is not organized at these plants subsidiary railroad corporations to handle terminal switching, should make no difference in the determination of the claims here presented. However, it is to be observed that where a terminal railroad is organized and operated the normal procedure is for the crews of such road to place out-bound cars on the tracks of the connecting line and to receive in-bound cars on such tracks. This we think pertinent to determining whether in doing the required work the crews here involved were required to go off of their assignment or into another seniority district. We find from the whole record in these cases that the switching here involved was in fact industrial plant switching and did not involve service off the assigned territory of the crews. We consequently recommend that the claims be denied.

Case No. 55 is a protest of trainmen of subdivision 3 because of being required to do local work with double header trains between Salida and Tennessee Pass. The claim is for 100 miles each date subsequent to January 1, 1944, for all crews who are required to perform local service with a double header between Salida and Tennessee Pass. Determination of the validity of this claim depends upon whether or not the setting out and picking up of local freight is local work within the meaning of the mediation settlement of June 20, 1917, and within the intent of article 43 of the current agreement and of article 27 of the agreement in effect when the mediation settlement mentioned was entered into. Article 43 of the current agreement and article 27 of the prior agreement herein before mentioned are, insofar as the question confronting us is concerned, identical.

The mediation settlement of June 20, 1917, provided:

> The Company will not require double header trains between Salida and Tennessee Pass to do local work.

Light is shed on what is meant by "local work" in the mediation agreement by reference to the claims handled between rep-

resentatives of the organizations concerned and officers of the carrier. On May 12, 1915, violation of article 27 of the agreement then in effect, was claimed by the local chairman of the B. R. T. Of the five violations therein claimed, four of them involved the setting out of freight cars. Subsequent correspondence relative to said claims reveals that the railroad took the position that it was not in violation of the article to require other than local trains with double headers to pick up and set out cars. On March 23, 1917, a letter was addressed by the vice presidents of the organizations involved to the then vice president of the Denver and Rio Grande Western, in which it was stated in answer to the recited contention of the carrier:

> It is an almost universal rule that picking up and setting out is local work.

It was in response to these contrary contentions that the mediation settlement of June 20, 1917, herein above recited, was reached.

In light of this settlement construing article 27 of the then current contract, it is reasonable to assume that by the readoption in substance of said article 27 in subsequent agreements, including the current one, they included within their intendment the construction made of article 27 referred to by the mediation settlement of 1917. Article 43 as so construed requires a finding that local work includes setting out and picking up cars by through freight double headers between the stations as contended in the claims.

We recommend that the claims be allowed.

Case No. 66, asserts claims on behalf of available pool crews on the road of the carrier on specified days in September 1944, for a rotary run-around by reason of a weed burner being operated without a work train crew. On August 19, 1944, the assistant superintendent of the Salt Lake Division posted a bulletin for a Conductor-Pilot of a weed burner. On August 30, 1944, conductor L. F. Averett, was assigned to this job. These claims are asserted by the organization based upon article 22 (e) and article 13 (a) of the current agreement between the carrier and the organization.

Paragraph (e) of article 22, reads:

> (e) All work trains crews will consist of conductor and two brakemen.

Article 13 (a) is the so-called run-around rule and provides:

> 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 run around will be allowed one day's pay and placed at the foot of the list at time of call.

It is provided by paragraph (e) of article 22, above, that work trains of five days or less, will be considered as temporary, but when known to be for more than five days they should be bulletined and assigned. The carrier concedes that it was in error in not bulletining the work involved for a crew, to wit, a conductor and two brakemen, under applicable National Railroad Adjustment Board awards, and it concedes that two brakemen—those two on the extra board next entitled to regular assignment—are entitled to a day's pay for each day the weed burner was in service. Carrier also asserts that since, under article 22, the work involved was to continue for more than five days, it properly belonged to an assigned crew; hence they offered to settle by payment to the members of the crew not assigned to said job. Under applicable awards of the National Railroad Adjustment Board, discussed in the report to the President by the Emergency Board created March 8, 1945, to investigate and report on a dispute between the carrier and the organization, it is clear:

(1) That a self-propelled maintenance of way machine, such as the weed burner here involved, is a work train within the meaning of the present agreement.

(2) That where such work train is used without being bulletined for assignment and without a full crew, that available pool freight crews are entitled to a rotary run-around under article 13 (a) of the agreement.

