Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED JULY 6, 1950, BY EXECUTIVE ORDER 10140
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT

To investigate an unadjusted dispute between The Pullman Company, a carrier, and certain of its employees represented by the Order of Railway Conductors

(NMB No. A–3300)

WASHINGTON, D. C.
NOVEMBER 3, 1950

(No. 89)

LETTER OF TRANSMITTAL

WASHINGTON, D. C., *November 3, 1950.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board created by your Executive Order 10140 of July 6, 1950, pursuant to the provisions of section 10 of the Railway Labor Act, and appointed by you on July 11, 1950, to investigate an unadjusted dispute between the Pullman Co., a carrier, and certain of its employees represented by the Order of Railway Conductors, has the honor to submit herewith the report of its investigation.

Respectfully submitted.

ERNEST M. TIPTON, *Chairman.*
I. L. SHARFMAN, *Member.*
ANGUS MUNRO, *Member.*

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REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD, CREATED JULY 6, 1950, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, TO INVESTIGATE AN UNADJUSTED DISPUTE BETWEEN THE PULLMAN CO. AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE ORDER OF RAILWAY CONDUCTORS

I. INTRODUCTION

An unadjusted dispute between the Pullman Co. (hereafter referred to as the Company) and certain of its employees represented by the Order of Railway Conductors (hereafter referred to as the Organization) resulted in the creation of this Emergency Board (No. 89), on July 6, 1950, through the following Executive Order of the President:

> Whereas a dispute exists between the Pullman Co., a carrier, and certain of its employees represented by the Order of Railway Conductors, 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 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 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 30 days from the date of this order.
>
> As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the Pullman Co. or its employees in the conditions out of which the said dispute arose.

On July 11, 1950, the President appointed Judge Ernest M. Tipton of the Supreme Court of Missouri, Prof. I. L. Sharfman of the Department of Economics of the University of Michigan, and Angus Munro, of Dallas, Tex., to serve as members of the Emergency Board.

The Board first met on July 17, 1950, in the United States Customs Courtroom, 610 South Canal Street, Chicago, Ill., for organizational purposes. It selected Judge Tipton as its chairman, and it confirmed

the appointment of Johnston & King, court reporters of Washington, D. C., as its reporter.

On behalf of the Company the following appearances were entered: Howard Neitzert, attorney, 11 South LaSalle Street, Chicago, Ill., and Donals S. Dugan, attorney, Merchandise Mart, Chicago, Ill.

On behalf of the Organization the following appearances were entered: H. E. Wilmarth, attorney, Merchants National Bank Building, Cedar Rapids, Iowa; A. G. Wise, executive vice president, Order of Railway Conductors, and general chairman, Pullman system; and J. R. Deckard, W. C. Kennamer, C. E. Graves, A. W. Hyatt, and R. M. Sheppard, Pullman conductors.

Public hearings (all of which were held in the place above set forth) extended for a 6-week period—from July 17 to August 25, 1950. Toward the end of the hearing period the Board held informal conferences with representatives of the parties, in an earnest effort to bring about a settlement of the dispute, but its mediatory services proved of no avail. Upon conclusion of the hearings the Board proceeded to decide upon its findings and recommendations on the numerous issues involved and to prepare this report.

The record of the proceeding consists of 30 volumes of transcript, comprising 5,253 pages, and 123 exhibits. Both parties availed themselves of the opportunity for presenting oral argument, but because of the extensiveness and complicated character of the dispute no written briefs were submitted. The entire record is made part of this report, and the findings and recommendations of the Board are based upon the entire record.

By stipulation of the parties, and with the approval of the President, the time limit for the submission of this report was extended to November 3, 1950.

The Board desires to record its appreciation of the uniform courtesy and helpfulness of both the Company and the Organization throughout the course of this hard-fought proceeding.

II. DEVELOPMENT OF THE DISPUTE

A detailed and fully documented history of the dispute is set forth in carrier exhibit V, entitled "Developments preceding reference of the 1949–50 Pullman conductors, rules case to the Emergency Board," and a condensed statement appears in employee exhibit 3A, which is the strike ballot submitted by the Organization, under date of March 18, 1950, to all its officers and members. It will suffice for our purposes to deal with the development of the dispute in summary fashion.

On September 19, 1949, more than a year ago, the Organization served notice on the Company of the Organization's desire to revise

the existing agreement (effective September 1, 1945; revised, effective January 1, 1948) and attached a copy of its proposed rules. On September 26, 1949, the Company advised the Organization that the Company also desired to make changes in the agreement, and that it would submit its counterproposals at the initial conference, to be held on October 14, 1949. Both sets of proposals were discussed by representatives of the parties on October 14, 17, 18, 20, and 21, 1949, and after a recess extending to November 17, the negotiations of the parties continued "almost daily, except Saturdays and Sundays," until December 21, 1949. During this period an agreement was reached on "32 non-money rules."

This agreement of December 21, 1949, was incorporated in the following joint Memorandum:

The following rules, a copy of each of which is attached hereto, were agreed upon in conference on the property starting October 14, 1949, and concluding December 21, 1949:

Preamble to the agreement, except for the effective date.

RULE 2. *Conductors reentering service.*

Organization's RULE 12, Company's RULE 15. *Lay-overs in regular assignment.*

Organization's RULE 15, Company's RULE 17. *Operation of overnight round-trip runs.*

Organization's RULE 16, Company's RULE 19. *Prorating relief.*

Organization's RULE 23, Company's RULE 63. *Pay for training student conductors.*

Organization's RULE 25, Company's RULE 26. *Posting seniority rosters.*

Organization's RULE 29, Company's RULE 30. *Conductors elected or appointed to official positions.*

Organization's RULE 30, Company's RULE 60. *Return to work of conductors retired under total disability.*

RULE 31. *Bulletining of runs.*

RULE 32. *Resigning from regular assignments.*

RULE 33. *Rebulletining changed runs.*

RULE 34. *Bulletining relief work.*

RULE 35. *Posting of bulletined assignments.*

RULE 36. *Continuance in regular assignment.*

RULE 37. *Displacement rights of conductors.*

RULE 39. *Regulating the number of conductors on the extra board.*

RULE 40. *Reducing and increasing forces.*

RULE 41. *Permanent retransfers to another district.*

RULE 42. *Temporary transfers.*

Organization's RULE 43, Company's RULE 44. *Runs transferred to another district in the same city.*

Organization's RULE 44, Company's RULE 45. *New service acquired by company.*

Organization's RULE 49, Company's RULE 51. *Application and decision in writing.*

Organization's RULE 50, Company's RULE 52. *Representation at hearings.*

Organization's RULE 52, Company's RULE 54. *Period of probationary employment.*

Organization's RULE 53, Company's RULE 62. *Instruction period.*

Organization's RULE 54, Company's RULE 55. *Leaves of absence.*

Organization's RULE 55, Company's RULE 56. *Absence without permission.*

Organization's RULE 56, Company's RULE 57. *Notification of disallowed time.*

Organization's RULE 58, Company's RULE 59. *Posting operation of conductors' form.*

Organization's RULE 59. *Office space for conductors.*

Organization's RULE 63. *The jurisdiction of districts and agencies.*

RULE 65. *Granting conferences and handling disputes.*

NOTE.—Where only one rule number is specified, it means that the Organization and the Company used the same number.

The above-listed rules will become effective simultaneously with the remainder of the rules now in dispute when the latter are agreed upon and made effective.

Since further direct negotiation appeared to be futile, the parties proceeded under rule 66 of the existing agreement, and on December 27, 1949, filed a joint application with the National Mediation Board invoking its services to assist in effecting a settlement of the dispute. Mediation, which was started in Chicago on January 16 and continued until March 13, 1950, failed to bring about agreement. On the latter date, the National Mediation Board, in conformity with the provisions of the Railway Labor Act, requested and urged that the parties enter into an agreement to submit the controversy to arbitration. The Company agreed to arbitrate; the Organization declined. The strike ballot of March 18 followed, and on the basis of the vote of the men a strike of all Pullman sleeping and parlor car conductors was set for April 17, 1950. On April 10 the National Mediation Board requested that the strike be postponed and that representatives of the parties meet with members of the Board in Washington on April 19. The strike date was then canceled, pending the outcome of the Washington conferences. While some progress was made at these conferences in the adjustment of certain unsettled claims which had been included in the strike ballot of March 18, the mediation efforts in the principal dispute again proved to be fruitless. Finally, the strike which had been originally set for April 17, and which had been postponed at the request of the National Mediation Board, was reset for July 11, 1950. It was this threatened interruption of the Pullman service which resulted in the creation of this Emergency Board.

III. ISSUES BEFORE THE BOARD

The Organization's strike ballot stated that it was found impossible to reach agreement on 34 rules proposed by the Organization and on 35 rules proposed by the Company. Most of these rules deal with the same subject matter. In a few instances the elimination of existing rules is proposed; in the vast majority of instances changes in existing rules are proposed; in some instances entirely new rules are proposed;

and in many instances one of the parties merely opposes rules proposed by the other and supports the continuance of existing rules. The rules of the present agreement are so closely interrelated in various spheres that not only are certain of the existing rules directly or primarily involved in the proposals of the parties, but a considerable number of other rules are incidentally involved. Furthermore, a single rule or proposed rule may involve a number of issues, both because each rule itself embraces more than one matter in dispute, and because these matters are further augmented by the establishment of special understandings, not merely by way of clarification, through numerous questions and answers, examples, and illustrations. A presentation of the issues before the Board in terms of existing rules, as numbered, and of proposed rules, as numbered, would be an exceedingly complicated undertaking and would result in almost unavoidable confusion.

In employee exhibit 1, there is set forth in parallel columns each of the present rules, each of the corresponding or new rules proposed by the Organization, and each of the corresponding or new rules proposed by the Company. The Organization presented its case by rules, in terms of elimination of, change in, or addition to, the present rules. In Carrier exhibit A, the Company outlined the same material in terms of issues, but referred by number to the present rules, the Organization's proposed rules, and the Company's proposed rules involved in each issue. The Company presented its case by issues, with 69 exhibits covering the 69 listed issues. Both parties confirmed the accuracy of these guiding materials contained in employee exhibit 1 and in Carrier exhibit A. Since, however, the present rules and those proposed by each of the parties are differently numbered, this report, in order to avoid confusion, will deal with each of the 69 numbered issues, appropriately grouped in the interest of clarity and reasonable brevity. In the preliminary listing of the 69 issues, reference will be included, by number, to the present rules primarily involved, to the Organization's proposed rules, and to the Company's proposed rules; but in the subsequent treatment of each of these issues, all references to rule numbers, unless otherwise expressly indicated, will be to the rules of the present agreement.

As a means of indicating the character and extent of the dispute as a whole, the 69 issues are listed below in the order of their presentation, together with the present and proposed rules primarily involved in each issue:

Issue No.	Subject of issue	Present rule	Organization's proposed rule	Company's proposed rule
1	Basic month	4 (a)	4 (a)	4 (a).
2	Basis of computing hourly rate increases or reductions.	None	None	1 (c).
3	Application of uniform release time.	6, 13, memo of 5/16/49	6, 9 (a), 13, 19 (Q-5, A-5), memo of 5/16/49.	6, 13, 20.
4	Application of reporting and release time to deadhead trips.	13	7, 13	13.
5	Pay for deadheading	7, 23	7, 20	2, 23.
6	Combining deadhead trips completed within a 24-hour period.	7 (Q-1, A-1)	7	7.
7	Pay for extended special tours.	8, memo of 4/1/48	6, 22	8.
8	Duplication of station duty and held-for-service payments.	9, 10 (Q-1, A-1)	8, 9 (Q-2, A-2)	9, 10 (Q-1, A-1).
9	Computation of pay for witness duty.	11	10, 61	11.
10	Release of less than 1 hour	14	Eliminates	14.
11	Computation of pay for late train arrivals in regular assignment.	20	17 (a)	20.
12	Proration	20, 21	17, 18	20, 21.
13	Computation of pay for relief days not earned.	19, 21	16, 18	19, 21.
14	Away-from-home expense allowance.	None	61	None.
15	Margin of nonpunitive overtime.	20, 21, 22	17, 18, 19	20, 21, 22.
16	Basis of computing punitive overtime pay in part-time regular assignments.	21	18	21.
17	Minimum payments under station duty rule.	10 (a), (b), (e), (f), (g), (Q-3, A-3), (Q-5, A-5).	9 (a), (d), (e), (Q-3, A-3).	10 (a), (b), (e), (f), (g), (Q-3, A-3), (Q-5, A-5).
18	Minimum payments for interrupted receiving work.	10 (a), (b)	9 (a), (Q-3, A-3)	10 (a), (b), (Q-3, A-3).
19	Minimum payments on road trips.	23, memo of 8/8/45	20 (a), 38 (b)	23.
20	Held-for-service pay at home terminal account interruptions in scheduled service.	9 (Q-1, A-1) (Q-3, A-3) (Q-4, A-4) (Q-5, A-5) (Q-9, A-9).	8 (Q-1, A-1) (Q-3, A-3) (Q-4, A-4) (Q-5, A-5) (Q-6, A-6) (Q-9, A-9).	9 (L).
21	Held-for-service pay at home terminal after return on train other than that specified in regular assignment.	9 (Q-3, A-3), (Q-4, A-4).	8 (Q-1, A-1) (Q-3, A-3) (Q-4, A-4) (Q-5, A-5) (Q-6, A-6).	
22	Pay for held-for-service on consecutive "double" trips.	9 (a), (Q-7, A-7)	8 (a), (Q-8, A-8)	9 (a), (Q-4, A-4).
23	Definition of conductors' work.	None	Scope	None.
24	Guarding cars	do	do	Do.

Issue No.	Subject of issue	Present rule	Organization's proposed rule	Company's proposed rule
25	Handling Western Union telegrams.	None	24 (Q-9, A-9)	None.
26	Lifting railroad transportation.	do	9 (b), 24, (Q-7, A-7)	Do.
27	Coach solicitation and refunds.	do	24 (Q-8, A-8)	Do.
28	Days off duty on runs requiring less than three conductors.	16, 18	14 (b), (Q-2, A-2)	16.
29	Assignment of conductors to extra sections of trains carrying regular equipment.	22 (Q-2, A-2)	19 (Q-2, A-2)	22 (Q-2, A-2), (Q-3, A-3).
30	Inclusion of railroad operated cars in applying 2-car rule.	64 (a), (b), (c)	24 (e), (Q-8, A-8)	64 (a), (b), (c), (g).
31	Collection of tickets and cash fares at "passing" and "outlying" points.	64 (d)	24 (g)	64 (d).
32	Use of foreign district conductors.	38 (b), (e), (Q-1, A-1)	38 (b), (d), (Q-2, A-2)	38 (g), (i), (j), (Q-1, A-1).
33	New conductor runs	46, memo of 8/8/45	45	46.
34	Reallocation and division of runs.	47	46	47.
35	Districts discontinued	43	Eliminates	43.
36	Pooling of runs	34, 58	34, 57	34, 58.
37	Car limitation	None	60	None.
38	Limitation on receiving service.	10 (c)	9 (b)	10 (c).
39	Nonrevenue and railroad per diem cars.	64 (a)	24 (a), (Q-6, A-6)	64 (a), (g).
40	Emergency lending of conductors.	None	38 (c)	None.
41	Consolidation and separation of seniority rosters.	27, 28	26, 27	27, 28.
42	Definition of porter-in-charge work; porter-in-charge roster.	None	24 (Q-5, A-5)	None.
43	Option of selecting train for deadhead return to home station.	do	8 (Q-1, A-1)	Do.
44	Conductor excused at away-from-home station.	do	8 (Q-10, A-10), (Q-11, A-11).	9 (Q-6, A-6).
45	Scheduling sleep periods	13	22	13.
46	Pay for sleep periods	13	22	13.
47	Pyramided pay for loss of sleep.	13	22	13.
48	Freezing of present conductor operations.	64 (b), memo of 8/8/45	24 (d)	64 (b).
49	Conductors on 2-car movements of less than 5 hours.	64 (c), (Q-3, A-3), (Q-4, A-4).	24 (e), (f), (Q-3, A-3), (Q-4, A-4).	64 (c), (e), (Q-3, A-3).
50	Assignment of conductors to cars parked at terminals or en route.	64 (a), (e)	24 (g), (i)	64 (f), (Q-4, A-4), (Q-5, A-5).
51	Availability and assignment of extra conductors.	38 (a), (c), (f), (Q-9, A-9), (Q-10, A-10), memo 9/8/47.	38 (a), (c), (e), (f), (Q-8, A-8), (Q-10, A-10).	38 (b), (c), (d), (e), (f), (k).

Issue No.	Subject of issue	Present rule	Organization's proposed rule	Company's proposed rule
52	Priority of assignments of extra conductors.	Memo of 9/8/47	38 (c)	38 (c).
53	Assignment of extra conductors to temporary vacancies at outlying points.	38	38 (Q-12, A-12)	38 (a).
54	Availability of unassigned extra conductors after signout period.	38 (Q-9, A-9)	38 (c), (e), (f)	38 (d), (f), (k).
55	Method of computing assessed hours.	38 (Q-10, A-10)	38 (Q-8, A-8)	38 (k).
56	Separate posting of credited and assessed hours.	38 (f)	38 (f)	38 (k).
57	Depositions and sworn statements.	None	48 (a)	None.
58	Preview of statements to be used in hearings.	do	48 (a)	Do.
59	Attendance of witnesses at hearings.	do	48 (a)	Do.
60	Requirement for hearing in case of "caution," "reprimand," or "warning."	49	48 (b)	48.
61	Time limits on grievances	49, 50	48 (a), (b), (c), (d), (f), (g).	48, 49.
62	Time limit on claims	49	48 (b), (d), (f), (g)	50.
63	Paying conductors withheld from service pending investigation.	None	8 (a), (Q-2, A-2)	9 (Q-7, A-7).
64	Compensation for wage loss.	53	51	53.
65	Free medical service	None	8 (Q-10, A-10), (Q-11, A-11).	None.
66	Accounting for company funds.	do	13	Do.
67	Abrogation of previous oral understandings.	do	66	Do.
68	Joint application for mediation.	66	66	66.
69	Re-execution of specified memoranda of understanding.	5 memos listed	66	Re-execute the memos listed.

After this long listing of the issues, a brief comment is necessary concerning the dispute as a whole. Both parties concede that the agreement between this carrier and its conductors is one of the most elaborate, complicated, and technical contracts in the entire field of railroad labor relations; and it is clear that the numerous changes proposed, whether by the Company or the Organization, are calculated in the aggregate, not to simplify the working rules, but to render them even more complex and difficult to apply. It is doubtful whether any considerable number of persons even in the Company or in the Organization, aside from the two principal witnesses (A. G.

Wise and F. J. Boeckelman), understand the full import of the numerous existing and proposed rules. In these circumstances it is unquestionably of vital interest to both parties that they work out such rules between themselves. From the beginning of the hearings, therefore, it was obvious that, aside from a small number of major issues, this is not the type of dispute that should be submitted for findings and recommendations to an emergency board necessarily composed of persons outside the industry and without long experience in the actual application of such intricate rules. Hence it was made clear to the parties in the course of the hearings that this Board would not undertake the impossible task of writing for them a virtually complete agreement of this extensive and complicated character. Furthermore, a careful study of the record indicates that in the case of many highly technical rules the implications are frequently so obscure and far-reaching that even such merit as may be found in certain proposals or counter proposals must be given effect, for the benefit of the parties themselves, only through the processes of collective bargaining. That all 69 issues were in fact submitted to this Board (without heed to the Board's suggestion that at least some of them be withdrawn) is believed to evidence a definitely unhealthy aspect of labor relations between the Company and the Organization; but in conformity with its mandate from the President, and on the basis of the record as developed in this proceeding, the Board will report its findings and recommendations on each of the 69 issues.

IV. COST ASPECTS OF THE DEMANDS

Before we enter upon an examination of the specific issues, it will be helpful to note briefly some of the cost aspects of the demands of the Organization.

The dispute was presented to the Board by both parties as a rules case. This approach was consistent with the entire development of the controversy. The original notice of September 19, 1949, which was served by the Organization upon the Company called for changes in rules governing working conditions; and the counterproposals submitted by the Company at the initial conference of October 14, 1949, likewise dealt with the working rules. It was natural, of course, that the Organization's demand that the number of hours constituting the basic month be reduced, together with the related demand that the margin of nonpunitive overtime be eliminated, should raise questions of wage-hour relationships, and should involve, if granted, additional costs to the Company, both through increased compensa-

tion to the presently utilized force of conductors and through the requirement of additional conductors. In point of fact, however, not merely these issues, but a very substantial proportion of all the rules proposed by the Organization involve extensive costs to the Company in both of these directions. Although the Organization insisted throughout that this is not a wage case, the effect of its proposals would be to increase wages by large amounts. While the basic monthly rates would not be changed, this result would nonetheless be accomplished, not only by reducing the hours constituting a basic month, but by increasing the number of hours for which the men are paid, by increasing their hourly rates, and by increasing the special allowances and arbitrary payments which supplement the wages received under the monthly and hourly rates. In addition, the proposals would so distribute the work as to require the employment for the same service, of a much larger number of men than are now used. In the aggregate, the Organization's proposals would result in an entirely unjustifiable and impracticable increase in the costs of operating the Pullman service.

The detailed estimates presented below appear fully to support this conclusion. The three tables set forth on an annual basis: (1) the cost in dollars and in men of each listed proposal separate and apart from all other proposals; (2) the cost in dollars and in men of the listed proposals in relation to each other and on a cumulative basis; and (3) the cost in dollars and in men of such of the listed proposals as are applicable to porters, if they were to be incorporated in the agreement between the Company and its porters.

Cost in dollars and men of the proposals, each proposal separate and apart from all other proposals, annual basis

Issue No.	Issue	Cost of each issue (dollars)			Cost of each issue—men (conductors)		
		Regular service	Extra service	Total cost	Regular service	Extra service	Total cost
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Basic month	352,604	78,240	430,844	77	17	94
3	Application of uniform release time	21,778	-------	21,778	-------	-------	-------
4	Application of reporting and release time to deadhead trips	-------	5,489	5,489	-------	-------	-------
5	Pay for deadheading	-------	28,947	28,947	-------	-------	-------
7	Pay for extended special tours	-------	14,406	14,406	-------	-------	-------
12	Pro-ration	-------	16,371	16,371	-------	-------	-------
14	Away-from-home expense allowance	1,263,577	121,586	1,385,163	-------	-------	-------
15	Margin of nonpunitive overtime	37,737	1,954	39,691	-------	-------	-------
16	Basis of computing punitive overtime pay in part-time regular assignments	6,296	-------	6,296	-------	-------	-------
17	Minimum payments under station duty rule	-------	54,446	54,446	-------	13	13
19	Minimum payments for road trips	248,130	46,045	294,175	53	10	63
24	Guarding cars	628,192	82,218	710,410	-------	-------	(1)
28	Days off duty on runs requiring less than three conductors	58,327	-------	58,327	13	-------	13
30	Inclusion of railroad operated cars in applying 2-car rule	177,302	3,943	181,245	[2] 47	1	48
31	Collection of tickets and cash-fares at "passing" and "outlying" points	65,334	5,786	71,120	15	1	16
37	Car limitation	267,566	275,010	542,576	58	64	122
38	Limitation on receiving service	-------	113,245	113,245	-------	26	26
46	Pay for sleep periods	1,048,508	70,771	1,119,279	227	15	241
47	Pyramided pay for loss of sleep	4,987	5,084	10,071	-------	-------	-------
53	Assignment of extra conductors to temporary vacancies between outlying points	-------	3,820	3,820	-------	1	1

[1] This issue increases porter cost only and would require 109 additional swing porters.

[2] While 47 additional conductors would be required under this issue there would be a saving of 2 swing porters.

Cost in dollars and men of the proposals of the organization, annual basis

Issue No.	Issue	Dollars				Men (conductors)			
		Cost of each issue			Cumulative cost	Cost of each issue			Cumulative cost
		Regular service	Extra service	Total cost		Regular service	Extra service	Total cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Basic month	352,604	78,240	430,844	430,844	77	17	94	94
3	Application of uniform release time	21,778	------	21,778	452,622	------	------	------	94
4	Application of reporting and release time to deadhead trips	------	5,881	5,881	458,503	------	------	------	94
5	Pay for deadheading	------	24,405	24,405	482,908	------	------	------	94
7	Pay for extended special tours	------	15,434	15,434	488,052	------	------	------	94
12	Pro-ration	------	16,371	16,371	504,423	------	------	------	94
14	Away from home expense allowance	1,263,577	121,586	1,385,163	1,889,586	------	------	------	94
15	Margin of nonpunitive overtime	40,113	2,411	42,524	1,932,110	------	------	------	94
16	Basis of computing punitive overtime pay in part-time regular assignments	6,745	------	6,745	1,938,855	------	------	------	94
17	Minimum payments under station duty rule	------	54,446	54,446	1,993,301	------	13	13	107
19	Minimum payments for road trips	248,130	46,045	294,175	2,287,476	53	10	63	170
24	Guarding cars	628,192	82,218	710,410	2,997,886	------	------	(1)	170
28	Days off duty on runs requiring less than three conductors	69,437	------	69,437	2,997,886	15	------	15	170
30	Inclusion of railroad operated cars in applying 2-car rule	193,350	4,224	197,574	3,195,460	[2] 50	1	51	221
31	Collection of tickets and cash fares at "Passing" and "Outlying" points	65,334	5,786	71,120	3,266,580	15	1	16	237
37	Car limitation	286,237	294,644	580,881	3,922,959	62	69	131	385
38	Limitation on receiving service	------	113,245	113,245	4,036,204	------	26	26	411
46	Pay for sleep periods	1,123,370	75,820	1,199,190	5,235,394	243	16	259	670
47	Pyramided pay for loss of sleep	5,340	5,449	10,789	5,246,183	------	------	------	670
53	Assignment of extra conductors to temporary vacancies between outlying points	------	3,820	3,820	5,250,003	------	1	1	671

[1] This issue increases porter cost only and would require 109 additional swing porters.

[2] While 50 additional conductors would be required under this issue there would be a saving of 2 swing porters.

Cost in dollars and men of the proposals if applied to the porters, annual basis

Issue No.	Issue	Dollars				Men			
		Cost of each issue			Cumulative cost	Cost of each issue			Cumulative cost
		Regular service	Extra service	Total cost		Regular service	Extra service	Total cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
4	Application of reporting and release time of deadhead trips	----------	18,436	18,436	18,436	------	------	------	------
5	Pay for deadheading	----------	76,501	76,501	94,937	------	------	------	------
7	Pay for extended special tours	----------	48,382	48,382	111,064	------	------	------	------
12	Proration	----------	51,320	51,320	162,384	------	------	------	------
14	Away-from-home expense allowance	5,344,931	514,309	5,859,240	6,021,624	------	------	------	------
15	Margin of nonpunitive overtime	125,741	7,559	133,300	6,154,924	------	------	------	------
16	Basis of computing punitive overtime in part-time regular assignments	21,145	--------	21,145	6,176,069	------	------	------	------
17	Minimum payments under station duty rule	----------	170,669	170,669	6,346,738	------	55	55	55
19	Minimum payments for road trips	738,600	144,335	882,935	7,229,673	224	42	266	321
28	Days off duty on runs requiring less than three porters	206,660	--------	206,660	7,229,673	63	------	63	321
46	Pay for sleep periods	3,343,379	225,422	3,568,801	10,798,474	1,028	67	1,095	1,416
47	Pyramided pay for loss of sleep	16,739	17,081	33,820	10,832,294	------	------	------	1,416
53	Assignment of extra porters to temporary vacancies between outlying points	----------	11,975	11,975	10,844,269	------	4	4	1,420

These estimates were not seriously questioned at the hearings, and they must be assumed to be approximately correct. Only 20 of the 69 issues are included in the estimates, but it became evident in the course of the proceeding that a considerable number of additional issues involve increased costs, although such costs do not lend themselves to being reduced to precise estimates with reasonable accuracy.

It will be noted, from the second of the three tables, that the total cost in dollars of the Organization's proposals in these 20 issues would amount to $5,250,003, requiring 671 additional conductors and 107 additional porters. In the year 1949 the total compensation paid to conductors amounted to $7,890,676, and together with payroll taxes on this amount totaled $8,349,137. If the 20 proposals involved in the estimates had been in effect in 1949, the total compensation would have amounted to $12,927,609—an increase of almost 55 percent. In the year 1949 the average number of conductors in the service of the Company was 1,836. If the 20 proposals involved in the estimates had been in effect in 1949, the number of conductors would have been 2,507—an increase of more than 30 percent—and 107 additional

porters would have had to be used in order to meet the Organization's proposal in issue No. 24 (guarding cars).

It will be noted, from the third table, that the total cost in dollars of the Organization's proposals in the 13 issues applicable to porters, if included in the porters' agreement with the Company, would amount to $10,844,269, requiring 1,420 additional porters (aside from the 107 additional porters incident to the conductors' case). These estimated porter costs, in both dollars and men, are more than double the estimated conductor costs, despite the fact that only 13 of the 20 conductor proposals are applicable to porters, because there are about 8,000 Pullman porters as against about 1,800 Pullman conductors. It is obvious, of course, that the porters as such are not involved in this dispute, and that there is no certainty that the granting of the conductor demands in the listed spheres would necessarily result in the submission and the granting of the same or even similar demands for the porters. Nevertheless, these estimates are significant, and their inclusion by the Company, along with their direct cost estimates, possesses a large measure of relevance and validity. The porters are the major group of employees of the Company who travel on the trains alongside the conductors. It would be very difficult, if not impossible, for the Company to differentiate between these two classes of employees in matters that are obviously of common concern to both groups. Whatever may be said about some of the more technical rule changes proposed by the Organization, with which it is unnecessary to deal at this point, there can be little question that at least in the matter of away-from-home expense allowances, which would involve a cost of $5,859,240 for the porters, or in the matter of pay for sleep periods, which would involve a cost of $3,602,621 for the porters, if in these two instances the same arrangements were made for the porters as are proposed for the conductors, the direct costs of the Organization's proposals in this dispute must be supplemented by very large additional costs to which the Company would undoubtedly have to be subject in connection with its porters.

The full significance of the direct and indirect costs involved in the Organization's demands will emerge only if we note, finally, some of the more important facts concerning the operations of the Company and its financial results. The complete story appears in Carrier exhibit C, entitled "History and prospects of the sleeping car industry," as supplemented by the testimony of the president of the Company (pp. 2033–2223 of the transcript of proceedings) and of its vice president and comptroller (Carrier exhibit G, entitled "Statistical data," and pp. 4801–4851 of the transcript of proceedings). If an effort were made to summarize all of this detailed material, the accuracy

of which was not seriously questioned at the hearings, this unavoidably long report would become impossibly voluminous. It will suffice for our purposes merely to call attention to some of the more important operating and financial considerations that are relevant to the matter of the costs of the Organization's proposals; and we shall confine ourselves so far as possible to the developments in these spheres since 1945, the year in which the last major revision of the agreement between the Company and the Organization was negotiated.

A few operating statistics will disclose the rapidly declining use of the Pullman service. In 1945, the average total number of the Company's employees (on a full-time basis) was 41,601. This number decreased to 36,982 in 1946, to 29,046 in 1947, to 23,724 in 1948, and to 22,286 in 1949. The average number of conductors, in 1945, was 2,761. This number decreased to 2,683 in 1946, to 2,134 in 1947, to 1,956 in 1948, and to 1,836 in 1949. These decreases in the number of all employees and of conductors were due, of course, to a decline in the number of revenue passengers carried, in the average number of cars operated, and in the number of car miles accomplished. In 1945, the revenue passengers numbered 31,484,132. This number decreased to 25,948,132 in 1946, to 21,012,493 in 1947, to 18,650,303 in 1948, and to 16,021,646 in 1949. In 1945, the average number of cars operated was 7,291. This number decreased to 6,636 in 1946, to 5,269 in 1947, to 5,083 in 1948, and to 4,700 in 1949. In 1945, the number of car miles accomplished was 1,346,583,539. This number decreased to 1,235,985,406 in 1946, to 937,644,579 in 1947, to 911,984,817 in 1948, and to 842,208,041 in 1949. These decreases in Pullman service naturally manifested themselves in declines in Pullman revenue, derived from space sold and from commissary. In 1945, this revenue amounted to $158,445,922. It decreased to $132,593,969 in 1946, to $113,851,408 in 1947, to $116,790,506 in 1948, and to $103,677,340 in 1949. Even if we discount in some measure the figures in all these directions for 1945, because of the war conditions that prevailed during most of that year, and even if, in addition, we similarly discount the figures for 1946, because of the demobilization demands of that year, it still remains clear that there has been a definite and very substantial decline in the use of Pullman service during the postwar period, and especially as compared with the year in which the present agreement became effective.

