Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED AUGUST 6, 1947
PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT

To investigate an unadjusted dispute between the Terminal Railroad Association of St. Louis and certain of its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

ST. LOUIS, MO.

AUGUST 19, 1947

No. 48

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ST. LOUIS, MO.,
August 19, 1947.

The President,
The White House.

DEAR MR. PRESIDENT:

The Emergency Board appointed by you on August 6, 1947, under Section 10 of the Railway Labor Act to investigate an unadjusted dispute between the Terminal Railroad Association of St. Louis and certain of its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, has the honor to herewith submit its report.

Respectfully submitted,

LEIF ERICKSON, *Chairman.*
EUGENE L. PADBERG, *Member.*
ANDREW JACKSON, *Member.*

The Emergency Board appointed by the President on August 6, 1947, pursuant to the provisions of Section 10 of the Railway Labor Act, and in accordance with his Executive proclamation of July 31, 1947, to investigate and report its findings with respect to certain matters in dispute between the Terminal Railroad Association of St. Louis and certain of its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, convened in room 705 of the Jefferson Hotel in the city of St. Louis at 9:30 a. m. on August 8, 1947.

The members appointed to the Board by the President were Leif Erickson of Helena, Mont., Andrew Jackson of New York City, N. Y., and Eugene L. Padberg of St. Louis, Mo., and all members were present. Leif Erickson was elected Chairman of the Board and the Board confirmed the appointment of Ward & Paul of Washington, D. C., as its official reporter for said hearing.

Public hearings were commenced in room 425, U. S. Court and Customhouse in St. Louis, Mo., at 10 o'clock a. m., Friday, August 8, 1947. The public hearings continued from day to day and were terminated on August 18, 1947.

The appearances were as follows:

On behalf of the employees:

Mr. H. R. Lyons, *Vice Grand President,*
Room 818, Missouri Insurance Building,
104 North Fourth Street,
St. Louis, Mo.

Mr. E. J. Schmidt, *General Chairman,*
Room 325, Missouri Insurance Building,
104 North Fourth Street,
St. Louis, Mo.

Mr. E. A. Woodery, *General Secretary-Treasurer,*
3121 Maury Avenue,
St. Louis, Mo.

Mr. E. O. Wetzel, *Member General Committee,*
2559 Waverly,
East St. Louis, Ill.

Mr. H. A. Ferguson, *Member General Committee,*
2201 Burns,
Overland, Mo.

Mr. W. A. Perrin, *Member General Committee,*
716 North Thirty-second Street,
East St. Louis, Ill.

On behalf of the Carrier:

Mr. Armstrong Chinn, *President,*
Terminal Railroad Association of St. Louis.

Mr. Warner Fuller, *Vice President and General Counsel,*
Terminal Railroad Association of St. Louis.

Mr. George Mueller, *Attorney,*
Terminal Railroad Association of St. Louis.

Mr. John A. Wicks, *Director of Personnel,*
Terminal Railroad Association of St. Louis.

Mr. H. B. Andrew, *Assistant to Director of Personnel,*
Terminal Railroad Association of St. Louis.

Mr. Tom M. Davis, *Attorney,*
Baker, Botts, Andrews & Walne,
Sixteenth Floor, Esperson Building,
Houston, Tex.

At the conclusion of the hearing the Board met with the parties individually in an attempt to mediate the dispute, but without success. The Board then proceeded to a consideration of the report.

THE EMERGENCY

The Carrier operates a union terminal, freight, and passenger service at St. Louis, Mo. Additionally, it has very extensive switching facilities in the St. Louis area on the Illinois side of the river as well as on the Missouri side. It does a large amount of classification and interchange work in its yards and over its interchange tracks.

Its stock is owned by 16 trunk-line carriers which operate into and out of the terminal. The testimony was that this terminal is the largest unified terminal in the world. Approximately 1,500 employees are represented by the Clerks' Organization and approximately 1,200 are directly affected by these proceedings.

