

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

CREATED MARCH 3, 1950, BY EXECUTIVE ORDER
10114, PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT, AS AMENDED

To investigate and report on an unadjusted dispute concerning rates of pay involving the Terminal Railroad Association of St. Louis and certain of its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen.

(NMB No. A-3343)

WASHINGTON, D. C.
APRIL 1, 1950

(82)

LETTER OF TRANSMITTAL

WASHINGTON, D. C., *April 1, 1950.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you March 7, 1950 pursuant to section 10 of the Railway Labor Act to investigate a controversy concerning wages between the Terminal Railroad Association of St. Louis and certain of its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

JOSEPH L. MILLER, *Chairman.*

A. LANGLEY COFFEY, *Member.*

WALTER GELLHORN, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD

INTRODUCTORY STATEMENT

Executive Order No. 10114, creating the Emergency Board, was promulgated on March 3, 1950 (appendix A). The members of the Board were named by the President 4 days later. On March 13, 1950, the Board convened in St. Louis, Mo.; organized and began receiving testimony and argument. Alderson Reporting Co. of Washington, D. C., was appointed official reporter of the proceedings. Public hearings were conducted on March 13, 14, 15, 16, 17, and 20. The record compiled during these hearings includes 741 pages of testimony and 37 documentary exhibits. The Terminal Railroad Association appeared by Warner Fuller, its vice president and general counsel; John A. Wicks, personnel director; and Arnot Sheppard, general attorney. The Brotherhood of Locomotive Engineers was represented by Guy L. Brown, assistant grand chief engineer, and R. H. Wadlow, general chairman. William C. Lash, vice president, and G. A. Andrews, general chairman, appeared on behalf of the Brotherhood of Locomotive Firemen and Enginemen.

After the close of hearings on March 20 the members of the Emergency Board held a number of conferences with the parties' representatives in an effort to secure a settlement of the controversy by mutual agreement. Moreover, under the auspices of the Emergency Board the parties were brought together for further collective bargaining in the hope that a fair compromise of their respective positions might be effected. Unfortunately these efforts were unproductive, though the Board is satisfied that its various suggestions were carefully considered in good faith by all concerned. Agreement having been found to be remote because of the wide divergency of the parties' appraisal of the merits, the Board considered in executive session in Washington, D. C., the evidence and arguments adduced during the formal hearings. The present Report rests solely upon the material there brought forward and preserved in the record of the Board's proceedings.

HISTORY OF THE DISPUTE

The dispute started shortly after a national agreement between the Railroads and the Brotherhoods, effective August 11, 1948, had given the Brotherhoods a general wage increase of \$1.24 a day, and, on top of that, among other things, an increase to yard service engine crews to bring their daily rate up to the through freight service rates. This wiped out a long-standing differential. Since Terminal's engine crews were already being paid at the through freight service rates, Terminal gave only the \$1.24 increase.

The Brotherhoods, as represented by the local general chairman, protested Terminal's action in a letter dated August 28, 1948. They maintained that Terminal had improperly interpreted the national agreement by giving their engine crews only \$1.24. This was the start of an exchange of correspondence, interlarded by conferences, which lasted into February 1949. On October 22, 1948, the Brotherhoods had changed the basis for their contention that Terminal had failed to construe the August 11 agreement properly. In a letter of that date, the Brotherhoods advised Terminal that they were not sure they could sustain the position that Terminal had failed to abide by the agreement, but that they deserved a 56 cent increase "by equity and by precedent."

Between February 3, 1949, and December 1, 1949, the record shows the dispute was dormant. There is no evidence of any conferences or exchange of correspondence between the parties.

On December 1, however, there was another conference between the parties. With the dispute reactivated, conferences were held and correspondence was exchanged with frequency until the processes of the Railway Labor Act in such matters were invoked.

Until early this year, Terminal debated the legality of the October 22, 1948, letter as a proper "section 6" (Railway Labor Act) notice that the Brotherhoods wished to negotiate a wage increase. So that the dispute could be promptly resolved on its merits, however, Terminal on January 17, 1950, agreed to recognize the letter as proper notice.