The causes of this decline are of varied character, but those which have undoubtedly exerted the greatest influence are the increases in railroad fares and Pullman charges, largely authorized by the Interstate Commerce Commission because of increased operating costs, and the pressures of competitive transport agencies. In addition to Pull-

man fare increases in 1936, in 1941, and in 1942, an over-all increase in Pullman sleeping car rates averaging approximately 18 percent became effective October 1, 1947, and an increase of 20 percent in Pullman parlor-car rates, as well as increases in the charges for certain higher priced room accommodations, became effective June 1, 1948. These Pullman increases, coupled with railroad passenger-fare increases, have raised the cost to the passenger traveling by rail and Pullman very sharply. For example: in 1941 the total one-way rail and Pullman fare of a passenger traveling by lower berth from Chicago to New York was $35.23; by the end of 1949 the expense to the passenger had risen to $55.93—an increase of 58 percent. The corresponding 1949 fares of competitive agencies were as follows: $19.84 by bus, $35.32 by rail coach, $40.25 by airline coach, and $50.72 by regular airline. Comparative fares between numerous other points could be cited which disclose a like competitive disadvantage to travel by rail and Pullman. Diversion of traffic to the airlines is particularly significant, since airline passengers are generally of the class that would use Pullman service if plane service were not available, and the extent of the diversion is evidenced in considerable measure by the changes in number of revenue passengers carried, respectively, by Pullman and by the airlines. Whereas, between 1945 and 1949, the number of Pullman passengers was decreased by almost 50 percent, the number of airline passengers was increased by almost 112 percent. In 1949 Pullman carried 90 percent of the number of passengers it had carried in 1937, whereas the airlines carried more than 14 times the number of passengers they had carried in 1937.

The financial results of Pullman operations have likewise been definitely unsatisfactory during the postwar period. In 1945, prior to the acquisition of the ownership of the Company by the railroads, Pullman realized a net income of $22,602,309 before railroad contract settlements, which amount was reduced to $8,831,788 after these settlements and payment of the Federal income tax. The effective date of the transfer of ownership of the Company to the railroads was January 1, 1946, and since that date operations have been conducted by the Company for the account of the railroads. In 1946, the Company incurred an operating deficit of $5,471,390, a loss on its net investment of 11.9 percent; in 1947, the deficit was $6,364,393, a loss of 18 percent; and in 1949, the deficit was $8,325,708, a loss of 22 percent. Only in the year 1948 was a net income realized by the Company prior to railroad settlements. The amount was $1,513,000, or 4.3 percent on its net investment. The average operating deficit for the 4-year period of 1946–49 was $4,622,022, or a loss of 14.9 percent on its net investment. Since the uniform service contract between the Com-

pany and the railroads provides that in case of deficit operations on the line of any rail carrier, that carrier must reimburse the Company for the deficit so incurred and provide, in addition, a 3-percent return on the depreciated value of the Pullman properties used in the operations of that railroad, and since, too, in the case of profit operations on the line of any rail carrier, the Company retains, besides the 3-percent guaranteed return, 25 percent of the profits realized, the Pullman Co. as such generally has a net income after railroad settlements and Federal income tax. For the 4-year period 1946–49 this net income averaged $725,344. It was the result, as compared with the average operating deficit for the same period of $4,662,022 noted above, of the subsidization of the Pullman service by the railroads.

And for the early months of 1950, there were still further declines on both the operating and the revenue side of the Pullman service. Taking 1946 as a base of 100, the average number of all employees of the Company decreased from an index of 60.3 in 1949 to one of 58 for the first 5 months of 1950; the average number of conductors decreased from an index of 68.4 in 1949 (1,836 conductors) to one of 63.4 (1,702 conductors) for the first 5 months of 1950; total payrolls decreased from an index of 80.1 in 1949 to one of 76.3 for the first 5 months of 1950; the number of cars operated decreased from an index of 70.8 in 1949 to one of 69.9 for the first 4 months of 1950; the number of car miles accomplished decreased from an index of 68.2 in 1949 to one of 67.2 for the first 4 months of 1950; the number of revenue passengers carried decreased from an index of 61.7 in 1949 to one of 59.8 for the first 4 months of 1950; and gross revenues decreased from an index of 78.2 in 1949 to one of 75.3 for the first 5 months of 1950. While some reversal of these trends has probably set in since the middle of the year 1950 because of the demands of the Korean war situation, the more or less normal operating and financial facts of the Pullman service disclose a progressive and substantial decline in that service.

The burden of unprofitable Pullman operation falls upon the railroads. For the 6-month period ending December 31, 1949, involving the first settlements under the uniform service contract, there were 21 profit railroads and 34 deficit railroads. Even the profit railroads, after reimbursing the Company for air conditioning and electric lighting maintenance, incurred an aggregate deficit of $2,224,763. The deficit railroads, on the same basis, incurred an aggregate deficit of $3,046,100. The total cost to the railroads for this 6-month period was $5,270,863. The net adjustments between Pullman and the railroads, involving payments by the railroads to Pullman, for the 4-year period 1946–49, offsetting losses paid by the railroads with profits

paid to the railroads and including reimbursements to the Company for air conditioning and electric lighting maintenance, were as follows: $6,190,643 for 1946; $6,559,471 for 1947; $2,056,464 for 1948; and $9,203,871 for 1949. The Company's right to conduct and to continue service on the line of any railroad is based exclusively upon such contract as may be negotiated from time to time between Pullman and the railroad on whose lines Pullman operates. The uniform service contract which is now in effect may be terminated by any railroad on 6 months' written notice given at any time after July 1, 1950. Furthermore, in conformity with court decree, Pullman is expressly denied any exclusive right to furnish sleeping-car service on the lines of any railroad; and the Company is also expressly obligated to provide partial sleeping-car service on reasonable and nondiscriminatory terms. The rail carrier alone has the right to determine in what trains, over what routes, and in what number of sleeping cars Pullman shall operate. Curtailments may be effected, by mere notice, without cancellation of the contract. Substantial reductions in the number of cars used, as already noted, have been made during the postwar period by both profit railroads and deficit railroads. But unprofitable operations have also resulted in complete abandonment of the Pullman service by rail carriers or its abandonment over lines operating between particular points. Recently, because of the burden of operating deficits, two class I railroads—the Chicago, Indianapolis & Louisville (Monon) and the Chicago Great Western—discontinued all regularly scheduled sleeping-car service on their lines; and during the year 1949, 57 loss-producing or marginal sleeping-car lines were discontinued by various rail carriers. The railroads are obviously free to curtail Pullman service, and the extent and character of the curtailment tend to be governed by the weight and incidence of the financial burden imposed upon them by Pullman operating deficits.

The only commentary upon the groups of facts set forth above that seems to be necessary is this: that the Company and the Organization have a common interest in maintaining a healthy and self-sustaining sleeping-car industry; that there is an unavoidable relationship between Pullman operating costs and charges for Pullman service, and, particularly under prevailing competitive pressures, between charges for the service and the magnitude of its use; and that it is against such a background of the estimated costs of the Organization's demands and the Company's operating and financial conditions that the specific issues before the Board must be examined.

V. REDUCTION OF HOURS AND BASIS OF PAY

It is reasonable to assume that the primary impetus for the submission of the Organization's large group of demands sprang from its desire to effect a reduction of hours in the Pullman service, in conformity with the general movement for reduction of hours in the railroad industry as a whole. In any event, this demand, and the various issues involved therein, was the first to be discussed before the Board, and the matters with which it dealt were accorded more extensive consideration by both parties in the course of the hearings than any other demand. In this section of the report we shall deal with the issue as to reduction of hours, in relation to the controlling matter of the basis of payment to be established in connection therewith, and with certain more limited issues that are sufficiently related to the major problem to be conveniently grouped with the principal issues.

1. Basic Month

The present rule (4(a)) provides that 225 hours' work, as credited under other rules of the agreement, shall constitute a basic month's service. The Organization proposed that 210 hours constitute a basic month, involving the establishment of a 7-hour day, instead of the present 7 : 30-hour day, for a 30-day month. The Company proposed that the existing 225-hour month be retained.

The Organization's proposal that the basic month be reduced to 210 hours, aside from the matter of the applicable wage rates, does not require any elaborate treatment.

In general industry the 40-hour workweek, implemented by provisions for punitive overtime, was established as early as 1938, following emergency arrangements of the same character during the NRA period, by the Fair Labor Standards Act of that year. The railroads were excluded from the provisions of this statute, but they have now achieved a like reducation of hours to 40 for virtually all classifications of their hourly rated employees whose wage payments are not determined on a mileage basis (the workweek of the latter group of road-service employees being progressively reduced as train speeds have increased). In 1948, Emergency Board No. 66 (the so-called Leiserson Board) recommended that the 48-hour workweek of the nonoperating railroad employees be reduced to 40 hours. In 1949, Emergency Board No. 73 (the so-called Cole Board) recommended that the 44-hour workweek of express employees, except those employed on a monthly basis, be reduced to 40 hours. In 1950, Emergency Board No. 81 (the so-called McDonough Board) recommended that the 48-hour workweek of yard-service employees be reduced to 40 hours. The recom-

mendations of the Leiserson Board and of the Cole Board have been adopted by the carriers and the organizations involved and put into effect; the dispute now pending between the carriers and the Brotherhood of Railroad Trainmen and the Order of Railway Conductors with respect to the recommendation of the McDonough Board for yard-service employees does not concern the establishment of the 40-hour workweek, but rather the wage adjustments incident thereto. Monthly rated employees on moving trains have likewise had their working hours reduced. The basic month of dining-car cooks and waiters and of Pullman porters has been reduced from 240 to 205 hours; the basic month of express messengers has been reduced from 190 to 170 hours; and the McDonough Board has recommended that the basic month of dining-car stewards be reduced from 225 to 205 hours, with the pending disagreement centering once more upon the adjustment of wages rather than upon the number of hours to be comprehended in the basic month.

The present 225-hour basic month of the Pullman conductors is the equivalent of a 52-hour week. It is true that the established monthly wage is also applicable, in a regular assignment, to any aggregate of credited hours in any month of less than 225 (that 225 hours merely constitutes a maximum), and that there are numerous under-time assignments (the character and extent of which will be noted in due course in a later connection). But even the average number of credited hours for all regularly assigned conductors under the 225-hour basic month is 212, or the equivalent of almost 49 hours per week. The proposed 210-hour basic month is the equivalent of a 48-hour week. It was estimated by the Company that under such a reduced basic month the average number of credited hours would be 201; but even this number would be the equivalent of a 46-hour week. In view of the developments in the matter of reduction of hours throughout the railroad industry—not only in the establishment of the 40-hour week for hourly rated employees, but in the very substantial decrease in the number of hours constituting the basic month for monthly rated employees moving on trains alongside the Pullman conductors—there can be little question that the reduction of hours for these conductors from 225 to 210 is fully justified. Indeed, it was evident at the hearings that the Company itself had no serious objection to such reduction of hours. It was primarily concerned with, and controversy was chiefly related to, the wage rates that were to become applicable to the reduced basic month.

The Board finds the Organization's proposal that 210 hours shall constitute a basic month's service to be just and reasonable, and recommends its adoption; and it is understood that in all references to the

basic month throughout the agreement to be consummated or in the proposals of the parties to be considered by the Board in subsequent sections of this Report, "210" hours is to be substituted for "225" hours, and that in all references to the measure of a day's service, "7" hours is to be substituted for "7:30" hours, with fractions or multiples thereof to be adjusted accordingly.

The Organization proposed that the reduction of the hours of the basic month to 210 should not affect the established monthly rates of pay. This would mean, however, that the hourly rates, which are derived from the monthly rates by dividing these rates by the number of hours in the basic month, would automatically be increased as a result of the establishment of the 210-hour basic month. The present monthly rates of pay range, in six graduated classes from $323.20 to $356.20, depending upon the length of the service period of the particular conductor; and on the same basis, the hourly rates range from $1.4364 to $1.5831. The monthly rates of pay, which are used primarily in the case of regularly assigned conductors, would be maintained without change. The hourly rates, which are used in payment for extra road service, for overtime, and for a variety of nonroad services, would be increased, approximately, between 10 and 11 cents. In other words, the monthly rates of pay would still range between $323.20 and $356.20; but as a result of the change in the basic month, the derivative hourly rates would range between $1.5390 and $1.6962.

The Company proposed that if the 210-hour basic month is adopted, the established monthly rates of pay of the Pullman conductors should be decreased by $9.30, which would still involve an automatic increase of the hourly rates of between 5.9 cents and 6.9 cents. This position of the carrier is based primarily upon the contention that such an adjustment is required by the wage pattern of the railroad industry, in connection with the third-round postwar wage increases in relation to the reduction of the hours of the workweek or the work month, established by the Leiserson Board and followed by the recommendations of the McDonough Board (recommendations which were still in dispute at the time of the writing of this report, and which led to the seizure of the railroads by the Government).

In recommending the reduction of the workweek of the nonoperating railroad employees from 48 to 40 hours, which reduction was to become effective September 1, 1949, the Leiserson Board recommended with respect to all existing rates of pay that they "be increased by 20 percent, to provide the same basic earnings in 40 hours of work as are now paid for 48 hours"; but with respect to the demand for the third-round wage increase, it recommended, effective as of October 1, 1948, an increase of 7 cents per hour, instead of the

10 cents per hour which had been received by the operating employees. The Board did not "consider it reasonable to impose on the Carriers the full burden of the third-round increase at the same time that the standard workweek of 40 hours is inaugurated, which will require hourly rates to be raised about 20 percent to maintain 48-hour earnings." For dining-car employees, the Board recommended that the basic month be reduced from 240 to 205 hours, effective September 1, 1949, as in the case of the major group of nonoperating employees, without reduction in their existing monthly wages; but the 7-cent wage increase, as in case of the principal group, was to become effective October 1, 1948, before the hours were reduced. In effect, the pattern set by the Leiserson Board for these monthly rated employees, like that for the hourly rated employees, was to grant a 7-cent hourly increase from October 1, 1948, to September 1, 1949, to be applied to the 240 hours then constituting the basic month, and following September 1, 1949, to have the increase in monthly rates of pay computed by multiplying the 7-cent increase by the 205 hours then constituting the basic month. These recommendations have been incorporated into agreements and are now operative. On this basis the Pullman porters have also had their basic month reduced from 240 to 205 hours on September 1, 1949, and their monthly wages, which had been increased by $16.80 on October 1, 1948 (7 times 240) were reduced by $2.45 on September 1, 1949 (as a result of multiplying the 7-cent third-round wage increase by 205, the number of hours comprehended in the new basic month).

While the McDonough Board expressly denied that "the situation and the evidence" in the nonoperating case decided by the Leiserson Board "necessarily set a pattern for a recommendation" in its own proceeding, it followed, essentially, an approach similar to, and in some respects a pattern identical with, that established by the Leiserson Board. It recommended that, effective October 1, 1950, the workweek of yard-service employees be reduced from 48 to 40 hours; but, contrary to the recommendation of the Leiserson Board, it declined to require full maintenance of take-home pay upon reduction of hours. It should be noted, however, that the yard-service employees had already received, as of October 16, 1948, a third-round wage increase of 10 cents an hour, along with the train-and-engine-service employees, on the basis of a 48-hour week, instead of the 7-cent increase recommended by the Leiserson Board for the nonoperating employees. The McDonough Board recommended a basic wage increase of 18 cents an hour for the yard-service employees, which involved a reduction of between 8 and 14 cents an hour as compared with the amount necessary to maintain, for the 40-hour week, the same earnings as

for the 48-hour week. But of greater relevance to the present proceeding is the Board's recommendations with respect to dining-car stewards. These stewards, like the Pullman conductors, had already received a 10-cent an hour third-round wage increase, as of October 16, 1948, on the basis of a 240-hour month. The Board recommended that, effective October 1, 1950, the basic month of the dining-car stewards be reduced from 225 to 205 hours, but that "the monthly salary to be paid for the 205-hour month shall be $9.65 less than the salary now received for the 225-hour month." In this holding as to wages, the McDonough Board followed strictly the formula employed in connection with the Leiserson Board's recommendations. In other words, in place of the 10 cents an hour increase for 240 hours, resulting in a monthly increase of $24, which had been in effect since October 16, 1948, it substituted a 7-cent an hour increase for 205 hours, involving a reduction of the original monthly increase to $14.35, and resulting in a decrease in the existing monthly wage rates of dining-car stewards of $9.65. The wage adjustments recommended by the McDonough Board, it should be noted once more, have not been effectuated.

It is upon the application of the formula above set forth, especially as used in the case of the monthly-rated employees, that the Company relies in its proposal for adjusting the wages of Pullman conductors under the 210-hour basic month. On October 16, 1948, the conductors had received a monthly wage increase of $24—that is, a third-round wage increase of 10 cents an hour computed for the month on the basis of 240 hours. If, in connection with the reduction of hours to 210, a 7-cent third-round wage increase were to replace the original 10 cents, and if this 7-cent increase were to be computed for the month on the basis of 210 hours, the resulting monthly wage increase would be $14.70. The substitution of this increase of $14.70 for the original increase of $24 would require the established monthly rates of pay to be reduced by $9.30. The increase in hourly rates of between 5.9 cents and 6.9 cents would be a mere derivative, in conformity with accepted practice, of the new monthly wage rates.

The Board is fully aware of the great importance of maintaining wage relationships in the railroad industry on as equitable and stable a basis as possible. At the same time it recognizes that numerous other aspects of collective agreements bear significantly upon the earnings of employees, and that the situation even as to wages and hours are not precisely the same in all proceedings or with reference to all classifications of railroad employment. There appears to be no adequate basis for assuming that a uniform wage-hour pattern has been strictly applied throughout the railroad industry; and there are

certainly many factual differences between this Pullman proceeding and those upon which reliance is being placed by the company.

A few of the relevant considerations may be briefly indicated. The 10 cents an hour third-round wage increase of the train-and-engine-service employees has remained undisturbed; the attempt to reduce the 10 cents increase of the yard-service employees and dining-car stewards has thus far failed of accomplishment; and in a sense the application of the 7-cent increase to the nonoperating employees, to the dining-car employees, and to the Pullman porters was in itself a departure from the previously established third-round wage pattern of 10 cents an hour. Moreover, in all the above cases except that of the dining-car stewards, the reductions in hours were much more drastic than in the case of the Pullman conductors. It is understandable that, in connection with reductions of weekly hours by 8 (from 48 to 40), implemented by immediate punitive overtime, or of monthly hours by 35 (from 240 to 205), even when only pro rata overtime becomes payable, sound judgment might properly reduce the amount of the general wage increase that is coupled with these large reductions of hours, since the increase in hourly rates automatically resulting from the hour reductions, if take-home pay is to be maintained, are already very large. But in this proceeding the basic month is reduced by only 15 hours, with the reduction to be made effective more than a year after it had been established for most of the other classes of monthly rated employee; and even as reduced, the basic month still involves a workweek of 48 hours. There is a vast difference, also, between recommending wage increases, coupled with increases resulting from reductions of hours, for the future, and recommending decreases in established wage rates when hours are reduced, as part of a general movement, on the basis of broad social and economic considerations.

The present rates of pay of Pullman conductors have been in effect for 2 years. Developments in this interim, and particularly during the recent past, certainly provide no basis for wage reductions. The monthly wage is the basic wage, and the proposal of the Organization is that this monthly wage be maintained at its present level. The derivative hourly rates, used for extra services and special payments, will be increased somewhat; but both the Organization and the Company appeared to recognize that such increases are unavoidable under established practice, and that they are necessary in order to avoid discrimination between regular conductors and extra conductors. Under the Company's proposal such discrimination would be certain and flagrant, in favor of the extra conductors, since the increase in hourly rates would be accompanied by an actual decrease in monthly

wages. If, in light of all the facts of record in this proceeding, this Board were to deem itself controlled by a rigid formula that had been applied in some instances upon recommendation of other boards, it would be abdicating its independent judgment and fail to perform its full duty.

The Board finds the Organization's proposal that the present monthly rates of pay be maintained without change, and that the hourly rates be derived therefrom in conformity with established practice, to be fair and reasonable, and recommends its adoption.

15. Margin of Nonpunitive Overtime

The present rules (20, 21, and 22) establish a margin of 10 hours beyond the basic month of 225 hours, for which payment is made at straight time rates; all credited hours in excess of 235 per month are paid for at time and one-half. It is provided that regularly assigned conductors shall be paid their respective established monthly wages on completion of a monthly assignment (which includes late train arrivals) of 225 hours or less, overtime at pro rata hourly rates for all time in excess of 225 to 235 hours, and punitive overtime for all hours in excess of 235; similarly, in extra service, only time credited in excess of 235 hours in any month must be paid for at the rate of time and one-half.

The Organization's proposal eliminates the 10-hour margin of nonpunitive overtime; in other words, under its proposal payment at time and one-half is to start immediately upon completion of the number of hours in the basic month. The Company proposed that no change be made with respect to nonpunitive overtime: that the present 10-hour margin be retained if the 225-hour basic month is continued, and that the margin be increased to 25 hours if a 210-hour basic month is established.

Overtime payments, on a pro rata or punitive basis, may result from a variety of circumstances. The present rule (4 (b)) provides that regular assignments shall not be scheduled to produce credited hours in excess of an average of 235 for a 30-day month; the Organization's proposal reduces this limit upon regular assignments for a 30-day month of 210 hours to an average of 220 hours. Thus, regular assignments may be so scheduled as to produce a certain amount of overtime in every month but February, both under the present rule and under the Organization's proposal. Since furthermore, all regular assignments are scheduled on the basis of a 30-day month, each of the seven 31-day months is bound to produce credited hours in excess of the number constituting the basic month, if an effort is made by the Company,

as far as possible to approach the number of hours of the basic month in the 30-day assignments. There are also other factors which tend to produce overtime hours. Late arrivals of trains on which Pullman conductors operate involve credit for the additional hours on duty; since conductors on extended special tours cannot be released from duty as long as the sleeping cars are not vacated by the passengers and their belongings at any point en route, excess hours may, and sometimes do, result, with the possibility of a conductor accumulating as much as 465 credited hours in a 31-day month; and extra conductors may be so used as to accumulate credited hours in excess of the number constituting the basic month, particularly if the conductors on the extra board of any district are unable in any month to handle all the assignments within the hours of the basic month.

Prior to September 1, 1945 (and dating from December 16, 1923), 240 hours constituted the basic month, pro rata overtime was paid for all hours between 240 and 270, and punitive overtime for all hours in excess of 270. On September 1, 1945, the effective date of the present agreement, the basic month was reduced to 225 hours, pro rata overtime was established for all credited hours between 225 and 235, with punitive overtime for all hours in excess of 235. The prevailing arrangement was adopted upon recommendation of the so-called Tipton Board (the emergency board created February 28, 1945). The proposed elimination of this 10-hour margin of nonpunitive overtime, under a 210-hour basic month, has received the careful consideration of this Board.

The fundamental factor urged in support of the Organization's proposal is that the reduction of the hours of the basic month would prove to be an empty gesture unless it is implemented by the immediate imposition of punitive overtime pay. As a general principle, for stationary workers in manufacturing or commercial enterprises where hours are under complete control of the employer, this is unquestionably a valid and governing consideration. But for employees who operate on moving trains, the working hours are only partially under control of the employer. Pullman conductors, both regular and extra, cannot be assigned to work in each month exactly the number of hours constituting the basic month. There are bound to be both undertime hours and overtime hours. The scheduling of trains is entirely in the hands of the railroads and beyond the control of the Company, the time of actual train arrivals is often beyond the control of the railroads and certainly of the Company, and there are many rules in the agreement (some of which will be dealt with in subsequent sections of this report) which restrict the freedom of the Company even in the scheduling of the assignments for which it alone is responsible. The

Organization's own proposal, which permits regular assignments to be scheduled to produce an average of as much as 220 credited hours in a 30-day month, is obviously designed, not to implement the basic 210-hour month, but to yield punitive overtime pay.

As a result of the sort of considerations indicated above, other classes of employees working on moving trains alongside the Pullman conductors have large margins of nonpunitive overtime. The dining-car cooks and waiters and the Pullman porters, with a basic month of 205 hours, receive punitive overtime only after 240 hours—a margin of 35 hours for which only pro rata overtime is paid; and the same arrangement as to basic month, pro rata overtime, and punitive overtime has been recommended for the dining-car stewards. Nor does the consideration that these classes of employees do not have the pro ration provisions of the conductors (whereby, when the days credited for the last round trip of a month extend into the succeeding month, the service hours of the trip are pro rated between the two months) remove the need, in case of the conductors, for retaining a margin of nonpunitive overtime. Despite the proration rule, there are numerous scheduled undertime assignments, for which the full monthly wage is paid. As of October 1, 1949, out of a total of 1,472 conductors assigned to regular runs, 1,130 had scheduled hours of less than 225 (the present basic month), and 410 had scheduled hours of less than 210 (the newly recommended basic month). These assignments ranged, respectively, from 95 to 224 hours, and from 95 to 209 hours. As of April 1, 1950, out of a total of 1,427 conductors assigned to regular runs and full-time station duty, 1,080 had scheduled hours of less than 225, and 396 had scheduled hours of less than 210. These assignments ranged, respectively, from 110 (the three station-duty assignments were sharply below this figure) to 224 hours, and from 110 to 209 hours. At the same time, there is much scheduled overtime. As of October 1, 1949, the number of conductors with scheduled overtime (between 225 and 235 hours) was 284; as of April 1, 1950, the number was 347.

A survey made by the Company, at the request of the Board, for the period extending from January 1948 to May 1950, disclosed the following: That the monthly scheduled overtime hours in a 30-day month ranged from 1,089 to 1,540; that the number of conductors operating in runs with scheduled overtime ranged from 321 to 407; and that 12.5 percent of the total number of overtime hours paid for were scheduled overtime hours. The Organization's contention that scheduled overtime can be avoided by increasing the number of undertime assignments and reducing them to a still lower level is not a persuasive one. It is tantamount to suggesting, in effect, that the

basic month be reduced, not to 210 hours, but to 190 hours or thereabouts. Economical and efficient operation in this complicated sphere requires that the Company be vested with a reasonable measure of discretion, and that it be free to adjust assignments on a flexible basis. It should be noted, finally, that the same survey showed that 87.5 percent of the total overtime hours paid for during the period involved, whether on a pro rata or punitive basis, were, except for the overtime earned by conductors in extra service, largely due to causes beyond the Company's control—for the most part to late train arrivals (because of storm conditions, derailments, or other factors producing delay) and the incidence of 31-day months.

In light of all the circumstances set forth above, the conclusion is unavoidable that there is little justification for eliminating the margin of nonpunitive overtime.

The Board recommends that the present 10-hour margin of nonpunitive overtime be retained; that regular assignments be permitted to be scheduled up to an average of 220 credited hours for a 30-day month; that pro rata overtime be paid for all time in excess of 210 to 220 hours per month; that punitive overtime, at time and one-half, be paid for all credited hours in excess of 220; and that all rules incidentally involved be adjusted accordingly.

2. Basis of Computing Hourly Rate Increases and Reductions

There is no rule in the present agreement dealing with this matter. The Company proposed that two new paragraphs be added to rule 1, which sets forth the provisions as to rates of pay: First, that the hourly rate of pay of a conductor shall be determined by dividing his monthly rate by 210, the number of hours' work constituting the basic month; and second, that in the application of an hourly increase or reduction in the rates of pay of conductors, the monthly increase or reduction shall be determined by multiplying the hourly increase or reduction by 210, the number of hours constituting the basic month. With respect to the first of these proposals there is no controversy. It merely incorporates into the agreement, by express provision, the established practice, which has been accepted without question by both the Organization and the Company and has been uniformly followed. The issue in dispute concerns the second of these proposals; the Organization, while not submitting any express proposal of its own in this matter, opposed the inclusion of such a provision in the agreement.

The problem raised by this issue is a severely practical one. It is customary, in the railroad industry to have both increases and reductions in wages stated in cents per hour; and it is also the usual prac-

tice to have such general increases or reductions, at least when they are not complicated by simultaneous decreases in hours in substantial measure, applied in full to classes of employees not directly involved in the proceedings or negotiations out of which the pattern of the hourly increases or reductions emerged. These results are achieved either through voluntary acquiescence or through the operation of stand-by agreements. In these circumstances, the question always arises as to how these increases or reductions in cents per hour shall be applied to monthly rated employees, particularly where the monthly wage is the basic wage.

As already noted, the monthly rates of pay of Pullman conductors are the basic rates; the hourly rates, which are applicable to a relatively small proportion of the work performed, are merely derived therefrom. For more than a quarter of a century prior to 1946, during which a 240-hour month prevailed, such hourly increases or reductions were translated into monthly rates by multiplying the cents-per-hour increases or reductions by 240. But effective September 1, 1945, the number of hours in the basic month of these conductors was reduced to 225, without change in their basic monthly wage rates; and thereafter the question arose as to whether cents-per-hour increases should be applied to the monthly rates by multiplying them by 240, as in the past, or by 225, the number of hours constituting the new basic month. In point of fact, in all three rounds of postwar wage increases (in 1946, 1947, and 1948) the Pullman conductors had the cents-per-hour increases (18½ cents, 15½ cents, and 10 cents) applied to their monthly rates of pay by having them multiplied by 240, despite the fact that 225 hours constituted their basic month. As a result, the actual cents-per-hour increases which they realized were greater than the general pattern established for and applied to the railroad industry as a whole, with consequent disproportionate increases in their monthly wages. The aggregate amount of the three monthly wage increases, based upon 240 hours, was $6.80 in excess of the amount they would have received had the monthly increases been determined on the basis of the 225 hours of their basic month. The present issue, then, which is obviously of great practical importance, is whether hereafter, under the new 210-hour basic month, cents-per-hour increases or reductions will continue to be multiplied by 240, in applying them to monthly rates of pay.

Essentially, the Organization, in opposing the Company's proposal, relied upon two governing considerations: First, that since no wage increase or reduction as such is involved in this proceeding, the issue raised by the Company is premature and irrelevant; and second, on the substance, that the determination of this issue has been foreclosed

by the finding and recommendation of Emergency Board No. 40 (the so-called Sharfman Board), with which the Company complied in all three postwar wage increases, and that it is merely seeking, therefore, to reverse the previous holding. On these grounds the Organization requested that the Company's proposal be rejected. The Board finds both considerations to be without merit.

All the rules proposed by both the Organization and the Company, and not merely this one, are designed to govern future relationships between the carrier and its conductors; and in some instances the proposed rules comprehend policies with respect to states of facts that may not ever arise. Issues as to wages, however, will certainly be forthcoming, in due course, in ample measure. Moreover, as must be clear from the analysis already presented in this report, this proceeding, though characterized as a rules case, is by no means free from wage issues. The most significant aspect of the proposal for reduction of hours lay in its relationship to the basis of pay; and when the Board recommended that a 210-hour basic month be established, without change in the monthly wage rates, it had necessarily to take into account the methods used in applying cent-per-hour increases, so generally prevalent in the railroad industry, to monthly rates of pay. In a sense the recommended reduction of hours, without loss of pay, was contingent upon the Board's disposition of the present issue. In the course of the hearings, the relationship between the issues also manifested itself in concrete fashion. When it was pointed out that, since the Organization merely sought a reduction of hours without any decrease in the basic monthly wages, the consequent increase in the hourly rates appeared to be without justification, the Organization argued that an adjustment which would retain the present hourly rates (the monthly wage divided by 225), after the reduction of hours to 210, would discriminate against extra conductors or special services paid for at the hourly rates. In other words, the Organization compared the rates per hour for extra service with the rates per hour for regular service, and it found higher hourly rates for regular service, despite the fact that the monthly wage is the basic wage, by dividing the monthly wage by 210. To insist, under all these circumstances, that the issue raised by the Company's proposal is premature and irrelevant, is to close one's eyes to the realities of the proceeding.