Two rules of the current agreement between the Carrier and the Organization are involved in this proceeding, being rule 40 and rule 44. On September 24, 1946, after previous preliminary conferences, the General Chairman of the Clerks' Organization served notice on the Company pursuant to the provisions of the agreement and of the Railway Labor Act requesting a change in rules 40 and 44. When the Company and the Organization were unable to agree upon the requested rule changes, the Organization invoked mediation. Mediation was not successful and the Mediator suggested arbitration, which both parties declined.

On June 2, 1947, strike ballots were distributed to all of the employees represented by the Clerks' Organization. The required majority vote in favor of the strike and the Organization on July 30, 1947, advised the Carrier that the employees were being notified to discontinue work at 6 a. m., Friday, August 1, 1947. On July 31 the President, pursuant to section 10 of the Railway Labor Act, created this Emergency Board.

THE DISPUTE

The foundation for rule 44 is Decision 1621 of the United States Railroad Labor Board, promulgated February 28, 1923. The rule as pronounced in that decision was incorporated in a letter agreement between the Carrier and the Organization dated May 16, 1923, as rule 51, and because of the importance in this dispute we set out in full that rule:

> "Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

When the rule was adopted on this Carrier by the letter agreement of May 16, 1923, there were added to it certain exceptions which are embodied in the following language:

> "This rule does not apply to watchmen employed in and around shops, buildings, warehouses, etc., it does not apply to the employees designated 'ice clerks' in the Purchasing and Stores Department, it does not apply to the employees designated 'office girls' in the Telegraph and Telephone Department, and it does not apply to employees in the Baggage and Mail Department during the 'Christmas Rush Season,' December 15th to December 24th, inclusive."

By memorandum agreement of December 13, 1943, the paragraph last above quoted from the 1923 agreement was deleted but it was

> "agreed that the present method of applying the rule in the Baggage and Mail Department is continued for the duration of the war and thereafter subject to negotiation in accordance with the provisions of the Railway Labor Act."

Thereafter a new contract was made between the parties effective April 1, 1945. That portion of rule 51 which contains the language of Decision 1621 was not changed. The rule in controversy appears as rule 44. Added to the rule is a note reading:

"NOTE.—The present method of applying this rule in the Baggage and Mail Department as provided in Memorandum Agreement of December 13, 1943, is continued for the duration of the war and thereafter subject to negotiations in accordance with the provisions of the Railway Labor Act."

Rule 40 appeared first as rule 58 of the National Agreement of January 1, 1920, and was applicable on this property. The first paragraph of rule 58 is substantially the same as present rule 40, but an additional paragraph was appended to rule 58 of the January 1, 1920, agreement and to later agreements. The added paragraph subsequently was eliminated and it will not be set out here. Rule 40 provides:

"Employees notified or called to perform work not continuous with, before or after, the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

RULE 44

Because of its importance in this dispute and because determination of the proper recommendation on rule 40 depends to some extent upon a prior determination of the proper recommendation as to changes requested in rule 44, we will discuss rule 44 first.

The Organization proposed as a substitute for present rule 44 the following:

"Sunday and Holiday Work.—Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of these holidays occur on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half.

"Employees covered by this agreement, except extra employees, will be assigned one regular day off duty each week, Sunday, if the requirements of the service permit."

A reading of the present rule and of the proposed rule shows that the present rule provides for time and one-half for Sunday work, but makes an exception which permits pro rata payment for services performed on Sunday for employees regularly assigned to Sunday work where the position is necessary for continuous operation, while the rule proposed would eliminate the exception and would require payment of time and one-half for Sunday work as such. The proposed rule would also eliminate the note to rule 44.

