Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED SEPTEMBER 5, 1946, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT

To investigate an unadjusted dispute concerning rates of pay and working rules involving the LONG ISLAND RAILROAD COMPANY and TRAINMEN represented by Railroad Workers Industrial Union, Division of District 50, United Mine Workers of America.

NEW YORK, N. Y.

OCTOBER 11, 1946

No. (41)

LETTER OF TRANSMITTAL

NEW YORK, N. Y.,
October 11, 1946.

THE PRESIDENT,
The White House
Washington, D. C.

MR. PRESIDENT:

We herewith submit to you the report of the Emergency Board created by you on the 5th day of September 1946, by Executive Order 9770 dated August 22, 1946, said Board being delegated to investigate and report its findings with respect to a wage and rules controversy involving the Long Island Railroad Company and certain of its employees represented by the Railroad Workers Industrial Union, Division of District 50, United Mine Workers of America.

Respectfully submitted,

FRANK M. SWACKER, *Chairman*,
H. NATHAN SWAIM, *Member*.
LEVERETT EDWARDS, *Member*.

INTRODUCTION

This Emergency Board, consisting of Frank M. Swacker (New York, N. Y.), Chairman, H. Nathan Swaim (Indianapolis, Ind.), and Leverett Edwards (Oklahoma City, Okla.), members, was appointed by the President on the 5th day of September 1946, pursuant to the provisions of Section 10 of the Railway Labor Act and by virtue of Executive Order 9770 dated August 22, 1946, and set forth below, to investigate and report upon an unadjusted dispute involving the Long Island Railroad Company and certain of its employees represented by the Railroad Workers Industrial Union, Division of District 50, United Mine Workers of America.

The dispute in question involves both rates of pay and rules. The emergency which resulted in the appointment of this Board arose over the announced determination of the employees so represented to withdraw from service as of the 23d day of August 1946, and subsequent to the appointment of the Emergency Board said strike call was postponed until the 24th day of September 1946, at 12:01 a. m.

EXECUTIVE ORDER 9770

Creating an emergency board to investigate a dispute between the Long Island Railroad Company and certain of its employees

WHEREAS a dispute exists between the Long Island Railroad Company, a carrier, and certain of its employees represented by the Railroad Workers Industrial Union, Division of District 50, United Mine Workers 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 the interstate commerce within the State of New York, to a degree as to deprive that portion of 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 said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

718698—46

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

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

HARRY S. TRUMAN.

THE WHITE HOUSE,
August 22, 1946.

At the first meeting of the Board, held in Room 905, United States Court House, Foley Square, New York, N. Y., Monday, September 9, 1946, at 10 a. m., all members were present. Having first selected Frank M. Swacker as chairman, the Board confirmed the appointment of the Acme Reporting Company as official reporter.

The following appearances were noted:

For the Long Island Railroad Company:

Guy W. Knight,
David L. Wilson,
James W. Oram,
(Broad Street Station, Philadelphia, Pa.).
Ralph E. Marson,
Henry B. Staples,
(Pennsylvania Station, New York City).
E. L. Hofmann, Superintendent,
(Jamaica, Long Island, N. Y.).
C. E. Musser, Chief of Personnel,
(Broad Street Station, Philadelphia, Pa.).
T. R. Colfer, Superintendent, Labor and Wage Bureau,
(Pennsylvania Station, New York City).

For the Railroad Workers Industrial Union:

Yelverton Cowherd, General Counsel,
(Washington, D. C.).
Thomas L. Kennedy, Associate Counsel,
(Hazleton, Pa.).
Stanley Denlinger, Associate Counsel,
(Akron, Ohio).
Edward E. Kennedy, Director of Research,
(Washington, D. C.).
William Dalrymple, Director,
(Newark, N. J.).
Earle Kelton, Chairman of Negotiations Committee,
(New York City).

Public hearings continued through September 20, 1946, at the same place.

