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**Report**  
**TO**  
**THE PRESIDENT**  
**BY THE**  
**EMERGENCY BOARD**

**CREATED JULY 27, 1946**  
**PURSUANT TO SECTION 10**  
**OF THE RAILWAY LABOR ACT**

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**To investigate an unadjusted dispute between**  
**the Pullman Company and certain of its em-**  
**ployees represented by the Order of Railway**  
**Conductors**

**CHICAGO, ILLINOIS**

**AUGUST 23, 1946**

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**(No. 40)**

## LETTER OF TRANSMITTAL

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CHICAGO, ILLINOIS,  
*August 23, 1946.*

THE PRESIDENT,  
*The White House.*

MR. PRESIDENT: The Emergency Board created by your Executive Order of July 27, 1946, pursuant to Section 10 of the Railway Labor Act, and appointed by you August 2, 1946, to investigate an unadjusted dispute between the Pullman Company and certain of its employees represented by the Order of Railway Conductors, has the honor to submit herewith the report of its investigation.

Respectfully submitted,

I. L. SHARFMAN, *Chairman.*  
ROBERT G. SIMMONS, *Member.*  
WALTON H. HAMILTON, *Member.*

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## INTRODUCTION

This Emergency Board was created, pursuant to Section 10 of the Railway Labor Act, by the following Executive Order, dated July 27, 1946:

WHEREAS a dispute exists between the Pullman Company, a carrier, and certain of its employees represented by the Order of Railway Conductors of America, a labor organization; and

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

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce within the several States of the Union, to a degree such as to deprive the country of essential transportation service;

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

The board shall report its findings to the President with respect to the said dispute within 30 days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the Pullman Company or its employees in the conditions out of which the said dispute arose.

HARRY S. TRUMAN.

THE WHITE HOUSE,  
*July 27, 1946.*

On August 2, 1946, the President appointed I. L. Sharfman, Chairman of the Department of Economics at the University of Michigan, Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska, and Walton H. Hamilton, Professor of Law at the Law School of Yale University to serve as members of the Emergency Board.

The Board first met in the Embassy Room of the Morrison Hotel, Chicago, Ill., on Monday, August 5, 1946. It selected I. L. Sharfman as its Chairman and confirmed the appointment of the Acme Reporting Co. of Washington, D. C., as its reporter.

Public hearings were opened on Monday, August 5, and extended through Wednesday, August 14. On August 5th and 6th the hearings were held at the Morrison Hotel; all subsequent meetings of the Board were held in Room 1904 of the North American Building, 36 South State Street, Chicago. On Thursday, August 15, upon conclusion of the

public hearings, the Board held informal conferences with representatives of the parties, in an effort to bring about a settlement of the dispute, but these mediatory services proved of no avail.

Appearances on behalf of the parties were entered as follows:

On behalf of the Order of Railway Conductors:

H. W. FRAZER, *President*, Cedar Rapids, Iowa.

HARRY E. WILMARTH, *Counsel*, 1115 Merchants Bank Building, Cedar Rapids, Iowa.

B. C. JOHNSON, *Vice President*, 536 Mulford Drive, S.E., Grand Rapids 7, Mich.

A. G. WISE, *Vice President and General Chairman*, Pullman System, Room 203, 10 East Huron Street, Chicago 11, Ill.

On behalf of the Pullman Company:

HOWARD NEITZERT, *Counsel*, Chicago, Ill.

M. R. WENDT, *Assistant General Solicitor*, Chicago, Ill.

GORDON WINKS, *Counsel*, Chicago, Ill.

J. M. CARRY, *Vice President, operating*, Chicago, Ill.

J. P. LEACH, *Assistant Vice President*, Chicago, Ill.

B. H. VROMAN, *Assistant Vice President*, Chicago, Ill.

H. R. LARY, *Supervisor of Industrial Relations*, Chicago, Ill.

CHAMP CARRY, *President*, Pullman-Standard Car Manufacturing Company, formerly *Executive Vice President*, the Pullman Company, Chicago, Ill.

W. S. HERRING, *Assistant General Auditor*, Chicago, Ill.

F. J. BOECKELMAN, *Assistant to Assistant Vice President*, Chicago, Ill.

The record consists of 1,117 pages of transcript and 45 exhibits. Both parties availed themselves of the opportunity for oral argument, and the Pullman Company also submitted a written brief. The entire record is made part of this Report, and the conclusions and recommendations of the Board are based upon the entire record.

## STATEMENT OF THE ISSUE

This proceeding involves a dispute as to the application to the wage rates of the Pullman conductors of the postwar wage pattern established for the railroad industry. The prevailing pattern is the result of the awards of two Arbitration Boards, of the recommendation of an Emergency Board, and of the terms of a negotiated settlement.

On April 3, 1946, an Arbitration Board awarded to the so-called non-operating railroad employees represented by the Fifteen Cooperating Railway Labor Organizations a uniform increase of 16 cents per hour, effective January 1, 1946. On the same day, April 3, 1946, an Arbitration Board awarded a uniform increase of \$1.28 per basic day, likewise effective as of January 1, 1946, to the operating employees represented by the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America. On April 18, 1946, an Emergency Board recommended for the operating employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, also retroactive to January 1, 1946, an increase of "\$1.28 per basic day or 16 cents per hour."

The 16-cent increase for the employees represented by the Fifteen Cooperating Railway Labor Organizations was put into effect by an agreement dated April 4, 1946, although soon thereafter these organizations instituted proceedings for a further increase of 14 cents per hour. The \$1.28-per-basic-day increase for the employees represented by the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America was put into effect by an agreement dated April 19, 1946, although soon thereafter these organizations instituted proceedings for a further increase of \$1.20 per basic day. The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen rejected the recommendation of the Emergency Board, and the continued deadlock of these organizations with the carriers resulted in the railroad strike of May 23-25, 1946.

On May 25 the strike was settled on the basis of "a wage increase of 16 cents per hour, or \$1.28 per basic day, as recommended by the President's Emergency Board, to be effective as of January 1, 1946, and an additional increase of  $2\frac{1}{2}$  cents per hour, or 20 cents per basic day, effective May 22, 1946, making a total increase of  $18\frac{1}{2}$  cents per hour, or \$1.48 per basic day." As of the same date agreements with the carriers were signed by all twenty of the railroad labor organizations, bringing the total wage increases to  $18\frac{1}{2}$  cents per hour or \$1.48 per basic day, the increase of  $2\frac{1}{2}$  cents per hour or 20 cents per basic day to be effective as of May 22, 1946. These adjustments were made in settlement of all outstanding demands and with a moratorium of one year upon all rules changes.

This pattern was recognized by the Chairman of the National Railway Labor Panel, with the approval of the Economic Stabilization Director, in his General Wage Approval No. 1 and General Wage Approval No. 3, dated respectively April 24, 1946, and June 12, 1946. In the first of these orders he approved "the granting by a carrier \* \* \* of wage and salary increases, effective as of January 1, 1946, in such amounts as will

not exceed 16 cents per hour, \$1.28 per basic day, or the equivalent thereof expressed in weekly or monthly rates." In the second of these orders he declared: "Any wage or salary increase not in excess of  $2\frac{1}{2}$  cents per hour made on or after May 22, 1946, by any carrier \* \* \* will be deemed approved."

To the proceedings out of which this wage pattern emerged the Pullman Company was not a party. The agreements of the Order of Railway Conductors were confined to railroad employees. Pullman conductors were not directly involved. But the Pullman Company and the Order of Railway Conductors (which represents Pullman conductors) are agreed that there should be an increase in the wage rates of the Pullman conductors, and that this increase should follow the general wage pattern of the railroad industry. They are also agreed upon the effective dates of the two elements in the increase. The issue, then, is to determine what addition shall be made to the wage rates of the Pullman conductors through the application to them of the wage increase of  $18\frac{1}{2}$  cents per hour or \$1.48 per basic day.