THE ISSUE

The matter in controversy may be summarily stated. The Brotherhoods maintain that the operations of the Terminal Railroad Association of St. Louis are unique in that they involve a commingling of services which elsewhere in the railroad industry are performed by different crews of employees. Historically, the Terminal's engine crews have received wages somewhat higher than those paid by other carriers to engine crews in yard service, which is the bulk of

the service performed by Terminal's employees. The Brotherhoods assert that this long-continued disparity in wage rates between Terminal's men and the yard service crews of other railroads reflected recognition that extra compensation should be paid the former because they can be and are assigned indiscriminately to several classes and types of service during a single working day. In 1948, however, a national wage agreement was entered into between virtually every United States railroad (including Terminal) and the five organizations representing "operating employees," providing for general wage increases. One product of this agreement was a higher wage for engine crews in yard service. As a consequence of this national movement of wage rates, the previously existing disparity favorable to Terminal's engine crews has been wiped out. This, the Brotherhoods argue, is an inequitable and inadvertant destruction of a pay advantage which has not only been long established, but is directly related to the value of the work being performed today. Their present demand is for a restoration of the preexisting wage differential, which they compute as having been approximately 56 cents.

The Terminal, on the other hand, has contended that no inequity exists. In its view, its engine crews have received precisely the general increase contemplated by the national wage agreement of 1948. The fact that employees of other carriers, engaged in general yard service, may have received a somewhat larger increase is, in the Terminal's view of the facts, of no significance. The general yard service rate of pay was raised, in partial response to the brotherhoods' demand in the national wage conference, to the level at which Terminal's wages had already been fixed. This, it is maintained involved acceptance of the brotherhoods' opinion that yard service rates were inequitably low. If Terminal's wages were now to be increased in an amount equal to the historical disparity, the carrier believes that the ancient inequity would be restored despite the professed effort in 1948 to eliminate it.

Fair consideration of these opposing positions requires description of the Terminal Railroad Association, its methods of operation, and the development of its wage rate structure.

DESCRIPTION OF THE CARRIER AND ITS WAGE RATE STRUCTURE

The Terminal Railroad Association of St. Louis is wholly owned by 15 trunk line railroads. Its unified passenger and terminal operations in the Greater St. Louis-East St. Louis area include switching, transfer, and other services for a total of 24 different railroads and 2 barge lines. These services involve not only the movement of freight cars within its own yards, but the interchange of freight cars

with the various railroads with which it has connections. Moreover, it conducts switching operations at various industrial plants and in its own freight-classification yards, and in this connection makes up and breaks up trains.

The St. Louis Union Station and the connected coach yards are owned and operated by Terminal, which does all passenger switching for every trunk-line railroad whose rails extend to St. Louis. Most of the passenger trains which operate over Terminal's facilities are handled by the crews of the trunk line concerned. To some extent, however, Terminal's engine crews move passenger trains between the St. Louis Union Station and the Relay Depot in East St. Louis, where they are taken over by the regular trunk-line crews. Terminal's crews, in addition, handle all the empty passenger equipment of its using lines between the Union Station and its various coach yards, where the trains are broken up and assembled by Terminal engine and train crews.

In addition to these freight and passenger operations, Terminal also operates several shop trains, of a nonrevenue character, which are used daily to transport its employees to and from their work on Terminal's properties in Missouri and Illinois. Terminal's engine crews are also used to move work or wreck trains and to push trains out of yards or over bridges.

An average of slightly over 225 engine crews has been employed daily by Terminal during the past 5 years. It is estimated by Terminal's officials that approximately 30 percent of the total time of all of Terminal's engine crews is spent in transfer service, that is, the movement of freight cars between its yards and the trunk-line yards; in running lines between its own yards; and the interchange of freight cars with the various railroads with which it has connections. The great preponderance of the remaining time of engine crews is spent in yard switching service, though, as noted, some of the crews are engaged in moving "live" passenger trains, while others are from time to time engaged in work, wreck, or other ancillary services.

By virtue of agreements with the brotherhoods concerned in the present case, Terminal has been free to use its engine crews at will for one or more of the types of services above described. That is to say, the service performed by the crews is of an intermingled and unspecialized character, changing from one to another type of activity without payment of penalty or compensation in excess of the normal day's wage.