Prime reliance for urging the rejection of the Company's proposal is placed by the Organization upon the determination of the Sharfman Board in 1946. This Board held that the 18½-cent first-round hourly wage increase of that year should be applied to the Pullman conductors by multiplying it by 240 hours, instead of the 225 hours then constituting the basic month, and therefore recommended that

their monthly wages be increased by $44.40 instead of $41.62½. The Company, as has already been noted, followed the same procedure in applying to the monthly wage rates the hourly increases of 15½ cents and 10 cents of 1947 and 1948.

An examination of the report of the Sharfman Board will disclose that it found no sanctity in the 240-hour figure for all time, and that it set up no "formula" for all future applications in all circumstances. It had before it a simple issue, which, under the facts and conditions of the particular proceeding, it resolved in favor of the conductors on two fundamental grounds: First, to safeguard the special advantage they had obtained by having their hours reduced from 240 to 225, instead of penalizing them because of it; and second, in order to maintain established differentials among monthly rated employees performing their service on trains. When the basic month of Pullman conductors was reduced to 225 hours on September 1, 1945, practically all other monthly rated employees continued to work under a 240-hour month. The general movement for reduction of hours in the railroad industry had not yet been initiated, and its major fruition did not come until 4 years later, September 1, 1949, after all three of the general wage increases had already been made by the Company. Because of the almost universal prevalence of the 240-hour month among railroad workers at the time of the 1946 proceeding, the first-round wage increase for virtually all monthly rated employees was $44.40. To have limited the Pullman conductors to $41.62½ would have penalized them for their reduction of hours and would have disturbed existing differentials. These controlling considerations are best stated in the words of the Sharfman Board itself, in the following two brief excerpts from its report:

> The question arises * * * as to whether the Pullman conductors should be penalized in the adjustment of their monthly wages because of the fact that they succeeded in obtaining a more favorable working rule than these other classes of employees (dining-car stewards, chefs, cooks, waiters, sleeping-car porters, chair-car attendants, and train porters—all of which had a 240-hour basic month). * * * If hourly wage changes were hereafter to be multiplied by 225 in translating them into monthly wage rates, the advantage obtained by Pullman conductors through the reduction of hours to 225 would in due course be completely neutralized, and they might eventually find themselves in even worse position, from the standpoint of the level of their monthly wages, than they were prior to the effectuation of the agreement of September 1, 1945. It is difficult to believe that such a result was contemplated. The Pullman conductors are now paid the same basic monthly wage rate which prevailed when 240 hours' service was required, and the 18½-cent wage pattern must likewise be applied on the basis of 240 hours when translated into basic monthly rates (pp. 13–14).

It should be noted, finally, that the wage pattern established in the railroad industry was designed to raise the general level of wage payments without disturbing existing dollars and cents differentials in hourly, weekly, or monthly

wages. It is particularly important that so-called intraplant differentials be not disturbed; and all employees who perform their work on a passenger train may not unreasonably be deemed to be working in the same plant. * * * Dining car stewards, chefs, cooks, and waiters have received an increase of $44.40 for their minimum month. Sleeping-car porters, chair-car attendants, and train porters not performing service as trainmen have likewise received an increase of $44.40 for their minimum month. * * * In view of the almost uniform application of the wage in terms of an increase of $44.40 for monthly rated employees performing their service on trains (the express messengers are the only exception), the limitation of the increase for Pullman conductors to $41.62½ would unjustifiably disturb established differentials and would be conducive to the serious impairment of the workers' morale (pp. 14–15).

But at the present juncture the Pullman conductors enjoy no special advantage as to hours which must be safeguarded. All the comparable classes have achieved a 205-hour basic month. The Pullman conductors would not be penalized by having increases in their monthly rates of pay determined by multiplying the cents-per-hour increases by 210. All the comparable classes have had even their third-round wage increases, when reduced in connection with their hour reductions from 10 cents to 7 cents, multiplied by 205. Insofar as established differentials would be disturbed when the 210-hour multiplier is used, it would be slightly in favor of the conductors and not against them; and if the old 240-hour multiplier were used in their case, as the Organization seems to desire, a very marked disturbance of differentials would result, as against the comparable classes of employees rendering service on trains, and worker morale would be bound to suffer seriously.

Following the general reduction of hours in the railroad industry, a number of the agreements have expressly specified that future wage adjustments shall be made on the basis of the number of hours comprehended in the work period. In the interest of avoiding controversy, in a situation where the equities are so clear, it is highly desirable that such a stipulation be incorporated in the new agreement to be made by the parties to this proceeding. No substantial ground whatever appears for rejecting the proposal that in the application of an hourly increase or reduction in the rates of pay of conductors, the monthly increase or reduction shall be determined by multiplying the hourly increase or reduction by 210, the number of hours constituting the basic month.

The Board finds the Company's proposal to be fair and reasonable, and recommends its adoption.

12. Proration

The present rules (20 and 21) provide that in regular assignments, whether full time or part time, where the days credited for the last

round trip (lap-over trip) in the month extend into the succeeding month, the service hours of the trip shall be prorated by allowing 7 : 30 hours' credit for each day credited in the month in which the trip was started (including day of departure if reporting time on such day was before noon) ; and that the balance of the service hours of the trip shall be credited to the succeeding month.

The Organization's proposal, which the Company opposes by requesting the retention of the present rules, involves a number of rather technical limitations upon the operation of the present rules. It provides, in effect, that the proration provisions shall not apply in the following situations which are now covered; when the lap-over trip performed by a conductor involves a "double" in other than his own assignment; when the lap-over trip is due to late arrival time; when the conductor's reporting time in the month succeeding that in which the lap-over trip is started is before noon on the first day of the month; when the lap-over trip is made by an extra conductor; and when the lap-over trip in a run having a periodic relief is performed by a regularly assigned conductor working part time in regular assignment or by a regularly assigned conductor entering such run and not completing the full cycle.

The issue as to the proration provisions (like the three issues immediately following) is related to the basis of pay, and hence is treated in this section of the report. The proration provisions are designed to stabilize conductors' earnings from month to month, and to reduce overtime payments springing from variations of the number of days in the calendar month, which produce corresponding variations in the number of trips, when coupled with the fact that fixed credit is allowed for each round trip performed. They were first included in the agreement between the parties on September 1, 1945, upon recommendation of the Tipton Board. The record discloses that these provisions have been working satisfactorily, and no issue of underlying principle has emerged. No showing of real inequity was advanced, and no adequate grounds were adduced for changing the rules.

The Board recommends that the Organization's proposals with respect to proration be withdrawn.

13. Computation of Pay for Relief Days Not Earned

Under the present rule (19), when a conductor operating in an assignment carrying periodic relief fails to complete the cycle of trips for which relief credit and pay is included, he is allowed a pro rata proportion of the scheduled relief. The Organization proposed that a conductor who displaces into or is awarded an assignment in a run

in which a relief is allowed, and who enters such an assignment after the first trip of a cycle which does not extend from 1 month into the succeeding month, he shall be credited and paid for the full relief day. The Company opposed this proposal, and urged that the present rule be retained.

The request of the Organization appears to be entirely without merit. Under its proposal a conductor who does not complete all the trips of a cycle would be entitled to the same credit and pay for the relief day as a conductor who completes all the trips, and he would be entitled to greater credit and pay than the conductor who is displaced by him. Moreover, on December 21, 1949, as already noted, the parties agreed upon what the Organization called, in its strike ballot, "32 nonmoney rules." One of these rules dealt with prorating relief. It is identical with present rule 19, which now governs the matter in dispute, as indicated above. The mere fact that the Organization's proposal was formulated as an exception to present rule 21, dealing with part-time regular assignments, did not remove its manifest inconsistency with rule 19, upon the continuance of which, under another number, it has already agreed.

The Board recommends that the Organization's proposal with respect to the prorating of relief be withdrawn.

16. Basis of Computing Punitive Overtime Pay in Part-Time Regular Assignments

Under the present rule (21), punitive overtime in part-time regular assignments is computed only on a monthly basis. The rule provides that excess hours included in payments on a day-service basis shall not be paid for as overtime, except that hours so credited in excess of 235 per month shall be paid for additionally at half-time rate. The Organization proposed that in such assignments punitive overtime shall be computed on a daily basis. Whereas the present rule specifies that time in excess of an average of 7:30 hours a day for the total days paid for under this rule shall be paid for at the hourly rate, the Organization's proposal provides that time in excess of an average of 7 hours a day for the total days paid for under this rule shall be paid at the rate of one and one-half times the hourly rate, except that when the conductor working part time in regular and extra service accumulates hours in excess of the basic month of 210 hours, such hours in excess of 210 shall be paid at one and one-half times the hourly rate (the last provision also involves the issue as to the margin of nonpunitive overtime, which has already been determined). The Company opposed this proposal, and urged that the present rule be retained.

Part-time regular conductors are those who make one or more trips in regular assignments covered by bulletined schedule without performing all the work required by these assignments in a calendar month. Such conductors are paid and credited on the day-service basis. They are paid for a round trip the number of days there are conductors in the assignment as covered by bulletined schedule, and they are credited for each day with $\frac{1}{28}$, $\frac{1}{29}$, $\frac{1}{30}$, or $\frac{1}{31}$ of a month's pay, depending upon the number of days in the month in which such work is performed. There is no dispute with respect to this underlying basis of payment. The issue is confined to the computation of punitive overtime pay.

The principle of the present provisions has been part of the agreement between the parties since December 1, 1936. Pay rules for Pullman conductors have always been predicated on a month's service, and punitive overtime has always been related to the basic month. Computation of punitive pay on a daily basis, which is appropriate to factory and office workers whose workday consists of a fixed number of hours, is entirely alien to the whole complex of arrangements under which Pullman conductors operate. The monthly basis for computing punitive overtime prevails also among the other classes of employees who work on moving trains alongside the conductors. The provisions of the present rule are fair and reasonable, and no adequate basis has been established for changing them.

The Board recommends that the Organization's proposal with respect to punitive overtime in part-time regular assignments be withdrawn.

11. Computation of Pay for Late Train Arrivals in Regular Assignment

Under the present rule (20), the time added by late train arrivals in regular assignments is credited as part of the assignment. The rule provides that regularly assigned conductors shall be paid their respective monthly wages on completion of a monthly assignment, "which includes late train arrivals," of 225 hours or less, with pro rata overtime to 235 hours, and with punitive overtime after 235 hours. The Organization's amendment of this rule not only proposed a 210-hour basic month and the elimination of the margin of non-punitive overtime, but omitted the express reference to late train arrivals as constituting a part of a regular assigned conductor's monthly assignment. While the Organization failed to include in its proposals any method of handling late-arrival time, and hence rendered the impact of the omission of late train arrivals from its rule

undetermined and ambiguous, the Company opposed the exclusion of the express reference to late train arrivals.

We have already seen that even the Company's scheduled operations involve numerous undertime and overtime runs. This situation springs from the fact that the scheduling of trains is based upon the public demand for service and the availability of operating facilities, and in any event is entirely the responsibility of the railroads. The actual service of Pullman conductors, in both undertime and overtime runs as scheduled, is subject, in addition, to late train arrivals. Even the railroads are often in no position to control them, and they are clearly beyond the control of the Company. The same considerations which justify a margin of nonpunitive overtime also justify the inclusion of delayed arrival time in regular assignments. Late arrivals are part and parcel of the time worked by conductors in regular assignments under the unavoidable vicissitudes of railroad operations. In some instances these late arrivals produce overtime, pro rata or punitive; in other instances they absorb some or most of the so-called "gift hours" or "constructive hours" in undertime runs. The Company pointed out that the exclusion of the reference to late train arrivals might mean, in the view of the Organization, "(1) that late-arrival time shall be credited and paid for at the hourly rate for the actual number of late arrival hours, in addition to all other earnings for the month, or (2) that each late arrival shall be credited as a minimum day and paid for at the hourly rate, in addition to all other earnings for the month." The Organization's insistence throughout the hearings that the integrity of their regular assignments must be meticulously maintained, regardless of uncontrollable circumstances, indicates that such possibilities are not altogether fantastic; yet either result would involve unjustifiable increases in wage payments. If such results were not contemplated by the conductors, then the proposal must fall because of the uncertainty of its implications. It would simply add a new source of controversy. In 1945 the Organization expressly included late train arrivals as part of the time embraced in the monthly assignments of regularly assigned conductors. No evidence whatever was produced of any change of circumstances during the intervening years which might reasonably support a change in the prevailing practice.

The Board recommends that the language of the present agreement with respect to late train arrivals be retained.

VI. SCOPE OF THE AGREEMENT

Aside from the various matters of wage-hour relations, the treatment of which has just been concluded, the most hard-fought and

extensively presented issues concerned the problem of the scope of the agreement. These issues divide themselves into two major groups: Those which concern the inclusion of a scope rule as such; and those which seek to modify those provisions of the present agreement that specify the circumstances under which conductors must be used. The first group of issues involves not only the desirability of incorporating into the agreement a definition of conductor's work, but the determination as to whether certain specific established conductor duties—guarding cars, handling Western Union telegrams, lifting railroad transportation, soliciting patronage in coaches and making refunds, and exercising custodianship of company funds after release—shall be continued. The second group of issues involves, from a variety of standpoints, what operations, entirely apart from the definition of conductor's work, are to be required conductor operations, and in which ones it is to be optional with the Company to use or not to use conductors. The precise character of all these issues, and the Board's findings and recommendations with respect to each of them, will now be developed.

23. Definition of Conductor's Work

The present agreement contains no scope rule as such. The Organization proposed that certain provisions, entitled "Scope," shall precede rule 1 of the agreement. These provisions define a conductor and conductor's work as follows: "This agreement shall apply to all employees of the Pullman Co. classified as conductor, who shall be understood to be those employees engaged in supervisory work, having jurisdiction over, and being responsible for the proper performance of their duties by, all car service employees on cars under their charge; receiving passengers for Pullman cars and assigning them accommodations; collection of Pullman tickets and Pullman cash fares; maintaining contact with passengers en route to see that their needs are properly served; making all reports designated for conductors' use; and acting as representative of the Pullman Co. when necessary in absence of an officer of the company, except, a conductor may guard a car while the porter is off duty on trains which carry only one sleeping car." It is also expressly specified under "Scope" that "all work required of conductors shall conform to the rules of this agreement." Identical language as to the conformity of all work required to the rules of the agreement is contained in the Organization's proposal concerning the present rule (12) on payments for hours credited; and in its proposal concerning the present rule (25) on basic seniority date, it is provided that the seniority of a conductor "shall include right to assignment of all work defined in the 'scope' of this agree-

ment." The Company opposed this demand of the Organization with respect to "scope," and it urged that no definition of conductor's work be included in the agreement. (There is also a "question" and "answer" attached to the Organization's proposed scope rule which defines the term "Pullman car"; but the problem raised by this definition is related to the second group of issues, dealing with the circumstances under which the use of a conductor shall be required, and will be examined in due course.)

It is clear that the Organization is seeking a rule that would restrict a conductor from being required to perform any work other than the work defined in its "scope" proposal. There can be no question that the duties actually enumerated are appropriate conductor duties; but the definition fails to mention many other duties customarily performed by conductors, and it provides no basis whatever for encompassing changes in duties, however reasonable, which may become necessary in the development of the Pullman service in the dynamic transportation field. In at least one instance—that of guarding cars, which will presently be dealt with as a separate issue—the proposal expressly effects a virtual elimination of a conductor duty of long standing; and by implication it excludes many other duties being performed without serious question under established practice. The principal representative of the Organization repeatedly declared at the hearings that the Organization was not wedded to the precise language of its proposed scope rule; but in this instance the language is directly and conclusively determinative of the work that may be required of conductors, and a proposal of uncertain tenor, even in the view of the sponsoring Organization, has no place in this proceeding. In point of fact it is practically impossible to enumerate, seriatim, all the duties incident to the performance of service by conductors, just as it is in connection with any employee who participates in the rendering of a general service, like that performed by the Pullman Co., without imposing an unjustifiable rigidity upon the quality and efficiency of the service. Probably the best bench-mark is that provided by the duties customarily performed by conductors; and any imposition of duties not essentially related to established usage in the Pullman service would readily be subject to redress through the grievance and claim procedure.

While there is no rule in the present agreement which is expressly denominated a "scope" rule, it must be noted that rule 64, entitled "Conductor and optional operations," which was adopted in 1945 upon recommendation of the Tipton Board, prescribes the conditions under which conductors, performing the entire complex of their customary duties, must be used by the Company. It defines the work

rights of conductors in relation to those of porters-in-charge and attendants-in-charge, the other classes of Pullman employees who work on trains; and in doing this it reflects the usual character of scope rules in the railroad industry, which generally differentiate, in their collective agreements, the work rights of each of the various classes of employees in the service of the railroads. In this sense the Pullman conductors have a scope rule—that is, a rule which protects them against the Company's use of employees other than conductors to do the work which conductors are entitled to perform; and only recently, in a formal exhibit in another proceeding, the Organization has itself referred to rule 64 of the present agreement as having conferred upon the Pullman conductors the benefits of a scope rule. The provisions with respect to "scope" as proposed, on the other hand, seem to be designed primarily to impose limitations upon the work that may be required of conductors, and thus to provide a basis for claims to additional pay when conductors are required to perform types of service, no matter of how long established a character, that are not specified in the scope rule. There appear to be no adequate grounds for imposing such work restrictions upon the Company, or for subjecting it to the controversies and burdens that are likely to follow.

The Board recommends that the Organization's proposal with respect to "scope," as well as all incidental references to its provisions in other rules of the agreement, be withdrawn.

24. Guarding Cars

While there is no rule in the present agreement which deals with the guarding of cars by conductors, it has been the established practice since the very inception of Pullman operations to consider it one of the duties of a conductor to protect passengers and their belongings by guarding cars when necessary. In its proposed scope rule, it will be recalled, the Organization limited the guarding of cars by conductors to trains carrying only one sleeping car (the exceptional situation in which a conductor operates); hence the carrier would not be free to assign conductors to guard cars on all trains carrying two or more sleeping cars (the usual situation in which a conductor operates). The Company opposed the Organization's demand.

Since the Board has already recommended that the Organization's proposed scope rule, of which this proposal is a part, be withdrawn, the issue as to guarding cars may be deemed to have been determined. It should be further noted, however, with regard to this specific demand, that conductors are generally assigned to guard cars only when the number or line-up of cars in a train (both of which matters are

entirely in control of the railroads) is such that one porter would be required to guard more than two adjoining cars during the sleep period of the other porters; that conductors thus guard only the odd cars; that guard duty is arranged by a definite schedule of watches for each operation; that the duties involved are not burdensome; that there was no showing of hardship on the conductors as a result of the prevailing practice; that if the proposal were adopted, the porter of each odd car would either have to be required to stay on duty all night without rest or an extra porter would have to be assigned for guard duty; and that in these circumstances 109 additional swing porters would be needed, and, together with payment for loss of sleep to porters, the estimated annual cost of the proposal to the Company would amount to $710,410. There appears to be no justification for this curtailment of the duties of conductors.

The Board recommends that the Organization's proposal with respect to guarding cars be withdrawn.

25. Handling Western Union Telegrams

There is no rule in the present agreement dealing with this matter; but under existing practice Pullman conductors are required to rate and collect payment for Western Union telegrams dispatched en route by Pullman passengers, and conductors are expected to see that telegrams received en route for Pullman passengers are delivered to the addressees. The Organization proposed that conductors shall not be required to rate and collect payment for telegrams dispatched en route, and that conductors shall only endeavor to deliver telegrams received en route when Western Union employees are unable to make delivery, and that even in such event they shall assume no responsibility for failure to deliver such messages. The Company opposed the proposed change in the prevailing practice.

The proposed change would alter a practice which has been in effect, in one form or another, for three-quarters of a century. It would deprive Pullman passengers of a service similar to that furnished to coach passengers by the railroads. The duty involved is a minor one, but it is essential to the maintenance of the quality of Pullman service. In its own "scope" proposal the Organization specified that the duties of a conductor shall include "maintaining contact with passengers en route to see that their needs are properly served." It is difficult to understand why this particular need of Pullman passengers should be excluded from the conductor's obligations. In 1945 the Organization progressed a claim to the Third Division of the National Railroad Adjustment Board, in which it charged that the Company had violated its agreement in requiring conductors to rate telegrams (without re-

ferring to any specific rule so violated), and that because of this violation the conductors should be paid as agents of Western Union, in addition to their earnings as Pullman conductors. In award No. 4086 the claim was denied, the Adjustment Board pointing out, among other things, that the handling of telegrams by Pullman conductors, including their rating, as a part of a conductor's duties, was a practice of long standing, which had not been changed by any of the negotiated agreements. There appears to be no merit in the Organization's demand.

The Board recommends that the existing practice with respect to the handling of Western Union telegrams be retained.

26. Lifting Railroad Transportation

There is no rule in the present agreement dealing with this matter; but under existing practice Pullman conductors lift railroad transportation at receiving tables in stations in the absence of train conductors, and they also lift railroad transportation on trains en route when they are instructed to do so. The Organization's proposal expressly states that the handling (lifting) of railroad transportation is not the duty of a Pullman conductor, and that such conductors shall not be required to lift (receive) railroad transportation. The Company opposed the Organization's demand.

The practice of Pullman conductors lifting the railroad transportation of passengers occupying space in Pullman cars, both at receiving tables and en route, has prevailed in the Pullman service practically throughout the history of the Company. The practice is also an extensive one. A survey made in January of 1950, embracing all districts and agencies, showed that in 205 out of 435 then-existing regular Pullman conductor operations, Pullman conductors lifted all or part of the railroad transportation of Pullman passengers either at terminals or en route. In other words, Pullman conductors lifted railroad transportation in 47 percent of all conductor operations. The duty thus performed is integrally related to the conductor's performance of Pullman service, since the occupancy of Pullman space is obviously dependent upon the possession and surrender of railroad transportation; and there has been no showing that this duty is in any sense a burdensome duty.

On trains departing from terminals late at night, the sleeping cars are generally made available for occupancy a considerable period in advance of the train departures. When train conductors do not report for duty at the time the cars are opened for occupancy, the Pullman conductors lift both railroad and Pullman transportation during the absence of the train conductors. The Pullman conductor merely

picks up and marks the railroad ticket to show the space occupied by the passenger, places the ticket in an envelope, and turns it over to the train conductor when he comes on duty. The Pullman conductor is not responsible to the train conductor or to the railroad company for the accuracy or validity of the transportation lifted by him; and he is not required to make cash collections for railroad fares or to submit any reports concerning the railroad transportation lifted by him. The service performed by Pullman conductors in lifting railroad transportation at receiving tables before the train conductors report, enables the passengers to retire in their accommodations immediately, without the necessity of their being disturbed after departure of the trains. In the case of trains where the transportation is not lifted at receiving tables in the station, it is usually the practice for the train conductor and the Pullman conductor to work together in the initial lift of tickets. On a number of railroads, however, this practice is not followed. Instead, the train conductor lifts the tickets in the coaches, and the Pullman conductor picks up both railroad and Pullman transportation from the passengers in the Pullman cars. The Pullman conductor merely marks the railroad ticket to correspond to the space occupied and turns it over to the train conductor after the latter has completed his task of collecting railroad tickets in the coaches. Finally, in the case of passengers boarding Pullman cars at points reached late at night, it has always been the uniform practice for the Pullman conductor to lift railroad transportation when the train conductor, who frequently has other duties to perform at these station stops, is not immediately available, in order that the passengers, if they desire to do so, may retire without unnecessary delay or subsequent interruption of their rest.

In two cases before the First Division of the National Railroad Adjustment Board, in which the Organization claimed that the lifting of railroad transportation prior to train departure is exclusively the work of train conductors, the Board, in award No. 6990 and award No. 7652, denied the claims; and in one case before the Third Division, in which the Organization claimed that the Pullman conductors involved should be relieved from lifting railroad transportation and should be compensated at the train conductor's rate for all such service previously performed, the Board, in award No. 3727, also denied the claim. The present proposal is designed to reverse the principle and practice underlying these awards, and to abstract from a Pullman conductor's duties, the performance of a task which is inherently related to the Pullman service and furnishes a definite convenience and benefit to Pullman patrons. There appears to be no sound justification for abandoning this long-established arrangement.

The Board recommends that the existing practice with respect to the lifting of railroad transportation be retained.

27. Coach Solicitation and Refunds

There is no rule in the present agreement dealing with this matter; but under existing practice Pullman conductors solicit coach passengers for the sale of Pullman accommodations, and in case of disrupted service the conductors accompany passengers in coaches or buses for a portion of the trip and make refunds en route. The Organization's proposal specifies that Pullman conductors shall not be required to perform work on day coaches or buses. The Company opposed the Organization's demand.

Coach solicitation consists of offering and selling vacant Pullman accommodations to coach passengers at tariff rates. If passengers desire to buy any of the available accommodations, the conductor issues Pullman cash-fare checks to cover the transactions. Where the passengers have first-class railroad tickets, no additional railroad fare is required; where the passengers have railroad tickets which are good only in coaches, the Pullman conductor notifies the train conductor of the change in transportation, and the train conductor makes the additional collection and issues a receipt. When the transaction has been completed the Pullman conductor directs the passengers to the proper car and space and instructs the Pullman porter to carry the passengers' baggage from the coach to the Pullman car.

A conductor's effort, in his spare time, to sell vacant Pullman accommodations to passengers riding in the coaches, not only promotes the welfare of the Company through increasing its revenues and provides a service to passengers who may be unaware of the availability of Pullman space, but it operates to his own direct personal advantage because of the commissions he receives on his sales. The policy of paying commissions dates from early in 1931, soon after the sales campaign was inaugurated because of the new competitive pressures and the sharp business shrinkage of the depression period. The commission structure was changed from time to time, but for a number of years prior to June 1, 1950, commissions were generally paid, excluding lower berths and parlor-car seats, on the basis of 2, 4, or 10 percent (depending upon the nature of the accommodations involved) of the amount collected for the direct sale of space or transfer to accommodations of higher value. Effective June 1, 1950, a new commission structure, of simpler and more liberal character, was instituted. Under the new plan a commission is paid of 10 percent of the amount collected on transfers from lower berths to

single occupancy sections, and a commission of 3 percent on all other transactions (the only significant exception being sales of parlor-car seats, because of the common practice of paying cash on the train after a name reservation has already been made by telephone). In 1949, under the old plan, conductors were paid commissions aggregating $86,882; under the new plan, for the same amount of business in a calendar year, it is estimated that conductors would be paid commissions aggregating $154,887—an increase of 78.2 percent. The figures for the first month of the operation of the new plan bear out this estimate.

The revenue derived from the sale of accommodations by conductors is of substantial amount and is important to the Company. During the 13-year period extending from 1937 to 1949, despite the inclusion of the space shortages incident to the war years, the total revenue derived from sales by conductors for which commissions were payable amounted to $21,694,081, about one-third of which, it is indicated by a test tabulation, resulted from coach solicitation. And these sales are equally important to the conductors. During the same 13-year period the total commissions paid to conductors amounted to $978,985. Individual conductors benefit in varying degrees, of course, but frequently these commissions constitute significant additions to their monthly wages. In the 12-month period ending October 31, 1949, many conductors received in excess of $20 in one or more months during the period, and the four highest earning records in any 1 month of the period amounted to $63.56, $44.97, $44.04, and $36.40. Under the new commission structure, conductor earnings are definitely calculated to exceed these results by substantial amounts. There is much evidence that the conductors themselves are pleased with the sales effort required of them and cooperate willingly with the Company; and no adequate grounds were adduced by the Organization for curtailing this aspect of the Pullman conductor's work as part of his established duties.

The other type of present conductor work which the Organization's proposal would terminate is the making, in buses and coaches, of cash refunds to Pullman passengers transferred to such facilities in cases of interrupted service. The occasions requiring the performance of this refund service are infrequent. In most instances they spring from the fact that Pullman cars are stopped short of their destinations because of weather conditions, derailments, track washouts, landslides, or other factors of similar character. Such disruptions in service generally occur at intermediate points and prevent further movement of the trains. In many such situations the railroad resorts to the use of buses to transport the passengers around the obstruction

and place them in other railroad equipment for continued movement to destination. In rare instances (only two have occurred since January 1, 1949), late trains are turned short of destination, in order to make scarce light-weight equipment available for use on returning companion trains. On such occasions Pullman passengers are transferred, at the point of turn-around, from Pullman cars to day coaches, in which they continue their trips to destination. In such circumstances Pullman conductors accompany their passengers to destination, in order to supervise the porters, look after the needs of the passengers, and make cash refunds to them en route, as far as possible, of the difference between the tariff rates for the distances actually traveled in Pullman cars and the original costs of their tickets.

The proposal prohibiting the performance of any supervisory or refund work in day coaches or buses would further limit recognized conductor duties, to the detriment of the Pullman service. The need for the services of conductors is especially urgent in just such situations as have been described—particularly in the emergency conditions created by the disruption of regular Pullman service through washouts, damaged bridges, derailments, avalanches, or snow storms. If Pullman passengers whose trips are interrupted are to be accorded considerate treatment and their good will retained, Pullman conductors and porters must obviously look after their needs during the period they are being accommodated in buses or coaches. The making of refunds, as well as the exercise of supervisory functions, is one of the established duties of Pullman conductors in these circumstances. Under the Organization's proposal conductors would be entitled to ride in buses or coaches, in order to begin or complete their scheduled trips, but they would not be permitted to perform any service. In effect they would be deadheading on buses or coaches occupied by Pullman passengers for whom, in most cases, they were originally responsible; and at the same time claims might well be made for additional payments because of the break in the continuity of the conductors' original assignments. There appears to be no merit in the Organization's demand.

The Board recommends that the Organization's proposal that Pullman conductors shall not be required to perform work on day coaches or buses, with special reference to coach solicitation and refunds as described herein, be withdrawn.

66. Accounting for Company Funds

There is no rule in the present agreement dealing with the matter here in dispute. The Organization proposed that a conductor shall be relieved of all responsibility with respect to company funds at

the time he is released from an assignment. The Company opposed the Organization's demand.

The situation involved in this issue stems from the fact that some Pullman conductor operations are such as to make it impracticable for the Company to establish offices at some points at which an accounting for company funds can be made by a conductor immediately upon his release from duty, or to keep established district or agency offices open for 24 hours a day to render possible in all instances the deposit of company funds by conductors upon their release from road-service assignments. In most cases deposit facilities are available to conductors upon arrival at a terminal, and the conductors deposit the company funds in their possession with the receiving cashier or in a deposit receptacle provided by the Company. When the district or agency offices are closed, at either their home terminals or away-from-home terminals, the Company generally provides a representative who is authorized to accept company funds, or establishes arrangements with railroad ticket agents, ticket receivers, or cashiers to accept the money. As a rule the absence of such facilities is confined to outlying points. At the present time 63 regular conductor operations terminate at outlying points where the Company does not have an office. In cases where a conductor is unable to deposit company funds, he has been required to retain them after he is released from his assignment until such time as he makes contact with a representative of the Company. Conductors come into the possession of company funds when they sell accomodations in Pullman cars while en route to persons who have not previously purchased space, when they sell accomodations of higher value to Pullman passengers, or when cash from commissary sales is turned over to them by attendants. The sums involved, especially at outlying points, are for the most part relatively small in amount; and where deposit facilities are not available, the Company has not held its conductors responsible, in the absence of negligence, for cash shortages which result from accidental loss, robbery, or honest error.