As the matter was argued by the parties, or was developed at the hearings, the single question before this Board came to be put in three quite distinct forms. Shall the rates of pay of conductors in the service of the Pullman Company be increased

1. In the amount of \$41.62 $\frac{1}{2}$  per month, to be arrived at by multiplying  $18\frac{1}{2}$  cents per hour by 225, the number of credited hours constituting a basic month's service? or

2. In the amount of \$44.40 per month, to be arrived at by multiplying the basic daily increase of \$1.48 by 30, the number of days generally regarded as constituting a work-month? or

3. In whatever amount is the proper equivalent, for a full month's service, of  $18\frac{1}{2}$  cents per hour or \$1.48 per basic day?

If Pullman conductors are hourly paid employees, the first statement of the question is appropriate; if they have basic daily rates, the second; if they have basic monthly rates, the third. If the hourly or daily increase is found appropriate, no further difficulty is encountered; for the one has been fixed at  $18\frac{1}{2}$  cents and the other at \$1.48. If, however, it is found that Pullman conductors are basically monthly-paid employees, a complication arises; for monthly increases are not set down in precise figures, but as "the equivalent" of the specified hourly and daily increases. The wage pattern must be applied to the work and the methods of pay of Pullman conductors. This is no mere exercise in calculation; for a complex code has arisen, through agreements, working rules, and unwritten custom, which makes the method of remuneration for Pullman conductors a distinctive institution. The application must be made in such a way as to do least violence to established usage. And it must also be in accord

with the application of the same standard to kindred groups of employees. In the railroad industry, the difference between types of employment and methods of remuneration are sharp. The language employed reflects such diversities in practice that even simple phrases like "an hour's work" and "overtime" are terms of art whose meaning is constant, if at all, only within the craft to which they are indigenous. The application, therefore, of an established pattern to the work and wages of a specific group involves, not the setting down of an exact and inevitable answer, but an exercise of judgment which takes into account all relevant factors. Its application in this proceeding must not, through breaking down established differentials or creating new ones, defeat the very purpose which a horizontal and uniform standard for raising railroad wages was intended to serve. These considerations, vital to a sound result, are the criteria by which the contentions put forward by the adverse parties must be appraised.

### APPLICATION OF THE WAGE PATTERN

The Pullman Company throughout the hearing argued that its conductors are paid by the hour, and that for all purposes the basic month is 225 hours. It consistently made the monthly rate and the hourly rate expressions of the same thing. The Order of Railway Conductors talked at times of the "monthly rate" and at times of the "daily rate." As the hearings were concluded, they had come to insist upon the monthly rate as the basic rate and the hourly rate as a derivative therefrom.

If working conditions and methods of payment were uniform throughout the railroad industry, the application of a rate of increase acceptable to both parties would be easy. But diversity in these respects makes application of the established wage pattern more than an exercise in arithmetic; and "equivalence," in terms of monthly rates, must be sought amid a variety of working arrangements and wage structures. The determinations underlying the wage pattern of the railroad industry were written in exact terms only for hourly rates and for basic daily rates. They do not contain any formula, or even directive language, by which the precise amounts set down for the hour and the day are to be commuted into the equivalent rates when wages are paid by the month.

If a constant ratio always existed between the hour, the day, and the month, the arithmetic approach would be an adequate and infallible guide to application. But, to begin with, the calendar itself decrees months of 28, 29, 30, and 31 days; and there is great diversity in practice as to the number of days in the work week, as to the number of hours in the working day, and even as to the meaning of the hour for wage purposes.

The whole structure of work on the railroads is shot full of such diversities. Various crafts are paid as if they were working by the hour,

by the day, by the month. But the terms, "hour," "day," "month," as used in the determination of railroad wages, are not everyday words, which to the mind of the layman mean exactly what they say. Instead, each of the three is a term of art, which has through usage come to have a distinctive meaning. Or any one of the terms, as used in different connections or for different purposes, may have a variety of meanings. In railroad service an hour is not necessarily an hour by the clock. Thus, for certain crafts, miles run are commuted into hours, and a locomotive engineer in the passenger service who makes a run of 100 miles, at a speed of 20 miles or less, is paid as if he had put in an 8-hour day. How seriously pay-hours have departed from clock-hours is indicated by a working rule of the engineers and firemen—not always lived up to in practice—that in the make-up of crews regular employees on passenger trains shall have an opportunity to earn from 40 to 48 days' pay, or 320 to 384 hours' pay, in the calendar month. If the days and hours referred to were actual days and hours, the rule would look absurd. It makes sense only when it is remembered that the hours are hypothetical or pay-hours, all of which are shorter, sometimes far shorter, than clock-hours. Further, the pay-hour, or pay-day, means different things in respect to different crafts. Thus, "an hour's pay" and "a day's pay" are terms which cannot be carried over from craft to craft with fixed meanings. All such terms take on precise meaning only as defined by the working rules of the craft. And when it is said that the hour's wage has been increased by 18½ cents or the day's wage by \$1.48, it is not to be inferred that the worker receives 18½ cents more for every hour or \$1.48 more for every day he actually puts in. The increase per clock-hour or per working day will vary tremendously. As railroad pay is calculated, especially for the crafts which work upon moving trains, they will usually be in excess, often substantially in excess, of the sums set down.

In these circumstances the commutation of hourly or daily wage increases into monthly wage increases is no mere matter of computation. In the hearings a great deal was said about distinction between the "operating" and the "nonoperating" employees, and an attempt was made to show that the work of Pullman conductors was quite like that of clerks and other nonoperating groups. Such a distinction might be useful if the issue were the basic wages of different crafts or what differentials were right and proper. But where as here the concern is the uniform application to various types of work of a pattern already established, it is hard to see how such a classification is pertinent.

But whether a man's work is done at a fixed place or upon a moving train is a matter of importance. For by influencing work schedules, conditions of labor, and methods of wage payment, it becomes a factor in the application of the given wage standard to the wages of particular



crafts. Employees, whether of the railroads or of the Pullman Company, who have a fixed place of work, may come to work and leave the job at fixed times, usually within the range of the calendar day. For them a regular hourly rate may be fixed; and, by the use of multiples which remain the same, a single rate may be expressed as an hourly, daily, weekly, or monthly rate. For them the pay-hour and the clock-hour tend to coincide; and, even though time and a half be allowed for hours worked in excess of eight, or for hours worked on Sundays and holidays, the resultant is a multiple of a clock-hour. In applying the increment of 18½ cents per hour to crafts with fixed working places, there is no difficulty. Equity unites with justice to multiply the increase allowed per hour by the number of hours the worker puts in to fix his daily, weekly or monthly compensation.

But it is not so easy to apply fixed hourly or daily increases to the monthly wages of the members of the crafts who move with the trains. There the pattern of work and wages is substantially affected by the fundamental fact that the place of work is a train which must move, so far as circumstances allow, on a schedule. The employee cannot come to work at a regular time in the morning and depart at a regular time in the afternoon. He cannot get overtime in excess of 8 hours in each calendar day he works. On the railroads Sundays and holidays are just like week days, and their coming brings no time-and-a-half to him. Many crafts make regular runs vastly in excess of 8 hours; and, for the Pullman employees who work on the trains, the hours on the job, covering the whole of the run, may amount to many calendar days. The hours credited to the crafts that work on trains are pay-hours, in no sense comparable with the clock-hours for which employees with a fixed place of work are generally paid. And although, for Pullman employees, there is no commutation of miles into hours, working rules of one sort or another operate to make hours paid for somewhat different from hours actually put in.

The resolution of the issue presented to the Board involves two tasks. The first is to set down in terms which are realistic and relevant the standard already established for the wage increase. The second is to apply this standard with regard alike to the conditions under which Pullman conductors work and receive wages and with an eye to that equality of benefit among related crafts which it was the purpose of the standard to effect.

