Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED APRIL 10, 1948
PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT,
AS AMENDED

To investigate unadjusted disputes between the Pennsylvania Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen

Philadelphia, Pa.
and
New York, N. Y.

JUNE 9, 1948

(N. M. B. Case A2791)

(No. 61)

NEW YORK, N. Y., *June 9, 1948.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on April 10, 1948, under section 10 of the Railway Labor Act, as amended, to investigate unadjusted disputes between the Pennsylvania Railroad Co. and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen, has the honor to submit herewith its report.

Respectfully submitted.

ANDREW JACKSON, *Chairman.*
JAMES H. WOLFE, *Member.*
E. WIGHT BAKKE, *Member.*

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On April 10, 1948, the President of the United States issued Executive Order 9947 creating an Emergency Board:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE PENNSYLVANIA RAILROAD AND CERTAIN OF ITS EMPLOYEES

Whereas a dispute exists between the Pennsylvania Railroad, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen, 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 to a degree such as to deprive a large 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 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 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 Pennsylvania Railroad or its employees in the conditions out of which the said dispute arose.

THE WHITE HOUSE, HARRY S. TRUMAN.
April 10, 1948.

The President appointed Andrew Jackson, of New York, N. Y., the Hon. James H. Wolfe, of Salt Salt City, Utah, and Prof. E. Wight Bakke, of New Haven, Conn., members of the Emergency Board.

The time and place fixed for the convening of the Board was 9:30 a. m. on April 20, 1948, in room 600, Customhouse, Philadelphia, Pa.[1] At the time and place fixed, the Board met in executive session and elected Andrew Jackson chairman and confirmed the appointment of Ward & Paul, of Washington, D. C., as its official reporter for said hearing. The hearing was called to order at 10 a. m.

[1] By consent of all parties, the place for the hearings was changed from Philadelphia, Pa., to room 5708, Grand Central Terminal Building, New York, N. Y., at the end of the second week of the hearings.

Appearances before the Board were as follows:

For the Brotherhood of Locomotive Firemen and Enginemen:
Richard R. Lyman, Esq. (Mulholland, Robie & McEwen), 741 Nicholas Building, Toledo, Ohio,
Francis J. Talty, Esq. (Harold C. Heiss, Esq., General Counsel), Keith Building, Cleveland, Ohio, and
H. A. Porch (Vice President, Brotherhood of Locomotive Firemen and Enginemen), 318 Keith Building, Cleveland, Ohio.
For the Pennsylvania Railroad Co.:
Edwin A. Lucas, Esq. (General Solicitor), Broad Street Suburban Station, Philadelphia, Pa.

Hearings were held between April 20, 1948, and May 25, 1948.[2] The record consists of 2,416 pages of testimony and a total of 61 exhibits.

On May 13, 1948, the Brotherhood submitted to the Carrier a settlement proposal which, after consideration, was rejected by the Carrier.

On May 17, 1948, the Brotherhood announced its determination to withdraw four of the seven issues involved before the Emergency Board. Between that day and May 25, 1948, the Board endeavored to settle all disputes through mediation. Its efforts were successful to the extent that three issues were settled. Over the Carrier's objection, the Board accepted the withdrawal of one issue, on the basis that the strike threat was withdrawn as to this issue and that the Brotherhood intended to process it through the First Division of the National Railroad Adjustment Board. Three cases were left before this Board, and our report and recommendations with respect thereto follow.

Preliminary Statement

Shortly after November 28, 1947, a strike ballot and letter of that date were distributed by the Brotherhood to all its members in service on the Pennsylvania Railroad. The letter contained a brief summary of the facts of a dispute involving the nonuse by the Carrier of firemen on three Diesel electric locomotives in yard service weighing 88,000 pounds on drivers, and also a very short summary of five other disputes involving matters, some of which had been under informal discussion since August 1946. The result of the strike ballot was an overwhelming vote in favor of a strike.

[2] During the course of the hearings, it became apparent they would last more than 30 days. Accordingly, the parties jointly stipulated to an extension of time for another 30-day period, which request was submitted to the President by the National Mediation Board and was approved by him.

Thereafter, meetings of the parties were held from time to time. No settlement could be reached. Ultimately, the Brotherhood wired the National Mediation Board that a strike would take effect at 6 p. m. on March 31, 1948. Thereupon, the National Mediation Board proffered its services, requesting the parties to appear in Washington, which they did on March 30 and 31, 1948. Eleven items were under discussion, six of which had been included on the strike ballot.

As a result of the efforts of the National Mediation Board, the parties agreed that the matters in dispute would be considered by the parties in direct negotiations on the property with the assistance of a mediator for the National Mediation Board. Following the conferences on the property, two of the items on the strike ballot were withdrawn by the Brotherhood without prejudice to their right to submit these cases to the National Railroad Adjustment Board, two items which were involved in mediation (but *not* included in the strike ballot) were settled, and it was agreed that no disposition had been made of the remaining seven items, four of which were included in the strike ballot, and three of which were not included in the strike ballot but were included in mediation before the National Mediation Board.

This settlement was reached on April 8, and thereupon the Brotherhood again notified the National Mediation Board that a strike was to be called effective 6 p. m., April 14, 1948. As a result of this advice, the Mediation Board certified to the President that the dispute, in its judgment, threatened substantially to interrupt interstate commerce to a degree such as to deprive a large portion of the country of essential transportation service. Thereupon, an Executive order was issued by the President setting up this Board to make a report and recommendations in respect to the following matters in dispute:

1. Employment of firemen on Diesel electric locomotives in yard service.
2. Payment for handling trains over inspection pit.
3. Request for reinstatement of minor supervisors.
4. Securing train beyond terminal.
5. Separate service.
6. Second tour of duty in yard service.
7. Firemen cleaning fires.

Since item 4 was withdrawn and items 5, 6, and 7 were settled with the assistance of the Emergency Board acting in a mediatory capacity, only items 1, 2, and 3 are the subject of discussion and recommendations in this report.

EMPLOYMENT OF FIREMEN ON DIESEL ELECTRIC LOCOMOTIVES IN YARD SERVICE

BACKGROUND

On November 13 and 14, 1947, the Carrier placed in yard service three Diesel electric locomotives weighing 88,000 pounds on drivers—two at Pittsburgh on the Conemaugh Division operating on three tricks, and one at Pottstown, Pa., on the Wilkes-Barre Division operating on two tricks. These Diesel electric locomotives replaced three coal-burning locomotives on which there had been a two-man crew on each trip, consisting of an engineer and a fireman. No firemen were employed on the Diesels and this resulted in what general chairman of the Brotherhood, Walter B. Woodward, Jr., termed "an abolition of the jobs." On November 17 and 18, 1947, the general chairman met with the four general managers of the Carrier and protested the operation of these locomotives without firemen (helpers) as a violation of the agreement between the Brotherhood and the Carrier. The general managers informed the general chairman that they intended, as a matter of right, to continue to operate without firemen Diesel electric locomotives weighing less than 90,000 pounds on drivers. It subsequently appeared that, in addition to the three Diesel locomotives already in use, there were 22 more on order.