Under the Organization's proposal the conductor would be relieved of responsibility for loss of company funds even though he were negligent in failing to make contact with the Company or a railroad representative to whom he should have turned over these funds, or in exercising reasonable care to safeguard them during his lay-over. Such a situation might well generate a sense of irresponsibility in the handling of company cash—both in its retention at outlying points, and in making deposits at home stations after office hours. Furthermore, large direct costs to the Company may well be involved

in this proposal. Such a rule might provide a basis for the contention that conductors who are on lay-over and have company funds in their possession are thereby kept on duty after release time and should be compensated for that service. Under the station-duty rule proposed by the Organization (to be dealt with in due course), a minimum of 7 hours of station-duty is to be credited to conductors in regular assignments who are required to remain on duty beyond normal release time to perform other work incident to the assignment; and in the event that the conductor was not relieved of company funds upon release, he might very conceivably claim that inasmuch as he was the custodian of the funds during his lay-over, he had performed work incident to his assignment beyond scheduled release time, and is therefore entitled to a minimum day (or actual hours, if the lay-over exceeds a minimum day), in addition to all other earnings for the month. Nor is the solution of this problem to be found in the provision of deposit facilities by the Company at all hours and at all points. A survey made for the period extending from October 1, 1949, through January 31, 1950, showed that the average amount of company funds retained by conductors at the 63 outlying points involved was $8.44. Such amounts would clearly not justify the cost of providing special-deposit facilities. The present arrangements for the handling of company funds have been in effect for many years and have proved to be fair and reasonable as well as necessary from the standpoint of cost. The Organization's demand appears to be without merit.

The Board recommends that the Organization's proposal that a conductor shall be relieved of all responsibility of Company funds at time released be withdrawn, and that the prevailing arrangements with respect to accounting for Company funds be retained.

39. Nonrevenue and Railroad Per Diem Cars

We now proceed to an examination of the group of issues which are related to the problem of scope, not from the standpoint of the permissible range of the conductor's duties, but in the more usual sense of the circumstances under which conductors, as against porters-in-charge or attendants-in-charge, must be used in the Pullman service. These issues involve amendments to rule 64 of the present agreement (dealing with conductor and optional operations) which have been proposed by both the Organization and the Company. The most general and important of this group of issues is the one with which we are now concerned; the remaining ones bear upon more limited and more specific matters related to the scope of the agreement.

Rule 64 (a) provides that Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service.

The basic question here in dispute is whether the use of conductors under these circumstances shall be dependent upon the proprietary control of the physical equipment by the Company as owner or lessee, or upon the revenue arrangements which the Company may make with the railroads on whose lines the Pullman service is rendered.

Thus, the Organization, in furtherance of the former of these views, incorporated after the words "in service" of the present rule, the phrase "occupied by passengers where sleeping or seat space is sold"—which obviously embraces situations in which the revenue from passengers is received not only by the Company but by the railroads to which the Company may transfer the use of the equipment. In conformity with this conception, furthermore, the Organization specified that " 'Pullman car' means any car owned by the Pullman Co. or leased to the Pullman Co., such as a sleeping or parlor car used for the accommodation or transportation of passengers and supplying sleeping or seating accommodations." Similarly, it provided that the seniority of a conductor shall include the right to assignment of all work "involved in operation of all sleeping and parlor cars owned by the Pullman Co. or leased to the Pullman Co."; and substantially the definition of a "Pullman car" noted above was included in the Organization's proposal with respect to "scope," except for the added stipulations that the Company shall furnish the general chairman of the Organization a list of all sleeping or parlor cars leased to the Company for operation, and that the general chairman shall be promptly notified of any change in such list.

The Company, on the other hand, in paragraphs (a) and (g) of its proposed amendments to rule 64, specified as follows: First, that "the words 'in service' and 'service movement,' whenever used in rule 64, mean and refer to sleeping and parlor cars furnished under contracts between the Pullman Co. and a railroad company when such cars are occupied or are open to occupancy by revenue passengers of the Pullman Co."; and second, that "cars operating on railroad per diem basis including those for which Pullman porter salary expense, if any, is borne by the railroad company, or cars operating in territory where the earnings do not accrue to the Pullman Co., shall not be considered in determining the requirements for the assignment of a conductor under the provisions of this rule." Since, in determining the required use of conductors, the governing consideration proposed by the Company is centered in the revenue arrangements, just as

that proposed by the Organization is centered in the proprietary control of the equipment, the issue between the parties was sharply joined.

When rule 64 was adopted in 1945, upon recommendation of the Tipton Board, the particular matter now in dispute appears not to have been contemplated by the parties. Their sole concern was with the question as to how many cars would require the use of a conductor, and in what circumstances porters-in-charge or attendants-in-charge might be used. Thus, in connection with the problem of what it called the "scope of conductors' work," the Tipton Board merely said: "The Organization has sought to prevent the disintegration of conductor service by the substitution of porters-in-charge. The Company has sought to protect itself against an undue waste of manpower and extraordinary expense by the employment of both a conductor and a porter when the service did not warrant the employment of two men. * * * The Board concludes that the limitation of the use of porters-in-charge to trains having one sleeping car would protect the Company's interest and would also give the Organization the security it seeks against the disintegration of conductors' work. Likewise, the limitation of the use of porters-in-charge of parlor cars. The Company proposed that porters-in-charge be used only when a train carries more than two parlor cars. The Board concludes that a conductor should be used when a train carries two or more parlor cars, or one sleeping car and two or more parlor cars." Rule 64 (a) was formulated in conformity with this recommendation. In all the extensive discussions of the problem at issue in the present proceeding, not a shred of evidence was forthcoming to show that in the earlier investigation, which preceded the adoption of rule 64, the question was even raised as to whether the use of Pullman cars, as now contended for by the Organization, or the direct receipt of revenue from passengers by Pullman, as now contended for by the Company, was to constitute the controlling factor in the required use of conductors.

Nonetheless, each party has proceeded on the assumption that the present rule supports its position, and has insisted that its proposed amendments are merely offered by way of "clarification." Thus, the Company stated, in its exhibit No. 39: "The Company proposes the retention of present rule 64 under which conductors are not entitled to work on Pullman cars used by a railroad in its own service where the Pullman Co. does not obtain the revenue from the sale of space in the cars. Included in this category are cars furnished to a railroad on what is known as the railroad per-diem basis. The Company advocates a clarification of the rule to spell out its pres-

ent intent." A like position was taken by the conductors. The Organization stated, in its exhibit No. 23: "The Organization has not proposed any changes in rule 64 other than for the purpose of clarification and to conform the rule to its intended object."

In reality, what both the Organization and the Company are seeking to accomplish through their proposed amendments is, essentially, to incorporate into the agreement the principle of a favorable award in a specifically adjudicated proceeding, to generalize the principle of the award by extending it to circumstances and conditions not comprehended by the specific determination, and, in each case, to reverse the principle of an unfavorable award. The Organization relies upon award No. 4000 of the Third Division of the National Railroad Adjustment Board, made in 1948 by Judge Edward F. Carter who sat as referee in a case involving the New York Central Railroad, and seeks to reverse or render inoperative for the future the principle of the so-called Canadian disputes; and the company relies upon the determinations in these Canadian disputes, made in 1949 by Frank M. Swacker who sat as the neutral member of a Special Board of Adjustment for these disputes, and seeks to reverse or render inoperative for the future the principle of award No. 4000. We will indicate the character of these adjudications and analyze their relationship to the issue here in dispute.

First, as to award 4000. On November 16, 1916, the New York Central operated two special trains in a daytime round-trip operation from Chicago to a Notre Dame football game in South Bend Ind. In connection with the operation of these special trains the Pullman Co. rented 16 standard Pullman cars to the railroad at $33 per car, the railroad per-diem rate in effect at that time, and it furnished porters to man the cars, as requested by the railroad, but with the porters' wages also paid by the railroad. The New York Central used its own tickets, which were collected by railroad employees. Pullman conductors were not assigned to the two special trains. The Organization's claim, in these circumstances, specified that Pullman cars were used "in service" (since seat space was sold in them); that extra conductors were entitled to assignment to these special trains; and that their operation without the services of conductors entitled the extra conductors to compensation for this work in addition to all other earnings for the month. In opposing this claim, the Company declared, among other things: "No conductor work of any kind was performed by the Pullman Co. on these trains and no such work was performed for it. The Pullman Co. had no work on these trains that it could assign to the Pullman conductors, and the fact that no such assignment was made does not constitute any ground for com-

plaint by the Pullman conductors. The New York Central had the right to conduct its own operation of its own trains and had the right to rent cars from the Pullman Co. or from any other source to supplement the supply of cars for its railroad operations. It is equally certain that the Pullman Co. had the right to rent these cars to the railroad for use on a railroad operation, and that the renting of the cars did not carry with it any obligation to take over the operation of the cars from the New York Central, or any right to do so. It is fundamental that the right of the Pullman conductors to work on a particular train does not depend upon whether the cars are owned or rented by the Pullman Co." In face of these opposing considerations, the claim of the Organization was sustained.

In making this award in support of the conductors, Judge Carter set forth his reasons as follows:

The Pullman Co. operates on many of the railroads of the country. It owns or leases the cars known as Pullman cars and operates them over the railroads under agreements made with them. In other words, Pullman cars constitute the physical equipment with which the Pullman Co. performs its Carrier service. In performing this service, many conductors, porters, attendants, and other employees are required. Collective agreements have been made with each class. In the case of Pullman conductors, it was agreed that Pullman conductors would be used on all trains carrying two or more Pullman cars in sleeping or parlor car service. In other words, the Carrier agreed with the conductors that whenever it placed two or more Pullman cars in service on any train, a Pullman conductor would be assigned.

In the present case the Carrier contends that it rented its cars to the New York Central. In other words, it contracted out its equipment in such a manner that it claims it can ignore rule 64 (a).

We agree that the Pullman Co. can place its equipment in service in any way and on any terms that it sees fit. But if they put Pullman cars in service, the provisions of rule 64 (a) must be complied with. It cannot defeat the rule by the simple expedient of sending them into service on the basis of daily rental plus the wages of porters and avoid its obligations to Pullman conductors.

The Carrier contends that the New York Central was operating the trains including the Pullman cars and that the Pullman Co. could not place its conductors on the trains even if it wanted to. Of course, the Pullman Co. may have obligated itself with the New York Central not to use their own conductors. But, even so, such action in no manner relieves the Pullman Co. of its contractual obligations to its conductors. Under rule 64 (a), Pullman conductors should have been used on the two trains here involved. The Pullman Co. cannot farm out its equipment for sleeping or parlor car service and deprive its conductors of the work which was guaranteed to them under the agreement. If the contract could be circumvented by so simple an expedient, it would be of little or no benefit to the employees within it. We must construe it in the sense intended rather than to give it a technical meaning that would defeat the very purpose of the contract itself. When the Pullman Co. placed these cars in service, by whatever method it saw fit to employ, it did not relieve itself of its contractual obligations towards its own conductors.

While it is not the function of this Board to review awards of the National Railroad Adjustment Board, it is constrained to declare, because of the relationship of this award to the proposals of the parties, that the principle underlying award 4000 appears to us to be both sound and reasonable. The Company has abided by this award, and it has refrained from withholding the assignment of conductors in all similar situations. But this does not mean that the Organization's proposal—which makes the sole test for the required use of conductors the utilization of sleeping-car or parlor-car equipment owned by or leased to the Company—is entitled to adoption. The decision in the New York Central proceeding, despite its broad and acceptable language, was necessarily an *ad hoc* determination—that is it was made in light of the particular facts of that proceeding. The Organization, by its proposal, seeks to extend its governing considerations to states of fact that may depart markedly from those there involved. It is one thing to farm out equipment through rental for special use, in a way calculated to deprive conductors of the work guaranteed to them under their agreement; it is quite another when equipment owned by or leased to the Company is sold to a railroad or leased back to it for substantial periods of time and is then operated by the railroad. At the close of 1949, out of the 5,838 cars then in Pullman service, 3,914 were railroad-owned cars, operated by the Company under lease.

In conformity with the court decree which preceded the acquisition of ownership of the Company by the railroads, the Company, under the uniform service contract with the railroads which is now operative, no longer enjoys any exclusive right to furnish sleeping-car service on the railroads, and it is obligated to furnish partial service on reasonable and nondiscriminating terms to any line of railroad which may desire to operate in part its own sleeping-car service. Situations are thus definitely contemplated, at least as possibilities, in which the Organization might have to seek agreements with individual railroads, instead of looking entirely to the Company to safeguard the rights of the conductors. It is true that the acquisition of the ownership of the Company by the railroads was definitely understood not to prejudice the existing rights of the various labor organizations involved; but such rights cannot extend, as against the Company, to operations performed by individual railroads, as a result of the transfer to railroads, upon their request and in good faith, of equipment previously owned or controlled by the Company. The Organization's proposal would tend to freeze the ownership-lease situation which now prevails, in relation to the work rights of conductors, with possible consequences that are neither sound nor equitable. The required use

of conductors is amply safeguarded by present rule 64 (a), as construed in award 4000; and furthermore, the Organization's amendments would, in the judgment of the Board, reverse or render inoperative for the future, without sound justification, the principle of the determinations in the Canadian disputes.

In the Canadian disputes the main question at issue was whether Pullman conductors had to be assigned, when two or more Pullman cars were being used, in so-called "railroad territory," in connection with joint through line service with the Canadian National and the Canadian Pacific, where the service was operated by these roads and Canadian conductors were assigned by them when deemed necessary. The Organization claimed that rule 64 (a) was being violated when the trains proceeded from so-called "Pullman territory" into "railroad territory" with a Pullman porter, but without a Pullman conductor. The Company pointed out that under the provisions of its operating contracts with the Canadian railroads, the revenues derived from the operation of Pullman cars in "railroad territory" accrued to the railroads, and the revenues derived from the operation of Canadian-owned cars in "Pullman territory" accrued to the Company; that the Canadian railroads had sole control of the operations in "railroad territory"; and that, indeed, the Company would not be permitted by the Canadian railroads to assign Pullman conductors in "railroad territory." The principal claims of the Organization, nine in number, were denied by the special board of adjustment. In announcing the awards, Chairman Swacker said:

> Rule 64 (a) cannot transcend in its scope the whole agreement itself. This is not a case of some work being taken away from Pullman conductors. They never did have this work. The contract they have relates to work which the Pullman Co. controls. The Pullman Co. * * * does not control that work in Canada, and never has, and consequently it would be sort of trying to hoist themselves by their own bootstraps to make 64 (a) enlarge the scope of the contract beyond operations of the Pullman Co. It is not a corollary of that conclusion that the Pullman Co. could * * * enter voluntarily into contracts which impinge upon the present operating agreements of the conductors. * * * The cases which are relied on by the organization to the effect that work once the subject matter of a bargaining agreement may not be removed and turned over to others by unilateral action has no application here, because this work * * * never was work of the Pullman conductors. This is an effort on the part of the Pullman car conductors to reach out and obtain work that they have not had. * * * Now, of course, what is said here has no application to any question such as could arise, such as did arise under docket 4000. We are not passing any judgment on that situation there at all, because it is not involved. There the contention made, at least, was that there was work formerly and normally enjoyed by Pullman conductors. The work here sought in these cases that is denied is work that has never been enjoyed by Pullman conductors.

It is the judgment of this board, as it was in connection with the claim involved in award 4000, that the disposition of the claims in the Canadian disputes was sound and equitable. But the principle of the determinations is applicable only to the Canadian situation. It is perfectly clear that the awards were based, in these joint through line services with the roads in a foreign country, upon the existence of a long-established practice in the Canadian operations which entirely removed these operations, in "railroad territory," from the scope of the Organization's agreement with the Company. This is the factor that is emphasized over and over again by Chairman Swacker. The matter of revenue arrangements as such is not even mentioned; and there is express recognition that the awards do not mean that the Company may "enter voluntarily into contracts which impinge upon the present operating agreements of the conductors," or that the principle underlying them is applicable to the question that was at issue in award 4000. Just as the Organization's proposal would, without sound justification, extend the principle of award 4000 to the Canadian operations, so the Company's proposal would, without sound justification, extend the conclusions reached in the Canadian disputes to all domestic joint through line services. There may doubtless be domestic situations, as indicated in connection with the discussion of award 4000, in which railroad operations involving sleeping-car service, undertaken by railroads in good faith, might prove to be beyond the impact of the Organization's agreement with the Pullman Co. But to make the applicability of the agreement dependent solely upon the revenue arrangements which the Company may make with individual lines from time to time, particularly when, as now, ownership and control of the Company is vested in the railroads, would unquestionably tend to impair the work rights of conductors and undermine their security. The proposal of the Company is no more acceptable, from the standpoint of maintaining the scope of conductor operations on a reasonable basis, than that submitted by the Organization.

Rule 64 (a) has been in effect for a period of 5 years. During this interval, aside from the disposition of the Canadian disputes, which was *sui generis*, and the principle enunciated in award 4000, which set the general pattern for disposition of the question here at issue, only one or two controversies relating to this provision for the required use of conductors have proved to be of sufficient importance to result in the submission of claims to the Adjustment Board. This record, an excellent one, indicates that the present rule is fair and reasonable and workable.

The Board recommends that both the Organization's proposal and the Company's proposal be withdrawn, and that rule 64 (a), as previously negotiated and now written, be retained.

30. Inclusion of Railroad Operated Cars in Applying Two-Car Rule

Under the present rule (64) railroad owned and operated sleeping or parlor cars are not counted in the two or more Pullman cars which require the assignment of a Pullman conductor. The Organization proposed that Pullman conductors shall be assigned to all trains while carrying at the same time one Pullman sleeping or parlor car and one railroad owned and operated sleeping or parlor car. Moreover, in connection with its proposal, already considered, that a conductor shall not be required to perform work on coaches and buses (involving coach solicitation and refunds), the Organization also proposed that conductors shall not be required to perform work on sleeping or parlor cars owned and operated by a railroad. The Company asserted that it proposed no change in the present rule, except to "clarify" it by defining a Pullman car "in service" as a car furnished under contract between the Company and a railroad which is occupied or open to occupancy by revenue passengers of the Pullman Co.

The Company's proposal, which is but a restatement of the position it took on the previous issue, as incorporated in its proposed paragraphs (a) and (g) of rule 64, does of course constitute a basic change in the present rule, and has already been rejected. The Organization's proposal must likewise be rejected. In effect it turns the two-car rule, which the Organization purports to retain, into a one-car rule, and is inconsistent with the provision whereby the Company may use porters-in-charge or attendants-in-charge on trains carrying one Pullman car. The burden upon the Company would be especially onerous in connection with railroad owned and operated parlor cars, since all the railroads except the Pennsylvania, the New Haven, and the Wabash operate their own parlor-car service. Many trains carrying railroad cars also carry a single Pullman car. Pullman conductors, who have never been used in such operations, would thus become entitled to displace porters-in-charge or attendants-in-charge. The Organization declared that the purpose of its proposal was to prevent the juggling of equipment by the Company and its railroad owners in order to exclude the assignment of Pullman conductors. No evidence of such juggling was produced; and if such juggling had occurred, resort would doubtless have been had to the grievance procedure. The Organization's proposal is rendered all the more unreasonable when coupled with the demand that the conductors shall not be required to perform work on railroad owned and operated sleeping or parlor cars, and when its estimated annual cost to the Company amounts to $181,245.

The Board recommends that both the Organization's proposal and the Company's proposal be withdrawn, and that the two-car rule continue to be applied without counting railroad owned and operated sleeping or parlor cars.

42. Definition of Porter-in-Charge Work; Porter-in-Charge Roster

In the present rule (64) there is no definition of porter-in-charge work, and no separate porter-in-charge roster is maintained. The Organization proposed that the following new provisions be added to the rule: "'Porter-in-charge' and 'Attendant-in-charge' means a porter or attendant who has been given training in the handling and use of car diagrams and cash fare checks and coached in the handling of tickets and certain routine involved in conductor's work, and who has the necessary equipment available and actually performs the work to which he is assigned. The general chairman and local chairman representing conductors shall be furnished a list of porters-in-charge and attendants-in-charge, and shall be kept promptly advised of changes therein." The Company opposed this demand.

This proposal seeks to prescribe the qualifications of another craft or class, which is represented, not by the Order of Railway Conductors, but by the Brotherhood of Sleeping Car Porters, and to deal with matters, such as rosters, which are covered by the agreement between the Pullman Co. and the Brotherhood. The Company is not legally free to accept stipulations which in point of fact are in conflict with provisions of that agreement; nor, it would seem, is the Organization free, under the Railway Labor Act, to determine working rules for another craft or class. The apparent purpose of the proposal is to restrict such use of porters-in-charge and attendants-in-charge as is authorized by the agreement between the Organization and the Company. As such, and apart from all questions of legal validity, it would impose unjustifiable limitations upon the managerial discretion of the Company, and it would tend to provide a prolific source of controversy. It appears to be without merit.

The Board recommends that the Organization's proposal involving the definition and listing of porters-in-charge and attendants-in-charge be withdrawn.

31. Collection of Tickets and Cash Fares at "Passing" and "Outlying" Points

The present rule (64) provides that the management shall have the option of using conductors, porters-in-charge, or attendants-in-charge,

interchangeably, from time to time, for collecting Pullman tickets and cash fares for cars at "outlying" points (where no conductors are carried on the roster) and at "passing" points (where a conductors' roster is maintained and at which cars are picked up by passing trains), when the cars will be in charge of a conductor on leaving such points, except that a conductor will be used at "passing" points for two or more cars which are being loaded at the same time in the same station prior to attachment to through trains on which Pullman conductors are operated. The Organization proposed that conductors shall be used for three or more cars at "outlying" points which will be in charge of a conductor when leaving such points; and that conductors shall be used at "passing" points for all cars (including a single car) which are being loaded in a station prior to attachment to through trains on which Pullman conductors are operated. The Company opposed the demand.

The Organization's proposal is designed primarily to increase the use of Pullman conductors, without any showing of need for their services. Unnecessary deadheading would follow its adoption, as well as unjustifiable payments as station duty for time not worked and the estimated annual cost of the proposal to the Company would amount to the substantial sum of $71,120. The demand appears to be without merit.

The Board recommends that the Organization's proposal with respect to the collection of tickets and cash fares at "outlying" and "passing" points be withdrawn.

49. Conductors on Two-Car Movements of Less Than 5 Hours

Under the present rule (64) the use of conductors (as against porters-in-charge and attendants-in-charge) is optional with the management on all trains where there is a combined service movement of two Pullman cars having one or both terminals different, and the combined movement is for a period of less than 5 hours; but it is also provided that if one of the cars in the first combined movement becomes part of another combined movement of two cars, the duration of the two combined movements must be considered in determining whether the use of conductors is optional with the management. The Company sought to eliminate the difference in terminals as a criterion of the option to use conductors, as well as the inclusion of a second combined movement in determining whether the original combined movement was one of more or less than 5 hours. It thus proposed, in effect, that the Company shall have the option of operating conductors on all trains carrying two cars when the service movement is one of less than 5 hours; and that conductors shall be used when the service

movement is one of 5 hours or more, provided the same two cars are operated together for such a period. The Organization opposed the demand.

There can be no question that the present rule is a complicated and highly technical one. The Company's desire to simplify it is altogether praiseworthy. But its proposal does more than simplify the rule. It expands its own option to use conductors, and to that extent it derogates from the established work rights of the conductors. The present rule has the merit of being the result of a negotiated settlement. No adequate grounds were adduced for disturbing it.

The Board recommends that the Company's proposal with respect to the use of conductors on two-car movements of less than 5 hours be withdrawn.

50. Assignment of Conductors to Cars Parked at Terminals or En Route

The present rule (64) provides that when passengers are permitted to occupy a car or cars in charge of a conductor beyond the scheduled arrival time at the foreign or home terminal of the conductor, he shall not be released from duty until the scheduled time the car or cars are to be vacated; and conductors must also be assigned to two or more cars in service parked en route. The Company proposed that the management shall have the option at terminals of releasing the conductor or continuing the conductor on duty until the scheduled time the car or cars are to be vacated; and that the management shall also have the option of assigning a conductor to a car or cars occupied by passengers or their baggage while laying over en route at either a passing point or at an outlying point. The Organization proposed to spell out the first requirement of the present rule by specifying that it will apply in case of extra conductors used in extra service; and also to spell out the second requirement by specifying that conductors will be used where two or more Pullman cars are held in service at a point en route pending further movement. On the substance of the rule, the Organization opposed the Company's demand.

No adequate grounds were adduced for changing the present rule. The Company's proposal would expand the management's options in using conductors, and to that extent would restrict the prevailing work rights of conductors. On the other hand, while the apparent intent of the changes proposed by the Organization is to retain its existing rights, the incorporation of the new provisions into an agreement might, through their interpretation, lead to an expansion of those rights. The present rule, as interpreted by the National Rail-

road Adjustment Board in light of particular circumstances, appears to deal with the situation on a reasonable and equitable basis.

The Board recommends that both the Company's proposal and the Organization's proposal with respect to the assignment of conductors to cars parked at terminals or en route be withdrawn.

48. Freezing of Present Conductor Operations

The present rule (64) provides that the management shall have the option of using conductors or porters-in-charge (including attendants-in-charge) on all trains carrying one Pullman car in service, except in certain conductor operations specifically covered in the memorandum of understanding dated August 8, 1945. This memorandum designates 52 lines carrying one sleeping car for all or part of the trip involved on which conductors must be operated. There is no prohibition in the present agreement against the removal of conductors from Pullman operations involving two or more cars which are reduced to one-car operations. The Organization proposed, in effect, that if, in one-car runs not covered by the memorandum of understanding, the Company posts a one-car run as a conductor operation by issuing an operation of conductors form for it, then it shall be deemed to have exercised its option and shall be required to abide by its posted bulletin, until such time as the operation of conductors form is cancelled by bulletin and the run is rebulletined as a porter-in-charge operation. The Company proposed that the management shall have the option of operating conductors (it agreed at the hearings expressly to include porters-in-charge and attendants-in-charge as alternatives) on all trains carrying one Pullman car in service. This proposal was designed to cancel the memorandum of understanding and to void the required use of conductors in the 52 one-car operations governed by that memorandum. In other wards, it was proposed that all frozen conductor runs be eliminated. The Organization opposed this demand.

The Organization explained at the hearings that it is not the purpose of its proposal to freeze the use of conductors on all lines now operated with conductors as shown in the operation of conductors form, but rather, and solely, to require that the Company abide by that form as long as it remains outstanding. Since both parties recognize that the integrity of assignments should not be arbitrarily disturbed or impaired, there can be no objection to the Organization's proposal. The Company's proposal, on the other hand, would cancel the memorandum of understanding with respect to the 52 frozen conductor runs, which was part of a general settlement of the many

matters affecting scope worked out in 1945. No convincing reasons were presented to support such cancellation, and the proposal appears to be wanting in adequate justification.

The Board recommends that the Company's proposal for the elimination of all frozen conductor runs be withdrawn, and that the memorandum of understanding of August 8, 1945, be continued as part of the agreement.

VII. GRIEVANCES AND CLAIMS

From the very opening of this proceeding, matters related to grievances and claims were presented to the Board by both parties in earnest and extensive fashion. The basic provisions of the present rule (49) specify: First, that a conductor who is disciplined, or who considers that he has been unjustly treated, may, through request in writing, elect to present his grievance for hearing and decision; and second, when a hearing is requested, the conductor must be given a fair and impartial hearing. It will be noted that the hearings for which provision is made are to be held after discipline has already been imposed, or other action has already been taken, by the management. The failure to provide for a hearing prior to disciplinary action or other alleged unjust treatment was recognized by both parties as constituting the fundamental defect of the existing procedure. On the basic need of removing this defect the parties were in complete agreement. A second major defect in the existing procedure lay in the fact that it furnished no adequate implementation of the requirement that a hearing, when held, must be a fair and impartial hearing. Accordingly, both the Organization and the Company submitted elaborate proposals, which embraced for the most part entirely new provisions for the handling of grievances and included also detailed stipulations for dealing with claims arising out of the interpretation and application of the agreement. These proposals provided both for hearings prior to managerial action and for the regulation of the hearings in the interest of fair and impartial procedure. On the matter of holding hearings in connection with disciplinary action, as will be noted presently, there was only one minor point of disagreement; the important issues between the parties concerned primarily the ways and means through which the hearings were to be rendered fair and impartial, with disagreement persisting also concerning time limits on claims, payment for time withheld from service pending investigation, and the measure of compensation for wage loss when the record involved is cleared of charges.

In the course of the proceeding the members of the Board discussed with the parties, openly and rather extensively, the nature of their respective grievance-and-claim proposals and the requirements of a

sound procedure. As a result, the representatives of the Company modified their proposals in a considerable number of directions, and thereby facilitated the efforts of the Board to reach just and reasonable conclusions. In making its recommendations, particularly in the matter of discipline procedure, the Board has been guided by two governing considerations: First, that the employee shall in fact be accorded a fair and impartial hearing, in conformity with due process broadly conceived; and second, that the procedural requirements shall not be so technical and onerous as to render disciplinary action by the management, which is clearly essential in a service industry, practically inoperative.

60. Requirement for Hearing in Case of "Caution," "Reprimand," or "Warning"

Under the present rule (49), as we have seen, hearings are held in all discipline cases only upon request of the employee affected by the discipline imposed. The Company proposed that no conductor shall be disciplined, suspended, or discharged, without a fair and impartial hearing. This proposal makes a hearing mandatory before the assessment of a "caution," "reprimand," or "warning" on the record of a conductor, just as it is in the case of suspension or discharge. The Organization proposed that a conductor shall not be suspended or discharged without a hearing; but it expressly stipulated that a conductor who considers that he has been unjustly disciplined as a result of a caution, reprimand, or warning being placed on his record, may elect through written request to present his grievance for hearing and decision.

The Company agreed at the hearings in this proceeding that the employee would be permitted to waive the hearing in these cases of minor discipline. Even without this possibility of waiver, the position of the Organization in this matter is difficult to understand; as against the modified proposal of the Company, there can certainly be no reasonable objection.

The Board recommends that the Company's modified proposal with respect to the requirement of hearings in cases of "caution," "reprimand," or "warning" be adopted.

57. Depositions and Sworn Statements

Under existing practice sworn statements and deposition procedure are not employed in connection with investigations in discipline cases. The Organization proposed the following procedure: that if the person or persons responsible for the accusation which resulted in a charge

being preferred against a conductor are not employees of the Company and hence cannot be required to be present at the hearing and testify, and if the management desires to obtain statements from such person or persons to be used as evidence, then the district representative of the Company shall furnish the conductor or his representatives the names and locations of such person or persons and the date or dates and time they are to be interviewed, so that the conductor or his representatives may have the opportunity of interviewing such persons jointly with management's representatives; that the same procedure shall be followed when the management, or the conductor or his representatives, desires to obtain statements from a person or persons not employed by the Company who may have witnessed the occurrence; and that all written statements introduced at the hearing shall be sworn to and notarized. The Company proposed no change in existing practice in these respects, and opposed the Organization's demand.

The eventual purpose of the Organization's proposed procedure is doubtless to accord the conductor a fair and impartial hearing in connection with the possible imposition of discipline; but more immediately it seeks to regulate the prehearing conduct of the parties, by compelling them to act jointly and by requiring outsiders to swear to their statements. It must be kept in mind that what is involved in discipline cases is not a trial in a court of law, but an investigation by private parties, whose relations to each other are fashioned predominantly by a collective labor agreement, for the purpose of discovering whether alleged service deficiencies or improprieties on the part of the accused conductor are supported by ascertainable facts. Joint interviews, whether with primary complainants or with witnesses, would not only be difficult to arrange, but would tend, because of the recalcitrance or embarrassment of complainants or witnesses, to thwart such assembly of the facts as is necessary for this purpose. A rule calculated to produce such consequences may not, in any true sense, be said to implement the investigation; on the contrary, it would operate to render the investigation altogether ineffective as an instrument for determining what just and fair discipline, if any, shall be imposed upon the conductor.

In the course of the hearings in this proceeding, the Company modified its position with respect to the continuance of existing practice in this sphere in a number of significant ways. It agreed to furnish the conductor or his representatives the names and addresses of passengers submitting complaints if permitted to do so by such passengers, the names of primary accusers, without any proviso, if such accusers are employees of either the Company or of the railroad involved, and the names (and addresses, which are assumed to have been

omitted as an oversight) of all witnesses with whom it may make contact. Under this procedure the conductor (or his representatives) would be in position to make his own investigation along the same lines as that pursued by the Company. Even the unavailability of the name and address of the primary complainant, in the case of a passenger who declines to have his or her name disclosed to the accused conductor, would not hamper the employee's investigation in any serious fashion; for the Company has also agreed, by way of modification of its original proposal, to have a full and exact copy of the letter of complaint made available to the accused conductor or his representatives, instead of merely filing a charge against him based upon such complaint. All of these modifications of the Company's practice appear to be essential, if a fair and impartial hearing is to result; but they are not calculated, as are the Organization's proposals, seriously to impair, and perhaps virtually to destroy, the effectiveness of the investigatory process.