The standard cannot be employed in the form of \$1.48 per basic day, for there is for Pullman conductors no basic day. The variety of the runs in hours, their diverse demands for continuous service, and the irregularities in periods of lay-over conspire to make a day's work, in other than a sheer fictional sense, an impossibility. The Pullman Company, to the

same effect, has argued that a fixed basic monthly wage is differently broken down to obtain the imputed wage per day according to the number of days in the calendar month; and thus the daily wage varies as the month has 28, 29, 30, or 31 days. Since the conductors have put forward no demand to change the prevailing usages of wage-payment, this view of the matter must be accepted. And, although for a time the Order of Railway Conductors undertook to make their case by multiplying the allowable increase of \$1.48 per basic day by the 30 days in a working month into an increase of \$44.40 per month, they were, as the hearings closed, disposed to abandon the day as the unit of adjustment.

The use of an increase of 18½ cents per hour presents more of a problem. For this unit the Pullman Company contended and against this unit the Order of Railway Conductors remained consistently adamant. It is true that the work of extra conductors and the overtime of regular conductors are paid for on an hourly basis. And it cannot be disputed that the contracts between the parties and the working rules through which they are given effect make mention of an hourly rate. Yet the evidence presented to this Board demonstrates beyond serious question that the Pullman conductors have grown accustomed to think of their monthly rate as their basic rate. And, to remove all doubt, representatives of the Pullman Company again and again referred to the basic monthly rate. In effect they took the position that the hourly rate and the monthly rate represent different ways of saying the same thing. The correct way to view the hourly rate is to accept it for what it is—a derivative of the monthly rate set down, not as a measure of all work, but as a device to be put to the very limited purpose of calculating extra service, overtime, loss of sleep, and all other work which is not an inseparable part of the basic month's service.

An examination of prevailing practice makes it clear that it is the month, not the day or the hour, which lies at the basis of pay for these employees. The Pullman conductors fall into the two classes of those regularly assigned to scheduled runs and those rendering extra service. The ideal of the Company, as the classification indicates, is to reduce to regular assignment as much of its service as possible. Thus, in ordinary times, the great majority of conductors fall into the class of regulars. But travel does not move over the days of the week or throughout the season in an even volume, and in the provision to meet such irregularities the extra conductors generally are used. In instances it also happens that a regular assignment exceeds the regular scheduled "month," and pro rata or punitive overtime is paid on an hourly basis. And, since trains may run late and contingencies of one kind or another occur, there is a constant demand for supplementary service. In recent years this situation has been materially disturbed by the war. The volume of travel has been

substantially increased, and it has been impossible to reduce a large part of this added increment to regular runs. The Pullman Company presented figures to indicate that, as of March 1946, as much as 41 percent of all service rendered by its conductors was paid for on an hourly basis. As the unusual conditions created by the war recede, travel may be expected to fall into more regular channels. As it does, the ratio of extra to regular conductors, which during the war years rose rapidly, may be expected to fall. In the normal situation, likely to be recaptured, the great bulk of the work will be done by regular conductors with fixed schedules, and the work not paid for fully and directly by monthly wages will be what it has always been intended to be, a miscellany of extras.

On the basis of this distinction between regularly scheduled work and extra services, the pattern for the payment of wages of Pullman conductors becomes clear-cut. The conductors on regular schedule receive the monthly wage, if their total credited hours equal or are less than the number of hours specified as constituting a basic month's service. Traditionally this basic month has been 240 hours. Since September 1, 1945, by agreement of the parties, it has been 225 hours. These hours, whether 240 or 225, are not necessarily the scheduled hours which the conductors put in; they are the number of hours—measured according to the working rules—which the Pullman Company may claim without having to pay compensation in excess of the monthly wage. If such a conductor puts in no time beyond this specified number—whether 240 or 225—there is little occasion to make use of an "hourly rate" of wages. As a matter of arithmetic—though it serves no practical purpose—the monthly wage can be divided by the number of hours each regular conductor puts in to discover how much he makes per hour. The result will be a different hourly rate for every period of actual work; and it is evident that the fewer the hours a conductor puts in, the higher this hourly rate. The fallacy of the "hourly rate" is thus obvious; the maximum of hours which the employee can be called upon to put in is confused with the hours which make up his working month.

It is only in respect to extra service, overtime, late arrivals, and loss of sleep that there is any need for a computation based on an hour unit. In respect to such services, and only in respect to such services, does the factor of 240 hours, as it was—225 hours, as it is—come in. As the system operated before September 1, 1945, the 240 hours served two distinct purposes. First, it fixed the point at which the Pullman Company must begin to pay the monthly employee for overtime. All hours in excess of 240 and less than 270 were to be paid for at a rate of  $1/240$  of the monthly rate per hour; and all hours in excess of 270 were to constitute "punitive overtime" and to be paid for at a rate of one and a half times  $1/240$  of the monthly rate per hour. Second, the 240 hours was

used, as a divisor of the monthly rate, to provide a unit in terms of which the wages of conductors in extra service, who did not enjoy the monthly guarantee, were to be calculated. They were to be paid  $1/240$  of the monthly wage for every hour of work with which they were credited. The distinction between the wages of the regular and the extra conductors stands out sharply. If each during the month was credited with 240 hours work, the two received the same pay. But if each put in, let us say, 220 hours, the regular conductor received a full month's pay, while the extra conductor received only  $220/240$  of a month's pay. If this is broken down, there is a serious disparity between the sums imputed to the two for "an hour's work." And, as the number of hours put in by the regular conductor falls, this disparity in hourly rates grows larger. The hourly rate, however employed, is obtained by a breakdown of the monthly rate; there is nowhere in this whole complicated wage structure a buildup of a basic-hour rate into a monthly rate. Nor is there evidence that Pullman conductors have worked a 240- and now work a 225-hour month.

Had it not been for the agreement of September 1, 1945, the 240 hours would have remained 240 hours and there would have been no occasion for the dispute which is now before the Board. It is necessary, then, to analyze this agreement in order to indicate how it has touched off the controversy. It all began in a demand by the Order of Railway Conductors for a revision of the working rules for Pullman conductors. A principal demand was for a reduction to 210 of the maximum of accredited hours necessary to entitle a Pullman conductor in regular service to the monthly wage. The actual agreement changed the definition of the basic month's service by substituting 225 for 240 hours. A conductor in regular service received the same monthly wage as before, if his total of accredited hours ran to 225 or less; and his earnings for the month, aside from miscellanies, remained exactly the same, that is, at the figure fixed for the monthly wage. Nor, if such a fiction is to be invoked, was his pay per hour—unless his scheduled runs for the month were increased or decreased—in any wise affected. His overtime, however, began at the end of the 225th, instead of the 240th, hour; and for each hour between 226 and 235 inclusive he was paid pro rata overtime, at a rate of  $1/225$ , instead of  $1/240$ , of the monthly rate. Beyond 235 he was paid one and a half times  $1/225$  of the monthly wage for every hour accredited to him. In respect to the payment of extra conductors a corresponding change was made. Each extra conductor received  $1/225$  of the month's wage for every hour accredited to him. After he had put in hours enough to receive the monthly wage he was paid for overtime and punitive overtime as if he were a regular conductor. The agreement of September 1, 1945, left the monthly rate of pay undisturbed. It decreased the number of

hours which make up a basic month's service; it moved forward the point at which overtime begins; it increased the derivative hourly rate at which overtime and a miscellany of extra services were to be compensated. It did not effect any change either in the monthly rate or in the earnings of Pullman conductors whose assignments are executed within the work-month. The changes made operate dominantly along what may be called the fringe of conductor employment.

It is against this background that the contentions of the Pullman Company must be considered. Its argument can be resolved into a series of assumptions and an arithmetical calculation. These assumptions, implicit in its testimony and its exhibits, were never nakedly set forth. The norm of 225 hours, now employed for the specific purpose of marking the beginning of overtime and of providing a divisor through which a derivative hourly rate is obtained, is converted into a regular month's employment of 225 hours. The reduction from 240 hours to 225 hours is treated as if it were a reduction for the purpose of calculating increases in the basic monthly wage.