There is disagreement between the parties as to the effect of the present rule with respect to the filling of positions on the assigned day of rest for employees in continuous service operation jobs. It is the Carrier's contention that these jobs may, at least under certain circumstances, be left vacant, or as the parties refer to it, "blanked" on the regularly assigned employee's day of rest, provided time and one-half is paid for the Sunday work. With this position the Organization does not agree. The proposed rule would permit the "blanking" of all or any continuous service position on the employee's day of rest.

In urging the adoption of the proposed rule, the Organization representatives contended that: (1) Its adoption would reduce the number of positions filled on Sunday; (2) the cost of the adoption of the proposed rule would be reduced by permitting the Carrier to "blank" positions on the employee's day of rest; (3) it would eliminate disputes on the property as to the proper application of rule 44; (4) the proposed rule has recently been put into operation on other Carriers, principally the Kansas City Terminal Railroad Company and is not a precedent; (5) shop craft employees on the same property are paid time and one-half for Sunday work as such; and (6) the present rule has been in operation for approximately 25 years, and in light of the improvement in working conditions in other industries generally, an improvement on this property is long overdue.

On the other hand, the Carrier in opposing the proposed rule change contended that: (1) Because of the nature of the industry, certain operations have to be carried on on a continuous basis and that it should not be penalized by being required to pay time and one-half for work made necessary by those continuous operations; (2) the present rule, with the exception of the note referred to above, is the standard rule in effect on practically all railroads in the United States and with the exception of the Kansas City Terminal Railroad Company on all comparable terminal and union station operations; (3) such a change in the rules should be sought by national movement or at least upon the proprietary lines before attempting to secure the change on this relatively smaller property; (4) the adoption of the rule at the Kansas City Terminal is not a precedent for its adoption on this terminal because that rule was, as the Carrier put it, "bought and paid for" by other concessions made by the employees; (5) adoption of the rule would materially increase the cost of operations for the Carrier and put it and its proprietary lines in a disadvantageous competitive position with other terminals and other trunk-line railroads; and (6) the proposed rule change would not have the effect of reducing Sunday work, but instead would operate only to increase the compensation of the employees.

A study of the testimony adduced and careful consideration of the argument impels us to the conclusion that we cannot recommend the adoption of rule 44 as proposed by the Organization. The contention that its adoption requiring punitive pay for Sunday work as such would materially reduce the amount of Sunday work appealed strongly to the members of the Board. However, the testimony presented did not support the argument. Witnesses for the Organization stated that in their opinion the adoption of a punitive pay Sunday rule would reduce to some extent the number of positions filled on Sunday, but with the exception of one witness, none testified as to specific positions now filled which could be left vacant on Sundays. On the other hand, testimony on behalf of the Carrier was that it would not be possible to reduce the number of Sunday positions. While it may be possible that an occasional job now filled could be left open on Sunday, this record does not support the Organization's argument that there would be a substantial reduction in Sunday work as a result of the adoption of the proposed rule.

As one of the exhibits the Carrier presented a statement showing that the first paragraph of present rule 44 is in effect on practically all carriers in the United States, including union station and terminal operations. There are minor exceptions to the rule, but a study of the exhibit shows that these exceptions take into account, in the main, peculiar local conditions. The Carrier's characterization of the first paragraph of present rule 44 as the "standard" rule seems to be justified by the record in these proceedings.

The Organization presented an exhibit showing various carriers which have rules in effect somewhat similar to its proposal. However, it developed that on some of these carriers, particularly the Alton & Southern, the rule was a temporary war measure and by provisions of the agreement the standard rule will be reverted to upon the expiration of a certain period. On other carriers the agreement provides an option to be exercised solely by the company to operate either under provisions similar to the proposed rule or to the standard rule. Evidence further showed that many of the carriers having a rule similar to the proposed rule had few, if any, continuous operation positions and that on them any Sunday operation was unusual.