Nevertheless, it is not clear, in view of awards Nos. 9398, 9469, and 9447, that pool freight crews are entitled to a rotary run-around where work such as that here involved is improperly bulletined for less than a full crew. However, in view of the recommendation of the Emergency Board created March 8, 1945, and in light of the settlements made pursuant to the report of such Emergency Board, we are not called upon to express our judgment with respect to future violations, if any, by the carrier of the rules in question under facts identical or comparable with those involved in this case.

The instant claims involve violations of rules occurring approximately six months before the appointment of the Emergency Board referred to. The claims had been asserted by the appropriate officers of the organization months prior to the report of the Emergency Board. Such claims were unadjusted during the time of its deliberation and its report. That Emergency Board had specifically presented to it the question of whether or not pool freight crews of this carrier were entitled to payment

of rotary run-arounds when self-propelled maintenance of way equipment was used without a full crew. After discussing awards of the National Railroad Adjustment Board, considered applicable, that Board in its report stated:

> 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 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 machines engaged in work train service within the definition given by the Adjustment Board. We therefore recommend these Awards be applied accordingly.

It is clear from the statements made by the carrier before the Adjustment Board referred to that the apparent inconsistency in the awards, both as to the personnel paid and the amount of payment, was specifically called to the attention of the Emergency Board. Subsequent to the receipt of the report of the Emergency Board, March 8, 1945; the carrier in compliance therewith paid claims amounting to thousands of dollars for rotary run-arounds; some at least of which are in all respects similar to the present claim.

Since the instant claims had been presented and were unadjusted at the time of the appointment of the former Emergency Board, and since, pursuant to its report and recommendations, claims on all four with the instant claims were—and we think properly—construed by the carrier and the organization as being within the intent of the recommendation of such board, we feel we are not at liberty to modify the previous board's recommendation. Consequently, despite the severity of the penalty and, indeed, the inequity of its enforcement, we are forced to the conclusion that the claims as presented should be paid and we so recommend.

Case Nos. 57 and 62 assert the claims of certain switchmen because of their being deprived of service on assignments to which their respective seniority entitled them. These claims are asserted under article 14 (a), 16 (c), and article 36 of the carrier's agreement with the Brotherhood of Railroad Trainmen, which articles deal with the seniority rights of switchmen and provide penalty pay for a violation of such rights as well as of

comparable provisions of the agreement between the carrier and the Switchmen's Union of North America.

In each of these cases the switchmen involved were displaced under applicable rules and practices and were properly notified of their displacement. In no instance did any switchman involved place himself within 48 hours from the time he was displaced from his regular assignment, but in each instance attempted at a later date to replace a junior on another assignment. On this property, the Switchmen's Union of North America is the duly authorized representative of the Switchmen. It is consequently conceded that the agreements between the carrier and that union are binding upon that class of employees regardless of their labor organization affiliation. On October 1, 1943, the general chairman of the Switchmen's Union of North America entered into an agreement with the carrier through its assistant general manager, which provided:

> When a regularly assigned switchman is displaced from his regular assignment by the reduction of switching power, or the application of seniority rights, the displaced switchman will assign himself in accordance with his seniority within 48 hours from the time of the displacement.

We are of the opinion and so find that the switchmen involved in the instant claims did not comply with this agreed to procedure and the practical construction of such procedure, as outlined in the agreement by the parties thereto. Such practical construction is evidenced by a letter from the general chairman of the Switchmen's Union to the assistant general manager of the carrier, November 17, 1945, in which he states in substance that under the quoted agreement it was the organization's understanding that if a switchman was displaced from his regular assignment by the reduction of switching power, or the application of seniority rights, and was at the time of displacement properly notified, it then became his responsibility to assert his seniority to its level within 48 hours. He then asserted that it was their understanding that the displaced or unassigned employee would be required to either await the opportunity of placing a bid on any job that was under bulletin, or could mark up on the switchmen's extra board and exercise the bulletin privileges from the extra board. The following decisive paragraph is quoted from such letter:

> The above procedure was literally followed in all cases brought to our attention during the life of the organization's understanding, which expired with the acknowledgment of our letter via telephone from your office October 27, 1945.

The contract as construed by the parties thereto, we find was not violated in the instant cases. We therefore recommend that they be denied.

