Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED JULY 11, 1949, BY EXECUTIVE ORDER 10067 PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate and report in respect to a dispute between the Missouri Pacific Railroad Company, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Brotherhood of Railroad Trainmen

(NMB Case No. 3157)

ST. LOUIS, MO.

AUGUST 2, 1949

(No. 76)

ST. LOUIS, MO., *August 2, 1949.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: We have the honor to submit herewith our report as an Emergency Board designated pursuant to Executive Order 10067 to investigate and report respecting a dispute involving the Misouri Pacific Railroad Co. and certain of their employees, represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Brotherhood of Railroad Trainmen, labor organizations.

Respectfully submitted.

CURTIS G. SHAKE, *Chairman.*
ROGER I. MCDONOUGH, *Member.*
FLOYD MCGOWN, *Member.*

INTRODUCTION

Emergency Board No. 76 was appointed by the President of the United States on July 11, 1949, pursuant to Executive Order No. 10067 signed on July 8, 1949, and in conformity with section 10 of the Railway Labor Act as amended.

The members of the Board were Roger I. McDonough of Salt Lake City, judge of the Supreme Court of Utah; Floyd McGown of Boerne, Tex., a member of the Texas Bar; and Curtis G. Shake of Vincennes, Ind., a former judge of the Supreme Court of Indiana.

Pursuant to directions, the Board convened in Room 425 at the United States Custom and Courthouse in the city of St. Louis, Mo., at 9:30 a. m. on July 14, 1949. After selecting Judge Shake as its chairman and approving the designation of the Alderson Reporting Co. of Washington, D. C., as the official reporter, the Board met the representatives of the parties to the dispute.

The appearances were as follows:

For the Carrier:

Theodore Short, chief personnel officer;

B. W. Smith, assistant chief personnel officer;

A. R. Heidemann, special assistant, personnel;

For the Organizations:

R. E. Davidson, assistant grand chief engineer, and G. C. Davidson, general chairman, appearing on behalf of Brotherhood of Locomotive Engineers;

Randall V. Laverty, alternate vice president, and J. H. McDonald, general chairman, appearing on behalf of Brotherhood of Locomotive Firemen and Enginemen;

J. H. Rodgers, vice president, and G. R. Ogletree, general chairman, appearing on behalf of Order of Railway Conductors;

E. B. Boggs, vice president, and F. Aldrich, general chairman, appearing on behalf of Brotherhood of Railroad Trainmen.

The Board continued in session from day to day until July 29, when the hearing was closed.

The proceedings disclosed that between 1938 and 1945, there accumulated on this property some 1,800 unadjusted operational disputes.

By June 1949, this number had been reduced through intermittent conferences of the parties to approximately 300 cases. Meanwhile, however, on November 3, 1948, strike ballots predicated upon the pending claims had been released. A suspension of work was authorized by the employees concerned and a strike was scheduled for 2 p. m., July 11, 1949. It was this emergency situation, fraught with dire consequences to the public interest, that brought about the appointment of this Emergency Board.

The hearings further developed that, with a few exceptions which will be hereinafter noted, all of the matters in controversy were grievances that grew out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, within the meaning of section 3, first (i) of the Railway Labor Act, as amended. All of the parties conceded this fact.

When this situation was made to appear, the Board suggested that the cases within the jurisdiction of the First Division of the National Railroad Adjustment Board be submitted to that agency and that the hearing proceed as to the remaining matters in controversy. Two reasons were advanced by the representatives of the employees as to why this suggestion was unacceptable to them. They asserted, first, that the failure of the carrier to comply with previous awards rendered it futile for them to again resort to the Adjustment Board, and, secondly, that the First Division was so far behind with its docket that it would require years to carry this group of cases through that agency.

As to the first point stated above, the Board called the attention of the parties to section 3, first (p) of the Railway Labor Act, which provides, among other things, that the District Courts of the United States for the districts in which the petitioners may reside have full jurisdiction and authority to enforce awards of the Adjustment Board by money judgments and writs of mandate, and that such proceedings may be prosecuted without expense to petitioners. The representatives of the employees expressed themselves as not disposed to make use of this remedy.