The vital issue in the Diesel dispute is whether subdivision (*a*) of paragraph 4 of the 1943 Diesel agreement [3] was in effect on November 13, 1947, the date on which these Diesel electric locomotives were first put into yard service. Paragraph 4 with its proviso (*a*), as far as material here, reads as follows:

> 4. A fireman, or a helper, taken from the seniority ranks of the firemen, shall be employed on all locomotives; provided that the term "locomotives" does not include any of the following:
>
> (*a*) Diesel-electric, oil-electric, gas-electric, other internal combustion, steam-electric, or electric, of not more than 90,000 pounds weight on drivers in service performed by yard crews within designated switching limits.[4]

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[3] The first Diesel movement was initiated in the fall of 1936 and culminated in the agreement of February 28, 1937, between the Brotherhood and the Joint Conference Committee representing the railroads in the eastern, western, and southeastern territories. This agreement became immediately binding upon both parties involved in this proceeding and is referred to herein as the 1937 Diesel agreement.

The second Diesel movement was initiated by the Brotherhood on May 10, 1941. Without going into all the intermediate steps, suffice it to say that on August 13, 1943, an agreement was entered into between the Eastern Carriers Conference Committee and the Brotherhood, which became immediately binding on both parties involved in this proceeding but did not become effective until August 29, 1943. This agreement is sometimes referred to as the 1943 Diesel agreement, the agreement of August 29, 1943, or the 1943 regional Diesel agreement.

[4] This provision was contained in substance in the 1937 Diesel agreement.

The solution of this dispute depends upon whether or not proviso (*a*) of paragraph 4 was in effect on and after November 13, 1947. Both parties agree that if it were and still is in effect, no firemen need be employed on the Diesels in question, and that if not, firemen must be employed.

POSITIONS OF THE PARTIES

The Brotherhood contends that the applicable schedule of regulations [5] is the basic agreement between parties; that any other agreement, be it local, regional, or national, becomes incorporated in the applicable schedule of regulations; that the 1943 regional Diesel agreement, including proviso (*a*), superseded the comparable provisions of the 1941 schedule,[5] but that proviso (*a*) was eliminated as of August 1, 1944, as a result of the exchange of correspondence between May 2, 1944, and July 26, 1944; and that its argument in this regard is confirmed by the fact that section M–A–1 [6] of the current schedule,[5] which was printed early in 1945, does not contain the "not more than 90,000 pounds" exception, that is, proviso (*a*) of the 1943 regional Diesel agreement.

The Carrier contends that proviso (*a*) was never disturbed by the revision of the schedule; that the exchange of letters between the parties during the period, May 2, to July 26, 1944, together with certain notes of the conference held on May 12, 1944, jotted down by General Chairman Woodward, confirms that it was intended by both parties to retain proviso (*a*) in paragraph 4 of the regional Diesel agreement of 1943. The Carrier emphasized that there is no question as to whether proviso (*a*) came out and was then in some manner reinstated; it insists that it never was disturbed. In support of its position, the Carrier offered several arguments; First, that both the 1943 regional Diesel agreement and M–A–1 of the current schedule are in effect contemporaneously; secondly, that should this Board hold that the two agreements are repugnant, then, under well-known rules of law, the 1943 Diesel agreement controls as the earlier agreement.

In connection with those two arguments, the Carrier raised the question as to whether the schedule of regulations assumed the status of a contract, although it agreed that it was binding on the parties.

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[5] A schedule of regulations effective March 1, 1941, and rates of pay effective October 1, 1937, are contained in a 133-page blue booklet. This booklet was the result of negotiations which had been initiated in 1939 and is referred to as the "1941 schedule."

A schedule of regulations effective March 1, 1941, and rates of pay effective December 27, 1943, are contained in a 180-page blue booklet, and referred to herein as the "current schedule."

[6] See appendix 1 of this report.

The Carrier further pointed out that the 1943 regional Diesel agreement must remain in full force and effect since the Brotherhood intended merely to change the form but not the substance of that agreement, as indicated by the fact that the May 2, 1944, letter from the Brotherhood stated "our proposal is not intended as a change in the schedule of regulations within the meaning of regulation 9–A–1." The Carrier also contended that the 1943 regional Diesel agreement could be changed only under the provisions of the Railway Labor Act, as amended. However, only one management witness insisted that a regional or national agreement could not be modified in its application to the operations of a particular carrier by appropriate local negotiations on the property.

The Carrier advances a third proposition—namely, that assuming its two previous arguments are unsupportable, nevertheless, the second paragraph of its letter of June 7, 1944, quoted on page 11 below, and the note at the end of M–A–3 originally proposed in this letter preserved proviso (*a*).

Other arguments were made by both the Carrier and the Brotherhood. We do not consider it important to set them forth here, but some of them are referred to in the course of our discussion, and our opinion as to these arguments will be readily apparent from the conclusions we have reached.

DISCUSSION AND RECOMMENDATION

We find that the basic agreement between the parties is the applicable schedule of regulations, as modified from time to time regionally, nationally, or locally. Admittedly, all the provisions were arrived at through collective bargaining and are binding on both parties.

We now proceed to a review of the correspondence exchanged between May 2 and July 26, 1944, which the Brotherhood contends eliminated proviso (*a*) of the 1943 regional Diesel agreement from the contract between the parties.

Some time prior to May 2, 1944, the Brotherhood was advised that there was to be a reprint of the 1941 schedule. Thereupon, a letter was addressed to the Carrier under date of May 2, 1944, the gist of which follows:

> Present regulation M–A–1 (A) has been superseded by the so-called basic wage agreement of August 29, 1943.[1] Therefore, in order that the reprint of our current schedule of regulations governing firemen, helpers on electric locomotives, hostlers, and hostler helpers may include the provisions of the August 29, 1943, agreement, we submit the inclosed draft designated as regulations M–A–1, M–A–2, and M–A–3, which we propose as a substitute for present regulations M–A–1 and M–A–2.

[1] The 1943 regional Diesel agreement.

It is understood that our proposal is not intended as a change in the schedule of regulations within the meaning of regulation 9–A–1.

The proposed draft of regulation M–A–1 rearranged certain portions of the 1943 regional Diesel agreement and omitted others, the only pertinent omission so far as this dispute is concerned being that of proviso (*a*).[8] The letter and the enclosed draft served notice on the Carrier that the Brotherhood was proposing to make the 90,000-pound exception inapplicable on the Pennsylvania Railroad.