It was "the working rules" with which the negotiations were primarily concerned. The Order of Railway Conductors had in mind, not the revision of the whole wage structure, but quite limited objectives. They sought to obtain, and did obtain, a lower maximum of hours-to-be-worked to secure the monthly wage and a corresponding increase in the derivative hourly rate by which work in excess of or apart from the basic work month was to be compensated. It is significant that, in making these changes, it seems to have been understood by both parties that the integrity of the basic monthly rate was to be undisturbed. From the materials before it the Board cannot conclude, either that it was the intent of the parties or that it is implicit in the agreement that in the future every increase in wages accruing to the conductors is to be depreciated to  $225/240$  of that which would otherwise be their lawful due. Nor can it accept the argument that the Pullman conductors must, in relation to other groups whose place of work is a moving train, suffer a penalty because they have succeeded in bettering their position.

The arguments of the Pullman Company stand or fall with these assumptions. They assume, when the need is to demonstrate, that the hourly rate is basic and the monthly rate derivative, or at the very least that the two are different expressions of the same base. Once by the grace of hypothesis this starting point is found, the argument by arithmetic flows easily, concretely, convincingly. In its simplest terms, the increase in the wage is to be at the rate of  $18\frac{1}{2}$  cents per hour; the working month now consists of 225—not 240—hours; therefore it follows, as of course, that the monthly wage of the Pullman conductors is to be increased by  $\$41.62\frac{1}{2}$ —not by  $\$44.40$ . Upon such assumptions

there is no escape from the answer to which this exercise in arithmetic leads. The incorrect result stems not from any error in figuring, but from the unrealistic assumptions upon which the calculations are based.

### CONCLUSIONS OF THE BOARD

It was said a good many times in the course of this proceeding that the disagreement between the parties does not involve a wage dispute in the ordinary sense. By this was meant, first, that both parties are agreed upon the propriety of a wage increase, and second, that both parties are agreed upon the general pattern of that wage increase. Thus, the Pullman Company offers a monthly increase of \$41.62½ to its conductors. This monthly increase results from the multiplication of 18½ cents per hour, the wage pattern established for the railroad industry, by 225 hours, the number of hours alleged to be comprehended in the monthly wage of the conductors. The Order of Railway Conductors, on the other hand, insists upon a monthly increase of \$44.40. This monthly increase results from the multiplication of 18½ cents per hour, the wage pattern established for the railroad industry, by 240 hours, the number of hours alleged to constitute a measure of a full month's pay for employees performing their service on passenger trains, whether they be operating or nonoperating employees, when hourly increases are translated into monthly increases.

The Board finds that a single wage pattern was established for the railroad industry, and that this pattern, whether stated in terms of cents per hour or in terms of dollars and cents per basic day, amounts to 18½ cents per hour.

The sole issue involved in this proceeding, therefore, concerns the application of this wage pattern to the monthly rates of the Pullman conductors.

Varying methods of wage payment prevail for employees performing their service on passenger trains. Engineers, firemen, railroad conductors, assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen are paid in dollars and cents per basic day. The increases allowed these employees, therefore, were stated in terms of \$1.48 per basic day (8 times 18½ cents). These increases were thus presumed to comprehend 8 hours' pay per basic day, despite the fact that the mileage method of payment that applies to these classes of employees contemplates normal performance, under the speed basis of 20 miles per hour, in not more than 5 hours for engineers and firemen and in not more than 7½ hours for conductors, assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen. For the latter classes of employees, furthermore, money monthly guarantees were increased 30 times the new daily rates.

Aside from these classes of employees serving on passenger trains, whose agreements with the carriers provide for basic daily rates, there are many classes of employees who, under their agreements with both the railroads and the Pullman Company, receive basic monthly rates. These embrace not only dining car stewards, chefs, cooks, and waiters, but also sleeping car porters, chair car attendants, and train porters. Like the Pullman conductors, each of these groups receives a basic monthly wage. In each case there is, of course, a derivative hourly rate, to be used for the payment of overtime and the performance of supplementary services, which is obtained by dividing the monthly rate by the number of hours specified as a basic month's service. In case of all the classes of employees listed above, other than the Pullman conductors, the number of hours so specified is 240. Prior to the agreement of September 1, 1945, 240 hours' work was also specified for the Pullman conductors. Had not this agreement reduced the figure from 240 to 225 hours, the present dispute would not have arisen. The Pullman conductors, like all of these other monthly-paid employees, would have received  $18\frac{1}{2}$  cents multiplied by 240, or \$44.40 per month.

The question arises, therefore, as to whether the Pullman conductors should be penalized in the adjustment of their monthly wages because of the fact that they succeeded in obtaining a more favorable working rule than these other classes of employees. The monthly rate of pay is designed to cover a minimum full month's service, whether that service comprehends a basic month of 240 or 225 hours. The reduction of hours to 225 was not accompanied by any reduction in the monthly wages of the Pullman conductors, and no adequate reason appears for computing subsequent increases or decreases in these monthly wages on any other basis than 240 hours, which almost uniformly is accepted as a measure of a month's service when hourly rates are translated into monthly rates for employees rendering service on passenger trains. The situation is in no way different from that which prevails in the case of railroad conductors, assistant conductors, and ticket collectors, whose money monthly guarantees were increased by 30 times the increase in their basic daily rates, although normal performance of 30 basic days' service would involve 225 rather than 240 hours of work. If hourly wage changes were hereafter to be multiplied by 225 in translating them into monthly wage rates, the advantage obtained by the Pullman conductors through the reduction of hours to 225 would in due course be completely neutralized, and they might eventually find themselves in even worse position, from the standpoint of the level of their monthly wages, than they were prior to the effectuation of the agreement of September 1, 1945. It is difficult to believe that such a result was contemplated. The Pullman conductors are now paid the same basic monthly wage rate which pre-

vailed when 240 hours' service was required, and the  $18\frac{1}{2}$ -cent wage pattern must likewise be applied on the basis of 240 hours when translated into basic monthly rates.

It is true that in the case of the so-called nonoperating employees, represented by the Fifteen Cooperating Railway Labor Organizations, the  $18\frac{1}{2}$ -cent an hour increase has been converted into monthly rates by multiplying this increase by the number of hours comprehended in the monthly rate. In these instances, however, hourly rates of pay predominate as the basic mode of payment, and their application in this way to daily, weekly, and piece-work rates, as well as to monthly rates, is designed to maintain uniformity of treatment as between the various classes of cooperating employees involved. The conditions of work for these employees are fundamentally different from those prevailing for employees working on passenger trains; and the hours credited to these employees tend in most cases to represent clock-hours rather than pay-hours, and to be supplemented by overtime provisions, after 8 hours of continuous service, and by punitive payments for work on Sundays and holidays, which do not prevail in the agreements defining the wages, hours, and working conditions on passenger trains. It is the established practice in this nonoperating group of employees to request increases in cents per hour and to apply such increases to monthly rates on the basis of the number of hours comprehended in a month's service. The employees working on passenger trains, on the other hand, have basic daily rates or basic monthly rates, rather than basic hourly rates. The hourly rates are derivative, and are used only for special purposes. It is the established practice in this group of transportation employees to request increases in dollars and cents per basic day (or in a percentage of the basic day's pay), and, where monthly rates or money monthly guarantees are involved, to translate the increases in the basic day's pay by multiplying by 30, or, when the increase is specified in cents per hour, by multiplying by 240. The same wage pattern is applied to both major groups of employees, but it is adjusted to the distinctive characteristics of the wage structure of each group.