Particular emphasis was placed upon agreements covering ore docks operations in the Great Lakes area. The Carrier's evidence showed these operations to be unusual, seasonal operations, with few of the standard rules in effect. It was further shown that the carriers which operated trunk line railroads in addition to the ore dock operations, without exception, had the standard rule as to all operations except those on the ore docks. It is our conclusion that the only comparable operation of any significance which has the

proposed rule is the Kansas City Terminal Railroad Company which was recently negotiated on that property.

Because of the reliance the Organization placed upon the Kansas City Terminal Agreement as precedent, which attention was given to the circumstances surrounding the negotiations of the rule on that property, testimony was adduced by the Carrier in rebutting the position of the Organization as to circumstances surrounding that negotiation which the Carrier contended were unusual and not applicable to the instant dispute. It is apparent that the agreement arrived at there came as a result of following the usual channels of the give and take of collective bargaining. However, the significant thing about the agreement on the Kansas City Railroad is that it is an almost single significant exception to the rule in effect on all of the railroads and comparable union terminal properties in the United States. The mere fact that the rule proposed by the Organization is in effect in this single exceptional comparable situation alone does not warrant the recommendation of the adoption of the same rule on this property. Whatever the circumstances existing at Kansas City, nothing in this record appeared to show that the situation here upon this carrier was so exceptional as to warrant the recommendation of a rule other than that in effect on the vast majority of the carriers in the country.

Our conclusion that the adoption of the proposed rule would not achieve the principal objective, i. e., elimination of a considerable number of Sunday assignments, and the fact that the first paragraph of the present rule is in effect on such a widespread basis is decisive of the recommendation to be made by this Board. It makes unnecessary a detailed examination of the other reasons advanced by the Organization for the adoption of the proposed rule. Those arguments, as indicated earlier, were that the cost of the adoption of the proposed rule to the Carrier would not be great, that the proposed rule should be adopted because shop craft employees are paid time and one-half for Sunday work as such, and that a change in working conditions for these employees is long overdue.

The evidence indicated that while the added cost might not be as great as the Carrier estimated in its argument, adoption of the rule would add materially to the cost of operation.

It developed that there were significant differences in the working conditions, rules, and hours between the shop craft employees and the employees represented by this Organization. If our determination were to be based upon the working conditions of other employees in the railroad industry, then again we would have to hold as we do because the great majority of crafts in the railroad industry represented by other organizations are not paid time and one-half for Sunday work as such.

The Organization finally urged that an improvement in working conditions is long overdue. Organization representatives pointed out that the first paragraph of rule 44 has been in effect for more than 25 years and that during that time there has been a drastic reduction in hours and days worked in industry generally and that the time has come to make similar changes in the railroad industry. We view that argument with sympathy; however, this proposed change in the rules would not have the effect of shortening the workweek.

NOTE TO RULE 44

The testimony of the Carrier that the first paragraph of present rule 44 is the standard on practically every railroad in the country, was persuasive to the Board in making its recommendation on that rule. It indicated to us that in the experience of 25 years the Carrier and the Organization had found that it was reasonably fair to both parties. On this particular Carrier alone, so far as the evidence shows, the note makes a broad exception to that rule which deprives a very substantial number of the employees involved from the full benefits of it. The testimony was that about 450 of the 1,200 employees here involved are baggage and mail handlers and the note to rule 44 applies to them. Over one-half of those working on Sunday are in this group. The contention was made by the Carrier that positions could not be bulletined and assigned in that department under the provisions of the standard rule without necessitating the assignment of more employees than the service requires on certain days. Reference was made to the fluctuation in the demand for service from day to day. Under the exception to the rule, rest day positions for employees in the Baggage and Mail Department who are regularly assigned to Sunday service may be "blanked."

The assumption that terminal operations are very similar in nature over the country and that like fluctuations in the volume of business handled from day to day exist on all terminals was not in any way refuted by the Carrier. The fact that no other terminals so far as the record shows have the exceptions now appearing in rule 44 indicates most strongly that the Carrier's position is not well-founded.