It is apparent to us that the Brotherhood intended two things—namely, to express in other language the 1943 regional Diesel agreement and to eliminate proviso (*a*); that the Brotherhood adopted the customary means used by the parties to change one or several provisions of the applicable schedule without opening the entire schedule; and that the Carrier was then aware of the Brotherhood's intentions.

The parties met on May 12, 1944, to discuss, among other matters, the Brotherhood's proposal. At the afternoon meeting, a draft of a counter-proposal was presented by the Carrier, the draft having been prepared after consultation with the legal department. The language of the 1943 regional Diesel agreement was contained *in haec verba* in this counter-proposal. The Brotherhood representatives objected and, in particular objected to the inclusion of proviso (*a*). However, since the 1943 regional Diesel agreement was admittedly binding on both parties, it is obvious that, in the face of the Brotherhood's objections, the Carrier, in order to maintain its position, should have insisted throughout that the entire contents of the 1943 regional Diesel agreement, including proviso (*a*), be incorporated in the schedule.

Apparently it attempted so to do. Under date of May 16, 1944, the Carrier sent another letter to the Brotherhood, the gist of which follows:

Referring to letter of May 2, 1944, * * * proposing that, without opening, the schedule within the meaning of regulation 9–A–1, regulations M–A–1, M–A–2, and M–A–3, draft of which proposed rules was attached to the letter, be substituted for present regulations M–A–1 and M–A–2, to include in the schedule the intent of the provisions of the agreement of August 29, 1943, * * *

This matter was discussed at meeting in Philadelphia, Pa., on Friday, May 12, 1944, * * *

At this conference you were advised that the management of the Pennsylvania Railroad Co. and your organization are both bound by the principles and provisions of the agreement of August 29, 1943, and, therefore, any deviation from the language agreed upon and included in that agreement by our respective representatives, is subject to be construed as intending to provide a different meaning from that contained in the language of the agreement of August 29, 1943.

[8] See appendix 2 for a comparison of the proposed M–A–1 and 1943 regional Diesel agreement.

It was, therefore, agreed the applicable sections of the August 29, 1943, agreement, i. e., sections 3, 4, and 5, would be quoted and included in regulation M–A–1 and that regulations M–A–1, M–A–2, and M–A–3 would read as follows:

Then followed the draft including proviso (*a*) submitted by the Carrier at the meeting of May 12, with an addition which has no bearing on the issue here involved.

Mr. Woodward testified that he denied vehemently in conversations with Mr. Luther Long, at that time superintendent of labor and wages at Philadelphia and chairman of the May 12 conference, and other carrier representatives that any agreement such as that referred to in the fourth paragraph of the foregoing letter had been reached; he insisted that the 90,000-pound exception be eliminated. Mr. Long testified that there had been some conversations between him and Mr. Woodward, and did not deny the gist of Mr. Woodward's testimony.

In any event, the Carrier subsequently altered its position with respect to its insistence that the exact wording of the 1943 regional Diesel agreement be included in section M–A–1 of the schedule of regulations. In fact, they agreed to a writing which was identical with that submitted by the Brotherhood on May 2, which, it will be recalled, did not contain proviso (*a*) of paragraph 4. Its acceptance of the Brotherhood's writing was, however, accompanied by a statement of the conditions under which that action was taken, conditions set forth in the second paragraph of their letter of June 7, hereinafter quoted, and a further statement embodied in a note which was to be included in the printed schedule of regulations.

A member of the legal department was asked for advice. He testified regarding the June 7 letter and particularly the above-mentioned note, stating that he prepared the note and made one or two changes in the second paragraph of the letter. We find that his chief concern was to assure that any comparable provisions of M–A–1 and the 1943 regional Diesel agreement would be given the same interpretation and that it was mainly with this thought in mind that he prepared the note (part of the proposal for the rewriting of the schedule contained in the Carrier's letter of June 7) and made the changes in the second paragraph of that letter. The pertinent portions of the letter, as finally written, follow:

Referring to our letter of May 16 in connection with letter of May 2, 1944, * * * proposing that, without opening the schedule within the meaning of regulation 9–A–1, Regulations M–A–1, M–A–2, and M–A–3, draft of which proposed rules was attached to the letter, be substituted for present regulations M–A–1 and M–A–2, to include in the schedule the intent of the provisions of the agreement of August 29, 1943, * * * and to our conference in connection with this matter at Philadelphia, Pa., on May 12, 1944.

After further consideration and with the understanding such action is not to be construed as intending regulations M–A–1, M–A–2, and M–A–3, to have any different meaning than though the agreement of August 29, 1943, itself were incorporated in the schedule, we are agreeable, in order to make the aforesaid agreement of August 29, 1943, effective on the Pennsylvania Railroad and for no other purpose, to *withdraw our proposal of May 16, 1944*,[9] and in lieu of regulations M–A–1 and M–A–2 presently in effect, incorporate in the schedule, regulations M–A–1, M–A–2, and M–A–3 as proposed in the letter dated May 2, 1944, from General Chairman Woodward and Acting General Chairman Elgin Adams with the addition of a note to the effect that the regulations are to be construed in the same manner as the agreement of August 29, 1943.[10]
Regulations M–A–1, M–A–2, and M–A–3 to read as follows:

Then appeared, in quotations, the proposal submitted with the Brotherhood's letter of May 2, except that the following note had been added at the end:

(NOTE.—Except as modified by the provisions of regulations M–A–2, it is understood that the provisions of regulations M–A–1 and M–A–3, as set forth above, are not to be construed as having any different meaning or interpretation than the meaning or interpretation heretofore or hereafter given to the comparable provisions of the agreement, effective August 29, 1943, between the Carriers listed in appendix A thereof represented by the duly authorized Eastern Carriers' Conference Committee, and the employees of said Carriers represented by the Brotherhood of Locomotive Firemen and Enginemen.)

Subsequent to the June 7, 1944, letter, several exchanges of correspondence took place on other details. On July 26, 1944, the Carrier sent a letter to the general chairman enclosing a draft of regulations M–A–1, M–A–2, and M–A–3, to which it agreed. This draft was identical with the draft submitted in its letter of June 7, 1944. It did not contain proviso (*a*) in paragraph 4 of the 1943 regional Diesel agreement.

Mr. Woodward testified he was positive that, upon receipt of the June 7 letter, he had succeeded in removing proviso (*a*) from the schedule of regulations and from the terms governing relations of the parties. In other words, his position was that firemen must be employed on all yards service locomotives, regardless of weight.

The Carrier contended that at no time had it agreed to the removal of proviso (*a*) from the terms governing the relations of the parties. The superintendents of labor and wages on the four divisions of the Carrier were unanimous in their testimony to this effect. Mr. Symes, vice president of operations for the Pennsylvania Railroad, testified that authority to make such a change could be granted only by the regional vice presidents after his approval and that the matter of the inclusion or exclusion of 4 (*a*) had never been called to his attention. Mr. Luther Long, the spokesman for the Carrier at the meeting of

[9] Emphasis supplied.
[10] This is the second paragraph of the Carrier's letter of June 7, 1944, referred to above.