The claims involved in case Nos. 60 and 72, have reference to switching at Delta and Somerset, Colo., stations on the carrier's road, on specified dates, as well as dates subsequent thereto, when such switching was performed. The organization contends that the switching required was a violation of article 15, as modified by article 21, of the current schedule. Article 15, provides in part:

> Trainmen in local or through and irregular pool freight service required to do terminal switching, before or after arrival at terminals, will be paid for the actual time so used at pro-rata rates on the minutes basis.

Article 21, provides in substance that such terminal switching pay will not be allowed on trips that do not exceed 50 miles or consume more than four hours in making the run, exclusive of any terminal time paid for.

The runs here involved consumed more than four hours. It is the position of the organization in these cases that the run involved is in fact local freight service. In support of their contention they refer to the kind of work performed and the fact that the basic day's pay is that for local freight service. They further point to the fact that when the mediation agreement of August 10, 1940, was made, which provided for a certain number of cents per 100 miles to be added to the through freight rates then in effect, to all local or way freight service, that such award was applied to the runs here involved. However, the contention that the runs in question are local freight service for which terminal switching pay would be allowed rather than mixed and miscellaneous service, is answered by the current contract between the organization and the carrier, entered into several years after the application of the mediation board awards to the basic pay on the runs in question. The current contract, in article 5, classifies in detail the various runs on the lines of the carrier. In freight service, the runs are classified as through freight, local service, mixed and miscellaneous service. Included in the runs under the last mentioned classification are the runs here involved. On some of the runs enumerated under this last classification, there are provisions for paying for certain specified switching, while in most of them nothing is said with respect to that service. We conclude under the contract of the parties that the service performed on these runs is not local freight service and that it would be wholly unreasonable, considering the contract as a

whole, to assume that article 15, insofar as it refers to local freight service, had application to any run then in existence, which was not in such contract classified as local service, unless the class of work was, subsequent to the negotiation of such contract, altered.

We find that the claims made in these cases are not supported and consequently recommend that they be denied.

Case No. 65 involves the claim of two brakemen for one day's pay for each day subsequent to September 20, 1943, when sufficient work was available for the assignment of a Pueblo Division percentage crew at Bond, for services between Bond and Orestod.

On September 20, 1943, tunnel No. 10, on the Denver & Salt Lake-Denver & Rio Grande Western, joint line, was burned out, blocking that line and making it necessary to reroute all Denver & Rio Grande Western business over the Denver & Rio Grande Royal Gorge route. Freight business moving via the tunnel route is handled west from Denver to Bond, Colo., which constitutes one freight district, thence from Bond to Grand Junction, Colo., which in effect, constitutes another working district for pool freight crews. Article 33, of the current agreement makes provision for certain freight brakeman service to be performed by what is known as the Bond-Denver crews. After tunnel No. 10 was blocked, the general manager of the carrier conferred with the general chairman of the Brotherhood of Railroad Trainmen and general chairman of the Brotherhood of Locomotive Firemen and Enginemen, relative to permitting the joint line Grand Junction crews to handle all interchange work between the Denver & Rio Grande Western and the Denver & Salt Lake Railroad at Orestod. On September 22, the general manager notified subordinate officials that such agreement had been effected. When the wording of that notification by the general manager of the carrier was brought to the attention of the general chairman of the two Brotherhoods, they promptly notified an official of the railroad that if interchange work referred to therein was of any considerable volume, it was the understanding that a Denver-Bond district crew would be assigned to such work. Correspondence between the parties indicated that there was such an understanding. Claims were asserted on behalf of the two brakemen of the Bond-Denver district crew for a day's pay for each day subsequent to date that sufficient work was available for the assignment of a Denver crew at Bond. The claim was denied as presented. However, the carrier offered to make an adjustment in favor of the brakemen on the basis of a day's pay for

each date from September 20 to November 26, the date of the crew's reassignment to the work involved, less earnings in other service. This offer was rejected by the organization. We are of the opinion that when the interchange work at Orestod was sufficient to permit the employment of the full crew, for any considerable period of time, the work should have been assigned to the Bond district crew under the cited rule, and the understanding reached relative to transfer service during the blocking of the tunnel. We consequently recommend that the claim as made be allowed for the dates only upon which there was sufficient interchange work to employ a train crew and excluding therefrom any days on which no such service was performed by Grand Junction Division crew.