The Board recommends that the Organization's proposals with respect to joint interviews and sworn statements be withdrawn; but with the understanding that the procedures to which the Company agreed in the course of the hearings (as set forth above), by way of modification of existing practices (as embodied in its original proposals), will be incorporated in the agreement.

58. Preview of Statements To Be Used in Hearings

The Organization also proposed, by way of altering existing practice, that the management shall furnish the conductor or his representatives with a copy of all correspondence and statements that are to be introduced at the hearing in discipline cases at least 48 hours before the hearing is scheduled to begin; and that the same obligation should be placed on the conductor or his representatives with reference to the management. The Company proposed no change in existing practice, which makes no provision for such interchanges of correspondence and statements, and opposed the Organization's demand.

The factors relevant to the disposition of this proposal have already been presented at some length in connection with the previous issue. The requirement here involved would simply serve as a further obstruction to effective investigation, by complicating the hearing procedure through the imposition of a technical prerequisite and thereby causing delay. Nothing is to be gained by the proposed preview of correspondence and statements, especially for so short a period of time, that cannot be the better realized through continuance of the hearing when necessary. Requests for continuances, in order to prepare re-

buttal testimony, are generally granted as a matter of course. Since the names and addresses of all witnesses are to be furnished to the conductor or his representatives, so that they themselves may interview such witnesses as and when they please, the opportunity for surprise to either party is entirely removed. The proposed requirement would merely impose an additional burden upon the parties, without encompassing any commensurate advantage. It would not contribute in any way to the fairness and impartiality of the hearing.

The Board recommends that the Organization's proposal with respect to the interchange of correspondence and statements prior to the hearing be withdrawn.

59. Attendance of Witnesses at Hearings

Under existing practice both the management and the conductor or his representatives may produce witnesses at a hearing in discipline cases, but they are not required to do so. The Organization proposed that if the person or persons responsible for the accusation which resulted in a charge being preferred against the conductor are employees of the Company, such person or persons shall be present at the hearing and testify. The Company proposed no change in existing practice, and opposed this demand.

The implications of the Organization's proposal are not entirely clear. If, when it refers to the "person or persons responsible for the accusation," it contemplates that all Pullman employees who offer testimony against the conductor, which generally takes the form of written and signed statements, must be present and testify in person at the hearing, then it goes beyond any reasonable need to assure a fair and impartial investigation. It is of the very nature of Pullman operations that the Company's conductors and porters who travel on trains, as well as its representatives at the numerous points which it serves, are widely scattered; and to require all such employees who may have witnessed the matter or incident being investigated, or who may have relevant knowledge concerning it, to present themselves at the hearing in the event that their written statements are adverse to the conductor. would not only impose a costly procedure upon the Company, with possible impairment of the service, but would tend to delay the hearings unnecessarily and thus lessen the effectiveness of the investigation. With the identity of all witnesses known to the conductor or his representatives, and with ample opportunity to secure statements from such witnesses on the conductor's behalf, there is little danger that a failure of justice will result from the usual reliance upon the submission of written testimony. There are, of course, instances in which the personal attendance of witnesses at the hearing

is essential; and in such instances either party is free to call them, so that witnesses offering importantly conflicting testimony may confront one another. Such situations are exceptional, however; and in any event they do not support the mandatory requirement contained in the Organization's proposal, as applied to all adverse witnesses who are employees of the Company.

Only in the case of the primary accuser, as distinct from all corroborative witnesses, is such a mandatory provision justified. Due process does require that the accused be confronted by his accuser at the hearing designed to determine his guilt or innocence by fair and impartial process. When the accuser is a Pullman passenger, there is no practicable way of assuring his presence at the hearing, since neither the management nor the conductor is vested with any right to subpena witnesses. When, however, the primary accuser is an employee of the Company, there is no insurmountable obstacle to assuring his attendance at the hearing and to requiring his submission in person, subject to cross-examination, of the testimony which generated the charge in the first instance. Such cost to the Company as may be involved in this procedure is amply offset by the contribution thus made to the fairness and impartiality of the hearing. As thus limited, the Organization's proposal possesses substantial merit.

The Board finds that the Organization's proposal with respect to the attendance of witnesses at hearings, when so limited as to require only the primary accuser, if an employee of the Company, to be present at the hearing and to testify as a witness, is just and reasonable; and it recommends that the proposal, as thus construed, be adopted.

61. Time Limits on Grievances

Under the present rules (49 and 50), with no provision for hearings prior to the assessment of discipline, grievances in cases of discharge must be presented by the employee within 30 days from the date of discharge; all other grievances must be presented within 60 days from the date of the action complained of; there are time limitations of 20 days and 15 days, respectively, on the decision of the Company's district representatives and that of the highest appeal officer; and there are no time limits on appeals by the employee or his organization, under the provisions of the Railway Labor Act, after final decision by the management has been rendered.

The Organization, under the provisions for hearings prior to disciplinary action as previously set forth, proposed time limits for the handling of grievances as follows: That a conductor charged with offenses involving suspension or discharge shall be advised of the precise charge against him, in writing, within 30 days from the date

of the cause of complaint; that the hearing in such cases, concerning the time and place of which he must also be notified in writing, shall be held not less than 10 days nor more than 15 days after he has been notified of the charge against him; that decision shall be rendered by the management within 15 days after the close of the hearing; that a 60-day limitation be established for the presentation to the management of grievances as to discipline not involving suspension or discharge and those submitted on the basis of alleged unjust treatment; that a 15-day limitation be placed on management's consideration of appeals on the property; and that there continue to be no time limits on appeals, under the provisions of the Railway Labor Act, after final decision by the management has been rendered.

The Company, on the basis that no conductor shall be disciplined without first being granted a hearing, proposed time limits for the handling of grievances as follows: That in all discipline cases, including suspension and discharge, hearings by the Company's district representative shall be held within 10 days from the date on which the conductor is notified of the specific charge against him; that decision shall be rendered by him within 30 days after the hearing is completed; that appeals from the decision of the district representative shall be made within 30 days, and decisions on appeals shall be rendered within 30 days after the appeal conference has been completed; that decisions of the highest officer designated to handle appeals on the property shall be final and binding unless protested within 60 days from the date of such decisions; and that any further appeal, under the provisions of the Railway Labor Act, shall be taken within 6 months of such final decision on the property, and if not so taken shall be barred. In cases in which a conductor desires a hearing because he considers that he has been unjustly treated, the Company proposed that he or his representative shall make a written request therefor, containing the specific charge to be brought to the attention of the management, within 60 days from the date of the alleged unjust treatment; that a hearing shall then be held within 30 days from the date of receipt of the request; that decision shall be rendered within 30 days after the hearing is completed; and that both appeals on the property and under the Railway Labor Act shall have the same time limits as was proposed for discipline cases.

In connection with these proposed time limits on grievances, as in other aspects of the proposed grievance-and-claim procedures, the Board participated actively in the discussions at the hearings in this proceeding, and as a result the principal directions of its probable determinations were then indicated. The nature of these determina-

tions, as finally arrived at by the Board, will now be set forth with respect to each of the proposed time limits.

(1) *Period of investigation.*—The Organization proposed that in cases involving suspension or discharge, the conductor shall be advised of the charge against him within 30 days after the date of the cause of complaint. This 30-day period would not allow sufficient time for investigation in the circumstances of the Pullman service, particularly if the hearing, as proposed by both parties, is to be held promptly after the conductor has been notified of the charge against him. The Company, on the other hand, placed no time limit on the duration of the investigation which was to precede the formal preferment of charges. Such an unlimited period of investigation might well tend to detract from the fairness of the hearing, since the circumstances of the complaint might become blurred and important witnesses might become unavailable. Neither proposal, as originally made, appears to be reasonable. But in the course of the hearings the Company modified its proposal. It requested that 120 days be allowed for investigation, to run from the date the Company is put on notice of the complaint (at which time or reasonably thereafter, it will be remembered, a full and precise copy of the complaint is to be made available to the conductor or his representatives). The Board deems it reasonable to reduce this investigatory period of 120 days to a period not to exceed 90 days, and it so recommends.

(2) *Notice of complaint.*—Neither the Organization nor the Company originally proposed any time limits for notifying the conductor of the complaint against him received by the management (as distinct from its formal preferment of charges). In the course of the hearings the Company amended its proposal to specify that a conductor will be advised of the complaint and will be furnished a copy of the letter or statement of complaint within "a reasonable time" after the receipt of the complaint by the management. In the judgment of the Board such "a reasonable time" should not exceed 15 days, and it so recommends.

(3) *Scheduling of hearing.*—The Organization proposed that the hearings in cases involving suspension or discharge shall be held not less than 10 days nor more than 15 days after the conductor has been notified of the charge against him. The Company proposed that in all discipline cases (including those of caution, reprimand, or warning) hearings shall be held within 10 days from the date on which the conductor is notified of the charge against him. It has already been determined that hearings will be required in all discipline cases, except that the conductor may waive the hearing in those involving

minor disciplinary action. In view of the fact that the conductor will be notified of the complaint against him within 15 days after its receipt by the Company, that he will receive at the same time a copy of the letter or statement of complaint, that he will receive the names of complainants when they are employees of the Company or of the railroads involved and in some instances even when they are passengers, that he will receive the names and addresses of all witnesses to be used by the management—so that he and his representatives will have ample time (substantially the same amount as is available to the management) to investigate the subject of complaint—no reason appears for not holding the hearing as promptly as possible after the charge has been formally preferred against him. This is all the more so since continuances of hearings are generally granted as a matter of course. In the judgment of the Board the 10-day limit proposed by the Company is just and reasonable, and it recommends its adoption.

(4) *Rendering of decision.*—The Organization proposed that decision shall be rendered by the management within 15 days after the close of the hearing, and the Company proposed that such decision shall be made within 30 days after the hearing is completed. There are frequently many cases pending at the same time which require decisions to be rendered by the management. Nothing is to be gained by hurrying these decisions unduly, with possible detriment to the soundness of the determinations. Since both proposals merely deal with outside limits, more prompt decisions, when feasible, can always be made. In the judgment of the Board the 30-day time limit on decisions proposed by the Company is just and reasonable, and it recommends its adoption.

(5) *Alleged unjust treatment.*—The Organization proposed that grievances as to discipline not involving suspension or discharge, and those submitted on the basis of alleged unjust treatment, shall be presented to the management, if the conductor elects to request a hearing, within 60 days from the date of the action complained of; that if such grievances are not satisfactorily adjusted within 15 days from the date they are submitted, the conductor or his representatives shall be notified immediately of the failure to secure a satisfactory settlement; that a hearing shall be held within 15 days from the date of such notification; and, as in cases of discipline involving suspension or discharge, decision shall be rendered within 15 days after the close of the hearing. The Company proposed, for cases of alleged unjust treatment, that the grievance, with a request for hearing, shall be presented to the management within 60 days from the date of the alleged unjust treatment; that a hearing shall be held within 30

days from the date of the receipt of the request; and that decision shall be rendered within 30 days after the hearing has been completed. In view of the previous holding that all discipline cases shall be dealt with on the same basis, through required hearings, grievances based on alleged unjust treatment must be all that may now be deemed to be included in the Organization's proposal as well as in the Company's proposal. The parties are agreed upon a 60-day limit for the presentation of such grievances; since, in these situations, there has been no period of investigation by the management prior to the submission of the grievance, the 30-day limit for the holding of a hearing, as proposed by the Company, appears to be fully justified; and the 30-day limit for rendering decision has already been found to be necessary and equitable. In the judgment of the Board the time limits proposed by the Company for cases of alleged unjust treatment are fair and reasonable, and it recommends their adoption.

(6) *Appeals on the property.*—The Organization proposed a 15-day limitation on the consideration by the management of appeals from decisions of the Company's district representative; the Company proposed that such appeals shall be submitted within 30 days, and that decisions on these appeals, as in case of the original decisions, shall be rendered within 30 days after completion of the appeal conferences. For reasons which have already been set forth in connection with previous determinations as to time limits on grievances, the Company's proposal appears to be fair and reasonable, and the Board recommends its adoption.

(7) *Appeals under Railway Labor Act.*—The Company proposed that decisions rendered by the highest officer of the Company designated to handle appeals on the property shall be final and binding, unless, within 60 days from the date of his decision, he is notified in writing that his decision is not accepted; and that any further appeal, under the provisions of the Railway Labor Act, shall be taken within 6 months of the date of such officer's decision, and if not so taken shall be barred. The Organization proposed no time limits for protest of final decisions on the property or for appeal from such final decisions under the Railway Labor Act, and it opposed the Company's demand. There appears to be no adequate reason why a final decision on the property with respect to grievances, involving either disciplinary action or alleged unjust treatment, should not be protested within a period of 60 days, if grounds for protest exist; indeed, the conductor could not possibly be injured by such a provision, since he would be free to file formal protest within the prescribed period, to save his rights, even if he should later decide not to follow his protest by further appeal. But in the interest of maintaining orderly

adjustment of labor relations, decisions on the property by the highest appeal officer of the Company must at some time become final and binding; and the proposed 60-day limit on protests is an entirely reasonable limit. Nor is there adequate reason why further appeals, through the submission of claims based on grievances to the National Railroad Adjustment Board, should be permitted to be prosecuted without limit as to time.

The grievances under consideration are personal in character, and after a fair and impartial hearing, coupled with the right of appeal on the property, no uncertainty remains which justifies long postponement of further appeal under the Railway Labor Act. Such delayed appeals, particularly in cases involving discharge, are calculated to impose unreasonable financial burdens upon the Company, in the event of adverse decisions by the Adjustment Board, and to provide windfalls, because of the usual acquisition of other employment, to conductors who had been improperly dismissed. The proposed 6-month limit for such appeals appears to be entirely reasonable; and it must be remembered, in addition, that under the rules of the Adjustment Board a 30-day notice is required for the submission of claims; that hearings before that Board are sometimes long postponed; that awards do not always follow promptly after hearings; that in case of deadlocks, further hearings before the referee are often provided for; and that a long lapse of time generally intervences between notice of the submission of a claim and its final disposition. In the judgment of the Board the proposad time limits on protests of final decisions on the property and on further appeals under the Railway Labor Act are fair and reasonable, and it recommends their adoption.

The Board recommends that the Company's proposal with respect to all the various time limits on the handling of grievances, as modified in course of the hearings by the Company, and as further modified herein by the Board, be adopted.

62. Time Limits on Claims

The claims now to be considered from the standpoint of time limits must be distinguished from the grievances involved in the preceding issue. Grievances, as we have noted, are personal in character; they are not covered by the rules of the agreement, except as to the procedure for handling them, and such claims as may result therefrom merely constitute appeals from management's final decisions on discipline or alleged unjust treatment. The claims now to be considered, on the other hand, result from disputes involving the application or interpretation of the provisions of the agreement with respect to rates of pay, rules, or working conditions.

Under the present rule (49) there are no time limits for the submission of claims to compensation for work performed, including pay for "held-for-service time" or for "time of reporting for duty and not used"; all other claims must be presented within 60 days of the date of the action complained of; and there are no time limits on appeals under the Railway Labor Act.

The Organization proposed that no change be made in the present time limits for the initial presentation of claims; that the same time limits be used for appeals on the property as it had proposed in connection with cases of alleged unjust treatment; and that no time limits be established for appeals under the Railway Labor Act.

The Company proposed the following procedures, including time limits, to govern claims involving alleged rule violations. When a conductor considers that any of the rules of the agreement have been violated, he or his representative may present a claim to the Company's district representative, provided such claim is made in writing within 60 days from the date of the occurrence [modified by the Company in course of the hearings to run from the date on which the conductor is put on notice of the occurrence] on which the claim is based, and if not so presented the claim will be barred. Such claims must contain a statement of facts, including a citation of the rule or rules allegedly violated, and must state whether or not a hearing is desired. The presentation of a claim based upon a continuing violation is not prohibited, but compensation for such continuing violation will in no event be payable for a period in excess of 60 days prior to the date on which the claim is presented. If a hearing is desired either by the complainant or by the Company, it must be arranged without unnecessary delay. Decision by the district representative must be made within 30 days after the hearing is completed or within 30 days from the date the claim is received if a hearing has not been requested. Appeals on the property must be made within 30 days from the date of the decision of the district representative, or they will be barred, and decisions on such appeals must be rendered within 30 days after the appeal conference has been completed. Decision by the highest officer designated to handle such appeals is to be deemed final and binding, unless such officer is notified within 60 days that his decision is not accepted. Any further appeal, under the provisions of the Railway Labor Act, must be taken within 6 months from the date of such officer's decision, and a written agreement may be made between the supervisor of industrial relations of the Company and the general chairman of the Organization, whereby [as slightly modified by the Company in course of the hearings], when a claim is being progressed under the Railway Labor Act, the Organization would not be estopped

from pressing other claims of similar character beyond the 6-month period, insofar as decisions upon such claims depend on the outcome of the claim which is already in process of determination by the Adjustment Board.

The procedures proposed by the Company for the handling of claims are not only orderly and entirely practicable procedures, but they are calculated to safeguard adequately the rights and interests of both the management and the men. The Company's proposed time limits, in all stages of the process of determining disputes that manifest themselves in the submission of claims, are virtually identical with those proposed by it for the handling of grievances involving alleged unjust treatment, and the reasons for their acceptance by the Board have already been set forth at considerable length. Only brief additional comment is necessary. Cut-off rules, through the establishment of time limits, are not uncommon in the railroad industry; and they are deemed to be essential for the purpose of outlawing, at least for the future, accumulations of old claims, frequently submitted to the Adjustment Board on the basis of favorable awards involving other carriers and other properties, which impose extensive liabilities on the Company despite apparent acquiescence by the Organization for long periods of time in the determinations of the Company that are thus belatedly subjected to appeal. In the light of such policies, which are not grounded in any sound or equitable principle, there is this further consequence: that the dockets of some of the divisions of the Adjustment Board, including the third division which has jurisdiction over disputes involving sleeping-car conductors, have become so badly congested that the effectiveness of the machinery provided by the Railway Labor Act for the adjustment of disputes concerning the application and interpretation of agreements has been seriously impaired. In the judgment of the Board the Company's proposed procedures and time limits are fair and reasonable.

The Board recommends that the Company's proposal with respect to the procedures to be followed and the time limits to be used in the handling of claims, as modified by the Company in course of the hearings, be adopted.

63. Paying Conductors Withheld From Service Pending Investigation

The question here at issue is whether a conductor may be withheld from service pending an investigation of his alleged misconduct, and whether, if so withheld, he should be paid held-for-service time even if the final decision sustains the charge against him and he is dismissed from service. There is no rule in the present agreement which ex-

pressly authorizes the Company to withhold a conductor from service pending such an investigation; and in award No. 3809 of the third division of the National Railroad Adjustment Board, rendered on March 18, 1949, it has been held that the held-for-service rule (9(a))—whereby a conductor held at his home station by direction of the management beyond the expiration of his lay-over must be allowed hourage credit and pay up to 7:30 hours for each succeeding 24-hour period—is applicable to a conductor so withheld from service pending investigation. The Company proposed, as part of its discipline rule, a provision specifying that a conductor may be withheld from service pending hearing and decision on the complaint presented against him; and it also proposed an addition to the held-for-service rule specifying that a conductor withheld from service for cause shall not be considered as "held-for-service." The Organization proposed no substantial change in these respects, and opposed the Company's demand.

It is not the function of this Board to review decisions of the Adjustment Board, and it will express no opinion concerning the soundness and validity of the particular award here involved. It appears to be clear, however, that this decision amounted to condemnation of a practice traditionally followed by the Company without penalty, and that the result achieved under the present rule and the sustaining award is neither reasonable nor equitable. The Company now seeks to reinstate its practice by express provision. Both parties agree that suspension, as well as discharge, is an appropriate form of discipline. Withholding a conductor from service pending investigation falls short of the actual imposition of either of these forms of discipline. Such withholding from service is necessary, and has been used, only in serious cases of reported misconduct—such as drinking while on duty, molestation of women passengers, and assaults upon patrons or employees—where the Pullman service might definitely be harmed if the conductor were to be permitted to continue his assignments, pending investigation, after such reported misconduct. If a conductor is withheld from service and the final decision, either on the property or by the Adjustment Board, sustains his denial of misconduct, the Company is required to pay him for all time lost. This is also true in cases of suspension or discharge. One of the present rules (53) expressly stipulates that if the final decision sustains the contention of the conductor, the record must be cleared of the charges made against him, he must be returned to his former position or to that for which he is contending, and he must be compensated for any wage loss suffered by him. When, on the other hand, the charge against the conductor, including the actual imposition of discipline,

is finally upheld, there seems to be no merit in the claim to compensation for the period he was withheld from service. The held-for-service rule is an operating rule, and not a discipline rule, and there appears to be neither logic nor justification for applying the held-for-service rule to a conductor withheld from service for cause.

The Board finds the Company's proposal with respect to paying conductors withheld from service pending investigation to be fair and reasonable, and recommends its adoption.

64. Compensation for Wage Loss

Under the present rule (53), as we have already noted, a conductor, the charges against whom are finally dismissed, must be compensated for any wage loss suffered by him. In addition, the memorandum of understanding between the parties dated August 8, 1945, specified that in the application of this rule "compensation for any wage loss suffered" would mean the wages which the conductor would have earned had he remained at work as a conductor, without regard to any amounts he may have earned during the period he was not employed as conductor; and further, that if a conductor presents a claim that he was not given an assignment to which he was entitled under the rules of the agreement, and that claim is sustained, he must be paid for the trip he lost in addition to all other earnings for the month.

The Company's proposal also differentiated between grievances and claims. In the case of grievances, it stipulated that if the final decision sustains the contention of the conductor, he shall be compensated for any wage loss suffered by him, "which compensation shall be the amount of wages due him as a conductor less the actual compensation received in other employment." In the case of claims, a further differentiation was made between various kinds of claims: in the settlement of claims sustained involving the operation of cars without the services of a conductor because of the Company's failure to assign a conductor, it was proposed that the conductor entitled to the assignment shall be paid for such assignment; that in the settlement of claims sustained involving instances where an extra conductor is used out of turn, it was proposed that the conductor initially entitled to the assignment who was thus "run around" shall be paid 3:30 hours for such "run around," and in addition shall be compensated for any wage loss suffered by him, "which compensation shall be the amount of wages he would have earned in the assignment to which he was entitled less the actual conductor wages received for the period covered by the assignment lost"; and that in the settlement of all other claims sustained where composition is involved, it was proposed that the conductor concerned in the claim shall be compensated for

any wage loss suffered by him as a result of action complained of, "which compensation shall be the amount of wages he would have earned less the actual conductor wages received." The Organization merely proposed that the provisions of the memorandum of understanding be incorporated in the present rule of the agreement, and opposed the Company's demand.

This issue required much more elaboration in its statement than is necessary for its disposal. It is by no means clear that the proposed criteria of compensation for wage loss are as equitable as those which now prevail. And there are objections to the acceptance of these criteria aside from the matter of equity. Insofar as the proposal seeks to offset wage losses by earnings in outside employment, the rule would be much more difficult to administer than the present provisions; and insofar as it seeks to offset wage losses by conductor earnings, the rule would so reduce the penalties for violation of important provisions of the agreement as virtually to remove indispensable sanctions. In any event, the memorandum of understanding is the result of a relatively recent and specially negotiated settlement, and no new circumstances have been brought to the attention of the Board which justify an abrogation of that settlement and a reversal of the policy embodied in its provisions.

The Board recommends that the Company's proposal with respect to compensation for wage loss be withdrawn.

VIII. DEDUCTIONS FOR SLEEP

In determining conductors' credit for hours worked, provision is made in the present agreement for deductions for rest periods en route. The issues here involved concern the question whether pay shall be allowed for scheduled rest periods, whether additional pay shall be allowed when the scheduled rest periods are not made available in whole or in part, and whether restrictions shall be placed upon the management's present authority to schedule rest periods.

46. Pay for Sleep Periods

The present rule (13) provides that a rest period may be scheduled, when sleeping space is available, on any trip of 12 hours or more during each period of the trip that includes the hours from midnight to 6 a. m. The rest period may be scheduled for a maximum of 4 hours for each night in regular assignment, and for a maximum of 4 hours for the first night and a maximum of 6 hours for each night thereafter in extra service. Time scheduled for sleep is deducted from the elapsed time for the trip, and the conductor is not credited

or paid for such hours. No deduction of time is made for any release for sleep of less than two consecutive hours; and, if a conductor does not obtain at least two consecutive hours of his scheduled rest, no deduction of time is made, and he is paid for his full scheduled rest period. When a conductor obtains two or more hours of his scheduled rest, but not all of the scheduled hours, he is credited and paid for any portion of the hours of the rest period he does not obtain, at his regular hourly rate, and at the punitive rate when his accumulation of hours exceeds 235, in addition to all other earnings for the month.

On the basic issue in connection with rest periods here involved, the Organization proposed that conductors shall receive full credit and pay for all time allowed for sleep en route. In effect the proposal provided that all elapsed hours on trips in both regular and extra service, from the time initially required to report for an assignment until finally released, are to be credited for pay purposes without any deductions, regardless of the hours scheduled and used for rest. The Company proposed no change in the present rule, and opposed the Organization's demand.

The scheduling of sleep periods en route, with deductions for hours of scheduled rest, has been operative in the Pullman service for decades. Not until 1945 was any demand for pay for sleep periods submitted on behalf of the conductors, and it was then rejected by the Tipton Board. There has been no change in circumstances and conditions affecting this matter since the present agreement was negotiated which justifies a reversal of policy on this issue. Furthermore, this is one of the costliest, in both men and money, of the Organization's demands. Under the existing 225-hour basic month, it would necessitate the employment of 242 additional conductors, at an estimated annual cost of $1,119,279; under the 210-hour month recommended by this Board, 259 additional conductors would be required, at an estimated annual cost of $1,199,190. In the judgment of the Board the present rule is fair and reasonable.

The Board recommends that the Organization's proposal with respect to pay for sleep periods be withdrawn.

47. Pyramided Pay for Loss of Sleep

We have already noted the provisions of the present rule concerning deductions of time for scheduled sleep periods, and the conditions under which conductors are credited and paid for sleep periods. The Organization, it will be recalled, proposed that conductors shall receive full credit and pay for all time allowed for sleep en route. It also proposed that when a conductor is not able to secure the 4-hour or 6-hour rest period required under its rule, he shall be paid for the en-

tire period at his hourly rate of pay, in addition to all other earnings for the month. The Company proposed no change in the present rule, and opposed this demand.

The considerations which supported the rejection of the previous proposal are at least equally applicable to this one; indeed, as a supplement to the previous demand, this proposal would tend to produce flagrantly inequitable results. It not only involves penalty payments, after removing all deductions for sleep periods, but these penalty payments are made to extend to the entire period of 4 or 6 hours for any deviation whatever from the full number of hours scheduled for rest. In the judgment of the Board the present rule is fair and reasonable, not only in its provisions for the deduction of time for scheduled sleep periods, but in its stipulations as to payment for loss of sleep.

The Board recommends that the Organization's proposal with respect to pyramided pay for loss of sleep be withdrawn.

45. Scheduling Sleep Periods

The Organization also proposed, by way of amending the scheduling provisions of the present rule which have already been set forth, that four plans for scheduling rest periods be established, under which, in effect, 4-hour sleep periods would be made mandatory in three defined situations, and 6-hour sleep periods would be made mandatory in the fourth defined situation. The existing maxima of 4 hours and 6 hours, with a minimum of 2 hours and a considerable range between this minimum and the maxima of 4 hours and 6 hours, would thus be turned into inflexible requirements. The 41 plans for scheduling sleep periods in regular runs which were in effect as of October 1, 1949, would have to be compressed into the four proposed plans. Since these proposed plans ignore entirely the demands of the service, which must obviously be controlling in the scheduling of sleep periods, the complicated mechanical details of the Organization's proposal become immaterial. The proposed arrangements restrict unduly the managerial discretion essential in this sphere; they are calculated to establish conditions under which penalty payments for loss of sleep would become unavoidable; they are dependent upon acceptance of the related proposal that full credit and pay be allowed for sleep periods; they contribute substantially to the large costs which the sleep proposals would entail. In the judgment of the Board the scheduling provisions of the present rule, like its other stipulations, are fair and reasonable, and the proposed changes are without merit.

The Board recommends that the Organization's proposal with respect to scheduling sleep periods be withdrawn.

IX. EXTENDED SPECIAL TOUR SERVICE

The present agreement, in dealing with credits for hours worked, provides that time for both regular and extra service shall be credited from the time a conductor is required to report for duty until he is released, except for the sleep deductions which have just received consideration. The provisions dealing with sleep deductions not only except one-way trips of less than 12 hours, but they also except "extended special tours." The service rendered in extended special tours is governed by a special rule (8), which, entirely apart from the matter of sleep deductions, also constitutes an exception to the general rule (6) for crediting hours worked. The provisions of this rule, together with the proposals of the parties for its elimination or modification, will now be considered.

7. Pay for Extended Special Tours

The present rule defines an "extended special tour" as a special service movement, exclusive of military movements, of 72 hours or more of elapsed time (from the reporting time of the conductor at the point of occupancy of the cars by passengers to the time the cars are released from the special movement), and confined to the party making the trip; and it provides that conductors operating in extended special tours shall receive credit of 15 hours for each 24-hour period from the time they are required to report, and actual time up to 15 hours for less than a 24-hour period. In a series of questions and answers following this rule, it is further stipulated that a special service movement of the specified duration will not be considered an extended special tour when the conductor does not report for the movement at the point of occupancy of the cars or is released at a point other than where the cars are released from the special service movement; that "confined to the party making the trip" does not contemplate that no cars used by persons of the same party shall be picked up en route at points other than the starting point of the trip; that no such service movement in which passengers on cars of other tours are picked up en route at points other than the starting point of the tour shall be considered an extended special tour; and that if no berth is available for the conductor to obtain his rest en route, such conductor shall be credited and paid, not under this rule, but as though he were being operated in extra service.

The Organization proposed to eliminate altogether the rule governing extended special tours, as well as all references to them in other rules of the agreement which are incidentally involved. In effect it demanded that extended special tour service, as a distinctive category

in the matter of determining credit for hours worked, be abolished; and that service movements now defined as extended special tours be credited and paid on the same basis as extra service. Coupled with the organization's proposed elimination of deductions for sleep, which was to be applicable to both regular and extra service, the instant proposal involved the requirement that conductors assigned to such service movements shall be credited for all elapsed hours between the time they report for duty and the time they are released from duty.

The Company opposed the Organization's demand that the rule governing extended special tour service be eliminated, but it proposed a number of changes in its provisions: It removed the exception as to military movements; it provided in effect that the conductor need not be assigned at the initial point of occupancy of the cars; it specified that the management shall have the right to annul a conductor's assignment during an extended special tour when the cars in his charge are consolidated with cars of another train or trains, or when a foreign district conductor is available for service and the movement is in a direct route toward the foreign district conductor's home station; and that if the assignment is annulled before the conductor has accumulated 72 hours of elapsed time, he shall be compensated as though he were operating in extra service.

There can be little question that these extended special tours, which accommodate organized groups of various kinds in connection with conventions, sporting events, sightseeing travels, musical and dramatic performances, and the like, are sufficiently distinctive in character to justify the establishment and maintenance for this service of special arrangements for credit and pay. The work performed by conductors on these tours appears not to be unduly onerous, and assignments to them have generally proved to be highly acceptable to the men. The hours credited in this service for each 24-hour period have increased, progressively, from 8 (1 day), to 12 (1½ days), to 15 (2 days). In 1945 the Tipton Board rejected the Organization's proposal to eliminate the extended special-tour classification, and there appears to have been no such change in circumstances and conditions since that time as to justify its present elimination. Nor does the Board find any adequate justification for enabling the management to resort to extended special-tour service or to extra service, virtually at its option, merely for the purpose of effecting particular movements at the lower level of costs. Military movements, as well as other governmental movements, do not partake of the characteristics of the extended special tours which underlie the retention of the special rule for this service; and the proposed reservation to the management of the right to annual assignments to extended special-tour service

is calculated seriously to impair, if not entirely to destroy, the basic rationale of the prevailing arrangement. In the judgment of the Board the present rule is fair and reasonable, and should be retained without change.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to pay for extended special tours be withdrawn.