May 12, who was responsible for the preparation of the current schedule including the note, declared that he had specifically in mind that the purpose of the note was to continue proviso (*a*) in effect. It is significant, however, that at no time did he discuss the import of this note with General Chairman Woodward.

Both parties had reached directly opposite conclusions. The question then is: Which party is justified in its position?

We find that the purpose of the note was to assure that the same interpretation would be given to the comparable provisions of M–A–1 and the 1943 regional Diesel agreement. This note stated that it was "understood that the provision of regulations M–A–1 and M–A–3 *as set forth above*,[9] are not to be construed as having any different meaning or interpretation than the meaning or interpretation heretofore or hereafter given to the *comparable* [9] provisions of the (1943 Diesel) agreement. * * * Regulations M–A–1 and M–A–3 *as set forth above* in the accepted draft did not include proviso (*a*) of paragraph 4. Since this was true, it is impossible to conceive of a provision in the 1943 regional Diesel agreement *comparable* to a nonexistent provision in regulations M–A–1 and M–A–3. In other words, we cannot agree that the note had the effect of "drawing in" or preserving the binding effect of proviso (*a*). We find that under the current schedule—i. e., the basic agreement between the parties—as written, the Carrier is obliged to employ firemen on *all* Diesel electric locomotives in yard service,[11] unless, by reason of the second paragraph of the letter of June 7 (see p. 11), the Carrier actually proposed, as a condition of acceptance of its draft of the regulations, that proviso (*a*) should remain in effect. If not, we must find that proviso (*a*) had effectively been eliminated from the contract relationship between the parties.

Several Carrier witnesses testified that if they had believed that these Diesel locomotives were to be used, in the future, in yard service, they would have insisted upon different and stronger language. We find that the language used in the second paragraph of the June 7 letter is ambiguous and that any ambiguity in the language must be construed against the Carrier, which not only used the language but did so with advice of counsel.

It is difficult to conclude that the language originally had the importance which the Carrier now attached to it. It does not appear in the current schedule, which was distributed to all employees represented by the Brotherhood. It was not mentioned in the Carrier's

[9] Emphasis supplied.

[11] In this connection, we should note here that we are not in accord with the concept that two incompatible or repugnant provisions in two different agreements can exist side by side and both have force and effect. The provision in the last agreement must be considered as having superseded to that extent the provision in the first agreement.

counterproposal to the Brotherhood's proposals initiating the third Diesel movement. As a matter of fact, it does not appear in any writing introduced in evidence except the June 7 letter. We are constrained to find that the language in the second paragraph of that letter has no different meaning than the language in the same letter contained in the note following M–A–1, M–A–2, and M–A–3.

Finally, it is our judgment in any event that if the intent of the second paragraph of the June 7 letter was to maintain, as a condition of acceptance of regulations M–A–1, M–A–2, and M–A–3 as written, a term incompatible with such regulations, the condition and not the regulations should be ignored. Certainly in industrial relations confidence cannot be maintained between the parties if a term of a contract is accepted only on condition that it is not really accepted at all.

Our conclusion is that the Brotherhood was justified in its position that on and after August 1, 1944, the 90,000-pound Diesel exception was not a part of the contract between the parties. However, this conclusion is not completely determinative of our recommendation in this dispute.

We cannot refrain from noting that neither party in 1944, for whatever reason (be it the pressure of business due to the war, a desire not to disturb good relations by meeting head-on the merits of employment of firemen on light Diesels when none were in service or were prospectively to be in service, or other reasons), faced the issue in a clear-cut manner. Actually, a change in contract terms was negotiated without any consideration of the merits of the employment of firemen on light Diesels used in yard service and hence, in the dispute before this Board, we are faced with a question not of the merits, but the content of the contract between the parties.

We do not believe that good labor relations are served by failure to consider on its merits an issue involving such far-reaching significance for the employees, the Union and the Carrier. This is particularly true in view of the practice of treating the Diesel issue through joint regional or national action on the part of the Carriers and the Brotherhood. Even now, a third national Diesel movement is under way through which the parties, after a consideration of the merits, will attempt, on a national basis, to reach an agreement.

Recommendation

Inasmuch as proviso (*a*) has not been in effect on the Pennsylvania Railroad since August 1, 1944, the Carrier was, after November 13, 1947, and is, obliged to employ firemen (helpers) on all Diesel electric locomotives in yard service weighing less than 90.000 pounds on drivers. Our recommendation is that firemen (helpers) be employed on all

Diesel electric locomotives used in yard service until such time as the third national Diesel movement shall have been consummated by agreement, provided the Brotherhood and the Carrier are parties to that agreement and that, on its effective date, all provisions of that agreement affecting the employment of firemen (helpers) on Diesel electric locomotives used in yard service shall prevail.

Payment for Handling Trains Over Inspection Pit

BACKGROUND

East-bound freight trains destined for points east of Enola,[12] called "relay trains," are required, shortly after entering the terminal limits at Enola, to pass over an inspection pit 30 feet long in order that inspectors located in the pit may examine the cars from underneath. At times, men are also stationed at track level on each side of the passing train to inspect the cars from the sides. Management has, by order, established a speed limit of 3 miles per hour over the track from a point about 15 feet west of the pit to a point about 15 feet east of the pit. The "normal" speed over this piece of track for safe operation would be about 10 to 15 miles per hour. The notice issued by the superintendent to engine crews on April 5, 1941, establishing the 3-mile-per-hour speed limit, contained no mention of the inspection pit but it was then understood—and still is understood—by all parties, that a major, although possibly not the only, purpose of the slowdown was to make the inspection possible. This notice was conceded to be a renewed notice of requirements previously in effect.

On March 3, 1941, the Brotherhood filed with the Carrier on behalf of Engineer V. C. Ayers and certain others, claims for a yard day's pay (in addition to the regular trip pay) for operating the train over this inspection pit. Negotiations on the property were continued according to customary practice until December 1944, when the four general managers of the Carrier sent a letter to the general chairmen of the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers (the latter organization, in the meantime, had joined in the negotiations). This letter refused the claims, a position consistent with that taken at the end of every previous step in the negotiations. Although further efforts were made at settlement, the issue remained unresolved.

[12] Enola is a terminal across the Susquehanna River from Harrisburg, Pa.