The first recorded collective bargaining agreements between Terminal and its engineers and firemen were signed in 1907. So far as

appears, the wage rates then prescribed were negotiated entirely locally, without reference to the rate paid by other carriers to their yard switching crews. In point of fact, however, Terminal's hourly wage schedules were slightly higher than those of most railroads in the St. Louis metropolitan area—2½ cents or 0.069 percent in the case of the engineers, and 1½ cents or 0.067 percent in the case of the firemen.

New wage agreements in 1910 and 1911 led to no substantial change in the situation. The first significant development occurred in 1915. In that year arbitration proceedings (to which a number of western railroads including Terminal were parties) led to the entry of a wage award fixing rates of daily pay for yard switching service on the following basis:

	<i>Engineers</i>	<i>Firemen</i>
Engines weighing less than 140,000 pounds on drivers----	\$4. 25	\$2. 70
Engines weighing 140,000 pounds and over on drivers----	\$4. 40	\$2. 75

The Arbitration Board added, however, that "in Belt Line or Transfer Service the grade of work is clearly different from ordinary switching service, and may, therefore, properly be entitled to higher rate of pay." Because variant circumstances made a uniform award impracticable, the issue of rates of pay for belt line or transfer service was remanded to the parties for settlement locally.

In the ensuing bargaining between Terminal and the brotherhoods, all parties recognized that Terminal engaged in both yard switching and transfer service. Because the work of Terminal's engine crews was a composite of both types of service and because it would be administratively cumbersome to record the exact times in which the various services were performed, it was finally agreed, effective October 15, 1915, that the pay for all of Terminal's engine crews would thenceforth be at the flat daily rate of \$4.75 for engineers and \$3 for firemen—without reference to the weight of the engine or the sort of work actually performed on any given day. At this time, therefore, Terminal's engine crews were paid, roughly, 10 percent more than the rates which the Arbitration Board had prescribed as proper for ordinary yard switching service in the St. Louis area. Terminal's agreements with the brotherhoods recited that all engines, regardless of assignment, were "to be considered in Transfer Service."

The next movement of Terminal's wage occurred during World War I, by order of the Director General of Railroads. His General Order No. 27 established a schedule of dollar-and-cents increases which lifted Terminal's rates to \$5.83 for engineers and \$4.23 for firemen. These changes, however, had no reference to the classification of service in which the affected employees were engaged.

In early 1919, the Director General supplemented his General Order No. 27 by providing specified wages for particularly identified classes of service. Thus, he directed that for "Yard Service" (which was not defined) the engineer's and firemen's rate should vary according to the weight of the engine on drivers. The rates so prescribed for engines of the type operated by Terminal ranged from \$5.60 to \$5.92 for engineers, and \$4.16 to \$4.40 for firemen. If this schedule of rates had been made applicable to Terminal's employees, many of them would have received no increase whatsoever, while others would have obtained only negligible raises.

At this same time, however, the Director General additionally prescribed new rates of pay for engineers and firemen in "through and irregular freight, pusher, helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snow plow, circus trains, trains established for the exclusive purpose of handling milk and all other unclassified service." For the types of engines then in use by Terminal, the engineers' rates in these classes of service ranged from \$6.08 to \$6.80, while the firemen's rates ran from \$4.24 to \$4.96.

Controversy immediately arose as to whether Terminal's engine crews were to receive the yard service rate of pay or the rate for "unclassified service," which was compensated at the through freight rate. The controversy was resolved by a ruling of the United States Railroad Administration that Terminal's engineers and firemen were to be deemed in unclassified service for purposes of applying the supplement to General Order No. 27.

From that date until the present time Terminal has paid its engine crews at the rates prescribed by administrative order or contract for through freight service. Transfer service, unclassified service, and through freight service have at all times since 1919 carried the same wage rate; and until 1948 this rate was consistently higher than the rate which was fixed for engine crews in ordinary yard switching service. This was reflected in contracts between the brotherhoods and Terminal negotiated in 1920, 1925, and 1935. The last of these contracts summarized the parties' agreement by providing that "All engines will be considered in unclassified service and the following through freight rates will apply: * * *."