At the outset, it was the Carrier's contention that the demand for rule changes did not include a demand for the elimination of the exception found in the note to the present rule 44. The Organization pointed out that the adoption of the proposed rule 44 would have the effect of eliminating the note and further that one of the principal reasons for the demand for the rule change was the dissatisfaction on the part of the employees with the condition produced by the note. There is no doubt in the minds of the members

of the Board that the note to rule 44 is one of the subject matters in dispute. It is so closely related to the proposal of the Organization that it would not be possible to make any recommendation that would aid in the settlement of the dispute as contemplated by the Railway Labor Act without passing upon it. It is an integral part of rule 44. Its presence in the agreement clearly was a major reason for the dissatisfaction of the employees which led to the strike vote. Failure to make a recommendation upon it would leave one of the principal sources of dissatisfaction unsettled.

We recommend that the Note to Rule 44 be eliminated, effective 30 days after the date of this report.

RULE 40

Present rule 40 permits calling a regularly assigned employee for service on his assigned day off, and employees generally for service on Sunday or holidays where the Sunday or holiday is not a part of the regular assignment, for service of less than 8 hours with a minimum payment of 3 hours for service of 2 hours or less, and with payment at the rate of time and a half on a minute basis for hours worked in excess of two. The organization under its proposed rule 40 would require the Carrier to pay employees notified or called for such service a minimum of 8 hours at time and one-half. The proposed rule reads:

> "Employee notified or called to perform work, not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."
>
> "Employees notified or called to perform work on 'Sundays,' 'week-day off days,' 'holidays,' or on their 'seventh consecutive day,' shall be paid a minimum of eight hours at time and one-half."

It is true that a majority of the carriers in the country have a rule similar to the present rule 40 in the current agreement on this property, though there is not the uniformity that applies in the case of rule 44. For example, three of the proprietary lines have rules somewhat like the proposed rule.

An objective steadily pursued in industry throughout the Nation is that employees be assured the maximum rest and recreation consistent with the needs of the service. Calling an employee for work on his rest day or on Sundays and holidays should be discouraged to the maximum extent possible. The recreation and rest contemplated by giving an employee a day of rest in seven cannot be attained where the employee is required to report for work and to perform services even though only a short time of the day is taken up by that work.

The contemplated picnic or fishing trip can be as effectively canceled by service of 2 hours as it could be by service for the full period of 8 hours. So far as the employee is concerned, his opportunity for rest, recreation, and association with his family and friends is destroyed if the few hours available to him are reduced in any degree. In the railroad industry, pace has not been kept with the general advance in the condition of employees, in that the 6-day week is still the standard in that industry and the 7-day week is not at all unusual, while in other industries the 5-day week has become almost standard, the 6-day week the exception, and the 7-day week extremely rare. Under these circumstances, every step should be taken to assure to these employees the maximum protection for their day of rest. There may be occasions when a call for a small amount of work may be unavoidable, but in those circumstances, we believe it only fair that the Carrier be required to pay as a penalty a minimum of 8 hours at time and one-half. This will have the effect, we believe, of reducing these calls for limited hours of service on the designated days and at the same time will serve to compensate the employee to some extent for the loss or interruption of his rest day. It is, of course, not intended that the adoption of the rule proposed as amended by the Board will require the payment of the minimum day at time and one-half to employees regularly assigned to Sunday and holiday work under the provisions of rule 44.

We recommend the adoption of the proposed rule 40 as amended by the Board effective 30 days from the date of this report and as set out as follows:

"Rule 40—Notified or Called.—Employees notified or called to perform work, not continuous with, before or after, the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

"Employees notified or called to perform work on 'Sundays,' 'week-day off days,' or 'holidays,' shall be paid a minimum of eight (8) hours at time and one-half, except as otherwise provided in rule 44."

LEIF ERICKSON, *Chairman.*
EUGENE L. PADBERG, *Member.*
ANDREW JACKSON, *Member.*

August 19, 1947.

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