This Board is not unmindful of the fact that for some considerable time there has been long and unusual delay in the progressing of cases through the First Division. A number of other Emergency Boards have taken note of this unfortunate situation and have made recommendations for the elimination of these delays. We believe that substantial progress has recently been made in that direction. On May 19, of this year, the chief executive officers of the five operating organizations and the three regional carriers' committees entered into an agreement providing for the establishment of two supple-

mental adjustment boards to relieve the First Division. Another agreement, entered into on the same day, is calculated to expedite the handling of cases. According to our information these supplemental boards are ready to function, if they are not already doing so. The representatives of the employees were reminded of these recent developments but they persisted in their determination not to take their claims to the Adjustment Board. We see no sound reason why this cannot and should not be done, even at this late hour.

The attention of the parties was also directed to the fact that section 3, first (i) of the Railway Labor Act provides that carriers, as well as their employees, may carry cases to the Adjustment Board for settlement, but the representatives of this carrier advised the Board that it could not do so on its own initiative without jeopardizing its relationship with is employees.

The Board also reminded the parties that section 3, second, of the Railway Labor Act makes specific provision for the establishment of system boards of adjustment, and it was suggested that this means might be utilized as a temporary expediency to clean up the 300 disputes listed on the strike ballot as well as the 1,800 additional cases that have accumulated in the meantime. We regret to report that this suggestion was not sympathetically received.

The representatives of the organization expressed the view that since an emergency board had been created it was the duty of this Board to hear these operational disputes and that the complaining employees were no longer obligated to take their grievances to the Adjustment Board. With this point of view we find ourselves unable to agree. This Board, like the Adjustment Board, derives what authority it possesses from the Railway Labor Act and we find nothing in that act which authorizes us to assume the functions of the Adjustment Board in the settlement of disputes that are within its peculiar jurisdiction. That Board has final administrative jurisdiction of operational disputes while the functions of this Board are limited to fact finding and the making of recommendations. True, there have been many instances in which parties appearing before emergency boards have voluntarily agreed in advance to be bound by the recommendations of such boards; but it seems sufficient to say that in the present case the employees, while urging us to hear the cases, made it clear that they would not obligate themselves to accept the Board's recommendations.

We should like to point out that if it is permissible under the Railway Labor Act for employees to circumvent the functioning of the Adjustment Board merely by creating a situation that calls for the appointment of an Emergency Board the act has lost its efficacy for

maintaining harmonious and orderly relations in the railroad industry insofar as operational disputes are concerned.

Having failed in our efforts to persuade the parties to make use of the facilities of the Adjustment Board we sought to find a way to serve them in the capacity of mediators. To that end we requested the employees to group the 300 pending claims into a limited number of classifications in the hope that we could find a means of adjustment on the basis of the principles involved. The organizations presented 23 such groups and it became readily apparent that this approach would not be helpful because of the necessity of considering each case within a group in the light of its peculiar factual background. We then requested the carrier to undertake to reduce the issues involved into a few hypothetical propositions. This brought forth the response that there were no less than 78 such issues to be resolved, and it likewise appeared that these, in turn, would have to be applied to the various factual situations. We think the parties realized the futility of these approaches.

In a final effort to find a basis upon which the parties might be persuaded to reconcile their differences, the Board went off the record for 2 days during which the members sat in the capacity of mediators while the parties discussed the merits of a group of claims of their own selection. This resulted in the settlement of 11 claims, or an average of 5½ per day. From this experience it follows that probably 6 weeks would be required for the Board to hear all of the pending disputes. Burdensome as this task would be, it would also carry with it an implication of futility, since there would be no assurance that the recommendations of the Board would be acceptable.

Fully mindful, Mr. President, of the mandate contained in your letters of appointment that the members of this board should "investigate promptly the facts as to such dispute, and on the basis of the facts developed, make every effort to adjust the dispute," it is with a deep sense of regret that we are obliged to report the failure of our mission. It seems inconceivable to us that a coercive strike should occur on one of the Nation's major transportation systems, with all of the losses and hardships that would follow, in view of the fact that the Railway Labor Act provides an orderly, efficient, and complete remedy for the fair and just settlement of the matters in dispute. Grievances of the character here under discussion are so numerous and of such frequent occurrence on all railroads that the general adoption of the policy pursued by the organizations in this case would soon result in the complete nullification of the Railway Labor Act. We cannot bring ourselves to believe that these parties are ready to assume the responsibility of sponsoring such a program.