POSITIONS OF THE PARTIES

The Brotherhood based its claim for an extra yard day's pay for operating trains over the inspection pit on two paragraphs of the 1941 schedule, paragraphs 4–D–2 (*a*) and 4–D–2 (*f*), reading as follows:

4–D–2. (*a*) The established mileage and hourly rates applying to freight firemen cover: 1, the preparation of the engine and the handling of the light engine and the cabin car within the initial and final terminals; 2, picking up for their train car or cars first out from not more than four tracks including yard, running or main tracks when the train is picked up in a single yard in the initial terminal, except that when more than four tracks are required to hold the cars of the train so picked up it will be from the minimum number of tracks, or picking up for their train car or cars first out from the minimum number of tracks that will hold such cars in each separate yard when the train is picked up in more than one yard of the initial terminal; 3, setting out cars on which defects develop during the assembling of the train; 4, the road movement between the initial and final terminal; 5, the setting off of a car or cars on the minimum number of tracks in separate yards at the final terminal between the point of entrance to the terminal to and including the final yard at which the last car or cars are disposed of. When a yard storage track at the final terminal will not hold all of the cars to be disposed of, only those cars in excess of the capacity of such storage track may be placed on an adjacent track. * * *

* * * * * * *

(*f*) At final terminals where yard crews are employed, freight firemen required to perform work other than that provided in paragraph (*a*) of this regulation (4–D–2), will be paid a yard day's pay separate and apart from the road trip pay for performing such work. When a yard day is paid, the road trip pay will end at the time the yard pay begins.

It is the position of the Brotherhood that paragraph 4–D–2 (*a*) sets forth affirmatively the "work" which may be required of freight firemen in performance of road service; and that running their trains over an inspection pit is not specifically set forth in such work specifications, nor embraced within them. It is claimed, therefore, that it falls outside such work specifications, and is "work" calling for a yard day's pay under paragraph 4–D–2 (*f*).

In support of their position that running the train over the inspection pit falls outside the specified work for road crews, the Brotherhood emphasized three circumstances:

1. The inspection is required for the *continued* movement of the relay train beyond the terminal and not for its movement on the trip to which the engine crew was assigned or to its safe or satisfactory disposal within the terminal.

2. The pit inspection is, in fact, a substitute for a "blue flag," or stationary, inspection, in which case the movement of the train incident to the "blue flag" inspection is considered "yard service."

3. Duties and responsibilities additional to those normally exacted in road service are required of road crews because of the fact that the inspection is taking place—e. g., watching for signals from inspectors which would indicate the necessity for an immediate stopping of the train.

The position of the Carrier is that the work required by the engine crew is essentially that involved in maintaining a running speed of 3 miles per hour over about 60 feet of a track customarily used for eastbound traffic within the terminal; that the imposition of such a requirement is within the authority held by management; and that no responsibilities are imposed upon the engine crew in addition to those which they are expected to assume at all times in the operation of their locomotives and trains within the terminal boundaries. They further state that negotiations with respect to the agreement on paragraph 4–D–2 in the 1941 schedule indicate that the Brotherhood's proposal to define this operation as "yard service" was not accepted.

DISCUSSION AND RECOMMENDATION

We find that the responsibilities and duties required of the engine crew because of the passage of the train over the inspection pit are no more or less than those required for the safe operation of their locomotive and train under any other normal circumstances within the terminal boundaries.

The parties have not agreed, nor can we agree, that the fact that this inspection is to prepare the train for further movement beyond the terminal, brings the slow movement for purposes of this inspection within the category of "yard service."

The comparison between the "pit" and the "blue flag" inspection, drawn by the Brotherhoods, is not persuasive. We cannot hold that a new method utilized in operations must be considered for purposes of classification and payment for performance as identical with another method for which it is a substitute.

This brings us to the basic position of the Brotherhood that, since the operation of the train over the inspection pit is not positively defined as work required of road crews, it falls outside of such work and is subject, therefore, to penalty pay.

Our findings on this position are as follows:

1. It is true that paragraph 4–D–2 (*a*), which defines the work requirements of road engine crews, does not contain the explicit phrase

"hauling a train over an inspection pit." Neither does it contain any general phrase descriptive of work within the final terminal other than "setting off of a car or cars" and "disposal of engine and cabin car" before release from duty.

Nevertheless, in any workable management of the operation of trains within the terminal limits, it must be assumed that management's authority to issue instructions without incurring penalty payments encompasses the giving of instructions as to the tracks to be used, the speed of operation, the permission to move or orders to stop, etc., unless such authority is specifically fettered by law or by agreement. No such negative is indicated in this case.

2. No agreement excluding "running train over inspection pit" from work properly required of freight firemen in road service or assigning such work to another craft, is contained in the 1941 schedule of regulations. Moreover, the Brotherhood at one time sought to have such work defined as "yard service" but failed to gain the Carrier's consent. The proposals of the Brotherhood for revision of the schedule submitted on January 3, 1939, contained this item as paragraph (*b*) in section 4–D–2:

> (*b*) Any yard service (includes moving trains over inspection pits or tracks for inspection) required of freight firemen, * * *

The negotiations subsequent to this proposal, however, failed of agreement to include the above parenthetical clause, and the regulations agreed upon which at present govern the relation of the parties make no mention of such operation as "yard service."

3. We cannot find from the testimony of witnesses on both sides any "agreed upon interpretations" that any "yard men" shall be assigned to work of handling trains over the inspection pit; that such work shall be defined as "yard service"; or that this operation shall be specifically excluded from service which is covered by "the mileage and hourly rates applying to freight firemen."

Management, in this case, has made use of an authority unfettered by law or agreement to order east-bound freight engine crews to operate their trains at 3 miles per hour over 60 feet of a specified running track within the terminal limits.

4. The tracks on which the inspection pit is located are regular running tracks used by east-bound trains entering the Enola terminal, some of which trains are not subject to pit inspection. The speed restriction applies alike, however, to those trains which are not inspected and to those which are.

5. Train crews required to slow-down for inspection are still en route on their required trip; they have not yet "set off" their cars or

disposed of their engine and cabin car. They are still receiving regular payment for their trip and if the occasion requires (including any delay caused by the inspection operation), are eligible for overtime and terminal delay payments.

Recommendation

We recommend that the claims of the Brotherhood be denied.

Request for Reinstatement of Minor Supervisors

BACKGROUND

From May 23 to 25, 1946, a period during which the United States Government was operating the railroads, the Brotherhood of Railway Trainmen and the Brotherhood of Locomotive Engineers went on a Nation-wide strike. The Brotherhood of Locomotive Firemen and Enginemen was not a party to the strike save with respect to its members who were qualified as engineers, who were instructed not to operate engines.