On the 19th day of September 1946 the Board having advised all interested parties that the issues in this controversy were so numerous and complex, involving approximately 220 requested rules changes, that the Board would not be able, in the time remaining, to give the subject adequate consideration; and, further, having announced that it appeared to the Board, from the evidence offered, that inadequate negotiations had been carried on between the parties and that a profitable result might be achieved by further negotiations under the supervision and auspices of the Board and that, should no opposition be expressed, the Board would ask the President for an extension of time within which to complete its report and allow sufficient time for additional negotiations and mediation by the Board; and all parties having announced during the proceedings that they would not oppose such extension, the request was accordingly made by the Board and granted by the President, and the time within which to complete the investigation and file its report was extended to and including the 21st day of October 1946.

The Union at that time had pending its strike call, which had been set, as hereinbefore stated, to go into effect at 12:01 a. m., Tuesday, September 24, 1946. The Union held a meeting and voted to postpone any further action with reference to withdrawal from service until the 24th day of October 1946.

The formal taking of testimony by the Board was concluded September 20, 1946, and, thereupon, it undertook mediation between the parties, as a result of which negotiations were resumed. After a very earnest effort by the parties, an agreement was reached and a complete new contract concluded for the disposition of the controversy in a manner, we are gratified to report, entirely consistent with the stabilization program, as will be hereinafter explained in detail.

HISTORY OF THE CONTROVERSY

Prior to January 28, 1946, the employees involved in this dispute had been represented by the Brotherhood of Railroad Trainmen. On that date, pursuant to an election theretofore held, District 50 of the United Mine Workers of America was certified by the National Mediation Board as the representative of the Ticket Collectors and Brakemen of the Long Island Railroad Company.

On February 14, 1946, the carrier received a letter from said organization specifying its proposals for various changes in the working rules involving these employees, many of which had long been subjects of controversy between the employees and the carrier, and suggesting an early conference to discuss the proposed changes in rules.

The date of March 15, 1946, was agreed upon between the parties for such meeting.

Conferences were held between the parties thereafter, at which various proposals and counterproposals were made, but no agreement had actually been reached until after the national agreement on the terms suggested by the President. The carrier then proposed a settlement with these employees on the same terms as had been used in the national agreement. The employees involved in this controversy were not parties to the national agreement, and refused the offer of the carrier to enter into an agreement on those terms.

Negotiations between the parties were then broken off and a strike ballot was taken, resulting in a vote of the employees to withdraw from service and the appointment of this Board.

SPECIAL CIRCUMSTANCES AFFECTING THE LONG ISLAND RAILROAD COMPANY

The Long Island Railroad Company furnishes both passenger and freight service to Long Island. Its lines extend from the Pennsylvania Station in Manhattan and the Flatbush Avenue Station in Brooklyn and form a network over the island. Its trains are propelled by both steam and electricity. It carries approximately 300,000 passengers per day on a total of about 850 trains. There is an interchange of freight and passengers between its lines and other railroads and steamship lines. Most of its passenger service is for the benefit of commuters who work in Manhattan and Brooklyn and live out on Long Island, occurring largely between 8 and 10 o'clock in the morning and from 5 to 7 o'clock in the evening.

The service performed by this carrier it also seasonal, in that during the summer months the passenger traffic on its lines is very heavy, due to the numerous race tracks, beaches, and shore resorts on Long Island.

These factors, according to the carrier, have made it very difficult, if not impossible, to assign the employees work for consecutive hours. Assignments have been made by the carrier so that the majority of its employees are on duty during both of the daily peak periods of transportation and are given certain times off in the interim. This inherent problem is common to other carriers rendering the same type of service to other large cities.

The situation of the Long Island Railroad in this respect is unique, as compared to other Class I railroads, in that in substantially all other cases the short turn-around service is but a small fraction of their total activities; whereas, in the case of the Long Island Railroad, it constitutes over 90 percent of the service performed by the employees. It follows that, on most of the other Class I railroads, employees at least have an opportunity to choose straightaway service in pref-

erence to short turn-around service, whereas on the Long Island, such opportunity is negligible.