Aside from the strictly operational disputes considered above, there were seven controversies listed on the strike ballots which one or both sides contended were not within the jurisdiction of the National Railroad Adjustment Board. The Board agreed to and did hear these matters in detail and, on the basis of the facts developed, will now submit its recommendations with respect thereto.

1. The Assignment, Maintenance, and Handling of Cabooses

By case designated on the strike ballot as No. 1114–ORC No. 46, the Order of Railway Conductors charged the carrier with failure to apply Award No. 11339 of the First Division of the National Railroad Adjustment Board. That Award involved the application of article 15 (d) of the conductors' current agreement, which reads, "Regular conductors shall be furnished regular cabooses when available." The Award recited that, "The Division is not able to say from the evidence before it whether there were sufficient usable cabooses available to furnish regular conductors with regular cabooses. * * * If there were, request is sustained; otherwise denied." The organization contended that the carrier has in service sufficient cabooses to comply with the Agreement and Award, but this was denied by the carrier. After having heard the evidence and the arguments advanced we find ourselves in the same situation as that reflected by the Award of the First Division. While the aggregate number of cabooses in service would appear to be sufficient to enable the carrier to comply with the Agreement, the showing made as to the character and condition of these cars and the demands of the service would lead to the opposite conclusion. The carrier seems to be making a good faith effort to improve this situation and it appears that substantial progress has been made in that direction, but we are unable to say from the evidence produced before us that the carrier has sufficient usable cabooses to comply with the rule. So long as the rule remains in the agreement and during the pendency of any negotiation for its abrogation or change, the carrier should make a good faith effort to comply with the rule.

Case No. 1115–BRT No. 391 presented issues as to the alleged misconduct of the carrier in not having cabooses available where needed by the employees; in using cabooses on long runs through terminals; and in failing to properly equip, guard, and maintain such cabooses. The evidence established and the carrier conceded that there had been abuses in these regards; but it is asserted that in most instances these shortcomings on its part were due to the abnormal conditions and demands incident to the war period.

We are inclined to the view that the situation has been remedied to the extent that it ought no longer be regarded as the basis of a substantial dispute.

2. DEMAND OF THE EMPLOYEES REPRESENTED BY THE FOUR ORGANIZATIONS FOR AN AGREEMENT RELATIVE TO THE OPERATION OF TEST TRAINS FOR THE PURPOSE OF ESTABLISHING TONNAGE RATINGS FOR LOCOMOTIVES USED IN FREIGHT SERVICE

In negotiations that followed the giving of notices by the organizations of their desire for a rule on the subject stated above, the carrier submitted a proposal which, with the omission of section 2 (c) (7) thereof reads as follows:

Covering the tonnage rating of engines in freight service.

1. (a) The present published tonnage ratings for the various classes of engines set up by division, or portions of divisions, are accepted by the Order of Railway Conductors of America, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen as being a fair rating, with the following exceptions:

Class of engine	*Territory*	
	From—	*To—*

(b) Tests will be made to establish ratings for engines in the territories listed in paragraph (a) where the published ratings are not now acceptable to the employees, parties to this agreement.

(c) The accepted published ratings and the ratings established under the provisions of paragraph (b) of this section will not be changed and new ratings established without tests being made.

2. (a) In making tests by which ratings of engines will be established, the principle as set forth in the Memorandum of Agreement between the Order of Railway Conductors, Brotherhood of Railroad Trainmen and Conference Committee of Managers of Western Railways, April 8, 1924, providing that tonnage rating of an engine is to be established by practical tests under average service conditions, is recognized by the parties to this agreement and is to be adhered to in making tests provided for in this agreement.

(b) Prior to making a test, superintendent will advise local chairman of the four organizations, parties to this agreement, that such test is contemplated and extend to them an invitation to be present or represented when the test is made.

(c) In order that tests may be uniformly conducted and reflect practical operation under normal conditions, the procedure to be followed will be—

(1) The consist of test trains may be either loads and empties but will not exceed 50 percent of tonnage in empty cars.

(2) Tonnage will be computed for test trains in the same manner as tonnage is computed for other trains.

(3) Auxiliary water cars and cabooses will not be counted in computing the tonnage, but an auxiliary water car will be used when making the test if it is the practice to use auxiliary water cars in the territory where the test is being made.