Case Nos. 89 and 90 assert claims in each instance for a day's pay for a switch foreman and two helpers on account of being required to perform switching service in the Chicago Burlington & Quincy Railroad yard at Denver in violation of articles 211 and 15, of the Switchmen's schedule, and not in conformity with certain cited National Railroad Adjustment Board awards. However, it developed during the course of the hearing that the crew involved in performing the service for which claim is made in case 90, was moving passenger equipment and it was conceded by the organization that the movement of such passenger equipment was not in violation of the cited articles of the Switchmen's agreement.

On October 18, 1945, the CB&Q Railroad crews set a string of cars on track No. 12, for delivery to the Denver & Rio Grande Western. These cars numbered about fifty and, due to the length of the string of cars, the CB&Q Railroad crews cut the cars at Nineteenth Street, which street they were required to leave open, and left part of the string of cars north of Nineteenth Street, and extending onto tracks not owned or leased by the Denver Union Terminal Co. Upon the carrier's crews pulling on track No. 12, to pick up this equipment, it was necessary for them in order to pick up the whole string of cars to couple at the Nineteenth Street crossing. It is the contention of the organization that requiring this crew to go onto the property of a connecting line and make this coupling and to haul the train from the connecting company's line was a violation of the cited rules of the current schedule, which provide that such crews will be confined to their respective yards and that switchmen will not hold rights in any other than their respective yards. Claim is for one day's

pay because of being required to go off their assigned territory in the performance of their work.

The interchange track commonly used in transferring freight equipment to this carrier is track No. 11. On the date in question track No. 11 was blocked by loaded freight cars and consequently the connecting road delivered the equipment on track No. 12 which, it is contended by the carrier, may be properly used as a transfer track, since a great portion of it is controlled by the terminal company. Conceding for the purpose of this determination that the portion of track 12 controlled by the terminal company might be used as a transfer track for freight equipment, nevertheless, the record clearly indicates that in order to perform the movement which was in the case of 89 required, it was necessary for the freight crew to couple the cars at the Nineteenth Street crossing and in doing so it was necessary for them to perform that duty off their assigned territory. In view of this fact, we are of the opinion and recommend that the claim involved in case 89 be allowed.

Case Nos. 102, 104 and 105 assert claims on behalf of named and available pool crews for one day's pay on dates specified on account of assigned crews on designated assignment being called for service in advance of their regular starting time. Requiring the assigned crews so to do, is asserted as being in violation of articles 64, 67 and 13 (a) of the current schedule. The three runs in question are all manned by assigned crews with regular designated times to go on duty. Since they had been assigned a specified starting time pursuant to the agreement reached between the carrier and the Brotherhood subsequent to the adoption of article 64, or pursuant to the article, carrier agreed to and did pay the assigned crews an extra day's pay for starting in advance of their assigned time. It, however, rejected the claim of the organization for rotary run-around in favor of the pool crews. Article 13 (a), the run-around rule, is quoted heretofore in this report, as has the relevant part of article 64. Article 67, provides:

> Assigned crews will not be used to perform through freight service that pool freight crews should perform except when there are not any crews available. Local officers will maintain timely supervision of service requirements to prevent assigned crews from performing such service.

The position of the organization is that where an assigned crew is called in advance of a designated starting time such crew is then working in unassigned service and consequently the pool freight crews were run around.

It is the carrier's position that on all mixed or miscellaneous runs the crews assigned are entitled to all the work on their assigned territory on the days of their assignment, whether such work is performed before or after the assigned hours and that none of the work on such assignments belongs to pool freight crews; that such crews are not used to perform any work on any such assignments unless it is necessary as a result of increased volume of traffic to supplement the assigned crews or it becomes necessary to move traffic on days of the week on which the runs are not assigned to operate. In the absence of a rule such as rule 64 of the current schedule, the position of the carrier to the effect that the work performed on the assigned run of the assigned crew, is not work belonging to pool freight crews, is sustained by relevant awards of the National Railroad Adjustment Board. See awards 1004, award 3537, and award 7029. We are of the opinion and so hold, that article 64 cannot be construed to take away from assigned crews work properly belonging to them simply because the crew started before or after the assigned starting time. The work here involved was in our opinion, work of the assigned crews for which they were adequately paid and for which the pool crews are not entitled to payment. We consequently recommend that the claims be denied.

Respectfully submitted,

JOHN W. YEAGER, *Chairman.*
ROGER I. MCDONOUGH, *Member.*
FLOYD MCGOWN, *Member.*

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