X. DEADHEAD SERVICE

Under the present agreement deadhead service (like the extended special tours which have just been dealt with) is excepted from the general rule that time for regular and extra service must be credited, subject to sleep deductions, from the time a conductor is required to report for duty until he is released. This exception is retained in both the Organization's proposal and the Company's proposal with respect to deadhead service. The issues here involved concern the application of the uniform reporting and release time to deadhead trips, the determination of credit and pay for hours worked in deadhead service, and the problem of whether different deadhead trips which are completed within a 24-hour period may be combined. The nature of these issues and the findings and recommendations of the Board with respect to them will now be set forth.

4. Application of Reporting and Release Time to Deadhead Trips

The present rule (13) provides that a uniform reporting and release time shall be established for each station in each district or agency; but such reporting and release time is not operative in deadhead service. The Organization proposed that the uniform reporting and release time shall apply to deadhead service. Its proposal stipulates specifically that in deadhead service the reporting time shall be that established at the point where the deadhead trip starts and the release time shall be that established at the point where the deadhead trip terminates. The Company opposed this demand.

The reporting and release time which is applicable in both regular and extra service is designed to permit conductors, prior to the departure of trains and after their arrival, to perform, respectively, preparatory work in checking cars prior to receiving passengers, and to turn in cash receipts, tickets, diagrams, and reports upon completion of the road trips. The rule requires that all regular and extra conductors departing on trains from a particular station be given the same preparatory time, and also the same interval for winding up the affairs of their trips, between arrival of trains and release from duty. The uniform reporting time, in advance of departures,

is not necessarily the same as the uniform release time, following arrivals. The uniform reporting time for various stations ranges from 5 to 25 minutes, and the uniform release time ranges from 5 to 45 minutes. The allowances for uniform reporting and release time are added to the credited hours for all regular and extra service trips; but conductors in deadhead service do not receive these allowances as a matter of course. Instead, the circumstances of each deadhead trip are considered individually to determine what reporting and release time, if any, shall be added to the conductor's credited hours for the deadhead trip.

It is obvious that the uniform reporting and release arrangements which prevail in regular and extra service are part and parcel of work being performed, and that the extent or duration of the allowances is related to the general nature and scope of the work required at each particular station. It is equally obvious that neither of these considerations is applicable to deadhead service. The Organization's proposal would simply expand the area of payment for work not performed, and it would discriminate between conductors at different stations by having the amount of additional pay for deadheading arbitrarily determined by whatever uniform reporting and release time happened to be established at a particular station. The problem here at issue is not whether reporting and release time should be added to deadhead trips where necessary (since such additions are made under present practice), but whether the established uniform reporting and release time should be added. For the latter demand, in the judgment of the Board, there appears to be no justification.

The Board recommends that the Organization's proposal with respect to the application of reporting and release time to deadhead trips be withdrawn.

5. Pay for Deadheading

The present rule (7) which deals specifically with deadhead service provides that conductors deadheading on passes or cars shall be allowed credit for actual time up to 11:15 hours (1½ days) for each 24-hour period from the time they are required to report until they are released, with a minimum credit of 7:30 hours where overnight trips are involved. In addition, the rule (23) which deals with 7:30-hour minimum payments provides that conductors in extra road service or deadheading on passes or with equipment or in combinations of such services who perform less than 7:30 hours' service from reporting time until they are released shall be credited and paid not less than 7:30 hours. Under this rule it is expressly declared to be

permissible to couple deadhead trips of less than 7:30 hours with extra road service and to treat the combined service as a single movement, provided the conductor is not released between the different classes of service and this combining of services is not used for the purpose of making a rest deduction en route.

The Organization proposed, by way of amending the rule dealing with deadhead service, that conductors deadheading on passes or on cars shall be allowed credit for actual time up to 14 hours (2 days) for each 24-hour period, with a minimum credit of 7 hours except in the following situations: Conductors who are deadheaded on passes between the hours of 12 midnight and 6 a. m., and who are not furnished at least an upper berth, shall be paid continuous time, with a minimum credit of 7 hours; and conductors deadheading on buses or day coaches shall likewise be paid continuous time, with a minimum credit of 7 hours. And by way of amendment of the rule dealing with 7:30-hour minimum payments, the Organization proposed that deadhead trips shall not be coupled with either extra road service or regular line service and be treated as single movements. The Company, as far as the matters here at issue are concerned, proposed no substantive changes in either of the two present rules which are primarly involved. In other words, it supported the existing provisions governing credits and payments for deadheading and with respect to the right to couple deadhead trips with extra road service, and it opposed the Organization's demand.

The Organization's proposal is directed to effecting an increase in compensation for deadhead service. This would be accomplished by requiring up to 2 days' pay (instead of the present 1½ days' pay) for each 24-hour period, by providing for continuous time in certain circumstances, and by eliminating the coupling of deadhead service with extra road service. No showing was made that the existing credits and payments are unjust or unreasonable, and no adequate grounds were established for changing them. It is not unreasonable that deadheading should be performed at a lower rate of compensation than actual service; and yet, under the proposal here in issue, the opposite result might well be produced in many instances. In the judgment of the Board the demand here involved is wanting in merit.

The Board recommends that the Organization's proposal with respect to pay for deadheading be withdrawn.

6. Combining Deadhead Trips Completed Within a 24-Hour Period

The present rule (7) provides that different deadhead trips within a 24-hour period shall be coupled together and treated as one move-

ment, provided both trips are completed within a 24-hour period and no other class of service has intervened. The Organization proposed that the provisions for coupling deadhead trips within a 24-hour period be eliminated. The Company opposed this demand.

Under the existing arrangement two different trips which involve the deadheading of a conductor on passes or equipment, when both are completed within a 24-hour period and no other service intervenes, are credited and paid for as one continuous trip. Under the Organization's proposal they would be credited and paid for separately. This is but another device, similar to those treated in connection with the two previous issues, whereby compensation for deadhead service would be very substantially increased. It embraces the possibility of a conductor receiving as much as a maximum of 24 hours' pay in a 24-hour period (almost 3½ days under the 210-hour basic month), instead of the present 11 : 15 hours' pay (1½ days under the 225-hour basic month). In the judgment of the Board the present rules governing credit and pay for deadhead service are fair and reasonable, and there appears to be no more justification for this amendment of the present rules than there was for the amendments previously considered.

The Board recommends that the Organization's proposal with respect to combining deadhead trips completed within a 24-hour period be withdrawn.

XI. AWAY-FROM-HOME EXPENSES

There is not now, and there never has been, any rule in the agreement dealing with away-from-home expenses as such. Under existing practice the management furnishes without charge to the conductor a berth for rest en route and sleeping accommodations at certain terminals. Conductors are also granted substantial reductions in price for meals in railroad dining cars and in Pullman restaurant cars while they are in service en route; but they pay all expenses for meals, and for lodging where it is not made available by the Company without charge, while they are away from home. The problem of away-from-home expenses has frequently been considered in controversies between the Organization and the Company, particularly in connection with wage disputes, but this is the first proceeding in which an allowance for away-from-home expenses has been presented as a separate and distinct demand by the Organization.

14. Away-From-Home Expense Allowance

The Organization proposed a new rule to be incorporated in the agreement, specifying as follows: That conductors in road service

(including deadhead and witness service) shall be paid an allowance of not less than $5 per day for expenses, when away from home, for lodging accommodations and meals; that this allowance is to be adjusted per day on the basis of elapsed time computed continuously from the time conductors go on duty at their home terminals until they are released from duty at their home terminals; and that the expense account allowance is to be made in addition to all other compensation earned during the tour or tours of duty involved. At the hearings the Organization suggested, as the basis of the adjustment referred to in the rule, the following allowances for varying away-from-home periods: No allowance for 8 hours or less; $1.25 for over 8 hours and up to 12; $2.50 for over 12 hours and up to 16; 3.75 for over 16 hours and up to 20; $5 for over 20 hours and up to 24; and $1.25 for each unit of 6 hours or less for all time in excess of 24 hours. The Company opposed this demand.

If the Organization's proposal were adopted and put into effect, its estimated annual cost to the Company would be $1,385,163 (about 17 percent of the present payroll)—the costliest of all the demands served upon the Company; and if it were to be applied to the porters, an additional estimated annual cost of $5,859,240 (almost 25 percent of the present payroll) would be involved. These extensive costs, in view of the financial results and prospects of the Company's operations previously set forth, naturally constitute at least a relevant factor in the disposition of this issue.

But the basic question concerns, not so much the amount of the allowances and the aggregate financial burden they would impose upon the Company, as whether provision for any away-from-home expense allowance shall be made in the agreement. A similar demand was recently submitted to the McDonough Board by the train crafts represented by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen. In rejecting the demand, that Board pointed out, in the words of the representatives of the Organization in the instant proceeding, that these crafts "were adequately compensated for their services and their away-from-home expenses by held-away-from-home terminal rules, the dual basis of pay, straight time rates, overtime rates, arbitraries, special allowances, and constructive hours." While some of these considerations, such as the dual basis of pay, are not applicable to Pullman conductors, most of them, in one form or another, are equally applicable to them, and there are working rules having like effect which constitute part of the agreement between the Organization and the Company and which are not applicable to the train crafts involved in the other proceeding. It would be a strange outcome if an adjustment of this basic issue for some 1,800 Pullman conductors

were to set the pattern for scores of thousands of train-craft employees.

But of even more conclusive significance is the fact that in the development both of working rules and of rates of pay, away-from-home expenses have been urged again and again in support of proposals designed to increase Pullman conductors' compensation, and that these expenses have been taken into account in the determinations and settlements which have followed. At the end of 1943, for example, as the result of an arbitration award made by the President of the United States, the Pullman conductors received an increase of 5 cents an hour, amounting to $12 per basic month, in addition to the 4 cents an hour allowed them under the then-operative Little Steel Formula, in lieu of claims not only for time and one-half for time in excess of 40 hours per week, but also, as expressly stated by the President, "for expenses while away from home." Similarly, by way of example, held-for-service rules, to be dealt with in a subsequent section of this report, have been developed to their present status, in very considerable measure, on the basis of the asserted pressure of away-from-home expenses. Such expenses are an integral part of the performance of Pullman service, and they have received repeated consideration in the adjustment from time to time of rates of pay and conditions of work.

This proceeding does not purport to be a wage case; and in point of fact no evidence was presented which could support in any convincing way the conclusion that Pullman conductors are underpaid in relation to their associates of like responsibility on moving trains, or that they have fared less well over the years than employees performing comparable work in the railroad industry. In effect, however, the Organization's proposed rule constitutes a demand for a very substantial wage increase—an increase estimated, as a minimum, to be the equivalent of about 21 cents per hour, or about $44 per basic month of 210 hours. In the judgment of the Board this demand is without merit or justification.

The Board recommends that the Organization's proposal for away-from-home expense allowances be withdrawn.

XII. SENIORITY RIGHTS AND ROSTERS

A number of issues before the Board involve questions related to seniority rights and rosters. They are concerned with the transfer of rights when districts are discontinued, with the consolidation and separation of seniority rosters, with the assignment of new conductor runs to districts, and with the reallocation and division of runs; and they are all intimately related to the basic rule (25) specifying that

the seniority of a conductor shall be confined to the district where his name appears on the seniority roster.

35. Districts Discontinued

The present rule (43) provides that when a district is discontinued and runs are transferred, conductors assigned to such runs, or an equivalent number of them, may transfer with the runs to the new point of operation; that such runs shall not be bulletined as new runs at time of transfer; that the conductors who transfer with the runs shall be considered as regularly assigned to those runs at time of transfer; that conductors so transferred shall be allowed full seniority in the district to which transferred and their names shall be added to the conductors' seniority roster of that district in accordance with their full seniority rights; and that all conductors of the discontinued district not so transferred shall be privileged, upon application, to transfer elsewhere under the provisions of the rule dealing with permanent transfers to other districts (one of the rules upon which agreement was reached by the parties on December 21, 1949, as previously noted). The Organization proposed to eliminate the "Districts discontinued" rule. The Company opposed this demand.

Once it is conceded that circumstances may require the discontinuance of districts, there can be little question that the present rule provides fair and reasonable protection for the seniority rights of the conductors involved. The apparent purpose of the Organization's proposal is not to provide additional safeguards for the men, but to restrict the Company's freedom to abandon the operation of district offices, with their supervisory facilities, when the business available at such offices no longer justifies their continuance. Such a demand, submitted at a time of rapidly changing conditions in the Pullman service because of competitive pressure from other transport agencies, appears clearly to be without merit. New districts are often established because of expanding service requirements, and by the same token old districts may have to be abandoned because of contracting service requirements. The perpetuation of every existing conductors' roster, without reference to economic needs or to the requirements of sound operation, would not only impose arbitrary shackles upon the Company, but would tend in the long run to work to the disadvantage of the men. The present rule assumes, as it should, that districts may be discontinued and runs transferred, and then proceeds to safeguard as far as possible the seniority right of the conductors involved. It has the merit of being a rule negotiated by the parties, the essential elements of which have been in effect since 1936. In the judgment of the Board it should be retained in the agreement.

The Board recommends that the Organization's proposal to eliminate the "Districts discontinued" rule be withdrawn.

41. Consolidation and Separation of Seniority Rosters

The present rules (27 and 28) provide as follows: that when conductor's seniority rosters are consolidated, the conductors affected shall be allowed full seniority on the consolidated roster, with the runs in existence not to be bulletined as new runs at the time of consolidation; and that when the roster of a district is separated, the conductors involved shall have the choice, on the basis of seniority, of remaining in the old district or of transferring to the new district at the time of separation, with all transfers under this rule to be made with seniority rights unimpaired. The Organization proposed, first, that conductors' seniority rosters shall not be consolidated, and second, that a conductor seniority roster of a district shall not be separated without conference and agreement between the management and the general chairman. The Company proposed no change in the present rules, and opposed the Organization's demands.

The problem here at issue with respect to the consolidation and separation of seniority rosters involves the very same governing considerations which were dealt with in connection with the previous issue on the discontinuance of districts and of the seniority rosters at these districts when the shrinkage of business renders it uneconomical and impractical to maintain particular district offices. The prevailing rules assume that rosters may be consolidated or separated, and are concerned exclusively with safeguarding the seniority rights of the conductors affected by the consolidation or separation. Apparently the Organization does not question the protection of seniority rights afforded by these rules; it but seeks once more to restrict managerial discretion in so reorganizing the set-up of rosters from time to time as to meet the changing needs of the Pullman service. In the case of consolidation, it proposes an absolute prohibition; in the case of separation, it proposes that it be vested with veto power.

The present rules have been in effect since the agreement of December 1, 1936. As late as July 1947, the Organization proposed rules in which the basic assumption that consolidation and separation of rosters might be made by the management without express restriction was retained; and with exception of the substitution of the word "runs" for the word "assignments," no resulting change of any kind was made in 1948 in the rules as formulated in the 1936 agreement and as readopted in the 1945 agreement.

Actual discontinuance of district rosters seldom occurs; consolidation or separation of rosters becomes necessary more frequently, in

response to expansion or contraction of Pullman service at particular points. No evidence was presented establishing such abuse of managerial discretion in this sphere as to require new rules; nor did the mediation agreement of May 16, 1949, with respect to the book of maps which defines the jurisdiction of districts and agencies over conductor work arising at outlying points, invalidate or modify the existing rules. In the judgment of the Board, the maintenance of reasonable flexibility in the set-up of seniority rosters, as made possible under the prevailing provisions, is essential to economical and efficient operation, and the protection of seniority rights provided by the present rules is fair and reasonable.

The Board recommends that the Organization's proposal with respect to the consolidation and separation of seniority rosters be withdrawn.

33. New Conductor Runs

Under the present rule (46) dealing with the assignment of runs to districts, it is provided that in the establishment of new service, the seniority of the extra conductors in the districts involved shall determine which district shall furnish conductors for this service; and under the memorandum of understanding dated August 8, 1945, by way of exception to the general rule, the so-called "clocker" runs (parlor-car service between New York and Philadelphia) are awarded, on each side, to the district from which the run makes its earliest departure.

The Organization proposed that when service "not previously operated" is established, a new run shall be deemed to have been created; that the seniority of the extra conductors in the districts involved shall be used in determining which district shall furnish conductors for such service; that "districts involved" shall be defined as districts or agencies where runs originate, through which they operate, or in which they terminate; that where a run terminates at an outlying point, the district or agency which has jurisdiction over such work at the outlying point shall be considered as one of the districts involved; and that, through the elimination of the memorandum of understanding, the "clocker" runs shall not be excepted from the operation of the rule.

The Company proposed that a new conductor run shall mean a run not previously operated; that in an extension or shortening of a conductor run the entire conductor operation, including any part of the run previously operated, shall also be considered a new run; that in the assignment of a new conductor run consideration shall be given to conductors of the terminal districts and of intermediate districts through which the new run operates, and the run shall be assigned to

the district whose extra conductors to the number required for the run have the highest average seniority; that when a new run passes through or terminates in an outlying point under the jurisdiction of a district through which the run does not operate, such district shall not be considered in the assignment of the run; and that the provisions of the rule shall not apply to the "clocker" runs, each side of which shall be assigned to the district where that side of the run (having the earliest reporting time) starts.

No useful purpose would be served by attempting to analyze and appraise, in detail, the intricacies of either proposal. The Organization's proposed rule, as such, appears to be a simple rule, with only slight modification of the present provisions; but it is supplemented, not only by a series of questions and answers, but by no less than 12 so-called examples of complicated character, which constitute an integral part of the rule. The Company's proposed rule is much more elaborate, is entirely new in its formulation, and is also supplemented by a series of questions and answers. The rejection of the proposals appears to be amply justified by their controlling objectives. The manifest purpose of the Organization is not primarily to assure an equitable distribution of the work, but to create conditions requiring the use of a larger number of conductors than the present rule warrants; and the manifest purpose of the Company is not to protect conductors against undesirable chopping up of runs, but to create conditions requiring the use of a smaller number of conductors than the present rule, as interpreted and applied by the Adjustment Board, warrants. The existing provisions were negotiated by the parties in 1945 and they have proved to be reasonably workable, despite the fact that neither "new service" nor "districts involved" is expressly defined by them. In the judgment of the Board no adequate basis for altering the present rule, including the provisions of the memorandum of understanding concerning the "clocker" runs, was established by either party.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to new conductor runs be withdrawn.

34. Reallocation and Division of Runs

The present rule (47) provides that, except as stipulated in the rule (43) governing the discontinuance of districts and the rule (44) governing runs transferred to another district in the same city, runs assigned to a district or agency shall not be reallocated to another district or agency without conference and agreement between the management and the general chairman of the organization.

The Organization proposed that runs assigned to a district or agency ("district" will be assumed to include "agency" in all subsequent provisions of this rule proposed by either party) shall not be reallocated to another district for any reason except as provided in this rule; that when a conductor of a district has a seniority date in such district prior to January 1, 1941, and his seniority does not permit him to hold a regular assignment, a run or a portion of a run shall be reallocated to that district from a district having a run terminating in or operating through such district; that the reallocation shall be from the district having the junior conductors operating in regular assignment, provided such reallocation does not deprive a conductor whose seniority date is prior to January 1, 1941, of a regular assignment; that a run shall be reallocated from a district even if it deprives a conductor whose seniority date is prior to January 1, 1941, of a regular assignment, provided a further reallocation can be made to give such a conductor a regular assignment; and that a run or a portion of a run that has been reallocated shall be returned to the district from which reallocated, provided the district to which the run or portion of the run was reallocated is awarded a new run which permits conductors with seniority dates prior to January 1, 1941, in such district to hold regular assignments, exclusive of the run or portion of a run that was reallocated.

The Company proposed that the rule dealing with the reallocation of runs should specify as follows: First, that when conductors in a regular run have average seniority in their home station of less than the average seniority of the same number of conductors on the extra board in the opposite terminal of such run, the conductor operation shall, upon request in writing in each case from the general chairman, be reallocated to the latter district, provided that district has sufficient conductors on its extra board to man the entire operation; and second, that the rule shall not apply to runs operating to or between outlying points, nor to seasonal or temporary runs.

There can be no question that when conductors with long years of seniority do not have regular assignments and find themselves on the extra board, they present cases of hardship which require amelioration if at all possible. The causes of such hardship in virtually all instances are to be found in a shrinkage of business at particular points. Both parties seem to be agreed that such situations, when they arise, call for corrective action; and the present rule was designed to provide a basis for such action. It not only restricts the Company from making reallocations of runs that might worsen matters, but provides for participation by the Organization in effecting necessary adjustments in the interest of improvement. The very fact that the existing

rule prescribes no conditions under which reallocations must be made, or under which they cannot be made, renders it a flexible instrument for dealing with each situation on the basis of its own distinctive merits. A considerable number of reallocations of runs, with resulting alleviation of hardship, has in fact been achieved through the cooperative procedure of the present rule, and no evidence was presented to indicate an unsympathetic attitude on the part of the management in connection with justifiable requests for reallocation.

It is to be remembered, however, that improvement in the situation of a senior group of conductors, whose difficulties spring from the drying up or sharp contraction of Pullman service at their home stations, which is achieved through the process of reallocation of runs, is generally accompanied by a deterioration of the situation of the junior group of conductors involved, whose favorable position is grounded in the maintenance or expansion of such service at their home stations. Reallocations of runs, therefore, inevitably lead to dissatisfaction on the part of some conductors as well as to approval by others. Apparently the Organization, by its proposed rule, has sought to relieve itself of its present responsibility in connection with the adjustment on a case by case basis of more or less distressing work situations, by incorporating a general rule in the agreement to govern reallocations.

The Organization's proposed rule would render reallocations of runs automatic and mandatory, once the prescribed conditions emerge, and it would exclude reallocations under any other conditions whatsoever. A problem which by its very nature is individual and personal, and necessarily involves a large exercise of discretion, would thus be transformed into one controlled by rigid requirements. Since the Organization would be as fully responsible for the proposed general rule, if adopted, as it is for the specific adjustments made under the present rule through conference and agreement between the Organization and the Company, the conductors at whose expense the position of other conductors was improved would still attach responsibility to the Organization, and dissatisfaction with the results would be bound to continue. Moreover, under the conditions prescribed in the Organization's proposed rule, there would have to be frequent reshuffling of conductor runs as between districts, and in many instances there would have to be such divisions of through runs into short segments as are calculated to result in the use of additional conductors and in the imposition upon the Company of an unjustified financial burden. The Organization's proposed changes in the present rule appear to be without merit.

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Nor, from the standpoint of the principal objective of the reallocation provisions, does the Company's proposal appear to provide an acceptable solution of the problem. At the hearings the management's principal witness conceded that reallocation of runs is not a matter that should be governed by prescribed rule; but, he added, "because of the vigorous demands of the Organization the Company has proposed a rule that would in a measure serve the purpose of guaranteeing conductors with the greater seniority employment in regular assignments." While the Company's proposed rule specifies that reallocations will be made only "upon request in writing in each case from the general chariman," it also prescribes the conditions under which such requests will be honored. The provision for initiative by the Organization in the reallocation of runs is highly desirable; but the prescribed conditions might render necessary an even greater amount of reshuffling of runs than is implied in the Organization's proposal, and it would exclude reallocations in circumstances which might fully justify them in particular instances.

The problem here involved is an important one; but in the judgment of the Board it can be dealt with most equitably and most effectively, without unnecessary collateral distortions of operating arrangements, by the disposition of individual cases on the basis of conference and agreement between the Organization and the Company, as specified in the present rule.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to the reallocation and division of runs be withdrawn.

XII. RETURN OF CONDUCTORS TO HOME STATIONS

Two issues involving matters related to the return of conductors to their home stations can be dealt with very briefly.

43. Option of Selecting Train for Deadhead Return to Home Station

There is no rule in the present agreement which governs this matter; but under existing practice the management is free to designate the train on which an extra conductor shall be deadheaded toward his home station. The Organization proposed that an extra conductor who is to be deadheaded toward his home station shall not be required to use the first available train out of the away-from-home station, provided there is a later train on which he may depart within the 14-hour period during which he may be held at the away-from-home station without credit or pay. The Company opposed this demand.

The present agreement not only provides that an extra conductor may be held without credit or pay at an away-from-home station up to 15 hours after his release from previous road service, but it permits the assignment of an extra foreign district conductor to road service on a direct route to his home station. When no such assignment is made, an extra conductor in a foreign district is deadheaded to his home station. Generally, under existing practice, the conductor is deadheaded home when there is no immediate or prospective need for his service within the 15-hour noncompensatory held-for-service period. In these circumstances the conductor is not arbitrarily compelled to use a certain train, if there is a choice of trains for which the conductor expresses a preference, provided no additional expense or other significant contingencies are involved. Conductor requests for choice of trains are denied only where added cost to the Company is involved, or where there is a known shortage of conductors at the home station, or where the requests conflict with railroad regulations with respect to deadheading employees.

While the Organization's proposal may merely mean that a conductor shall be free to decline to deadhead on the first available train, it may also not unreasonably be construed as giving the conductor control over all deadhead assignments during the 14-hour period by selecting any available train he may choose during that period. It raises the question, too, as to whether an available train would include restricted trains, on which free transportation is not granted by the railroads, and as to whether the first available train is the one first departing after the foreign district representative of the management has decided to deadhead the conductor to his home station. Even on the assumption that the Organization's proposal, in substance and intent, is designed to be a reasonable one, these ambiguities would tend to be a source of much controversy.

But a more fundamental objection to the proposal is that it would seriously limit the Company's use of extra conductors. These conductors are employed by the Company to protect extra and emergency assignments. To permit conductors to regulate their schedules by allowing them to choose the trains on which they deadhead back to their home stations would obviously tend to interfere with service requirements. Present rules restrict the extra board of a district to that number of conductors which will afford as nearly as possible minimum earnings of three-quarters of a basic month's pay to each conductor on the extra board; and to carry out this purpose management must have the right, except as limited by other provisions of the agreement, to control the operation of extra conductors. The proposed rule could also serve as a means of increasing costs to the Com-

pany in various ways: By preventing the application of the present rule whereby release from duty for less than 1 hour does not break the continuity of service time; by the conductor's use of restricted trains, whereby payment would be required for the whole or a part of the conductor's transportation; by the conductor's selection of slower trains, whereby deadhead credit and pay for the return movement would be increased. In the judgment of the Board there is no justification for the demand.

The Board recommends that the Organization's proposal with respect to giving extra conductors the option of selecting trains for deadhead return to their home stations be withdrawn.

44. Conductor Excused at Away-From-Home Station

As in connection with the previous issue, there is no rule in the present agreement which governs the matter here in dispute; but under existing practice a regular or extra conductor who lays off of his own accord at an away-from-home station is eventually provided with transportation to his home station, but is not paid held-for-service time upon expiration of his specified lay-over or the applicable noncredit period of 15 hours. The Organization proposed, as part of its held-for-service rules to be considered in a later section of this report, that except for illness, an extra conductor shall not be permitted to remain at a point other than his home station for a period in excess of 14 hours without being paid held-for-service time; and that except for illness, a regularly assigned conductor, or an extra conductor who is filling a regular assignment, shall not be permitted to remain at the opposite terminal of the assignment for a period in excess of the specified lay-over of that assignment without being paid held-for-service time. The Company proposed no change in the present practice and opposed the Organization's demand.

Under the Organization's proposal, a conductor could not voluntarily lay off, beyond his specified lay-over or the 14-hour noncredit period, for reasons (other than his own illness) which the Company deems to be good and sufficient reasons, without imposing upon the Company the penalty of allowing credit and pay for held-for-service time. The effect would be that all such conductor requests for lay-off, however reasonable or urgent, would have to be denied. Such requests are infrequent; but when they are made, they are generally based upon important considerations. No adequate reason appears why such requests should be denied; or why, when they are granted in these circumstances, the Company should be penalized; or why, when conductors lay off of their own accord, they should nevertheless receive compensation. The existing practice is fair and reasonable,

and there seems to be no need for its express incorporation in the agreement.

The Board recommends that the Organization's proposal with respect to credit and pay for conductors excused at away-from-home stations be withdrawn.

XIV. ASSIGNMENT OF EXTRA CONDUCTORS

An elaborate rule (38) of the present agreement deals with the operation of extra conductors, and this rule is further supplemented by a memorandum of understanding dated September 8, 1947. The rule consists of 6 lettered sections, 4 examples, and 11 questions and answers. The memorandum of understanding is also of substantial length and detailed in its provisions. The Organization proposed a considerable number of changes in various aspects of the regulations involved, and the Company not only made counterproposals with respect to specific changes, but urged a rather complete recasting of the procedural arrangements. Under either proposal the rules would remain extensive and complicated. This is a sphere in which, whatever the guiding stipulations, satisfactory results can be achieved only through continuing cooperation of the parties; and it is highly desirable, also, that the governing arrangements be developed through the processes of collective bargaining, rather than as a result of prescription from without the industry, however tentative such prescription may be. The weight accorded to these factors will appear when the problems at issue, together with the Board's findings and recommendations, are set forth.

51. Availability and Assignment of Extra Conductors

It will be helpful, in connection with the first of these issues, to indicate at some length the provisions of the present rule, as clarified and expanded by the memorandum of understanding, even to the extent that they embrace matters not immediately involved. Such an approach will render possible a much briefer treatment of the remaining issues.

The rule provides, as the basic stipulation, that all extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when they are available; and "available" is defined to mean that the conductor entitled to an assignment can be contacted and assigned, and can reach the point where he is required to report by scheduled reporting time.

It is then provided, by way of determining in what order the extra

conductors of the given district are entitled to assignments, that until service has been performed in the current month, the extra conductor with the least number of hours of service in the preceding month shall be called first, and that the conductor with the least number of hours of service in the current month shall next be called. The memorandum of understanding deals in detail with the application of these provisions. It stipulates that a regular sign-out period shall be established in each district, at which time assignments will be made for a succeeding 24-hour period; that the sign-out period shall not be less than 30 minutes nor more than 4 hours in length; that the local chairman shall be notified in writing by the district representative at least 5 days in advance of any change in the sign-out period, and a bulletin of the change shall be posted for the information of the conductors. It is stipulated, further, that until credited and assessed hours have been acquired in the current month, extra conductors shall be assigned in accordance with their credited and assessed hours for the preceding month, the conductor with the least number of such hours to be assigned first; and that the process be continued until all conductors in this group have been assigned, after which the conductor with the least number of hours accumulated in the current month shall next be assigned.

The memorandum of understanding also deals with different types of service and varying reporting times in relation to such assignments. It provides that road-service assignments and deadhead assignments shall first be grouped and shall be assigned chronologically with regard to the time conductors are required to report for duty; that thereafter station-duty assignments shall be made chronologically with regard to the time conductors are required to report for duty; that when two or more conductors have the same number of credited and assessed hours, the senior conductor shall receive the assignment with the earliest reporting time; that when two or more assignments to be filled have the same reporting time, and there are two or more extra conductors having the same number of credited and assessed hours, the senior of these extra conductors shall be given the assignment with the farthest destination; that when two or more assignments to be filed have the same reporting time, and there are two or more extra conductors having different numbers of credited and assessed hours, the extra conductor with the least number of credited and assessed hours shall be given the assignment with the farthest destination.

Finally, the memorandum of understanding contains a series of provisions, in connection with these assignments of extra conductors, that are especially applicable to station-duty situations. It stipulates that

an extra conductor assigned to station duty shall not be given another station-duty, road-service, or deadhead assignment at the same time (that is, a double assignment) during the sign-out period; that a road-service or deadhead assignment which occurs after the close of the sign-out period shall be given to the next unassigned extra conductor who has not declared himself unavailable or who has not missed a call during the sign-out period, except that an extra conductor assigned to station duty shall be given a road-service or deadhead assignment which occurs and which has a reporting time within his tour of station duty; and that an extra conductor who has been assigned to station duty and who has completed his tour of duty on the station-duty assignment and still has the least number of accumulated hours in the current month, including the hours earned on the station-duty assignment, shall be assigned to a road-service or deadhead assignment which occurs after the close of the sign-out period and which assignment has a reporting time between the time his station-duty assignment was completed and the beginning of the next 24-hour assignment period.