(4) Careful inspection will be made of the train prior to making the test to see that all hand brakes are released and that the rules with reference to making terminal air-brake tests are complied with in every detail. No special attention will be given to the journal boxes on cars in the test train unless it is the regular practice at the terminal from which the train is started to service condition boxes of cars at that terminal.

(5) The engine used in making the test will not receive any special attention other than the normal running repairs and conditioning of the engine.

(6) The engine crew called for the run will operate the engine during the test.

* * * * * * *

(8) Speed restrictions provided for by timetable, operating rules, special instructions, and train order must be complied with. Stop must be made at all stop boards, at all gated crossings where normal position of gate is against the test train and at crossings equipped with cabin interlocking where normal position of home signals is "Stop" for the test train.

3. Should a test train stall while making the test requiring a double, crew will be compensated on the basis of doubling rules and lap back will not be cleaned.

4. This agreement becomes effective _____, and remains in effect until changed or canceled, as provided for in the Railway Labor Act as amended.

That part of the carrier's proposal quoted above was acceptable to the organizations and it need not here be noticed further.

Section 2 (c) (7) of agreement proposed by the carrier reads:

(7) When the test run is made, normal operating practice will be followed: for example, if under the average service conditions fuel and water is taken on line of road, fuel and water should be taken on the test run at the fuel and water stations where normally taken and the normal practice will be followed in meeting trains or permitting trains to pass on the test run.

The organizations were not satisfied with section 2 (c) (7), as submitted by the carrier, and it was proposed on behalf of the employees that the following addendum be appended thereto:

Prior to the operation of such test train the superintendent and majority of the employees' representatives BLE, BOLF&E, ORC, and BORT, will agree as to what will constitute normal operating conditions.

The carrier, in turn, rejected the counter-proposal of the organizations and the negotiations reached an impasse, resulting in this controversy being listed on one of the strike ballots. The matter is therefore before us for a recommendation.

The employees assert that definite, fair and equitable rules are necessary for the operation of test trains because of the application of double-heading agreements, the adjustment of lap-back claims and the observance of the so-called stoker order of the Interstate Commerce Commission. It was charged on behalf of the employees that tests had been made by the carrier under circumstances most favorable to it and not in a manner to reflect the actual tonnage ratings of loco-

motives under prevailing operating conditions. Apprehension was expressed that the words, normal operating practice will be followed," as used in section 2 (c) (7) of the carrier's proposal, are so indefinite and uncertain as to afford no adequate assurance that the tests would be fairly made.

We can readily understand the concern of the representatives of the organizations, and we share their view that the proposed rule should be sufficiently specific to indicate the manner in which the tests should be made, prevent abuses and avoid controversies, insofar as it is practicable to do so. On the other hand, we think there is reason to fear that the adoption of the rule proposed by the organizations would be calculated to encourage, rather than avoid, misunderstandings. According to the literal meaning of the language employed, as we understand it, a majority of the representatives of the organizations referred to therein might overrule the superintendent and dictate the manner in which the test should be conducted. We think the rule as proposed by the carrier, when taken as a whole, is reasonably definite and certain; but in the interest of clarity and with the thought of avoiding misunderstandings in its practical application, we respectfully suggest that it be modified to read as follows:

> When the test run is made, normal operating practices in the usual and ordinary operation of comparable trains and movements will be followed: for example, if under average service conditions fuel and water is taken on line of road, fuel and water should be taken on the test run at the fuel and water stations where normally taken, and the normal practice will be followed in stopping trains, meeting trains, or permitting trains to pass on the test run.

We believe that the agreement tendered by the carrier and quoted in the first part of this discussion, with the inclusion of what we have proposed as section 2 (c) (7), will provide the parties with a reasonably practical and workable rule. We recommend its adoption by the parties. While we believe it would not be feasible to include such provision in the written rule, we nevertheless recommend the practice of consulting the local chairmen on the various divisions prior to conducting a test run relative to the makeup of the train and the conditions under which the run is to be made.

Definition of Outside Hostler-Helper's Duties

The employees are requesting a rule to the effect that all work heretofore performed by outside hostler-helpers at certain points should be classified as their work regardless of the fact that at certain points the work is performed by laborers. The carrier takes the position that it has no objection to defining the duties of outside hostler-helpers provided that by so doing it will not be considered to give the outside

hostler-helpers exclusive right to the work now being performed at various points by outside hostler-helpers and/or laborers.