Between 1935 and 1948 Terminal's engineers and firemen, along with those of other carriers, received a number of further wage increases. In each instance Terminal's wages, after the increases, were equal to the rates of pay for transfer crews and through freight crews on the trunk lines.

In 1948 a critically important development occurred. In that year the employees of all but a few American railroads joined in a comprehensive wage demand. Direct negotiations having failed and a crisis having arisen in the Nation's transportation facilities, a Presidential Emergency Board was appointed to investigate and report. One of the brotherhood's contention before that Board was that the wages for engine crews in yard service were inequitably low. A request was made that the wages for that service should be placed on a parity with the pay for local freight service. The Emergency Board, while unwilling to endorse this request in full, acknowledged that the yard service rate was indeed too low; it recommended, accordingly, that the wage for yard switching should be brought up to and made equal with the wage for through freight. By contracts executed on August 11, 1948, the carriers (including Terminal) and the brotherhoods agreed on a new wage scale, providing general increases for all engine crews and at the same time eliminating the discrepancy between the wages for these two categories of work. When this contract was put into effect, it at once became apparent that yard switching crews on the trunk lines had received a larger wage increase than had Terminal's engine crews, and that Terminal's men, despite the diversity of their assignments, no longer earned an amount larger than that paid for ordinary switching.

The brotherhoods now assert that the work performed on the Terminal property has always in the past been recognized, and in the future should continue to be recognized, to be worth more than yard switching pay. They argue that a 56 cents per day adjustment will roughly restore a relationship which has present validity as well as historical precedent. The carrier, on the other hand, argues with equal intensity and conviction that for 35 years Terminal's men have been paid the same rate as that paid for transfer or unclassified service. They are paid that same rate today. Therefore, in Terminal's estimate of the facts, they are entitled to no further increments, for they remain now, as formerly, on a parity with engine crews handling through freight. The fact that yard switching crews have been raised to that same level does not, in Terminal's opinion, have any bearing upon the value to be attached to the intermingled services which the Terminal engine crews perform.

THE BOARD'S ANALYSIS OF THE CASE

It is true, as Terminal argues, that the engine crews involved in this controversy have for many years been paid at the through freight rate. This is not, however, because they were engaged in through freight service. Nor were they exclusively performing work which

could be described as unclassified or transfer service. The fact of the matter is that they were in service of a commingled and heterogeneous character, ranging quite literally from passenger transportation (road service) to switching (yard service), from freight movement (transfer service) to work trains (unclassified service). For ease of reference the parties agreed that all of Terminal's engines should be deemed to be devoted to unclassified service. But clearly this was merely a means of indicating the rate of pay the engine crews were to receive, rather than a description of the service actually being performed.

In agreeing through all these years that Terminal's engine crews should be paid as though they were engaged in unclassified service, the parties were expressing a judgment that the work done was of a different and higher caliber than that of yard switching crews. More than that, their agreements reflected a practical railroading judgment that the intermingling of services on Terminal's properties would be an administrative impossibility if each assignment of a crew were to involve the application of a different wage rate, or the payment of penalties or arbitrations of the types conventionally found in railway labor contracts. In effect, the parties resolved that Terminal would not be bound by various restrictive rules and pay practices which are widely (though not universally) enforced on American railroads; and in return for the managerial flexibility thus allowed, the engine crews were to enjoy a pay scale above that which applied to yard switching, even though some two-thirds of their work was of that description.

In our opinion, there is no truly functional relation between Terminal's wage structure and the through freight rate. The latter simply afforded a fixed point of reference to which Terminal's pay scale was permitted to rise at a time when the yard switching rates were lower. The true relationship has at all times been between Terminal's rates and the yard rates. From the very inception of their bargaining relationship, more than four decades ago, these parties have explicitly or impliedly agreed that the Terminal crews were entitled to what was in essence a premium payment above yard switching wages. The justification for some such premium is as clear today as it was in the years gone by. It is immaterial that all parties agreed in 1948 to equalize the pay for yard switching and through freight (or transfer, or unclassified) service. To say that ordinary yard switching is worth as much as transfer service or through freight hauling is not to say that it is worth as much as the uniquely diversified and intermingled service which Terminal's engine crews perform.