The principal rule also contains provisions which deal with the recording of credited hours and the computation of assessed hours, for the purpose of implementing the above arrangements for the assignment of extra conductors on the basis of accumulated hours. It is stipulated that a complete record be kept in each district or agency covering the credited hours of all extra conductors of that district or agency, and all assignments of conductors, both local and foreign, including assignments made at points where no seniority roster is maintained but which are under the jurisdiction of the district or agency; that this record shall be posted daily in a place accessible to all conductors affected and shall be kept for a period of 30 days; and that the record shall be maintained on a uniform basis in all districts and agencies. And with respect to the computation of assessed hours, provision is first made for the determination of credited hours, and these credited hours are then used for the computation of assessed hours. It is stipulated that when an extra conductor makes a trip in regular assignment he shall be credited in the required record of credited hours with the actual hours worked; that the daily average of credited hours shall be kept on a day-to-day basis; that the daily average of credited hours shall be determined by adding the total credited hours of the extra conductors who are in the home terminal that particular day and dividing the result by the number of conductors involved, and then dividing by the date of the month; that the average daily hours shall be assessed against each local conductor's total credited hours when he misses a call or for each day he is off duty for any cause; and that a conductor who misses a call

shall be assessed only once each day and shall not be called again that day unless all available local extra conductors have been used.

This extensive recital of the provisions of the existing rule, which will be still further supplemented in connection with some of the subsequent specific issues, has been presented, not only as a basis for appraising the particular proposals of the parties here involved, but for the purpose of indicating the complex and detailed character of the prevailing arrangements in this sphere.

In most respects, as far as the instant issue is concerned, the Organization's proposed rule, which embodies on the whole the stipulations of the memorandum of understanding, conforms to the provisions of the present rule. In the basic provision, however, which specifies that all extra work of a district shall be assigned to the extra conductors of that district when available, the Organization omitted the words "when available," as well as the defined meaning to be attached to "available" as previously set forth; and it specified that a conductor will be considered as having missed a call only after "every effort" has been made by the Company to contact him during the sign-out period. At the hearings the Organization agreed, by way of mitigating the Company's opposition, to substitute "every reasonable effort" for "every effort" in its proposed rule. Since no evidence was presented to indicate that the Company has not sought, in good faith, to contact extra conductors for available assignments, no reason appears for imposing upon it any stronger or more controversial obligation than now prevails. The Organization also omitted the limitations under the present rule upon the scheduling of the regular sign-out periods, and it seemed to restrict contact for assignments to the sign-out period. These changes in the present rule the Company also opposed on what appear to be sound grounds.

But the Company's principal objections to the Organization's proposal were centered in the fact that the proposal retained what the Company deemed to be the undesirable features, largely procedural, of the present rule. It was contended that under this rule, as continued by the Organization's proposal, the Company would still be required to assume all responsibility for contacting the conductors, in designated order, to notify them of their assignments; that the district offices would still be required to waste time in attempting to reach the conductors to determine their availability for the assignments; that the conductors would still have to await calls, at the expense of their leisure time, at the telephones listed with the district offices, until they are reached in their proper turn for the assignments; and that the Company would continue to be confronted with unnecessary disputes, misunderstandings, and claims.

Accordingly, the Company proposed a complete redrafting of the rule from the standpoint of the procedures to be followed. In essence the new elements consisted of the required registration of the conductor at the time of release from duty at his home station, and the required establishment of his availability by contacting the district office during the sign-out period. The proposal, stripped of the technical phraseology of the rule, was explained as follows by the Company's principal witness (Carrier's exhibit No. 51, at pp. 22–24):

To overcome the difficulties in the administration of the present rule, the Company has proposed several changes in its proposed rule 38. These changes offer a responsible and workable method of handling assignments of extra men. The Company's proposal is generally known as the "block-out" method of assignment. It establishes a short, definite period in each day known as the "sign-out period." During that period all known local extra assignments for an ensuing 24-hour period are filled. The assignments which are to be filled by the local extra conductors are listed in the chronological order of their reporting time. All road assignments are grouped first and are followed by the station duty assignments. The assignments are then blocked out to the required number of conductors in the chronological order of their accumulated hours at the beginning of the sign-out period. Each assignment is held for the designated conductor for the duration of the sign-out period. Each conductor can establish his availability for his assignment by contacting the district office at his convenience at any time during the sign-out period. The contact may be made either by telephone or in person and the conductor is immediately advised of the assignment which has been designated for him. The failure of a conductor to call for his allotted assignment during the sign-out period would render him unavailable. Assignments which remain unfilled at the close of the sign-out period and any assignments which might develop after the beginning of the sign-out period and which have a reporting time prior to the end of the sign-out day are filled by calling the remaining extra conductors in the chronological order of their accumulated hours.

Under this method each conductor's availability for the assignment to which he is entitled would be definitely and easily established. Each conductor would be assured of receiving the assignment to which entitled regardless of the availability of another conductor. This is not always possible under the present arrangement and it would not always be possible under the Organization's proposal, where failure to contact a conductor changes the assignments of the conductors following. For example, under both the present method and the Organization's proposal a conductor who is second man due out in chronological order of his accumulated hours should receive the second assignment for the day in chronological order of reporting time. If, however, the conductor first out that day missed his call, the second conductor would then receive the first assignment, although he would normally be entitled to the second assignment. Under the Company's proposed block-out method the conductor second out would be assured of the second assignment through simply establishing his availability for it by calling the district office at his convenience during the sign-out period. This would be true regardless of how the first assignment was protected.

In order to assure that each extra conductor will be correctly considered for assignment during the sign-out period, the Company's proposal requires that when a conductor is released at his home station following a road or station duty

assignment, he shall register in person or by telephone at least 1 hour prior to the start of the scheduled sign-out period. A conductor who is released at his home station too late to register for the current sign-out period will not be considered for an assignment until the next sign-out period, except in an emergency after all conductors who registered 1 hour prior to the start of the sign-out period have been considered for assignment.

A conductor would be required to register only once after release from assignment at his home station. Any conductor who failed to register following his release at his home station would be assessed the daily average hours against his total accumulated hours for each sign-out period for which he should have been registered. This provision of the Company's proposal is advantageous to both the Company and the conductors, because it will discourage the sharp practices of conductors who endeavor to remain unregistered until a particularly desirable assignment is to be made. It will also assist in determining availability for assignment, because it will establish a definite list of conductors for assignment each day and will assure each conductor of assignment in the proper order of his accumulated hours at the beginning of each sign-out period.

It may well be that in due course a recasting of the prevailing procedural arrangements will prove to be necessary. In such event it is more likely to take the form of a division of responsibility between the management and its extra conductors, on the basis of mutually acceptable concessions on each side, than a shifting of responsibility from one side to the other. Without the willing cooperation of the parties neither the present scheme nor that proposed by the Company is likely to function equitably and effectively. For the development of improved relationships in this sphere, the free operation of the processes of collective bargaining must be relied upon, unhampered by prejudgments of particular aspects of the regulations, when the entire complex of arrangements, with its rather minutely detailed stipulations, must be cast into an organic and harmonious whole. Existing practice is the result of a negotiated agreement, with clarifications and expansions of its terms achieved through the memorandum of understanding as late as September 1947. The evidence of record does not support abandonment of existing practice, at least on the basis of the proposals as presented to this Board.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to availability and assignment of extra conductors be withdrawn.

54. Availability of Unassigned Extra Conductors After Sign-Out Period

Under the present rule assignments arising after the beginning of the sign-out period and those not filled during the sign-out period are made to the available extra conductors according to their credited and assessed hours. An extra conductor who reports at his home terminal after the assignments have been made for the day is not privi-

leged to displace any of the local conductors already assigned; a conductor who misses a call is not called again that day unless all available local extra conductors have been used; and a road-service or deadhead assignment which occurs after the close of the sign-out period is given to the next unassigned conductor who has not declared himself unavailable or who has not missed a call during the sign-out period.

The Company proposed no rule changes in these respects, except that it provided that an extra conductor who is not registered for a sign-out day shall not be considered for an assignment remaining unfilled or arising after the start of the sign-out period, unless all other properly registered available conductors have been used. In view of the Board's previous disposition of the "block-out" method of assignment, of which required registration is a part, the Company may be deemed merely to propose the retention of the present rule in these connections.

The Organization, on the other hand, proposed that in the event that all known assignments are not filled during the sign-out period, the local extra conductor who arrives and is released first shall be given the unfilled assignment which has the earliest reporting time; and that when a conductor who misses a call is required to be given an assignment when all local extra conductors have been used, these local conductors shall include those who report at their home stations after the close of the sign-out period. This proposal changes the present practice under which a conductor who has been assessed because of his being unavailable for an assignment is not called again for any assignment until the next sign-out period, as long as there are other extra conductors available at the time such assignments are being filled. It seeks to reverse the principle of an award by the Adjustment Board which supported the present practice; and the method it proposes appears to be unworkable, since it would compel the Company to wait until the last moment in making assignments, and might thereby result in leaving some assignments unprotected. No adequate reasons were adduced for the proposed change.

The Board recommends that the Organization's proposal with respect to the availability of unassigned extra conductors after the sign-out period be withdrawn.

52. Priority of Assignments of Extra Conductors

It has already been noted that the present rule, as it appears in the memorandum of understanding, provides that when two or more assignments to be filled have the same reporting time, and there are two or more extra conductors having the same number of credited and assessed hours, the senior of these extra conductors shall be given the

assignment with the farthest destination; and that when two or more assignments to be filled have the same reporting time, and there are two or more extra conductors having different numbers of credited and assessed hours, the extra conductor with the least number of credited and assessed hours shall be given the assignment with the farthest destination. In place of the preferred assignment being the one "with the farthest destination," as now specified, the Organization proposed that it be the assignment "which will result in the greatest number of credited hours." The Company proposed the retention of the present rule, with the provisions of the memorandum of understanding covering this matter to be incorporated in the agreement.

The present rule provides an objective and readily ascertainable measure of the preferred assignment. The Organization's proposal involves a test which cannot be determined in advance, since many factors, entirely unknown at the time the assignment is made (such as late train arrivals, changes of schedules, and loss of sleep, to cite but a few examples) bear upon the number of hours that may finally be credited for an assignment. The proposed method is unworkable, and it would almost inevitably produce numerous controversies and claims.

The Board recommends that the Organization's proposal with respect to priority of assignments of extra conductors as herein defined be withdrawn.

53. Assignment of Extra Conductors to Temporary Vacancies at Outlying Points

This issue concerns the assignment of local extra conductors to fill vacancies arising in runs operating between outlying points. The present rule contains no provision limiting the duration of extra conductors' assignments to temporary vacancies at outlying points. The rule merely stipulates that work arising at points where no seniority roster is maintained (that is, at outlying points) shall be assigned to the extra conductors of the district having jurisdiction of the point involved. The Organization proposed that a local extra conductor who is given an assignment to operate in regular line service, in lieu of the regularly assigned conductor, at an outlying point, may be so assigned for not to exceed four round trips. The Company proposed a provision expressly specifying that a vacancy of 31 days or less in a regular assignment where the home terminal is an outlying point may be given as one assignment to a local extra conductor.

Under the Organization's proposal additional deadhead expense would have to be paid by the Company in order to fill vacancies at

outlying points where the vacancies are of longer duration than four round trips; under the Company's proposal, the additional relief periods of 4, 6, or 10 days' duration that prevail in some runs between outlying points, as well as the 14-day vacation periods or the 15-day bulletining-and-award periods, could be filled by one conductor without penalty to the Company. The Organization's proposed limitation to four round trips appears to be an entirely arbitrary limitation; and no justifiable basis was established for requiring additional conductors to be deadheaded to and from outlying points in runs that are vacant for more than four round trips. The Company's proposal conforms to existing practice, which this Board finds to be fair and reasonable; and this practice has been upheld by the Adjustment Board as a proper application of the present rule. In these circumstances the retention of the present rule appears to be all that is required.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to assignment of extra conductors to temporary vacancies at outlying points be withdrawn.

32. Use of Foreign District Conductors

When a Pullman conductor arrives at an away-from-home terminal, he is considered a "foreign conductor" in a "foreign district"; and he must, of course, eventually be returned to his home district. This applies to both regular and extra conductors, and whether they arrive at the foreign-district terminal in deadhead, extra, or regular service.

The present rule provides that the management has the right to annul an extra conductor's assignment when a foreign-district conductor is available for service out of a station moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station; and "direct" route is defined as "a direct rail route between the given points," or a route having "through Pullman service between these points." The Organization proposed that a foreign-district conductor may be given an extra assignment moving in a direct route toward his home station, provided he is in a district or agency at the beginning of the regular sign-out period; and that a foreign-district conductor who arrives in a district or agency after assignments have been made for that day shall not be permitted to displace any local conductor already assigned, but may be used on an extra movement which occurs after the close of the sign-out period and is on a direct route toward his home station. The Company proposed, for the most part, to retain the provisions of the present rule with respect to the use of foreign-district conductors, but it also stipulated that a foreign-district extra conductor may be assigned to any

service, including the vacancy in a regular run, when no local-district extra conductor is available; and that when a district knows in advance that a foreign-district extra conductor is scheduled to arrive in the district before the reporting time of a known assignment on a direct route to or toward the foreign-district conductor's home station, or to a point within a radius of 50 miles of his home station, the assignment need not be made during the sign-out period but may be held for the foreign-district conductor pending his arrival.

The Organization's proposal is designed to restrict the use of foreign-district conductors out of a terminal. It does not permit the Company to annul an extra conductor's assignment when the assignment is to service moving on a direct route toward the home station of a foreign-district conductor who is available for service; it omits the "50-mile radius" and "through Pullman service" provisions of the rule; and it stipulates that a foreign-district conductor must be present at the beginning of the local district's sign-out period in order to receive an assignment. These proposed changes would not be calculated, primarily, to facilitate a fairer distribution of work among extra conductors, but rather, through an increase in deadheading, to impose substantial additional costs upon the Company without any corresponding increase in productive service. The Company, on the other hand, purported to propose no material change in the substance of the present rule, but merely to clarify its provisions. Such so-called "clarifications," however, which embrace not only the principal stipulations set forth above but a number of more or less minor changes, might well lead, as part of the complicated rule as a whole dealing with the operation of extra conductors, to undesirable disturbance of existing practice, with a probable increase in controversies and claims. The Board concludes that the present rule is both equitable and workable, and that the evidence of record supports its retention.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to the use of foreign district conductors be withdrawn.

55. Method of Computing Assessed Hours

The method of computing assessed hours under the present rule has already been described. The Organization proposed no change in existing practice. The Company also agreed that the present method be continued, except that only the extra conductors who are registered at the home terminal one hour prior to the start of the scheduled sign-out period are to be counted in making the computation. This exception was incidental to the Company's proposed "block-out" plan

of assigning extra conductors. Since the Board has already recommended that the proposal for this plan be withdrawn, no recommendation is necessary on the specific issue here involved.

56. Separate Posting of Credited and Assessed Hours

We have already noted that under the present rule complete records of the credited hours and assignments of all extra conductors must be kept in a uniform manner in all districts and must be posted daily and retained for a period of 30 days. The Organization proposed that credited hours, assessed hours, and the total of credited and assessed hours be posted separately. The Company proposed that the present practice of posting the combined total of credited and assessed hours be continued. This appears to be a frivolous issue to bring before the Board in a proceeding of this character. A continuance of combined posting would not result in any substantial harm to the conductors, nor would the adoption of separate posting impose any substantial burden upon the Company. In point of fact, at the hearings the Company agreed that it could provide for separate posting of credited hours and assessed hours, and hence no recommendation by the Board is necessary.

XV. MINIMUM-PAYMENT RULES

A number of issues before the Board involve proposed changes in the minimum-payment rules of the agreement. These proposed changes concern such payments for road service, for station duty, and for interrupted receiving work; and they also bring to issue the application or continuance of the present rules concerning uniform release time and release from duty for less than one hour.

19. Minimum Payments for Road Trips

The present rule (23) provides that conductors in extra road service or deadheading on passes or with equipment, or in combinations of any such services, who perform less than 7:30 hours' service from reporting time until released shall be credited and paid not less than 7:30 hours, a minimum day. In addition, the memorandum of understanding dated August 8, 1945, provides that a conductor who for any reason relieves a regularly assigned conductor in a "clocker" run (such runs departing from each terminal in New York and Philadelphia on the hour from early morning until evening) shall be paid 1⅙ days for 1 day of such relief work, whether the relief is furnished on a day on which the regularly assigned conductor would have per-

formed one round trip or two round trips; but that, should a conductor furnish relief for only one round trip on a day when the regularly assigned conductor would have performed two round trips, the relief conductor would be entitled to pay for seven-twelfths (one-half of the 1⅙ days) of 1 day for this one round trip.

The Organization proposed that conductors operating in regular line service, extra road service, or deadhead service who perform less than 7 hours' service from the time they are required to report for duty until they are released from duty, shall be credited and paid actual time, but not less than 7 hours, a minimum day, for each one-way trip or assignment in such service, except that conductors operating in the "clocker" assignments shall be credited and paid not less than 7 hours, a minimum day, for each round trip. It proposed, further, that it shall not be permissible to couple deadhead trips with either extra road service or regular line service (unless, in regular service, the deadheading is part of the regular run and is covered by the operation of conductors form), with the combined service to be treated as a single movement. And it proposed, finally, in connection with the rule (38) governing the operation of extra conductors, that an extra conductor performing extra service shall not be assigned on the round-trip continuous-time basis, except when a car or cars in his charge are occupied continuously by passengers or their possessions, and that extra conductors will not be given more than one assignment at any time.

The Company proposed that extra conductors assigned to regular service, extra service, deadheading on passes or with equipment, or in combinations of any such services, who perform less than 7 hours' service within the 24-hour period immediately following their reporting time at home station shall be credited and paid not less than 7 hours, a minimum day; that extra conductors assigned to service who are away from their home stations more than 24 hours shall be paid actual time for service performed; that road service may be combined with station duty, and such combined service treated as a single assignment; that these provisions shall also apply to regularly assigned conductors performing service in other than their regular assignments; and that these provisions shall not apply to an extra conductor assigned to perform one round trip in "clocker" service on a day when the regularly assigned conductor is scheduled to perform two round trips, in which case the extra conductor, as under the present rule, shall be paid seven-twelfths of a day for the one round trip.

Virtually all the changes proposed by the Organization would operate to increase the compensation of conductors, or to require the

use of additional conductors, and the aggregate cost in dollars and in men would be very substantial. This cost of the proposal to the Company, on an annual basis, has been estimated to involve 63 additional conductors and to amount to $294,175. The reasons for such effects are rather obvious. Assignments combining deadhead and road services, which may now be treated as single continuous assignments, would be split in each case into two or more assignments, with the possibility of requiring two or more minimum days in each instance. The separate crediting of hours for each side of round trips produces like effects. Data submitted by the Company, by way of example, concerning a considerable number of actual runs, disclosed that the payment of a minimum day would be required for each of one-way deadhead or service assignments when such trips consume as little as 1 hour, 1:10 hours, and 1:15 hours, and even though such service is performed in immediate connection with other service, and these data revealed, furthermore, that the hours required to be credited under the Organization's proposal range from 38.5 percent to 154.7 percent in excess of the number of hours credited under the present rule, with the increase in most instances amounting to 100 percent or more. In the "clocker" runs, too, the Organization merely seeks to increase conductor costs, not only by modification of the memorandum of understanding, but in contravention of the practical demands of that service. More than one round trip on 2 or 3 days of each week has always been required in the "clocker" service, because of the short time involved in one-way trips in this service; and even under such assignments these runs still produce an average of only about 199 hours in a 30-day month. In the "clocker" runs about 5 additional conductors would be required; in other regular runs, where the elapsed time for either the out-bound trip or the in-bound trip or both is less than the number of hours in the minimum day, approximately 49 additional conductors would be required. These effects of the Organization's proposal do not spring from the entirely legitimate desire to assure conductors, through minimum-payment rules, reasonable amounts of compensation for the time they are away from their home terminals; they are the result of penalty impositions, designed to increase the number of so-called "gift" or "constructive" hours, and to require the use of additional conductors without any increase in the amount of productive service rendered. In the judgment of the Board the proposal is without merit.

Nor does the counterproposal of the Company appear to merit approval. While it retains, in many respects, the presently prevailing arrangements, it seeks to restrict in various ways the applicability of the existing minimum-payment rule. It proposes, for example,

that station duty, as well as deadheading and road service, should be combined, where advantageous, into single continuous assignments; and that minimum payments be not based, as now, upon service performed from reporting time to release time, but rather upon service performed within a 24-hour period commencing with the reporting time at the home terminal. Such changes would doubtless operate to the advantage of the Company, just as the Organization's proposed changes would operate to the advantage of the conductors. But no convincing considerations were presented in support of either proposal. The rule, as negotiated in 1945, appears to this Board to be fair and reasonable; and the awards of the Adjustment Board which have been cited merely apply the present rule, with varying results, to the intricacies of particular situations.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to minimum payments for road trips be withdrawn.

17. Minimum Payments Under Station-Duty Rule

Under the portions of the present rule (10) which are here in issue, it is provided that when an extra conductor is required to perform station duty, load trains, or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for in addition to all other earnings for the month, with a minimum credit of 3:45 hours (one-half day) for each call; that a regularly assigned conductor under the same conditions, shall be credited in the same way, except that his minimum credit shall be 7:30 hours (a minimum day) for each call; that an extra conductor who performs station duty and then immediately goes into road service shall be credited and paid actual time for station duty; that conductors shall not receive credit and pay for attending safety and service meetings when such attendance is on a voluntary basis; and that conductors will not be compensated for inquiries by telephone or by letter in connection with service matters.

The Organization proposed that under the conditions described in the present rule—that is, when conductors are required to perform service embraced in the station-duty rule as set forth above—extra conductors, as well as regular conductors, shall receive a minimum credit of 7 hours (a minimum day) for each call. Furthermore, by eliminating the provision with respect to the interruption of station duty by road service, the Organization provided in effect that extra conductors shall be paid a minimum of 7 hours for station duty under these circumstances; and it also eliminated the nonpayment provisions for voluntary attendance at safety and service meetings and for

district office inquiries by telephone or by letter, as a result of which claims to minimum payments might also be made. The Company proposed no change in the present rule, and opposed the Organization's demand.

The major change involved in the Organization's proposal is the requirement that extra conductors, like regular conductors, be credited with a minmum day of 7 hours for station duty. Even the 3:30 hours allowable under the present rule exceed, in many instances, the number of hours of service actually rendered; and no evidence was presented to indicate that a minimum of one-half day's pay, in the case of extra conductors, is unfair or unreasonable. In 1945, prior to the adoption of the present rule, the Organization argued for the establishment of a differential in favor of regular conductors, by allowing them a full minimum day, because calls to station duty, in their case, interfere with their regular schedules and deprive them of lay-overs they have earned. In other words, the full minimum day was insisted upon "as putting a greater penalty on the Company for using regularly assigned men to perform this work, which belongs to the extra men." Now the proposal is made that this differential be removed, and that the extra conductors, to whom this work "belongs," be raised to the same level of payment as the regular conductors. There appears to be no merit in this request, or in the other proposed changes in the present rule set forth above. As in case of the proposal with respect to minimum payments for road trips, the obvious purpose of the instant demand is merely to increase conductor compensation. It is tantamount to a demand for a wage increase, without the submission of any data relevant to a wage determination, in a proceeding which purports to deal with rules affecting working conditions. Nor is the financial burden involved a negligible one. The estimated annual cost of the proposal to the Company amounts to $54,446.

The Board recommends that the Organization's proposal with respect to minimum payments under the station-duty rule be withdrawn.

18. Minimum Payments for Interrupted Receiving Work

The matter here in dispute is covered by the same rule (10) as was involved in the immediately preceding issue concerning station-duty payments. Under that rule, it will be recalled, the minimum credit of 3:45 hours for extra conductors, and of 7:30 hours for regular conductors, is made applicable not only to the direct performance of station duty, but to conductors "when called and reporting for road service and not used." In practice the stipulated minimum payments are made under these provisions both when conductors are called and not

used at all, and when they perform part of the receiving work incident to one assignment and are then used in another assignment.

The Organization proposed that under these circumstances, as in connection with the direct performance of station duty, both regular and extra conductors shall receive minimum payments of 7 hours; and it expressly specified that a conductor who reports for a road-service assignment, begins to receive passengers for the cars which he is to have in charge, and is then relieved of the road-service assignment, shall be paid 7 hours, a minimum day, for the service performed, "account called and reporting for road service and not used in road service." The Company, opposing this demand, proposed not only that the minimum payments of the present rule (that is, one-half day's pay for extra conductors, and a full day's pay for regular conductors) be retained, but that the phrase "when called and reporting for road service and not used" be changed to "when called and reporting for road service and not used in any service." Under the Company's proposal both regular and extra conductors who are used in other assignments after they have performed part of the receiving work in their original assignments would be paid for the actual time involved in the receiving service performed. Both parties were agreed that such conductors would be entitled to pay for station duty in addition to all other earnings for the month.

Neither proposal appears to merit approval. The considerations which supported the Board's conclusion, in connection with the immediately preceding issue, that there is no justifiable basis for increasing minimum payments for extra conductors to 7 hours, are equally applicable to the station duty here involved. On the other hand, the Company's proposal that conductors be paid for station duty arising from interrupted receiving work on an actual time basis, would impair the integrity of assignments, in the absence of penalties, under circumstances which afford no adequate justification for departing from the general minimum-payment provisions of the station-duty rule. In the judgment of the Board the present rule is fair and reasonable and should be retained.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to minimum payments for interrupted receiving work be withdrawn.

3. Application of Uniform Release Time

The present rules (6 and 13) provide that time for regular and extra service shall be credited from time required to report for duty until released (subject to deductions for sleep periods en route), and that a uniform reporting and release time shall be established for each station

in each district and agency. We are here concerned only with release time and its application to conductor assignments. In this matter the above provisions are supplemented by the memorandum of understanding dated May 16, 1949. This memorandum, which is designed to provide for credit and payment of time when a conductor is required to remain on duty after arrival for the specific purpose of turning over a car or cars in his charge to the conductor of the train on which the car or cars are regularly scheduled to be further operated, specifies as follows: That when a conductor is required to remain on duty 30 minutes or less for the above purpose, such time shall be added to the conductor's other accumulated hours for the month, and he shall be credited for such time as though it were part of his regular assignment; and that when a conductor is required to remain on duty in excess of 30 minutes for the above purpose, he shall be credited and paid as station duty, in addition to all other earnings for the month, for actual time required to remain on duty, with a minimum credit and pay of 1 hour in each instance.

The Organization proposed no change in the memorandum of understanding—that is, under its proposed rules the exception would be continued requiring payment on an actual time basis, with a minimum of 1 hour, when a conductor is kept on duty more than 30 minutes after arrival of his train to turn over his diagrams and reports to a connecting conductor; but it also proposed, aside from this one exception, that conductors shall be automatically released from duty, after arrival, at the established uniform release time, and that all work performed thereafter be paid for as station duty, with a minimum payment of 7 hours, in addition to all other earnings for the month. The Company not only opposed this demand of the Organization, but it proposed, on its part, that the memorandum of understanding be eliminated, and that a conductor required to remain on duty beyond his normal release period to perform work incident to his assignment, including the turning over of diagrams and reports to connecting conductors, shall be credited and paid for such time as part of his assignment.

Under present practice, aside from the specific situation covered by the memorandum of understanding, conductors are credited and paid in conformity with the Company's proposal. The work involved, after arrival, consists of supervising the unloading of ambulance patients, assisting in the search of cars for lost passenger baggage, collecting commissary funds, and performing other such tasks. Such duties are clearly incidental to the road assignments involved, and no adequate reason appears why they should be paid for separately, as station duty, on a penalty basis. But as late as May 1949,

through the memorandum of understanding, the parties agreed that the delay incident to the turning over of cars to connecting conductors shall be deemed to constitute a special category, and that when a conductor is required to remain on duty for such purpose in excess of 30 minutes he shall be paid for actual time as station duty, with a moderate minimum of 1 hour. Much can be said for the contention that this work, like the other tasks previously mentioned, is incidental to the regular assignment, and does not constitute station duty; and that the distinction between remaining on duty for 30 minutes or less and in excess of 30 minutes is an entirely arbitrary distinction, and reflects in itself an admission that such work is incidental to the road assignment. But the compromise involved in this agreement, even though effectuated in connection with a threatened use of economic power, is of relatively recent date; and such a compromise, the origin and impact of which transcend the single matter here in dispute, should not be lightly disturbed.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to the application of uniform release time as herein set forth be withdrawn.

10. Release of Less Than 1 Hour

Under the present rule (14) it is provided that when release from duty is less than 1 hour, no deduction shall be made from the continuity of time. The Organization proposed to eliminate this rule from the agreement. The Company proposed no change, and opposed the Organization's demand.

The present rule, in identical language, has been part of the various agreements between the conductors and this carrier for almost three decades. It was originally proposed by the Organization, and it has continued from time to time to be advocated and supported by the Organization. It operates to pay a conductor for time released from duty, when less than 1 hour, as well as to prevent claims for separate assignments when the service of the conductor is thus briefly interrupted. In fairness to the conductors, payment should be made for so short an interval, since such freedom from duty is of no practical value to them; but by the same token, in fairness to the Company, continuity of service should not be deemed to have been broken in these circumstances, so as to provide a basis of pay for separate assignments. This proposal of the Organization is but another device whereby its proposed minimum-payment rule (calling for the payment of a minimum of 7 hours for each one-way trip or assignment, without combination of deadhead and road services), which has already been rejected, would become operative under release from duty

for less than 1 hour. Like all of the Organization's proposals in connection with the minimum-payment rules, it is merely designed to increase conductor compensation. Its effect would be tantamount to a substantial wage increase, and it would add to the number of hours credited and not worked. The imposition of such additional financial burdens, unsupported by any showing of need or equity, would tend to handicap the Company in its competition with other transport agencies, to the ultimate detriment of the conductors as well as of the Pullman service. In the judgment of the Board the proposal is without merit.

The Board recommends that the Organization's proposal with respect to release from duty for less than 1 hour be withdrawn.

XVI. HELD-FOR-SERVICE RULES

In connection with the determination of credits for hours worked, a rather elaborate held-for-service rule is included in the agreement: It consists of seven lettered paragraphs and nine questions and answers. A number of matters are in dispute with respect to the held-for-service provisions. The nature of these issues will de disclosed as we examine the present rules and the proposals of the parties concerning them.

8. Duplication of Station-Duty and Held-for-Service Payments

The present rule (9 (a), (b), and (c)) provides that a regularly assigned conductor held at his home station by direction of the management beyond the expiration of his lay-over shall be allowed hourage credit and pay up to 7:30 hours for each succeeding 24-hour period; that an extra conductor held at his home station by direction of the management (that is, beyond the reporting time of an assignment that is due him) shall be allowed the same hourage credit and pay; that a conductor in incompleted regular, extra, extended special tour, or deadhead service (except in connection with witness service), who is held at a point other than his home terminal may be held 15 hours without credit or pay following the time he is released from previous road-service duty; that if he is not used in road service at the expiration of the 15-hour period, he shall be allowed hourage credit and pay up to 15 hours for each succeeding 24-hour period; that a conductor operating in regular assignment who is held at the away-from-home station beyond the specified lay-over of the assignment shall be allowed hourage credit and pay from the expiration of the specified lay-over up to 7:30 hours for each succeeding 24-hour period; and that if such a conductor arrives at the

away-from-home terminal after the specified lay-over has expired, held-for-service time will start from the time he is released. In addition (especially related to the instant issue), the station-duty rule (10) provides that the assignment of a conductor to station duty does not constitute a break in the continuity of a conductor's lay-over or his held-for-service time.

The Organization proposed no change with respect to the continuity of lay-over and held-for-service time when station duty intervenes. The Company proposed that the assignment of a conductor to station duty shall not, as at present, constitute a break in continuity with respect to lay-over, but that it shall suspend the payment of held-for-service time during the period station duty is performed.