Exhibit D–2, Document 24, sets out the duties of outside hostler-helpers as now and heretofore practiced, and the parties are in agreement as to its accuracy.

We recommend the adoption of the following rule:

The general duties that outside hostler-helpers may be required to perform are:

Take fuel, water, and sand on locomotives.
Fill auxiliary water cans and make necessary moves with such cars.
Operate turntable where no turntable operator is employed.
Block engines placed in roundhouse and remove blocking.
Open and close drains to air reservoirs and air pumps.
Check and replace engine supplies and flagging equipment.
Supply ice and drinking water to engines.
Assist in blowing boilers.
Place compound in engine tanks.
Wash ash pans and close slides.
Assist hostler in handling engines in and out of roundhouse—open and close roundhouse doors.
Handle stack covers.
Assist in switching locomotives, tenders, company material, work equipment, etc., in mechanical yard.
Give signals and line switches.
Assist in keeping proper steam pressure on outgoing engines until placed on train.
Communicate with bridge tenders and CTC operators for permission to use various tracks and switches (Arkansas Division).
Watch engines on outbound moves (Falls City).
Place and remove locomotive supplies (Falls City).

The duties to be performed by outside hostler-helpers at the following points and terminals will be as enumerated:

St. Louis	Takes coal, water, and sand, handles turntable, etc.—puts ice and water in keg.
Dupo	Takes coal, water, and sand—puts water in keg and ice on engine.
Jefferson City	Takes coal, water, and sand—puts water in keg and ice on engine.
Kansas City	Takes coal, water, and sand—puts water in keg and ice on engine.
Atchison	Takes coal, water, and sand.
Falls City	Takes coal, water, and sand, water in auxiliary water cars, fills hydrostatic lubricators.
Omaha	Takes coal, water, and sand, washes out ashpans, supplies ice and fills water coolers.
Lincoln	Takes coal, water, and sand, helps knock fires and fuel motor railer, watches engines, checks flagging equipment, supplies ice and drinking water.

Concordia	Takes coal, water, and sand, assists in work around roundhouse, cinder pit and coal chute. Fills water coolers and supplies ice.
Osawatomie	Takes coal, water, and sand, checks supplies, fills water coolers and puts on ice. Operates turntable, blows boilers.
Horace	Takes coal, water, and sand, checks supplies, supplies ice and drinking water.
Hoisington	Takes coal, water, and sand, checks supplies, fills water coolers and supplies ice. Operates turntable, blows boilers.
Council Grove	Takes coal, water, and sand, checks supplies, supplies ice and drinking water.
Coffeyville	Takes coal, water, and sand, blocks wheels in roundhouse, puts compound in tanks, blows belly of boilers, opens air reservoir, drain cocks and air pump drain cocks. Supplies ice and drinking water.
Van Buren	Takes coal, water and sand, blocks wheels in roundhouse, puts compound in tanks, blows belly of boiler, opens drain cocks of air reservoir and air pumps. Supplies ice and drinking water.
Wichita	Takes coal, water, and sand, handles turntable, washes ash pans, puts compound in tanks.
Nevada	Takes coal, water, and sand, puts compound in tanks.
Cotter	Takes coal, water, and sand, puts compound in tanks, supplies engine with oil, waste, flagging equipment, etc. Puts ice and water in coolers.
Joplin	Takes coal, water, and sand. Puts ice and water in coolers.
Poplar Bluff	Takes fuel, water, and sand, opens and closes drain cocks and relief valves, places and removes blocking from drivers, handles turntable, blows boilers (belly). Supplies ice and water to coolers. Gives signals and line switches. Takes engines in and out of roundhouse-places compound in tanks.
Newport	Takes fuel, water, and sand, blows belly of boilers, supplies ice and water to coolers.
Gurdon	Takes coal, oil, water, and sand. Blows belly of boilers and supplies ice and water to coolers.
El Dorado	Takes coal, oil, water, and sand. Blows belly of boilers and supplies ice and water to coolers.
North Little Rock	Assists in moving engines in and out of house—operates turntable, blocks drivers, opens and closes drain valves, takes coal, water, and sand, supplies ice and drinking water, puts compound in tenders, assists in blowing boilers and spotting engines inside or outside of mechanical yard where work is to be performed, cleans ashpans, closes slides, assists in maintaining steam pressure until engine is placed on train, switches out water cars and sets water cars over on in-bound moves, communicates with bridge tender, CTC operators for permission to use various tracks and switches.