It should be noted, finally, that the wage pattern established in the railroad industry was designed to raise the general level of wage payments without disturbing existing dollars and cents differentials in hourly, weekly, or monthly wages. It is particularly important that so-called intra-plant differentials be not disturbed; and all employees who perform their work on a passenger train many not unreasonably be deemed to be working in the same plant. Among these employees, the group of railroad conductors, assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen have received an addition of \$44.40 to their money monthly guarantees (and the same is true of train porters



who perform service as trainmen). Dining car stewards, chefs, cooks, and waiters have received an increase of \$44.40 for their minimum month. Sleeping car porters, chair car attendants, and train porters not performing service as trainmen have likewise received an increase of \$44.40 for their minimum month. Only express messengers, like all other employees of the Railway Express Agency, have been grouped with the nonoperating employees, and have received an increase of 18½ cents an hour on the basis of the number of hours comprehended in their minimum month of service. Such an adjustment has been customary for express messengers, in the interest of maintaining uniformity in the treatment of all express employees, and in conformity with the established practice of the large group of nonoperating employees whose wage structure is based predominantly on hourly rates of pay. The engineers and firemen, to complete the listing of the privately employed force performing work on passenger trains, received, of course, an increase of \$1.48 per basic day, without reference to the number of hours' work actually involved in the performance of a basic day's service. While engineers and firemen generally have no monthly guarantees, the carriers seek as far as possible to provide them with not less than 40 and not more than 48 basic days' pay each month in the passenger service. In view of the almost uniform application of the wage pattern in terms of an increase of \$44.40 for monthly-rated employees performing their service on trains (the express messengers are the only exception), the limitation of the increase for Pullman conductors to \$41.62½ would unjustifiably disturb established differentials and would be conducive to the serious impairment of the workers' morale.

The fact that the monthly wages of yardmasters and train dispatchers have also been increased by \$44.40, although their agreements do not provide for a 240-hour service month, further supports the Board's conclusion that an increase of the minimum monthly wage rates involved in this proceeding by \$44.40 constitutes an appropriate application of the wage pattern.

In these circumstances the Board recommends that the basic monthly rates of pay of Pullman conductors specified in the agreement effective September 1, 1945, between the Pullman Company and its conductors represented by the Order of Railway Conductors be increased by \$44.40.

### CERTIFICATION

In accordance with the provisions of the Stabilization Act of October 2, 1942, as amended by Section 202 of the Stabilization Extension Act of 1944, approved June 30, 1944, we hereby CERTIFY that the recommendations of this Board relating to changes in compensation are

consistent with such standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies, and are approvable for the purpose of seeking rate increase relief.

Respectfully submitted.

I. L. SHARFMAN, *Chairman.*

Walton H. Hamilton, *member.*

AUGUST 23, 1946.

### MINORITY REPORT AND RECOMMENDATION

I recognize the desirability of a unanimous report from this Board. We have been unable to have a meeting of minds fully on the issue and the facts; we are apart on the reasons for a conclusion and have been unable to find a common answer. Under these circumstances it becomes necessary that I state my views in a separate report and recommendation.

We are not here dealing with the question of the ability of the Pullman Company to pay increased wages. Neither are we dealing with any question of working conditions, wage inequalities, living costs, or other general issues that normally enter into a typical wage case. As I see the question presented, the answer is one to be arrived at by the use of simple arithmetic.

The fact to be determined is whether the basic increases of pay per hour are to be multiplied by  $8 \times 30$  or 240 hours, or by 225 hours. The parties so treated the question in their across-the-board discussions, in negotiation, and in their submissions to us.

The question, in an alternative form, as submitted to the National Mediation Board and by it to us, in substance is this:

(1) Shall the rates of pay of Pullman conductors be increased, effective January 1, 1946, in the amount of \$38.40 per month, arrived at by multiplying \$1.28 by 30, and further increased effective May 22, 1946, by \$6 per month, arrived at by multiplying 20 cents by 30?

or

(2) Shall the rates of pay of Pullman conductors be increased, effective January 1, 1946, in the amount of \$36 per month, arrived at by multiplying the basic month of 225 hours by an increase of 16 cents per hour, and further increased, effective May 22, 1946, by \$5.625 per month, arrived at by multiplying the basic month of 225 hours by an increase of  $2\frac{1}{2}$  cents per hour?

The first section of the question states the position of the Order of Railway Conductors, representing the Pullman conductors, the second section of the question states the position of the Pullman Company. For clarity, I shall refer hereafter to the employees as "Pullman conductors."

The pattern, as it has been referred to here, controlling for the solution of the problem, is found in General Wage Approval No. 1, dated April 24, 1946, by the Chairman, National Railway Labor Panel, and General Wage Approval No. 3, by the same official, dated June 12, 1946. The April 24, 1946, order approves the granting "of wage or salary increases, effective as of January 1, 1946, in such amounts as will not exceed 16 cents per hour, \$1.28 per basic day, or the equivalent thereof expressed in weekly or monthly rates." The June 12, 1946, order approves "any wage or salary increase not in excess of 2½ cents per hour made on or after May 22, 1946."

In an address to the People of the United States on May 24, 1946, President Truman put the whole wage increase structure on a per hour basis, not a monthly basis, and said 18½ cents per hour was "eminently fair." He further said, "It is also important that the suggested increase of 18½ cents was within the wage stabilization formula—and *this formula must be maintained.*" [Emphasis supplied.] I believe he meant what he said. As I see it, the recommendation of the majority does not maintain the formula which the President said "must be maintained." But it is held that the pattern is not the General Approval Orders relied upon herein, but the arbitration awards and the agreements of April 4 and April 19. True, those proceedings antedated the approval orders. But the approval orders expressed the deliberate policy of the Government of the United States. That position was that thereafter employers and employees may go to the limits expressed in the approval orders and not beyond those limits. The approval orders did not say that hereafter one may use the agreements of April 4 and April 19, 1946, and May 25, 1946, as a pattern. Those approval orders themselves set the pattern. If they did not then the unanswered question comes, Why were they issued? It is not to be assumed that the Chairman of the National Railway Labor Panel did a useless and futile thing. I do not ascribe such an act to him. Only insofar as the agreements explain the pattern of the approval orders do those agreements enter into our consideration here. But if we are to consider the agreements as patterns here, and ignore the approval orders, then it is quite apparent to me that the monthly increase rate formula applied to the nonoperating crafts in the agreement of April 4, 1946, should be followed here.

Let us examine further into this contention that the proceedings prior to the wage approval orders are the controlling patterns. The Agreement of April 4, 1946, is based upon the arbitration award of April 3, 1946, in National Mediation Board Docket No. A-2215, Arb. 2. There the request was for an increase in hourly rates. The Board awarded "16 cents per hour." On the following day that award was executed in the agreement of April 4, 1946, and in that execution it was provided that

"16 cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rates." In such a manner the parties construed and applied the award.

The wage agreement of April 19, 1946, is based upon the Arbitration Award of April 3, 1946, in National Mediation Board Docket No. A-2215, Arb. 61. There the demand was for an increased daily rate. An increased daily rate was granted in the agreement of April 19, 1946. In neither of the awards is there any reference to basic month increases without regard to the other factors entering into the calculation. The monthly rates in both agreements were arrived at by calculations based upon the number of hours actual or credited which the employee performed. The hourly rate increase remained at all times the base point in the calculations.

It will be noted that the two wage approval orders start with a basic hourly increase; the second order stops there. The first order translates the basic hourly increase into a basic 8-hour day, by multiplying 8 by 16 cents to secure the basic daily increase of \$1.28. That was not by accident nor theorizing but by multiplication. About that there appears to be no question. Beyond that the order of April 24, 1946, recognizes the variable elements that exist in the contracts of the several crafts and provides that the equivalent of the hourly or daily rate shall be expressed in weekly or monthly rates. The pattern is built up from hourly rates, not down from monthly rates. The question here arises because of a dispute as to how to determine the equivalent monthly rate. The majority go to this "equivalent" provision in the wage approval order.

The application of the pattern for the solution of this problem is to be found in the agreement dated April 4, 1946, between certain carriers and fifteen cooperating labor organizations. This group is generally referred to as the nonoperating crafts. I deem it important to note that this agreement was in existence and antedates General Wage Approval No. 1 by 20 days. I think it may be assumed that this pattern was considered in issuing the approval of April 24, 1946. It was there agreed that "16 cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate." Sec. 1(d).