THE RULES IN DISPUTE

As indicated at the outset, some 220 demands were presented. Many of these simply consisted of the incorporation in a new contract of presently existing rules; a number, additionally, covered practices, not always uniform, sometimes disputed, which the employees sought to have incorporated in definite terms in the agreement; some others were demands for new rules covering working conditions. The major demands, however—and by far the most important cause of the dispute—were with respect to rules which were the subject of controversy in the National movement of 1945 and which were frozen on other carriers, and on this carrier so far as other crafts were concerned, by the moratorium agreement settling the general strike of May 1946, which froze these rules for one year from May 25, 1946.

They involve 23 rules, which reduce themselves to six principal issues, mainly concerning rules governing short turn-around service or the so-called eight-within-ten-hour provisions, and the payment of overtime at straight time rates, rather than time and a half, as demanded.

The eight-within-ten-hour rules had their origin in 1917 with the Commission of Eight, following the passage of the Adamson Act which established the eight-hour day for train service in the railroad business. It was recognized at that time that the necessities of the commuter service would not readily lend themselves to a straight eight-hour day, and this plan was evolved to perpetuate the "split trick" assignment common to the transit industry.

Under this plan a trainman may be paid for only eight hours within a spread of ten, from the time he reports for duty until he is released. If he is actually working more than eight hours during the spread of ten, he will receive overtime at straight time for the excess, but with no allowance for continuous idle time in excess of one hour. He also, if required to remain on duty beyond ten hours, will receive overtime for such excess at straight time rates.

The employees engaged in this service Nationwide have, for many years, been endeavoring to improve these rules, but their efforts have generally been frustrated because of the fact that they were handled in conjunction with national movements involving, primarily, wages.

In the 1941 wage movement these, along with all other rules demands, were set aside, and the same thing happened in 1943. In the 1945 movement the trainmen and engineers refused to sidetrack their rules controversy, and it was heard by the Emergency Board which

reported to the President on April 18, 1946. We think we can do no better than to repeat what that Board said with respect to this subject:

> Of the proposed rules presented by the organizations, the one which received the most attention, both in the way of testimony and by way of oral argument, was proposed rule No. 4 dealing with short turn-around service. The present rule almost universally in effect is known as the "eight-within-ten-hours" rule. Under its provisions employees may be released between the legs of their runs and, where the period of release exceeds one hour, the carriers may deduct that time from the total spread of the assignment. The maximum deductible for pay purposes is two hours. Where the periods of release exceed two hours, overtime does not begin until after ten hours from the time the employee reports for service. If there is no period of release exceeding one hour, overtime begins at the end of eight hours from the time of reporting for duty. In practical operation, this rule results in an average spread of hours exceeding eleven between the time the employee reports for duty for his first service in the assignment until his final release. The evidence clearly showed a great dissatisfaction on the part of the employees in short turnaround service with the situation produced by the eight-within-ten rule. There can be no question but that the excessive spread of hours is not in harmony with the generally accepted eight-hour day in effect in industry. The carriers pointed out that the time during the release periods belonged to the employees to be used as the employee saw fit and some instances were cited where individual employees were gainfully employed at other work during release periods. It appeared however, that those instances were rare and that ordinarily the employee could make no profitable use of the release periods. The president of the Brotherhood of Railroad Trainmen took the position that the eight-within-ten-hour rule gives to the employer an option on the employees' time during the ten-hour period and as a practical matter the release periods were of little or no value to the employees and insisted that, since this time was available to the employer, it should be paid for. We must conclude that there is considerable merit in that position. There is no question in the minds of the members of the Board but that the situation must be remedied without delay. When, however, it comes to suggesting just how the rule should be changed the Board is at a loss to make definite recommendation. The problems involved are so complicated and the factors determining the decision are so many that we believe this is a situation where the matter can only be worked out through joint action and negotiation by the parties themselves. We therefore, recom-

mend that the parties immediately negotiate a new rule designed to reduce the breadth of spread of the short turnaround assignments and accelerate the beginning of overtime. We are confident that there is a practical middle ground upon which the parties may agree to accomplish this purpose.