McGehee	Takes fuel, water, and sand, handles turntable, fills auxiliary water cars, checks flagging equipment.
Monroe	Takes fuel, water, and sand, handles turntable, fills auxiliary water cars, places stack covers.
Alexandria	Takes fuel, water, and sand, handles turntable, fills auxiliary water cars, places stack covers.
Lake Charles	Takes fuel, water and sand.

The carrier shall not be required to employ outside hostler-helpers where no outside hostler is employed.

4. DEMAND OF EMPLOYEES REPRESENTED BY THE BLF&E, BRT, AND BLE FOR AN AGREEMENT GOVERNING THE SUPPLYING OF LOCOMOTIVES WITH FUEL AND WATER ON LINE OF ROAD WHEN SUCH FUEL AND WATER IS NOT NEEDED TO COMPLETE THE TRIP TO THE TERMINAL

In negotiations pursuant to notice, the representatives of the organizations identified above sought to obtain the following agreement:

All locomotives of whatever type will be fully supplied with all necessary supplies including fuel and water and with fire properly cleaned and in condition to handle train to objective terminal before departure from terminal.

Crews will not be required to stop on line of road to service engine, clean fire or take fuel and/or water when same is not necessary to handle train to terminal except in case of emergency due to failure or shortage of fuel and/or water supply at terminal or inability to use facilities at terminal for supplying fuel and/or water on locomotives.

Crews run around on line of road account required to supply locomotive with fuel, water or other supplies or to condition fires account of emergency referred to in preceding paragraph, shall be paid 50 miles.

A brief statement of the history of disputes which preceded the request of the named organizations for the quoted agreement, will aid in understanding the respective position of the carrier and the organizations with respect thereto. In recent years the carrier constructed certain facilities including water tank, coal chute and cinder pit, as well as a passing track to permit the use of such facilities in servicing locomotives without interfering with traffic on the line, at certain points on its system, other than at, but in the vicinity of, main line district terminals. Examples of such construction are those at a point designated as RH in the record which is located some 4 to 5 miles east of the main line district terminal, Council Grove, Kans.; and Selkirk, Kans., located about 13 miles east of Horace, Kans., another main line district terminal.

A westbound through freight train, the crew of which would be changed at Council Grove, would stop at RH and there be sup-

plied with fuel and water and would otherwise be serviced. It would then proceed to the district terminal at Council Grove. It would thus be already serviced for its journey to the next district terminal. In like manner, an eastbound through freight train whose crew is changed at Council Grove would proceed with the new crew to the facilities at RH where it would be serviced for its trip to the next district terminal. The construction of the facilities at RH involved an expanditure of something in the neighborhood of $250,000.

The use of these facilities in the manner indicated has given rise to disputes heretofore on this as well as on a competing road. It was the subject matter of one of the disputes handled by an Emergency Board appointed to investigate certain unadjusted disputes between the parties hereto in 1945. That Emergency Board found that the erection of the facilities in question was not in violation of any negotiated rule on this system. The conclusion of that Board was supported by a number of First Division Adjustment Board Awards theretofore handed down which dealt with the erection of similar facilities on a competing railroad.

The recommendation of the 1945 Emergency Board with respect to the dispute just referred to was adopted by the parties. The request for negotiation of the agreement proposed by the employees and set out herein above was shortly thereafter presented to the carrier. After negotiations conducted over a long period of time had failed to produce an agreement, the request therefor was included in one of the strike ballots of November 1948.

In their submission, the employees' representatives take the position that the construction and use of the described facilities outside of main line district terminals was for the purpose of eliminating hostlers at such district terminals or, in the alternative, of paying road crews arbitrary time for spotting their trains for servicing at such terminals. They also contend that the road crews by virtue of being required to stop and spot their locomotive for servicing prior to the conclusion of their run, and in like manner, being required to hold their locomotive for servicing prior to the commencement of their run, resulted in the holding the crews on duty for a longer period of time than would be the case were the locomotives serviced at the district terminals. The practice, they assert, likewise resulted in run-arounds outside of terminals in situations where more than one train arrived at the described facilities at or near the same time. It is the position of the carrier that its reason for erecting, maintaining, and using these facilities in the manner described was to expedite the movement of through freight through terminals and thus facilitate its movement over the system.