It has been vigorously argued, however, that to restore a premium in this instance would have the effect of unsettling the railroad wage structure which was so laboriously erected on a uniform, national basis in 1948. We do not so regard the matter. Indeed, if this Board believed in the slightest degree that a decision in the present case would have a precedential impact upon the national wage scale now in force, the Board would unhesitatingly deny the increase the Brotherhoods are seeking. In our judgment, however, the facts of this case are so unique that the consequences of our conclusion can only be strictly local. This follows from both the kind and the distinctive frequency of the intermingling of service on Terminal's properties. This Board has heard extensive testimony concerning the work done in the yards of numerous trunk lines. While transfer service occurs in some of them, and while it is true that in very limited circumstances some of them have utilized yard crews for diverse activities, there is no doubt whatsoever that Terminal's organization and operations are unlike all the others. On Terminal as distinguished from the trunk line railroads, the range of work done, the continual shifting of crews from one service to another, the regular commingling of passenger and freight train movements by engine crews ordinarily engaged in switching, the extent of the interchange among the using trunk lines—all these are so marked as to warrant a conclusion that they truly differ from other Carriers' methods in kind rather than merely in degree. Furthermore, by virtue of a system-wide seniority plan, initially requested by the Brotherhoods but highly advantageous to the management, Terminal is relatively free from the rigidities which are sometimes caused by seniority provisions of types more conventionally found on American railroads. If the distinguishing facts were less clear than we find them to be, our conclusion concerning Terminal's uniqueness would be reinforced by the brotherhoods' repeated insistence that their demands in the present case could have no possible application to other properties.

We find, accordingly, that so long as Terminal is free from restrictive rules which would forestall its flexible use of engine crews, its wage rates should reflect the fact that its men are in both freight and passenger service, yard and (to a limited extent) road service, unclassified and switching service. The exceptional variety of responsibilities imposed on Terminal's crews warrants recognition in the applicable pay scale.

We therefore turn to a consideration of the adjustment which is appropriate in the light of all circumstances disclosed.

THE COMPUTATION OF WAGE ADJUSTMENTS

A comparison of Terminal's wage rates with those of other carriers, before and after the national wage agreements of August 11, 1948, can best be presented in summary form as follows:

Weights on drivers in thousands of pounds	Number of terminal's engines of each weight	Pre-1948 wage for engineers		Pre-1948 wage for firemen		Post-1948 wage for both terminal and yard switching engine crews	
		Terminal	Yard service	Terminal	Yard service	Engineers	Firemen
170-200.....	13	\$11.36	\$10.80	\$9.38	\$9.21	\$12.60	\$10.62
200-250.....	81	11.53	10.97	9.55	9.33	12.77	10.79
250-300.....	40	11.68	10.97	9.72	9.33	12.92	10.96
450-500.....	3	12.46	11.31	10.39	9.65	13.70	11.63

Examination of this table makes it apparent that until 1948 Terminal's engine crews, on each weight engine then operated, received a higher wage than yard switching crews using engines of the same weights on other railroads. The disparity ranged from as much as \$1.15 per day in the case of engineers on the 450,000-500,000 pound locomotives to as little as \$0.17 per day in the case of firemen on the 170,000-200,000 pound locomotives. The weighted average of the disparity, combining the firemen and engineers and distributing the total working force proportionately among the locomotives in actual service, comes to approximately 45 cents per day rather than the 56 cents for which the brotherhoods have contended in this proceeding.

RECOMMENDATION

The Board finds and recommends that the daily wage paid each engineer and fireman in the employ of Terminal Railroad Association of St. Louis should be increased in the amount of 45 cents, and that the adjustment resulting from this increase should be made retroactive to December 1, 1949.

Respectfully submitted.

JOSEPH L. MILLER, *Chairman.*
A. LANGLEY COFFEY, *Member.*
WALTER GELLHORN, *Member.*