Historically and in fact the Pullman conductors belong in the nonoperating group. Not only are they nonoperating employees but they are in fact not employees of the railroad in any sense. It is again not by accident that the Federal Employers Liability Act, the Hours of Service Law, and the Adamson Act, applying to operating employees, do not apply to Pullman conductors. The Railway Labor Act recognizes this distinction by placing Pullman conductors adjustment cases in the nonoperating group.

Rule 4 of the current agreement between the Pullman Company and its conductors (effective September 1, 1945) provides "225 hours' work credited as hereinafter provided shall constitute a basic month's service."

Rule 1(a) of the same agreement sets up rates per month and per hour in dollars, increasing with the service period of the conductor. Neither rate is shown as a derivative of the other. In each instance the monthly rate is 225 times the hourly rate and the hourly rate is  $1/225$  of the monthly rate. For instance, the hourly rate for the first year is \$0.9671 and the monthly rate is \$217.60. For over 15 years' service the hourly rate is \$1.1138 and the monthly rate \$250.60. It is to be noted that the contract existing between these parties as of December 1, 1936, provided that 240 hours' work shall constitute a basic month's service and the monthly rates were 240 times the hourly rate, and the hourly rate  $1/240$  of the monthly rate. A "constant ratio" is maintained between the hourly and monthly rates. As I shall point out later, the contract also provides for overtime in hours and not fractions of a month. Rule 5 provides, "Where a regular assignment is less than 225 hours' work per month, deductions shall not be made from the regularly established monthly wage in consequence thereof." The contract, then, in effect is one for an hourly rate with a guaranteed monthly minimum of 225 hours. There is then an hourly rate to which the 16 cents and  $2\frac{1}{2}$  cents increase approved in the wage orders can be applied. It becomes then a matter of simple arithmetic to reach the equivalent monthly increase. It is 16 cents and  $2\frac{1}{2}$  cents times 225 hours.

Rule 1(b) of the same agreement provides, "The daily rate of pay of a conductor shall be determined by dividing his monthly rate by the number of days there are in a current month." This leaves the daily rate a variable one to be determined by the calculation above provided. There is accordingly no daily rate in dollars, that is a definite one, save as is determined by the calculation provided, based upon the calendar days in the month when the service is provided. The daily rates of pay are used for calculating pay where a fraction of a month is involved.

The Pullman Company then proposes to apply the two pay increases, approved by the wage approval orders, to the contractual definite hourly rates and multiply that sum by 225 in reaching the new monthly rate. By that calculation it follows the exact pattern already and formerly in their contracts, by which the present monthly rates were determined. I think it the correct application of the wage order increases.

The Pullman conductors in their original request, in negotiation and here asked for an increase of daily rates by \$1.48, which translated into monthly rates means a basic month increase of \$38.40 under the April 24, 1946, wage increase approval, and \$6 under the June 12, 1946, wage increase approval. These sums obviously are 240 times the hourly in-

creases provided by the approvals, or 8 times 30 times the increase. They would secure the equivalent increase for an 8-hour day and a 30-day month, or a 240-hour increase per month. The fault in this contention is that the Pullman conductor does not have a basic 8-hour day for a 30-day month or a 240-hour basic month. Nor can he be called upon to perform 240 credited hours of service without being paid overtime and penalty time. His monthly rate does not comprehend that much service. If the conductor is allowed an increase based on 240 hours, then he will be given an increase for 15 hours of service for which he performs and is not required to perform any labor, actual or credited, and for which he is not otherwise paid. There is nothing in hours' pay, a day's pay, or fraction of a month's pay, to which that last 15 hours' increase can be added. Obviously, such an increase will be violative of the "will not exceed 16 cents per hour" and of the "nor in excess of  $2\frac{1}{2}$  cents per hour" provisions of the wage approval orders.

To accept this proposal of the Pullman conductors as the majority of our Board recommend is to translate the cents per hour increase authorized by the wage approval orders into a fixed monthly increase without regard to the hours of service per month contemplated in the contracts and to reach a result that is not the equivalent of the cents per hour increases expressed in weekly or monthly rates, and which is in excess of those hourly increase rates. Had the Chairman of the National Railway Labor Panel, who drafted those orders, intended such a result, the orders could well have said so. On their face they refute such a contention. He approved increases built up from hourly rates, not calculated down from monthly rates.

As has been pointed out, the Pullman conductors have no basic daily rate either in hours or dollars. They contend, however, that their 225-hour month is the equivalent of 30 days of  $7\frac{1}{2}$  hours each, and that, accordingly, their basic day is  $7\frac{1}{2}$  hours and that they should therefore be granted the daily increase for 30 days. The difficulty with this argument is that it asks for an 8-hour increase to be applied to a  $7\frac{1}{2}$ -hour day.

The Pullman conductors submit that such an increase was granted the railroad conductors and certain other employees by the agreement dated April 19, 1946. That agreement increases "all basic daily rates of pay" in the amount of \$1.28 per day and increases the daily earnings minima by that amount and the standard monthly rates and monthly guarantees in passenger service by 30 times the new standard daily rate. This agreement was in existence and had been for five days when General Wage Approval No. 1 was issued. It may likewise be assumed that this agreement was likewise considered in issuing the approval of April 24, 1946.

It will be noted that the agreement of April 19, 1946, accepts the daily

rate, which is 8 times the per hour increase, and multiplies that by 30. The result is a 240-hour increase per month.

But it is argued by the Pullman conductors that the agreement of April 19, 1946, was not an hourly but a daily increase, without regard to hours per day. They premise their contention on that base also.

To determine the question, attention is called to the agreement of May 25, 1946, with the Brotherhood of Locomotive Engineers and Brotherhood of Railroad Trainmen. The memorandum of agreement recited therein as the basis for the final agreement recites, "The basis of settlement is a wage increase of 16 cents per hour or \$1.28 per basic day \* \* \* to be effective as of January 1, 1946, and an additional increase of  $2\frac{1}{2}$  cents per hour, or 20 cents per basic day effective May 22, 1946, making a total increase of  $18\frac{1}{2}$  cents per hour or \$1.48 per basic day." It will thus be seen that the daily rate increase was recognized as the equivalent of 8 times the hourly rate increase, and the increases were stated in the alternative of hours "or" days. It can hardly be said that the Engineers and Trainmen accepted a base increase less favorable to their crafts than that received by the other operating groups, yet if this contention now advanced is sound, they did just that.

The railroad passenger conductors are paid upon a mileage and miles per hour basis. Operating exactly upon a standard mileage basis of 150 miles at 20 miles per hour permits them to earn a minimum day's pay in  $7\frac{1}{2}$  hours. It is therefore argued that the railway conductors and the Pullman conductors both have a basic  $7\frac{1}{2}$ -hour day and should be treated on a parity in wage increases. This reasoning cannot be accepted for a number of reasons.

Pullman conductors do not have either a mileage or miles per hour basis upon which to calculate their earnings. Neither do they have a basic day rate. They, as has been pointed out, have a basic hourly and a basic monthly rate. Their daily rate for pay purposes is a calculation based upon their monthly rate divided by the number of days in the current calendar month.

But no matter how many hours may be required for a railroad passenger conductor to earn his basic daily rate, the fact remains that his basic daily rate upon which the increases have been applied has been increased by 8 times the hourly rate approved by the wage approval orders. There is evidence before us, some documentary, that the schedule of hourly, daily and monthly rates in dollars is based on 8 hours times 30 days. We do not have before us the evidence nor the considerations that were advanced by the railroad conductors when the agreement of April 19, 1946, was entered into, fixing an increase of \$1.28 per day, without reference to hours. I venture the thought that the railroad conductors did not then advance the contention that they had in fact a  $7\frac{1}{2}$ -hour basic

day, but rather that that agreement recognized, perhaps without discussion, the custom in the industry, applicable to their craft, of figuring daily rates at 8 times the hourly rate.

It is certain that the Chairman of the National Railway Labor Panel, when he issued General Wage Approval No. 1, calculated on the basis of an 8-hour day and not a 7½-hour day. Were it otherwise, he would, in the order itself, have violated the "will not exceed 16 cents per hour" provision. Such a conclusion is not warranted.