During the strike, the management of the Carrier called on certain minor supervisory employees—namely, assistant foremen of engines, special-duty engineers, instructors, and assistant trainmasters, to operate locomotives. These men occupy the first rungs on the ladder of the managerial organization. They are promoted to these jobs from the ranks of the firemen and engineers. By agreement between the Carrier and the Brotherhoods, they retain their places on their respective seniority rosters while occupying these minor supervisory positions

In all, the Carrier had 303 men in these positions. Forty-five of these men refused to operate engines during the strike, 15 of whom were in the eastern region. They did not refuse to perform their customary tasks but only to engage in this work which they considered, and their union considered, to be "strikebreaking."

Those who refused to perform this service were demoted and returned to their former status as engineers and firemen. They continued in the employment of the Carrier. The general managers, to date, have considered favorably the application of a number of these men and restored them to their former supervisory positions. None have been restored in the eastern region. Management policy has been to consider such applications favorably only after the applicants have satisfied their superintendents that "these employees have so conducted themselves as to show that they understand the requirements of the positions which they previously held." When they do so, "they will

be given consideration along with others, when appointments are being made in the future."

Some but not all of these men were formerly, and others still are, members of the Brotherhood. The Brotherhood "championed their cause" and requested that the Carrier reinstate them in their former positions.

POSITIONS OF THE PARTIES

The Brotherhood does not base its plea upon any contract provision nor upon a challenge of management's "right" to issue the instructions to man the locomotives or to discipline those who refused to do so. Their case rests on five contentions:

1. That it was unjust to ask these men to engage in "strikebreaking" service and to penalize them by demotion for refusal to do so; that strikebreaking is a serious business to a union man; that if engaged in, it subjects the individual to the ostracism of his fellowmen and violates his self-respect, based on adherence to principles of conduct considered right and proper; and that it subjects him to dismissal from his organization. It is its contention that to require a man to do this against his will is unjust; and that the punishment imposed was, in view of the above circumstances, unduly harsh.

2. That the action of the Carrier in restoring some and not other men to their positions was discriminatory. As indicated above, of the 45 men involved who were demoted, some have been restored to their supervisory jobs in the western and middle regions and in the New York zone. None of the 15 involved in the eastern region have been reinstated. Although the Brotherhood presented no direct evidence that a uniform policy and practice was not followed by all four general managers, they drew a strong inference from these facts that the eastern region men have been treated less favorably than those in other regions.

They also pointed to the fact that another group of minor supervisory employees—namely, some yardmasters, acted in a manner even more indicative of "disloyalty" to the Carrier in that they went out on a "sympathetic strike" along with the trainmen and engineers. Thus, they refused to perform their *normal* duties, which the men in question did not refuse to do. Yet, when the Brotherhood of Railway Trainmen "championed" their cause before management, all yardmasters were restored to their former positions.

3. That the action was inconsistent with the spirit of a letter from Mr. W. M. Clement, president of the Carrier, which was brought to the attention of the men, in which he urged upon management the desirability of restoring operations and relationships without rancor.

4. That these men are the immediate supervisors of the firemen and engineers, must work closely with them, and must have their respect; that nothing is more damaging to that respect than the label, "strikebreaker."

5. That the Brotherhood has encouraged the practice of filling these supervisory positions from the ranks and has agreed to their retention on the seniority rosters; that if now the possibility exists that they may be used to weaken the Brotherhood's economic strength in a strike, the Brotherhood will have to consider seriously the wisdom of this agreement.

The Carrier maintained that the assignment of supervisory personnel not covered by any agreement to any task required in the interests of the effective operation of the railroad is a matter completely within the discretion of management; that an effective managerial organization requires that it should be able to count upon the unqualified loyalty of such supervisors and their willingness to accept such assignments and to perform to the best of their ability.

The Carrier further urges that this right is particularly important in the case of railroad operations, since the management is under an obligation to perform adequate service in the public interest; that this is true at all times; that, in this particular situation, the circumstances are even more compelling since the Carrier, at the time, was being operated by the United States Government and its officers were under direct instructions from the Government to keep the road operating and to require of all personnel the performance of their duties.

DISCUSSION AND RECOMMENDATION

We find that management, in assigning these minor supervisors to operate engines and in disciplining them for their failure so to do, was acting within its managerial rights. Moreover, we can understand the necessity for management to expect loyal and willing performance from such men when they are assigned to duties considered essential by their management.

We find no evidence of discrimination in the Carrier's policies with respect to the demotion and reinstatement of these men as between the several regions. Furthermore, we find no evidence of discrimination as between particular individuals since there is every reason to believe that, had those who were not restored complied with the same general policy as those who were, some of the former would have been restored.

Although the actions of the Carrier with respect to the yardmasters and this supervisory group were different, in our opinion management

exercised a legitimate discretion in considering as a basis for its actions the differences in the circumstances surrounding the case of each group.

In view of the foregoing, we conclude there is no basis for any recommendation which would require the Carrier to take any action other than that dictated by the judgment of its officers as to good management policy and practice. Such action was taken by management in the exercise of its rights to discipline these minor supervisors, to determine whether they should be reinstated, and to set the terms for their reinstatement.

During the hearings, however, at which this issue was explored, a number of matters were discussed bearing on the effect of the Carrier's action on good labor relations. These matters and others which have occurred to us follow as the basis for consideration by the Carrier of the suggestion we make later, in connection with our recommendation:

1. Whether the loss of supervisory status for a period of 2 years is not a sufficient discipline for the failure to accept an assignment under the circumstances noted.

2. The effect of the failure to restore these men to their former jobs upon the continued cooperation of the Brotherhood in agreeing to the retention of the minor supervisors on their respective seniority rosters.

3. The effect on the status of supervisors in the eyes of the employees with whom their relations are so close, of having compelled such supervisors as a condition of employment in their positions to engage in action so contrary to the traditions and convictions of the employees.

4. The fact that these men have been employees for a much greater length of time than they have been supervisors. (Most of them have been union men. The average length of service in a supervisory capacity was 3 years, 4 months, compared to an average of 26 years, 3 months, as employees. Would it be surprising if the longer period of service as employees and union members was more compelling in motivating their action than the shorter period of service as supervisors?)

5. The fact that these men are in a twilight zone between the rank of employee and that of established management. (They are in transition from those loyalties to which they had adhered for many years to those which are characteristic of well-established members of management—loyalties, the importance of which they do not yet fully understand, and to which, in fact, they may have been antagonistic during their earlier experience.)

6. The fact that a man does not psychologically become a part of management overnight. (He must not only learn the duties of management, but he must also acquire those codes and convictions which

support the unquestioning performance of those duties and, ultimately, minimize certain loyalties which he had theretofore held.)

7. The basic fact that an employee becomes a part of management by becoming a manager through training and experience acquired only with the passage of time—not merely by acquiring a managerial title.

Recommendation

We recommend no action by the Carrier be required in connection with restoring the minor supervisors involved to their former positions, since its action was and is one properly within its discretion.

However, we strongly suggest that the Carrier, in the exercise of its managerial discretion, reconsider its position regarding the reinstatement of these minor supervisors in the light of the foregoing discussion.