We concur in that Board's opinion concerning the merits of this phase of the controversy.

DISPOSITION OF THE CONTROVERSY

During the negotiations just concluded the rules which are involved in the national moratorium were laid aside, and those strictly local to the Long Island Railroad were dealt with first. As a result, the parties reached agreement on 174 of them, with some compromises, and 23 were withdrawn by the organization.

As previously indicated, the organization representing these employees was not a party to the National movement and, consequently, not a party to the moratorium agreement, and not estopped thereby. They were within their rights under the Railway Labor Act in pressing their demand for some agreement in the matter, and there was no legal obstacle to the making of some agreement, should one mutually acceptable be reached. However, from the carrier's point of view, there were two very practical obstacles to making any agreement to be effective immediately. The carrier felt that it would undoubtedly reopen the whole question involved in the moratorium, not only so far as other crafts engaged in train service on the Long Island Railroad are concerned, but also Nation-wide. It is, therefore, entirely understandable why the carrier would be unwilling to reach any agreement in those circumstances.

So far as this Board is concerned, the men are, nevertheless, just as effectually estopped for the present, not by the moratorium but by the stabilization program. Under executive order, as we understand it, that program contemplates that, when a pattern has once been set in an industry, boards such as this must confine their recommendations to the pattern.

It should be said, to the credit of the employees, that when they fully understood the situation, they recognized their public responsibility to aid in the maintenance of the stabilization program and, accordingly, agreed to abide the present rules until the expiry of the moratorium on May 25, 1947. Having accepted the existing rules in the new contract, with a termination date of May 25, 1947, they feel, however, that they are entitled, under the Railway Labor Act, to have their dispute heard and determined, separate and apart from other crafts and other railroads, and with this we agree.

It is, of course, desirable that a uniform solution be reached, not only nationally but particularly with respect to the other employees

engaged in train service on the Long Island Railroad, and it is hoped that that result may be achieved in the negotiations which are to ensue. Nevertheless, such uniformity is not indispensable, as there are now major variations in the rules as between some of the crafts. However, if some such uniform solution can not be accomplished, these employees are entitled to their day in court; and, with a view to securing for them a definite time and forum for the determination of the dispute—in order to have definite rules available, to become effective at the end of the moratorium—the Board suggested that the parties agree upon an arbitration of the matter, to be concluded before May 25, 1947, should intermediate negotiations fail to eventuate in agreement.

The employees were willing to enter into such an agreement, but the carrier declined at this time to do so. The organization, therefore, has available to it the right to proceed under the Railway Labor Act, formulating and presenting its demands sufficiently in advance of May 25, 1947, to permit their being disposed of by negotiation and mediation and, if these fail of results, we recommend arbitration; failing all these, an emergency board not trammeled in its recommendations by the present restrictions of the stabilization program would be available.

An unfortunate incident of the controversy was the impression held by the carrier that "the motives behind this attempt" were attributable to promotional activities of the United Mine Workers of America; in substance, that it fomented the controversy to demonstrate that, by its tactics, it might be able to obtain more for these employees than had the Brotherhood of Railroad Trainmen.

However, the indisputable circumstances show that the grievance is of long standing, long before District 50 of the U. M. W. had anything to do with the matter, and that that organization was solicited by these employees to come into the picture in their behalf because of their repeated frustration through the grievance being handled as an incident of National movements, concerned primarily with other matters more important to the great majority of trainmen.

We are gratified to say, however, that we believe the parties now have a better understanding of the situation and will sincerely strive to reach a settlement of their differences on equitable terms before the termination of the contract just concluded.

Respectfully submitted,

FRANK M. SWACKER, *Chairman*,
H. NATHAN SWAIM, *Member*,
LEVERETT EDWARDS, *Member*.

Dated, New York, N. Y., October 11, 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946