The same contention as is here made in the submission of the employees' representatives was presented to the Emergency Board of 1945. The finding of that Board did not sustain their position relative to the factors which motivated the carrier in establishing these servicing stations on line of road. We find nothing in this record which would lead us to a contrary conclusion. While the elimination of hostling service at terminals and the consequent deprivation of certain employees of certain work may be regrettable, it was done in accordance with the working rules negotiated by the parties to this dispute, and such consequential results cannot in our opinion justify reestablishment of an outmoded operational procedure. We therefore do not feel constrained to recommend the adoption of the agreement proposed by the representatives of the employees. The record discloses that on all main lines of this carrier very many stops by crews for the purpose of supplying locomotives with fuel and water have been eliminated in recent years, as the power and tank capacity of steam locomotives have been increased and much more so since conversion from steam to Diesel power has been effected. This has inured to the benefit of the employees in greatly shortening the time consumed in making an assigned run, without diminishing the pay received therefor.

5. Demand of the BLE, BLF&E, ORC, and BRT for the Cancellation of Their Letter Agreement of September 24, 1927, With the Carrier

Prior to the execution of the agreement identified above, the carrier operated its freight engine and train crews on its Illinois and Missouri divisions between North Little Rock and Hoxie; Hoxie and Gale; Dupo and Gale; and Gale and Paragould.

The agreement was negotiated on the initiative of the carrier, to effectuate the elimination of Gale and Hoxie as terminal points, and to enable it to establish through freight runs between Little Rock and Poplar Bluff; Dupo and Poplar Bluff; and Dupo and Paragould.

The application of the agrement appears to have been a source of continuing friction almost from its inception. Notices were given by the organizations of their desire for an abrogation of the agreement in 1945.

The mileage from Dupo to Poplar Bluff is 191 miles and from Dupo to Paragould 229 miles. The employees have complained bitterly and almost continuously about the time length of their runs on account of the mileage involved, the volume of seasonal traffic, and the fact that they are required to pick up and set out cars en route. The

carrier, on the other hand, defends the existing practices on the basis of economy and efficiency of operations.

Balancing these conflicting factors against each other, we are of the opinion that the agreement of September 24, 1927, ought to be canceled, unless the parties in interest can agree upon a modification thereof that will substantially obviate the attendant hardships and, at the same time, afford reasonable efficient railroad service to the public. We so recommend.

6. AMONG THE DEMANDS LISTED IN ONE OF THE STRIKE BALLOTS OF NOVEMBER 3, 1948, WERE THE FOLLOWING: "CASE NO. 950–BLE CASE NO. 367: QUESTION OF HAVING ALL ENGINE CREWS IN FREIGHT SERVICE, PARAGOULD TO MCGEHEE AND MEMPHIS TO MCGEHEE, TIE UP AT LEXA, ARKANSAS;" AND "CASE NO. 951–BLF&E CASE NO. 634: QUESTION OF HAVING ALL ENGINE CREWS TIE UP AT LEXA, ARKANSAS, INSTEAD OF RUNNING THROUGH THAT POINT"

The question raised by the foregoing demands of the named brotherhood is the same in principle as that involved in the case just discussed. Prior to 1927, Lexa, Ark., was a terminal and Arkansas-Memphis Division crews worked from Paragould to Lexa and Lexa to Paragould, a distance of 106 miles in each direction, and the Little Rock-Louisiana Division crews work from McGehee, Ark. to Lexa, Ark., and from Lexa to McGehee, a distance of 83 miles in each direction. On February 4, 1927, carrier through its superintendent conferred with the local chairman of the BLE concerning the carrier's intention to combine the aforedescribed runs by the elimination of Lexa as a terminal. Subsequent to such conferences an order issued by the superintendent providing that the run Paragould to McGehee, a distance of 189 miles would be handled by chain gang crews of the two seniority divisions mentioned, running first in and first out. No written agreement was entered into by the carrier and the organizations concerning the establishment of this run, but as will presently appear the action of the carrier in establishing them was both acquiesced in by the organizations and ratified by them.