ANDREW JACKSON, *Chairman.*
JAMES H. WOLFE,[13] *Member.*
E. WIGHT BAKKE, *Member.*

JUNE 9, 1948.

OBSERVATIONS OF THE HON. JAMES H. WOLFE, MEMBER OF THE BOARD

EMPLOYMENT OF FIREMEN ON DIESEL-ELECTRIC LOCOMOTIVES IN YARD SERVICE

I concur with the recommendation, but I do not see the purpose or need of recommending that the employment of firemen (helpers) be "until such time as the third national Diesel movement shall have been consummated by agreement," etc. The parties to this dispute are parties to the third national Diesel movement, so it appears fairly certain that, without recommendation as to the duration of the requirement for employment, the agreement consummated by that movement will supersede regulations M–A–1, M–A–2, and M–A–3 insofar as such sections in the current schedule are affected or changed by provisions in that third national agreement.

If a clause saving to any of the parties to the third national agreement the benefits of any agreement locally made on the property of any of the carriers (parties to that national agreement) more favorable to such individual parties than are those of the national agreement, then it would most likely be contended that such savings clause continued in effect the situation on the Pennsylvania Railroad requiring the employment of firemen (helpers) on Diesels of less than 90,000 pounds weight on drivers. But that would be because that national agreement would prevail and, by virtue of that, the savings

[13] Concurs in the light of certain observations set out hereunder.

clause would of course prevail and, in consequence, the requirement to employ firemen on all Diesel-electric locomotives as now required would still continue as an obligation.

I agree heartily that this issue of whether firemen (helpers) need or need not be employed on Diesel engines in yard service should be considered on its merits, but I think we may presume it will be so considered in the conferences regarding the third Diesel movement, and a recommendation as to the duration of the employment of firemen (helpers) on any Diesel engines seems futile.

I think that the letters of May 2, May 16, and June 7, 1944, were simply means and intermediate steps in the negotiations by which the parties led up to and arrived at their final agreement embodied in the Carrier's letter of July 26, 1944, and the Brotherhood's acceptance of it by letter of July 28, 1944. That letter of July 26 and its acceptance embodied the end-product for which the intermediate letters were exchanged. That constituted the totality of agreement between the parties as to the revised regulations M–A–1, M–A–2, and M–A–3. The intermediate letters first above referred to had fully served their purpose and can be ignored since there is no ambiguity in the fact that proviso (*a*) of paragraph 4 of the Diesel agreement of 1943 was no longer in effect on this property.

Of course, this view implies a nonacceptance of the Carrier's position that the contract consisted of *all* the letters, or certain parts thereof, bearing on the revision (for printing) of M–A–1, M–A–2, and M–A–3. It further implies a nonacceptance of its position that, after July 28, 1944, there were two contracts in existence on this property, both applying to the matter of the requirement to employ firemen on Diesel electric engines of 90,000 pounds weight on drivers or less—one, the 1943 regional Diesel agreement, and the other, the sections of the so-called current schedule known as M–A–1, M–A–2, and M–A–3, one including proviso (*a*) and the other excluding it.

The main report holds no differently. In fact, it so holds specifically, but analyzation and discussion in some detail of many of the intermediary letters and especially paragraph 2 of the letter of June 7, would seem to be either on the theory that the position of the Carrier that such letters were, *with the letter of July 26*, all part of the understanding between the Carrier and the Brotherhood, or on the theory that there was an ambiguity in the agreement finally arrived at. I fear a discussion of the ambiguities in the letter of June 7, 1944, when it is not a part of the agreement arrived at, dims the clarity of the real reason why we must find for the Brotherhood in this case.

Before I close my remarks on the Diesel case, I advert to the sentence under the heading, "Positions of the parties," reading that "the Car-

rier raised the question as to whether the schedule of regulations assumed the status of a contract, although it agreed that it was binding on the parties." I rather think, viewed from the whole of the Carrier's testimony, this gives a false impression. If the Carrier admitted that it was binding, for our purposes we can treat it as a contract. I think the intention of the Carrier in making that statement was to attempt to avoid committing itself as to any legal theory of what such a schedule is, whether a contract or in the nature of legislative rules cooperatively arrived at. It suffices to know that the Carrier admitted they were binding on it.

Nor do I think it material to determine whether a national, regional, or local agreement is incorporated by implication in the schedule or whether it exists independently when not contained between the covers. Nor does the question as to whether the schedule of regulations is the basic agreement between the parties impress me as important. There may be national, regional, and local agreements consummated from time to time, even though not conceived of as being incorporated by reference or implication in the blue schedule books but which may be just as basic. I cannot see that logically a determination of this question aids us. I think posing it as a matter which is essential to our decision is confusing, and is of no moment in the logical resolution of the question at issue. One does not discuss contentions simply because they may be advanced in argument.

PAYMENT FOR HANDLING TRAINS OVER INSPECTION PIT

Here again, I fully concur with the result but I am far from convinced that the position of the Brotherhood has been stated as favorably as it should be. In my view, the Brotherhood contended that when a train in road service was run slowly for the purpose of inspection, which inspection was not for the purpose of revealing defects necessary to a continued tour of duty of the instant crew, but for the preparation of the train for a subsequent arm of a journey beyond the terminal in which the complaining crew ended its tour of duty, that *slow* movement became an ingredient of the inspection, and since the inspection itself was not part of the road tour of duty, any ingredient of it was not part of road tour of duty. The matter of additional duties or responsibilities was a make weight which, whether they existed or not, would not ordinarily affect the resolution of the question as above posed.

Furthermore, the matter of blue-flag inspection was introduced in the case to show that it would *not* be made during the road crew's tour of duty but would be preceded in many instances by yard switch-

ing and hence, since pit inspection was a substitute for blue-flag inspection, it should not be considered a part of the road tour of duty. This second reason, I consider not a contention but as argument to support a contention. My answer to the really material contention is that the Carrier may issue orders for the slow running of road trains in the terminal for any purpose consistent with operational necessities so long as the road crew is not required to deviate from those functions defined in 4–D–2 of the schedule or necessarily embraced in said definition as being road work even though incidentally to such functioning and in the course of its duration some other craft may be at the same time performing functions necessary to train operation. The only risk to the Carrier runs in using the *movement* of the train *in its course in road duty* in the terminal at a slower speed is that it may pass free terminal delay time and then become subject to pay terminal delay time.

APPENDIX 1

M–A–1. (Effecteive August 1, 1944.) (*a*) A fireman (helper) taken from the seniority ranks of the firemen shall be employed on all locomotives, with the understanding that the term "locomotives" includes new rail motorcars weighing more than 90,000 pounds on drivers placed in service after March 15, 1937, and existing rail motorcars the power units of which have been changed since March 15, 1937, to the extent that more trailing units can be pulled, if such cars then weigh more than 90,000 pounds on drivers.