The question arises as to the 30-day month base for applying the daily guarantee and arriving at the monthly guarantee in the case of railroad conductors. That, like the 8-hour daily base seems to have been accepted by the industry in applying wage increases to several of the operating crafts. No such 8-hour day or 30-day month base has ever been applied in calculating increases for the Pullman conductors.

The accuracy of this last statement may be challenged. Prior to the agreement of September 1, 1945, the Pullman conductors' basic month was 240 hours by contract. Prior to that agreement, which reduced the hours in a basic month to 225, increases were applied on a 240-hour base. That, however, was not because of any 8-hour 30-day month custom, but because the basic contract month was 240 hours. Naturally, the question here presented would not arise under those circumstances. Accordingly, wage increase adjustments made prior to September 1, 1945, cannot be precedents or establish a pattern for increases under the present contract fixing 225 hours as the basic month. Of course, had the basic month continued at 240 hours, the Pullman conductors would have received the \$44.40 increase, but the Pullman Company would have been entitled to receive 240 credited hours' service, not 225 as now. That is a two-way road. There are mutual obligations and rights involved.

When the basic month was reduced from 240 to 225 hours a month for Pullman conductors, their monthly pay was not reduced; hence, it is argued they are still being paid for 240 credited hours' work, as a pay base, although not required to perform more than 225 credited hours' work to earn the 240 credited hours, or a month's pay, and, hence, they should now receive a 240-hour increase. The answer to that is obvious. The basic month is now 225 hours and they are paid on that basis. If this argument were valid, then the hourly rate as a pay base should and naturally would be 1/240 of the month's pay, as it was prior to the September 1, 1945, contract. But, as has been pointed out, by Rule 1(a) of the September 1, 1945, contract, the rate per hour is 1/225 of the rate per month. While it is true that an hour actually worked quite customarily does not correspond with a credited hour for pay purposes, yet, in all instances, the pay for a credited hour is 1/225 of the pay for a basic month and pay is based not upon actual hours worked but upon



credited hours. Both the 240-hour basic month and the 225-hour basic month are credited hours as distinguished from worked hours. The hour's pay provided in the contract is pay for a credited hour.

The argument then is that the Pullman conductor, under the September 1, 1945, agreement, continues to earn 240 credited hours by earning 225 credited hours. It is true that he may earn 240 credited hours in 225 actual hours or less, but I am unable to understand how he can earn 240 credited hours in 225 credited hours. He is paid under the contract for 225 credited hours, not 240 credited hours. The fallacy of this argument I think can be demonstrated. If 240 credited hours can be earned in 225 credited hours' time, then that process must be accomplished by increasing each credited hour (not actual hour) for pay purposes to 240/225 of 60 minutes or 64 minutes, and, in effect, applying the hourly increases to that number of minutes rather than to a 60-minute hour. A Pullman conductor is, according to that line of reasoning, being paid for 64 credited minutes for every hour of credited time accumulated. This constitutes an inflation of credited hours. It is my understanding that an "hour," as used in the contract is 60 minutes. It is likewise my understanding that an "hour," as that word is used in the General Wage Approval Orders, is 60 minutes. As a matter of mathematics, this inflation of 4 minutes into each credited hour for 225 credited hours amounts to 900 minutes or 15 hours, and that is the number of non-credited hours upon which the Pullman conductors request that the increase be applied. The result, if the Pullman conductors' position is sustained, is an inflation of the increases in pay of  $15 \times 18\frac{1}{2}$  cents, or \$2.77 a month. That is the amount per month in dispute in this controversy.

Perhaps a shorter illustration will assist. Take the basic hourly increases totalling 18.5 cents and multiply by 240 and you reach a month increase of \$44.40. Now divide, not by 240, but by 225 and, "presto chango or something," the result in hourly increase is 19.73 cents. By the magic of the formula, in the round trip from hourly increase rate up to monthly rates and back to hourly increase rates, the hourly rate has increased by 1.23 cents. Of course, there is no magic in the formula. The increase is accomplished by the 240 figure used as a vehicle on the outbound trip.

I submit that any formula that reaches such a result is fallacious. But, even if sound, it should not be recommended for the fact remains that 19.73 cents per hour increase is 1.23 cents per hour increase in excess of the maximum limits fixed by the wage approval orders, and, so far as that is concerned, by the arbitration and emergency board awards and agreements preceding the approval orders.

And this increase is not a fictitious one, but an actual one. It is one to

be applied, if accepted, not to occasional exceptional conditions nor to "fringe" conditions, nor for "very limited purposes." It is one to be applied if accepted to a substantial part of the hours earned by Pullman conductors. A Pullman conductor is paid solely on an hourly basis for all extra service, for all overtime, for deadheading, for extended special tours, when held for service, when performing station duty, when appearing as a witness, and for loss of sleep. Forty-one percent of the hours worked by Pullman conductors are paid for on an hourly basis. The only figures furnished us, are as of March, 1946. During that period 8.35 percent of the Pullman conductors were paid exclusively on a monthly basis; 11.69 percent were paid a fraction of a month's pay but received no payments at the hourly rate; 27.86 percent received the monthly rate plus additional payments at the hourly rate; 11.33 percent were paid a fraction of a month's pay plus more than 225 hours' pay at the hourly rate; 12.30 percent were paid a fraction of a month's pay plus from 112 to 225 hours' pay at the hourly rate; 18.04 percent were paid a fraction of a month's pay plus less than 112 hours' pay at the hourly rate, and 10.43 percent *received all of their compensation at the hourly rate.* [Emphasis supplied.] It will thus be seen that the hourly rate entered into the pay actually received by approximately 80 percent of all the Pullman conductors and is the exclusive base for the pay received by over 10 percent of the Pullman conductors. If the position of the Pullman conductors is sustained in this controversy, it follows that an increase of 1.23 cents per hour above the maximum allowed by the wage approval orders will be granted in a very substantial way and amount. To rest this recommendation on an increase per month formula is to ignore this very important fact situation in this case.

Let us examine further into this theory that the Pullman conductors earn 240 credited hours in 225 credited hours and hence would have a 240 hour increase. It is advanced as a foundation stone for the solution of this problem. It has not been advanced by the parties. If it is sound, then I suggest that it has equal applicability to conditions where daily and weekly hours have been reduced without a reduction in pay. Further, the period of the elapsed time between the reduction in hours and the application of increased wage scales is not material. Likewise it should have application to increases in all industry and not to one craft in the railroad industry. The effect of translating this theory into a principle for the application of wage increases becomes apparent at once. The havoc it will cause is likewise apparent. If a further increase of wages is to be made, it should be done on some rational basis, rather than adding approved increases to fictitious credited hours.

But what are the precedents or customs in the matter in the railroad industry? It is in evidence before this Board that some years ago cer-

tain of the operating crafts, including the railroad conductors, by contract, received a reduction in hours of their basic day from 10 to 8, without a reduction in wages. Thereafter, increases of pay were allowed. Those increases were applied not to the discarded 10-hour day but to the then existing 8-hour day. Representatives of the crafts accepted that basis of applying increases. They do not question it now. There is no sound reason or request on their part for departing from it now. So by reason and precedent the increased wages now should be applied to the now existing hourly base of 225 hours rather than the discarded 240 hourly base.

I go now to another matter and that is the holding that equality of treatment and the prevention of discriminations in pay increases require that this increase of \$44.40 per month be granted rather than the \$41.625 which the Pullman Company proposes. This is based upon the application of increases already made to other crafts.

Omitting United States mail clerks, for this discussion the employees who actually serve on the trains are divided into four groups, by the evidence. First: railroad conductors, assistant conductors, ticket collectors, baggagemen, brakemen, flagmen and train porters who perform service as trainmen. Second: engineers and firemen. Third: dining car stewards, chefs, cooks and waiters, sleeping car (Pullman) conductors and porters, chair-car attendants and train porters not performing service as trainmen. Fourth: express messengers. Those in the first group have had a \$44.40 increase applied to their minimum month. I have heretofore explained my understanding of the basis of the calculation of that increase. Its material dissimilarity to the wage and hour basis of calculation of pay from that of the Pullman conductors is apparent. There is only one point where the two patterns close. Each has a basic month or minimum pay base. That is true in many of the crafts. To grant the same pay increase on that premise is, as I have pointed out, to translate the basic hour increases approved by the General Approval Orders and the prior agreements into a fixed monthly increase, without regard to the other elements that enter into the problem.