Within a few weeks after the inauguration of this run the general chairman of the BLE protested its continuance, pointing out certain dissatisfaction on the part of the employees relative to the arrangements. It appears that this dissatisfaction was due to some unusual conditions on the line relative to the movement of traffic due among other things, to the washing out of a bridge, and other adverse line conditions. This protest evidently was not insisted upon and nothing more appears in the record as to objection upon the part of the or-

ganizations or the employees to the run's continuance, until 1942. In the meantime, the employees and their representatives appear clearly to have acquiesced in the continuation of the practice described. Furthermore, as appears from the record, some 5 years after the establishment of the run, in July of 1932, in connection with a dispute between management and certain local chairmen on other runs on the system, the then general chairman of the BLF&E, in directing the local chairman to advertise the proposed establishment of a regular run through a terminal, stated that under the appropriate rule of the then existing agreement, the carrier had the right to establish such run. The rule referred to has continued unchanged to date. In that letter, it was specifically stated by the general chairman as follows:

> Our Committee itself has approved the action in several of these cases, namely—Dupo to Paragould, 229 miles; Dupo to Poplar Bluff, 191 miles, and have recognized the right of the company upon runs, McGehee through Lexa, Ark., to Paragould, 179 miles.

Thus, the BLF&E through its proper officer clearly ratified the action of the carrier in establishing the very run here in dispute, and neither that organization nor the BLE, as heretofore pointed out, made any protest to the run or the manner in which it was manned until 1942, some 10 years after the date of the letter just referred to. Although no written agreement was executed by the parties with respect to the establishment of the run under discussion, it is patent from the facts recited hereinbefore, that the interested organizations are in the same situation with respect to its inauguration and continuance as though a formal agreement had been entered into, as was done before the Dupo-Paragould and Dupo-Poplar Bluff runs were instituted. However, as pointed out hereinabove, there was in the case of the Dupo to Paragould and Dupo to Poplar Bluff's runs, almost continuous dissatisfaction and complaints upon the part of the employees performing the service.

The dissatisfaction upon the part of the employees in the instant case and the protests of their representatives which occurred in 1942 and in subsequent years was due, it clearly appears, to the abnormally heavy traffic between the terminals of the run during the war years when heavy shipment of war material and supplies were moving in both directions over the line.

In view of the foregoing, the ultimate question confronting us is whether or not in fairness to all concerned, the carrier was justified in continuing to run through Lexa, a point designated in the agreement of the parties as a terminal but abolished as such, shortly after the inauguration of the Paragould-McGehee run. In determining

this question, the interests of the public and the efficient operation of the railroad must be taken into consideration as well as the question as to whether the practice involves any undue hardship upon the employees. Taking into account all of these factors, we do not find in the record before us facts which would justify us in recommending the cancellation of the runs under protest and the demand of the employees for the restoration of Lexa as a terminal.

7. CLAIMS OF THE BLE AND THE BLF&E ON BEHALF OF CERTAIN ENGINEERS AND FIREMEN IN PASSENGER SERVICE ACCOUNT ALLEGED RUN-AROUNDS THROUGH NEWPORT, A TERMINAL ON THE WHITE RIVER DIVISION

The runs in question were from Cotter to Bald Knob through Newport, a terminal point. It is 125 miles from Cotter to Newport and 27 miles from Newport to Bald Knob. The carrier paid the employees on the basis of 152 aggregate miles, Cotter to Bald Knob. The claims are for 125 actual miles, Cotter to Newport, and 100 minimum miles, Newport to Bald Knob.

It is apparent that the claims are for compensation based upon mileage and relate exclusively to the interpretation and application of the pertinent agreements. The Board finds that claims of this character are within the jurisdiction of the First Division of the National Railroad Adjustment Board and expresses no opinions as to the merits of the controversy.

The Board therefore recommends that this phase of the dispute be handled in accordance with the suggestions contained in the first part of this Report.

Respectfully submitted.

CURTIS G. SHAKE, *Chairman.*
ROGER I. MCDONOUGH, *Member.*
FLOYD MCGOWN, *Member.*

ST. LOUIS, MISSOURI, *August 2, 1949.*

U. S. GOVERNMENT PRINTING OFFICE: 1949