(*b*) The term "locomotives" does not include any of the following:

(1) Electric car service, operated in single or multiple units.

(2) Except as provided in paragraph (*a*), gasoline, Diesel-electric, gas-electric, oil-electric, or other rail motorcars which are self-propelled units (sometimes handling additional cars) but distinguished from locomotives in having facilities for revenue lading or passengers in the motorcar.

(3) Self-propelled devices used in maintenance of way, maintenance of equipment, stores department, and construction work, such as locomotive cranes, ditchers, clamshells, pile drivers, scarifiers, wrecking derricks, weed burners, and other self-propelled equipment or machines.

(*c*) On multiple unit Diesel-electric locomotives in high speed, streamlined or main line through passenger trains, a fireman (helper) shall be in the cab at all times when the train is in motion. If compliance with this provision requires the services of an additional fireman (helper) to perform work customarily done by firemen (helpers), he shall be taken from the seniority ranks of the firemen.

NOTE.—The term "main line through passenger trains" includes only trains which make few or no stops.

(*d*) If an additional fireman (helper) is found necessary on multiple unit Diesel-electric locomotives in any other class of service, he shall be taken from the seniority ranks of the firemen.

APPENDIX 2

COMPARISON [1] OF THE 1943 REGIONAL DIESEL AGREEMENT AND REGULATION M–A–1 OF THE CURRENT SCHEDULE

Pertinent portions of 1943 Diesel agreement

It is mutually agreed:

1. To put into effect, subject to requisite governmental approval and upon such approval being obtained, rates for engineers, firemen, helpers, hostlers, and hostler helpers, as specifically set out in appendix (B), attached hereto and made a part hereof.

2. *Steam locomotives of the 4–8–4 and 2–10–4 type* to be reclassified for pay purposes by being moved *into the next higher wage bracket.*

3. *On multiple-unit Diesel-electric locomotives in high-speed, streamlined, or main line through passenger trains, a fireman (helper) shall be in the cab at all times when the train is in motion. If compliance with* the foregoing *requires the service of an additional fireman (helper)* on such trains *to perform the work customarily done by firemen (helpers), he shall be taken from the seniority ranks of the firemen,* in which event the working conditions and rates of pay of each fireman shall be those which are specified in the firemen's schedule. The rates of pay shall be determined by the weight on drivers of the combined units.

(NOTE.—*The term "main line through passenger trains" includes only trains which make few or no stops.*)

For the sole purpose of designating the ranks from which the employee

Agreement effective August 1, 1944, subsequently incorporated in the current schedule (M–A–1)

NOTE to P–A–1: The rate applicable to firemen on *steam locomotives of the 4–8–4 and 2–10–4 types* shall be that provided for locomotives *in the next higher wage bracket.*

M–A–1 (c): *On multiple-unit Diesel-electric locomotives in high-speed, streamlined, or main line through passenger trains, a fireman (helper) shall be in the cab at all times when the train is in motion. If compliance with this provision requires the services of an additional fireman (helper) to perform the work customarily done by firemen (helpers) he shall be taken from the seniority ranks of the firemen.*

(c) NOTE.—*The term "main line through passenger trains" includes only trains which make few or no stops.*

(d) If an additional fireman (helper) is found necessary *on multiple-unit*

[1] Portions common to both documents are italicized.

shall be drawn and for no other purpose, it is further understood that *on multiple-unit Diesel-electric locomotives* operated in other classes of service, should there be added a man to perform the work customarily performed by firemen (helpers) such man shall also be taken from the seniority ranks of the firemen and his working conditions and rates of pay shall be those which are specified in the Firemen's schedule. The rates of pay shall be determined by the weight on drivers of the combined units.

Diesel-electric locomotives in any *other class of service*, he *shall be taken from the seniority ranks of the firemen.*

4. *A fireman*, or a *helper, taken from the seniority ranks of the firemen, shall be employed on all locomotives;*

(a) *A fireman (helper) taken from the seniority ranks of the firemen shall be employed on all locomotives,* * * *

provided that *the term "locomotives" does not include any of the following:*

(b) *The term "locomotives" does not include any of the following:*

(a) Diesel-electric, oil-electric, gas-electric, other internal combustion, steam-electric, or electric, of not more than 90,000 pounds weight on drivers in service performed by yard crews within designated switching limits.

(b) *Electric car service, operated in single or multiple units.*

(1) *Electric car service, operated in single or multiple units.*

(c) *Gasoline, Diesel-electric, gas-electric, oil-electric, or other rail motor cars, which are self-propelled units (sometimes handling additional cars but distinguished from locomotives in having facilities for revenue lading or passengers in the motorcar;*

(2) Except as provided in paragraph (a), *gasoline, Diesel-electric, gas-electric, oil-electric, or other rail motorcars which are self-propelled units (sometimes handling additional cars) but distinguished from locomotives in having facilities for revenue lading or passengers in the motorcar;*

except that *new rail motorcars* installed after March 15, 1937, which *weigh more than 90,000 pounds on drivers* shall be considered *"locomotives."*

(a) (continued) * * * with the understanding that the term *"locomotives"* includes *new rail motorcars weighing more than 90,000 pounds on drivers* placed in service *after March 15, 1937* * * *

If *the power* plants of *existing rail motorcars* be made more powerful by alteration, renewal, replacement, or any other method, *to the extent that more trailing units can be pulled* than could have been pulled with the power plants which were in the rail motorcars on *March 15, 1937*, such motorcars, *if then weighing more than 90,000 pounds on drivers* shall be considered "locomotives."

(a) (concluded) * * * and *existing rail motorcars the power* units of *which* have been changed since *March 15, 1937, to the extent that more trailing units can be pulled, if* such cars *then weigh more than 90,000 pounds on drivers.*

(d) *Self-propelled* machines *used in maintenance of way, maintenance of equipment, stores department, and construction work, such as locomotive cranes, ditchers, clamshells, pile drivers, scarifiers, wrecking derricks, weed burners, and other self-propelled equipment or machines.* This will not prejudice local handling on individual railroads where disputes arise as to whether or not the character of work performed by these devices constitutes road or yard engine service.

5. (a) Existing rates of pay which are higher than those herein provided shall not be reduced.

(b) Except as specifically provided herein, this agreement does not modify or supersede existing agreements covering rates of pay, rules, and working conditions of locomotive engineers, firemen, helpers, hostlers, and outside hostler helpers.

(b) (3) *Self-propelled* devices *used in maintenance of way, maintenance of equipment, stores department, and construction work, such as locomotive cranes, ditches, clamshells, pile drivers, scarifiers, wrecking derricks, weed burners, and other self-propelled equipment or machines.*

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