The employees in the second group received an increase of \$1.48 per basic day of 100 miles or less, 5 hours or less. They have no monthly rate, so no monthly increase was had. Other than that, for the purpose of this discussion, the men in this group fall into the same pattern as those in the first group, and the distinctions there pointed out need not be repeated here.

With the exception of the Pullman conductors, the employees named in the third group have all been granted a \$44.40 increase of their minimum month. Then why not the Pullman conductors? The employees that have received the \$44.40 increase have a basic month of 240 hours.

Their employers have the right to 240 credited hours of service. Obviously they should have received the named increase under the wage approval orders, but from that it does not follow that the Pullman conductors, who have a 225-hour basic month and whose employer has the right to ask for only 225 hours of credited service, should receive a 240-hour increase. Therein lies the why of the difference.

So when the why of the \$44.40 increase to the employees in the first three groups is understood, there is no precedent in these settlements that equality of treatment requires a like increase to be given Pullman conductors. But we do find a precedent in the increases as applied to express messengers and it is adverse to the contentions of the Pullman conductors.

The express messengers (fourth group), received an increase not of \$44.40 per month but 18½ cents per hour on the number of hours constituting a basic minimum month. We are advised that that increase is figured on a basic month of 190 hours and amounts to \$33.15—\$11.25 less per month than that requested by the Pullman conductors. In short, they followed, in applying the increase to express messengers, exactly the formula the Pullman Company proposes here.

It is only where those employees have a 240-hour basic month and may be called upon to perform that much credited service that they receive the \$44.40 increase. The argument that equality of treatment means that each employee shall receive the same monthly increase breaks down here, for the express messengers have not received the \$44.40 increase, nor are they required to perform 240 hours of credited service. Equality of treatment is had when each employee is given the hourly increases contemplated by the wage orders based on the hours in his basic month. It may be further pointed out that the express messenger and Pullman conductor are about equal in numbers and have a number of common employment situations. Both are employees of corporations other than the railroad carrier; both ride the trains because their duties require that place for their performance; neither one has any responsibility for the operation of the trains.

Now as to the discrimination or disparity argument. As has been pointed out, the employees who have received the \$44.40 increase have received it because they have earned 240 credited hours. It still remains an 18½ cents increase. But if the Pullman conductors are to receive a \$44.40 per month increase applied to their basic month's pay which they receive when they have earned 225 credited hours, then their hourly increase amounts to 19.73 cents an hour. Such a result in itself creates both a discrimination in wage increase rates per hour, in favor of the Pullman conductors, and violates the "shall not exceed" limits of the General Approval Orders. But the discrimination in favor of the Pullman con-

ductors would not stop there. By their contract (Rule 20, agreement of September 1, 1945), when a Pullman conductor earns more than 225 credited hours in a month he is paid overtime at pro rata hourly rates up to 235 hours and time and a half in excess of 235 hours. Now assume that a Pullman conductor earns 240 credited hours, the same as do the employees who have been granted the \$44.40 per month increase. In that event he would receive a \$47.85 increase in pay for the 240 hours credited as against \$44.40 received by the other employees for 240 credited hours.

This discrimination is illustrated by the evidence of Mr. George M. Harrison, President of the Brotherhood of Railway Clerks, who testified in this matter, as a witness for the Pullman conductors. The wage increases to members of his organization, whose pay is on a monthly base, was arrived at by calculating the number of hours in the working month and multiplying that by the wage increase per hour. This is the exact formula worked out in the agreement of April 4, 1946, with the 15 cooperating labor organizations, of whom the Brotherhood of Railway Clerks was one. Mr. Harrison was asked by counsel for the conductors, "Now your reason for following the hourly rate, if I understand it, is to keep the men relatively in proportion when wage increases are granted, that is, not to throw their rate out of disparity with each other." Mr. Harrison answered, "I think that is true. Of course, the primary reason is to compensate the monthly paid men for the number of hours that they work, give them a proportionate increase. If you didn't give them a proportionate increase then you would throw the relationship of their wage rates out of line. If I was assigned 240 hours and I didn't get an increase 240 times the hourly rate, why, then my rate would be disturbed, the relationship of my rate would be disturbed with the rates of other employees." In short, Mr. Harrison testified that the proper base is a proportionate increase and not an equal increase. His reasoning and the contract of the men he represents support the position of the Pullman Company and is contra to that of the Pullman conductors. Not only that, but it explains the pattern that has been followed heretofore in these situations.

It may be further pointed out that to grant the Pullman conductors the wage increase requested here is, in effect, to place them in the category of operating employees for wage purposes only. As has been pointed out, historically and in fact they do not occupy that position. It is a new doctrine to so classify nonoperating crafts.

Two settlements or agreements have been advanced here as precedents supporting the Pullman conductors' contention. They are the ones with the train dispatchers and yardmasters. Both were negotiated or across the board settlements. Both groups are paid on a monthly basis. In the case of the trainmasters we are told that the carriers' contention was that

they have a 208-hour month. Mr. Braese, President of the American Train Dispatchers Association, testified that because of transfer time and other matters, they actually put in more time than that and that they believed they should be paid for 240 hours a month. Be that as it may, Mr. Braese testified that in negotiating this settlement they talked about increases on a monthly basis,—they “were not interested in figuring” hourly increases. The dispatchers asked for a \$72 a month increase. The carrier offered \$38.40 as the most it could pay under the Wage Approval Orders. The dispatchers accepted it. Subsequently the 2½ cents per hour increase expressed in 240 hours or \$6 was also granted. This agreement was one, then, negotiated on a basis of a monthly increase, without regard to basic hours, and the pressure on the one hand and the yielding on the other finding a point of equilibrium. It was not arrived at by any rationalized method of calculation. It is not for this Board to say whether or not that settlement was within or without the Wage Approval Orders. The method used to secure the result removes it as a persuasive precedent here.

In the case of the yardmasters a somewhat similar situation arose. The yardmasters have variable days in number of hours. The evidence is that the carriers calculate the weighted average of hours worked at 237 hours 43 minutes per month. The yardmasters advise us that the average is more nearly 208 hours per month. We are not advised whether or not such a contention was advanced in the negotiations leading to the contract. In any event the carriers considered that the 237:43 hours approximated the 240-hour base and agreed to the increases which now amount to \$44.40 a month. It further appears that prior to 1937 the average hours per month of these employees was in excess of 240 hours and that since that time 240 hours has been accepted as the base for applying increases. As I see it, an agreement so arrived at is not a precedent here. But in any event, if it be one, it more nearly supports the position of the Pullman Company than that of the Pullman conductors.

It is my view that the recommendations of this Board should be bottomed upon a proper application of the general approval wage increase orders rather than upon what appear to be two isolated negotiated agreements, which do not influence the situation when the why is understood.

Throughout this statement I have used a number of illustrations, all of which, when reduced to the essence of the situation, illustrate that 15 hours' increase in pay cannot be added to 15 nonexistent hours neither actually worked nor credited.

Through these General Approval Orders the Government of the United States has stated the top limits of wage increases in this industry as a part of its inflation prevention policy. To recommend the adoption

of the wage increase asked by the Pullman conductors is to exceed the top limits fixed by the Wage Orders that are to be applied. To that extent it will encourage inflation by letting down a bit the controls there set up. But more serious than that, it unlocks the doors and furnishes a vehicle to be used in further tearing down the anti-inflation controls.

For the reasons given herein I cannot join with my fellow members on the Board in their recommendations.

I recommend that the proposal of the Pullman Company should be accepted.

Respectfully submitted,

Robert G. Simmons.