On the surface the Company's objective appears to be an entirely legitimate one. It seeks to prevent simultaneous payment for station-duty and held-for-service time, or, as put in its statement of the issue, the duplication of station-duty and held-for-service payments. Under its proposal station-duty time and held-for-service time would be credited consecutively rather than simultaneously, and thus the duplication of payments would be avoided. It is to be remembered, however that the intervention of station duty generally not contemplated in connection with specific lay-overs or the 15-hour noncompensatory period, and that the held-for-service provisions are primarily related to conductors' expectations of road-service assignments. When station duty does intervene, it constitutes extra non-road service, which may well be paid for independently of the varying guarantees of held-for-service time. The Company voluntarily agreed to the prevailing arrangement in 1945, without even being subjected to the impetus of a recommendation by the Emergency Board whose investigation preceded the 1945 agreement, and no adequate basis has been established for overturning the arrangement then adopted by the parties. The held-for-service rules are elaborate and technical, and they have been formulated as a means of maintaining in reasonable balance, on the whole, the rights of both the management and the men. The mere fact that under some special circumstances, such as those involved in award No. 3759 of the third division of the Adjustment Board, the Company deems itself subjected to unduly extensive liability does not justify complete abandonment of the governing rule, which is generally applicable on fair and reasonable terms.

The Board recommends that the Company's proposal with respect to duplication of station-duty and held-for-service payments be withdrawn.

9. Computation of Pay for Witness Duty

The present rule (11) provides that a conductor required to appear as a witness in court proceedings by direction of the management shall receive credit of 7 : 30 hours for each 24-hour period and compensation at his regular (hourly) rate of pay while in such service, and shall be allowed actual, legitimate, and reasonable expenses. In addition, witness duty is expressly excepted from the provisions of the deadhead-service rule (7) and from the provisions of the held-for-service rule (9).

In place of the simple provisions noted above, the retention of which without change was urged by the Company, the Organization proposed an elaborate new rule, which not only provided a *minimum* of 7 hours' credit and pay for each 24-hour period, but specified in extensive and complicated detail the circumstances under which witness-duty credit and pay shall be required to be supplemented by both deadhead-service credit and pay and held-for-service credit and pay, with refined differentiations established between the rights under the rule of regular conductors and extra conductors, and as applied to witness duty performed at home stations and at away-from-home stations. No useful purpose would be served by attempting to explain the intricacies of the proposed rule, or by pointing out what seem to be the defects of particular provisions of that rule. It is sufficient to note that no evidence whatever was presented to show that the operation of the present rule has produced unfair or unreasonable results, or that there is any justification for the far-reaching changes proposed except the desire to increase the compensation of those conductors who, on relatively rare occasions (only 61 conductors were used as witnesses during the 3-year period ending April 20, 1950), are required to testify in court proceedings. The witness-duty rule, substantially in its present form, was originally written into the agreement, in 1936, at the Organization's request; and no developments have taken place since that time, or since the adoption of the 1945 agreement, which support the need of superseding the traditional policy of providing a day's pay for each 24-hour period of witness duty, including travel to and from the place of hearing. In the judgment of the Board the present rule is fair and reasonable and should be retained.

The Board recommends that the Organization's proposal with respect to the computation of pay for witness duty be withdrawn.

20. Held-for-Service Pay at Home Terminal Account Interruptions in Scheduled Service

Because of the highly technical character of the matters here involved, it will be helpful if the issue is briefly stated before the provisions of the present rule or the proposals of the parties are set forth.

The problem concerns the method of payment that shall be applicable in cases of interruptions in scheduled service. The conflicting proposals of the parties are designed to resolve the dispute between the Organization and the Company, accentuated by not altogether consistent determinations of the Adjustment Board (award No. 4441 and award No. 4561 of the third division), concerning the interpretation to be placed upon some of the provisions of the held-for-service rule of the present agreement. Stated in most general terms, the issue is whether a conductor whose scheduled service is interrupted at some time during his trip should receive held-for-service pay at his home terminal. The Company interprets the present rule to mean that a regularly assigned conductor who completes his assignment, regardless of the type of transportation used, is entitled only to his regular pay plus credit for late arrival where applicable; the Organization, on the other hand, interprets the same rule to mean that such a conductor is entitled to be paid held-for-service time at his home terminal if he operates on other than his scheduled train either out-bound or in-bound. Some of the more concrete points of conflict will appear in the course of our examination of the present and proposed rules.

Under the directly relevant provisions of the present held-for-service rule (9), it is stipulated that incompleted regular service is service which is terminated at a point where no specified lay-over is established; that a regularly assigned conductor shall be credited and paid held-for-service time at his home station when returning to his home station in other than his regular assignment, except when the conductor is returned from the opposite terminal on a train later than the one on which he was scheduled to return, but with Pullman equipment he would have handled on his regular train; that a regularly assigned conductor who has been held at the away-from-home terminal of his assignment and who consequently does not return to his home station on his scheduled train shall be credited and paid held-for-service time starting immediately upon being released at his home terminal, provided the train on which he was scheduled to return carried Pullman equipment in service; that a conductor who is used in service other than his own assignment to the opposite terminal of his regular assignment and returns in his regular assignment to his home terminal shall be credited and paid held-for-service time on release at his home

station; and that a regularly assigned conductor shall be credited and paid held-for-service time on return to his home station when completing only a portion of the return trip of his regular assignment, since there is no lay-over in the home station for incompleted regular service.

For the most part the Organization's proposal retained these provisions, but in two instances it removed the exception and proviso incorporated therein, so as to extend the operation of the present rule. Thus, under the amended provisions, a conductor would receive held-for-service pay even though, when he arrived from the opposite terminal on a train later than the one scheduled, this train carried Pullman equipment he would have handled on his regular train [a matter which will be dealt with, specifically, in the next succeeding issue]; and if a make-up coach train were operated as the scheduled train, and the conductor were held for his cars, he would have to be paid held-for-service time at his home terminal, in addition to receiving credit for his late arrival. A new provision was also added by the Organization, whereby a regularly assigned conductor who arrives at his opposite terminal after the train on which he was scheduled to return has departed, is to be credited and paid held-for-service time at his home terminal, in the event that there is a lapse of time between his release and the scheduled reporting time for the next trip.

While the Company opposed these specific changes, it directed its opposition primarily to the Organization's interpretation of the present rule, in connection with interruptions in scheduled service, which is the subject-matter of the immediate issue. In order to meet the difficulties created thereby, the Company proposed changes in the held-for-service rule which provided as follows: First, that a regularly assigned conductor whose round-trip service is interrupted because of changes in scheduled operations not due to his illness or to misconduct on his part shall receive no less credit and pay than he would have earned had he completed his regular assignment; and second, that such a conductor shall not be credited and paid held-for-service time upon return to his home station, but shall be credited as late arrival for the hours intervening between the time that should have been his normal release time at his home station in his regular assignment and the time he is actually released at his home station. At the hearings the Company agreed that the interruptions of service covered by its proposed rule shall be those caused by "emergencies," and that the language of its proposed rule would be modified accordingly.

The contentions of the Company in support of its proposal are amply persuasive. When interruptions in service occur en route, pro-

tective measures can seldom be instituted to insure that a conductor will be operated on his scheduled train. Generally train operations, and the consequent conductor operations, are interrupted because of snowstorms, washouts, tornadoes, wrecks, and a variety of equipment failures. The paramount interest of both the railroad companies and the Pullman Co. is, as it should be, the safe and dependable transportation of the passengers involved to their destination. It is impossible to anticipate and prevent all the varied causes of interruptions in scheduled service; and when these interruptions occur, whatever transportation facilities are available must be used to complete the service operations that had been undertaken. The penalization of the Company under such circumstances, which are entirely beyond the control of the management, by invoking the provisions of the held-for-service rule, appears to be neither fair nor reasonable.

But despite the emergency character of these interruptions in scheduled service, the Organization has so interpreted the present rule as to justify its submission of claims for held-for-service time. The theory which underlies this interpretation is that whenever a conductor's regular assignment is interrupted, whatever the cause of the interruption, his home lay-over is thereby canceled and he becomes entitled to held-for-service pay. The Organization and the Company are in agreement that provision for lay-overs is both proper and necessary, in order to afford conductors opportunities for rest and relaxation. Occasionally, however, lay-overs are shortened by late arrivals, because of one or more of a multitude of causes, and conductors are then compensated for these curtailed lay-overs by the credit of late-arrival time. The interruptions in scheduled service involved in this issue also result in late arrivals in most instances, and the conductors would likewise be compensated by credit for late-arrival time. The only difference between this situation and that of ordinary late arrivals is that, because of emergency conditions over which the Company has no control, the conductor generally operates on other than his scheduled train on a portion of either the out-bound or the in-bound trip. In these circumstances the Organization claims held-for-service time at the home station as the proper measure of compensation, on the ground that the lay-over has been canceled.

In point of fact, of course, there is no actual cancellation of the lay-over in these cases. When service has been interrupted and the conductor arrives late, his lay-over is still operative, just as it continues to be operative in connection with late arrivals resulting from any other cause. The duration of the lay-over may be shortened, for which the conductor is compensated by late-arrival credit, but the lay-over as such is not eliminated. Claims for held-for-service time

in these situations are based upon a strained and highly technical interpretation of the held-for-service rule.

The Organization has submitted many such claims for held-for-service pay at the home terminal on account of interruptions in scheduled service. It will suffice for our purposes to set forth, in the words of the Company's principal witness, the facts of the latest instance as presented at the hearings (Carrier's exhibit No. 20, at pp. 19–20):

> Conductor R. O'Hara, Chicago western district, was regularly assigned to operate in line 135, which runs between Chicago and Seattle on Great Northern Railroad trains 3 and 4. Conductor O'Hara left Chicago on February 18, 1949, in his regular assignment, arrived at Seattle on February 21, and was released at 1:55 p. m. At the expiration of his lay-over he reported at Seattle at 8:15 p. m. on February 22 for Great Northern train No. 4 en route Chicago. He was advised that the equipment for train No. 4 had been turned at Everett, Wash., and was instructed that he and his passengers were to be transported by bus from Seattle to Everett, a distance of 33 miles, and that he would continue in service with his passengers on the regular equipment to Chicago. Conductor O'Hara received transportation from passengers at his regular time, 8:15 p. m., at Seattle and left at 9:30 p. m., the regular departure time for train No. 4. He accompanied the passengers on the bus from Seattle to Everett. At Everett they boarded the regular equipment and proceeded to Chicago where the conductor was released at 10 a. m. on February 25, 55 minutes after his scheduled release. He was due to report for his next trip in line 135 at 9:15 p. m. on March 3. Since this was a 13-man assignment, Conductor O'Hara was paid 13 days for the round trip and credited with 55 minutes late-arrival time. The Organization on behalf of Conductor O'Hara claimed that rules 9 and 10 of the agreement were violated when he was not paid 7½ hours for station duty at Seattle on February 22 and held-for-service at Chicago from 10 a. m. on February 25 to 9:15 p. m. on March 3. * * * Under the Organization's proposal Conductor O'Hara would receive the equivalent of 20 instead of 13 days' pay for the round trip simply because it was necessary to ride a bus with his passengers for a distance of 33 miles.

When, in face of interrupted service caused by circumstances beyond the Company's control, the Organization's interpretation of the present rule can lead to such a fantastic result, it became essential that the rule be reformulated. At the hearings the representatives of the Organization expressed a willingness to write a memorandum whereby interruptions of regular assignments caused by "acts of God" would be excepted from the operation of the general rule. The Organization declined, however, to accept the Company's modification of its own original proposal whereby "emergencies" would constitute the controlling factor in rendering the held-for-service rule inoperative, on the ground that too much controversy would ensue as to what constitutes "emergencies." No reason appears why it should prove more difficult to apply the standards of "emergencies" than that of "acts of God." There are certainly many causes of interruptions in service, such as equipment failures, which may reasonably be deemed to have

created "emergencies" and which may not be said to have been the result of "acts of God." Furthermore, among the rules agreed upon by the parties on December 21, 1949, prior to the initiation of the present proceedings, is rule 36, continuance in regular assignment, which specifies that "a conductor operating in regular assignment shall not be used in service outside his assignment except in emergency." This rule not only safeguards the integrity of conductor assignments under normal conditions, but it sets up the very standard of "emergencies" incorporated in the Company's held-for-service proposal in relation to interruptions in scheduled service, as an appropriate and justifiable ground for departing from the strict terms of regular assignments.

The Board finds the Company's proposal with respect to held-for-service pay at home terminal on account of interruptions in scheduled service, as modified at the hearings, to be fair and reasonable, and recommends its adoption.

21. Held-for-Service Pay at Home Terminal After Return on Train Other Than That Specified in Regular Assignment

In the preceding issue, one aspect of the question in dispute was whether, when a regularly assigned conductor whose scheduled service is interrupted by an emergency returns to his home station along with his passengers on day coaches, parlor cars, buses, or some other form of transportation furnished by the railroad company, the conductor is entitled to held-for-service pay at his home station. The question here at issue is whether the Company should be required to pay held-for-service time when the conductor returns to his home station on a train other than that specified in his regular assignment, regardless of whether or not such train carries Pullman equipment he was originally scheduled to handle.

It will be recalled that the present rule specifies: First, that a regularly assigned conductor shall be credited and paid held-for-service time at his home station when returning to his home station in other than his regular assignment, "except when the conductor is returned from the opposite terminal on a train later than the one on which he was scheduled to return, but with Pullman equipment he would have handled on his regular train"; and second, that such a conductor who has been held at the away-from-home terminal of his assignment and who consequently does not return to his home station on his scheduled train shall be credited and paid held-for-service time starting immediately upon being released at his home terminal, "provided the train on which he was scheduled to return carried Pullman equipment in service."

As already noted, the Organization omitted the "exception" and the "proviso" from the above stipulations. This would expand beyond the requirements of the present rule the circumstances under which the Company would be obligated to pay held-for-service time—that is, in the first case, held-for-service time would have to be paid even though the later train on which the conductor returned carried "Pullman equipment he would have handled on his regular train," and in the second case, even though the train on which he had been scheduled to return did not carry "Pullman equipment in service."

The Company, on the other hand, proposed to narrow the requirements of the present rule—that is, to have itself relieved of the obligation to pay held-for-service time even when the circumstances described in the "exception" are absent, and even when the circumstances described in the "proviso" are present. It did this by seeking to have the rule it had proposed in connection with the immediately preceding issue, so modified, as before, as to apply only to operating changes created by "emergencies," apply also to fact situations involved in the matter here in dispute. In other words, the Company's proposal merely specified that the conductor shall receive no less credit and pay than he would have earned had he completed his regular assignment as originally scheduled; and that instead of being credited and paid held-for-service time upon return to his home station, he shall be credited as late arrival for the hours intervening between the time which should have been his normal release time at his home station in his regular assignment and the time he is actually released at his home station.

In the judgment of the Board, for reasons already set forth in connection with the disposition of the preceding issue, the Organization's proposal for expanding the incidence of held-for-service payments under the circumstances here involved is without merit. But the Board also finds the Company's proposal for narrowing such incidence under the circumstances here involved to be without merit, despite the fact that it has recommended the adoption of the proposal as a fair and reasonable means of handling the situations involved in the preceding issue. The submission and consideration of the matter here in dispute as a separate issue was based upon the Company's own recognition that the fact situations presented by the two problems are of distinctive character. In the preceding case, the conductor, despite the interrupted service, actually completes his assignment, accompanied by his passengers—the use of other transportation facilities in the course of the operation constituting the basic modification of his regular assignment. In the instant case, the Company seeks

to apply the same rule even when the train by which the conductor reaches his home station does not carry Pullman equipment which he would have handled on his regular train—thus constituting an actual substitution of one assignment for another. It is important that the integrity of regular assignments be adequately safeguarded, and the existing rule, including the "exception" and the "proviso," appears to afford such protection on a basis that is equally fair to the Organization and the Company.

The Board recommends that both the Organization's proposal and the Company's proposal, with respect to held-for-service pay at home terminal after return on train other than that specified in regular assignment, be withdrawn.

22. Pay for Held-for-Service on Consecutive "Double" Trips

Every regular assignment has a specified lay-over at the away-from-home terminal and at the home terminal of the run. When a regularly assigned conductor performs road service prior to the expiration of the lay-over of his assignment, the service performed is referred to as a "double." The rules of the agreement do not permit the Company to double a regularly assigned conductor when an extra conductor is available. The question here at issue is whether a conductor who is doubled consecutively in his own run shall be paid held-for-service time immediately upon release at his home station after his second and all subsequent "double" trips.

The present rule provides that a conductor who is doubled in his own run either at his home station or at the away-from-home terminal shall not be entitled to held-for-service credit upon release at his home station until the expiration of the lay-over accruing to the "double" trip.

The Organization proposed that a conductor who is doubled in his own assignment either at the home terminal or at the opposite terminal shall not be entitled to held-for-service credit until after the expiration of the lay-over accruing to the initial "double" trip; and, as a new provision, that if the conductor is doubled again prior to being returned to his side of the run, held-for-service time shall be credited and paid immediately upon release at his home terminal.

The Company proposed, also through a new provision, that a regularly assigned conductor who is doubled either at his home station or at the away-from-home terminal shall be credited and paid held-for-service time, following return to his home station, if the lay-over from his regular assignment has expired, and in such event he shall be paid held-for-service time after the expiration of the lay-over accruing to the "double" trip.

While the Organization did not contend that the agreement prohibits consecutive "doubles," it argued, in support of its own proposal, that the penalty of held-for-service time should be imposed upon the Company for departing from a conductor's regular assignment through more than the initial "double"; and, in addition, it opposed the Company's proposal that the limitation of the "double" to the conductor's "own run" be omitted from the rule, arguing that the present rule merely establishes a specific exception to the applicability of the held-for-service penalty. The Company, on its part, insisted that the agreement does not limit the number of times a conductor may be doubled before being returned to his own assignment, and that, under existing practice, if no extra men are available a conductor may be doubled not only in his own run but in any regular or extra assignment. Then, ignoring the other changes involved in its proposal, it took the position that it was merely seeking "to clarify the intent of the present rule."

In point of fact, as must be obvious from a mere statement of the proposals, both parties sought to change the present held-for-service rule—the Organization, to broaden or expand its incidence, and the Company, to narrow or restrict its incidence. In neither case was any evidence submitted calculated to show that the present rule is working unsatisfactorily. The Organization confined itself to demonstrating that the Company's proposal would operate to the disadvantage of the conductors; and the Company confined itself to demonstrating that the Organization's proposal would operate to the disadvantage of the management. Both demonstrations were of convincing character, and no good reason appears for either broadening or narrowing the terms of the held-for-service rule as now formulated in this connection. In the judgment of the Board the present rule is fair and reasonable; and such unadjusted disputes as may be pending concerning its application should be left to the determinations of the Adjustment Board, in light of the particular facts of particular proceedings.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to pay for held-for-service on consecutive "double" trips be withdrawn.

40. Emergency Lending of Conductors

There is no rule in the present agreement which deals, as such, with the emergency lending of conductors; but there is a provision in the rule (38) dealing with the operation of extra conductors which specifies that a foreign district conductor who has been deadheaded from

one district to another in other than a direct route toward his home station shall not be used in service before all available extra conductors of that district have been used. Under existing practice, supported by this rule and by an understanding reached in settlement of certain specific claims, a conductor may be deadheaded to another district for service, but may not be used in the district to which he is sent until all available local extra conductors of that district have been assigned; and conductors may be sent from one district to another in the cities of Chicago and New York, on a voluntary basis, without deadhead credit or pay, and may similarly be used only after all available local extra conductors have been assigned.

The Organization proposed, not only the omission of the above rule from the agreement, but the inclusion of a new provision specifying that a deadhead assignment, in connection with the operation of extra conductors, shall mean a deadhead trip to a point under the jurisdiction of the conductor's home district for service originating at such point. This proposal would forbid the management to deadhead an extra conductor to another district in an emergency to protect an assignment in the other district, and it might also prohibit the lending of conductors between districts in the same city or metropolitan area. In the words of the Organization itself (employees exhibit No. 27, at pp. 22–23): "The effect of the present provision is to permit deadheading of a foreign district conductor from a point to another point, not on a direct route home, and his use out of that other point when all available extra conductors having seniority at that point have been used. The Organization believes that he should not be used so long as any conductors, regular or extra, having seniority at that point, are available * * *." The Company opposed the Organization's demand, and proposed the retention of both the existing general practice and the special practice prevailing in Chicago and New York.

It appears to be clear that Pullman service requirements cannot be met without emergency lending of conductors. When the local supply of extra conductors is insufficient to meet unusually heavy demands, it becomes imperative that the districts involved should have the privilege of borrowing conductors from other districts. This is especially important to the smaller districts where, under the provisions of the rule (39) regulating the number of conductors on the extra board, only a limited number of extra conductors is maintained; and the need for borrowing conductors becomes especially pressing in connection with extensive movements of persons, such as those involved in military encampments, inaugural ceremonies, important sporting events, large conventions of fraternal or other groups. When, at the hearings, the Organization was confronted with the fact of these un-

questioned needs, it suggested that when the extra board is exhausted at any particular point, additional traffic demands should be met by temporary transfers of conductors from other districts or by doubling regularly assigned conductors.

In the judgment of the Board neither expedient affords a reasonable or workable solution of the problem. The rule (42) dealing with temporary transfers applies to both regular and extra conductors, operates on a voluntary basis, and requires that in the exercise of the right to transfer the seniority of the conductors be strictly observed. Moreover, these transfers are designed to man seasonal runs or other temporary assignments, and they provide no assured basis for meeting the emergency situations here involved. Nor is the doubling of regularly assigned conductors calculated to prove more satisfactory. In the smaller districts there are not enough regular conductors available to meet, through "doubles," the need created by the exhaustion of the extra board; the use of "doubles" generally involves penalty payments for the "doubles" themselves, as well as held-for-service pay at the home station in certain circumstances; and the doubling of regularly assigned conductors involves a policy, as indicated in connection with the immediately preceding issue, which the Company tries to avoid where possible, and to which the Organization itself is fundamentally hostile. Existing practice has not been shown to be unfair or unreasonable in any way, and its retention appears to be indispensable for the protection of Pullman service.

The Board recommends that the Organization's proposal with respect to emergency lending of conductors be withdrawn.

XVII. MISCELLANEOUS DEMANDS REQUIRING USE OF ADDITIONAL CONDUCTORS

Many of the demands examined in this report require the use of additional conductors. Up to this point such demands have been grouped under appropriate captions which embrace closely related matters governed as far as possible by the same rules of the agreement. In this section of the report we will deal with demands each of which is important in itself but which as a group are of miscellaneous character and are governed by a variety of rules. These demands include the extent to which runs may be permitted to be pooled, proposed limitations upon the number of cars to be handled, proposed limitations upon the performance of receiving service, the extent to which provision shall be made for days off duty, and the degree to which conductors may be permitted to be assigned, without penalty, to extra sections of trains carrying regular equipment.

36. Pooling of Runs

When two or more regular conductor operations are combined into a single operation, the runs are said to be pooled. Runs may be pooled to create assignments of more desirable character from the conductor's standpoint, by combining a run between outlying points with a run between the district where the conductor's roster is maintained and one of the outlying points—thereby enabling the conductor assigned to the pooled operation to continue to work out of his home station without having to maintain two places of residence or to incur the risk of temporarily moving his family from his home station to an outlying point. Runs may also be pooled in the interest of the management, by combining long-mileage overtime runs with short-mileage undertime runs, so as to bring the credited hours of the conductors assigned to these pooled runs to a figure approximating the number of hours constituting the basic month—thereby eliminating or reducing payment for hours not worked and pro rata or punitive overtime payments.

The present rule (58) provides that overnight round-trip runs of 14 hours or less of elapsed time in each direction shall not be operated in conjunction with other runs, but that this rule shall not apply when a conductor operates in one direction in an overnight run and in the opposite direction in a day run. Stated in affirmative terms, the rule permits the pooling of a round-trip night run of more than 14 hours in each direction with another such round-trip run, or with a run which operates overnight in one direction and during the daytime in the opposite direction; and it also permits the pooling of two round-trip day runs, or two runs which operate overnight in one direction and daytime in the opposite direction. Relief runs may also be pooled under this rule; and indeed, under the rule (34) already agreed upon which provides that where the relief work in any district constitutes full-time service it shall be bulletined, as in case of other regular service, the relief assignments must be pooled. Such relief assignments arise when it is necessary to add 24 hours or multiples thereof to established home lay-overs in order to meet the requirement of the rule (16) specifying that not less than 96 hours off duty each month, in 24-consecutive-hour periods or multiples thereof, shall be allowed at the designated home terminal, or to meet the requirement of the rule (4(b)) specifying that regular assignments shall not be scheduled to produce credited hours in excess of an average of 235 [220 under the recommendation of this Board] for a 30-day month.

The Organization proposed that the pooling of runs, with a single exception, should be limited to relief assignments. Its revised rule

specified that no conductor assignment, except regular relief assignments established in accordance with the rule (34) dealing with the bulletining of relief work, shall be pooled with another assignment; but it retained the provision that the principal rule shall not apply when a conductor operates in one direction in an overnight run and in the opposite direction in a day run. The Company proposed no change in the present rule, and opposed the Organization's demand.

The Organization's proposal would remove from the pooling procedure as now established the advantages resulting therefrom to both the management and the men, as set forth at the beginning of the analysis of this issue. The working conditions of conductors would tend to be worsened rather than improved; and through the splitting up of runs and the required use of additional conductors, extra costs would be imposed upon the Company without any increase in productive service. Runs have been pooled from time to time at the request of the conductors themselves, and no evidence was presented to justify the further restriction of management's exercise of discretion in this sphere. In the judgment of the Board the present rule is fair and reasonable and should be retained.

The Board recommends that the Organization's proposal with respect to pooling of runs be withdrawn.

37. Car Limitation

There is no rule in the present agreement which imposes any limitation upon the number of cars that may be handled by a single conductor. Under existing practice second conductors are assigned to runs whenever assistance to the conductors normally assigned to particular operations is deemed by the management to be needed; and when continual assistance is found to be necessary, regular second-conductor operations are established. The problem is met from time to time on the basis of day-to-day consideration of the service and operating characteristics of all regular, extra, and special conductor assignments, supplemental and guided not only by frequent road-service inspections, but by consultations with conductors serving in regular operations concerning the relevant service requirements of their runs and the ability of the conductors, under the prevailing operating conditions, to meet these requirements effectively and without hardship.

The Organization proposed that the maximum number of cars for a conductor to be in charge out of a city where a conductor roster is maintained shall not exceed seven sleeping cars, or five parlor cars, or five parlor and sleeping cars combined; that lounge, club, and observation cars shall be considered and counted as the equivalent of a sleep-

ing car or a parlor car, as the case may be; and that this rule shall not apply to special movements or trains, such as military specials, Shrine specials, American Legion specials, and the like. The Company opposed the Organization's demand.

It must first be noted that even if there were justification for imposing some restrictive limit upon the amount of work that should properly be assigned to one conductor, the inflexible rule proposed by the Organization would seem to provide an entirely arbitrary expedient for meeting the alleged difficulty sought to be removed. The addition of a single car in connection with any one of the prescribed categories, which embrace all regular and extra service, would require the assignment of a second conductor; and this requirement is being proposed on the assumption that the number of cars in an operation constitutes the sole determining factor in the need of additional conductors. In point of fact, of course, as was convincingly established by the Company, there are many service and operating conditions which bear more importantly than the number of cars in a train upon the volume of work required of Pullman conductors. These factors, which need only be listed to disclose their relevance to the problem at issue, include the following: The capacity, or total number of units of space, provided on the train; the percentage of occupancy of the available space; the portion of conductor work completed at the station, prior to the departure of the train; the portion of the trip en route during which, because of special duties such as those incident to customs and immigration inspections, the regular conductor may be overburdened; the frequency of scheduled stops; the consist of a train and the arrangement or location of its various types of equipment; the nature of the transportation that is to be lifted, and the supplementary adjustments that may be incident thereto; the extent to which cars are picked up en route, at large junction points, after the transportation has been received and the passengers have retired; and other circumstances of miscellaneous character which need not be detailed (see Carrier's exhibit No. 37, at pp. 4–18). To assume, in view of these considerations, that the volume of work of Pullman conductors depends exclusively upon the number of cars over which they have charge, is to proceed on a totally unrealistic basis.

Furthermore, aside from a few declarations by the representatives of the Organization that in some instances the large number of cars in a train have rendered the conductor's duties unduly onerous, no showing was made that the Company has abused its discretion in determining the circumstances under which there is need for second conductors. On the contrary, the facts indicate that very substantial use of second conductor operations has actually been made by the

management. As of October 1, 1949, a survey showed that the Company was operating a regular second conductor in 9 round-trip runs and in 7 one-way runs having 8 or more cars in the operation for the entire trip between the terminals of the runs; that there were 52 regular second-conductor runs on trains between intermediate points of the terminals of the regular conductor runs where the number of cars in the train exceeded the limits established by the proposal at issue; and that in only 18 of the 430 existing conductor runs scheduled on a regular basis did one conductor handle at one time more than the limited number of cars specified in the proposal for the whole or a portion of the round trip out of a city where a conductor's roster is maintained. In light of all these circumstances, it is difficult to avoid the conclusion that the Organization's proposal, which would become applicable to the remaining regular service, and to all extra service, encompassed by its terms, is primarily a make-work proposal. It is also a costly make-work proposal. On an annual basis, and entirely apart from all other demands made by the Organization (including the demand, approved earlier, that the basic month be reduced from 225 to 210 hours), the proposed car limitation would require the use of 58 additional conductors in regular service and 64 additional conductors in extra service, at an estimated aggregate cost to the Company of $542,576. In the judgment of the Board this demand is without merit.

The Board recommends that the Organization's proposal with respect to car limitation be withdrawn.

38. Limitation on Receiving Service

Both regular and extra conductors are frequently required to receive passengers and lift their tickets at terminals, at passing points, and at outlying points before the passengers board the trains, so that they may retire, if they wish, from 1 to 3 hours prior to departure without being subsequently disturbed. This procedure constitutes an important aspect of Pullman service. Sometimes a conductor receives passengers for his own train only; at other times he is assigned to receive passengers for several trains. In the latter case a conductor may or may not make a road trip with some of the cars for which he has lifted transportation at terminals; and at passing and outlying points he may be assigned to receive passengers for several cars that may be picked up by as many different trains. The volume of work involved in receiving passengers at stations prior to departure of trains depends upon the type of tickets the conductors are required to lift, the number of passengers handled, and the length of the receiving period.

The present rule (10 (c)) provides that a conductor, within the spread of his assignment, may be required to lift transportation for

cars other than those he will handle on the road without additional credit or pay; that his responsibility therefor shall cease when he is released from receiving service; and that when conductors are available they shall receive for the cars they will handle on the road. Under this rule, the Company may thus direct a conductor, while he is on duty and receiving passengers for the cars of his own assignment, to receive passengers also, without additional credit and pay, for cars which are not included in his road-service assignment—that is, for cars to be handled by porters-in-charge, cars to be added to passing trains, cars already a part of passing trains, and cars at outlying points which are to be picked up by trains other than the one on which he is to operate—so long as the conductors to whom the additional cars are assigned for road-service duty are not available for the performance of this receiving work.

The Organization proposed that regular and extra conductors operating in road service shall not be required to lift or receive Pullman tickets for cars other than those they will handle on the road; and that when conductors are available they shall lift or receive Pullman tickets for the car or cars they will handle on the road. The Company proposed no change in the present rule, and opposed the Organization's demand.

In support of its proposal, the Organization merely contended that the provisions of the present rule require a conductor to work outside his regular assignment, without additional compensation, and that extra conductors are thereby deprived of station-duty work to which they are entitled under other rules of the agreement. This contention, in the judgment of the Board, neither provides a justifiable condemnation of the present rule nor establishes a convincing basis for the proposed change.

The receiving duties here at issue are actually made part of the conductor's assignment, and their performance is expressly confined to the spread of his assignment. The controlling provisions which permit the inclusion of such receiving service are an integral part of the station-duty rule, and hence they constitute a specific exception to whatever requirements may be established by the general rules dealing with extra service (22) and the operation of extra conductors (38). And there is like support for the existing rule on the merits. In many operations as few as two cars are involved in the road-service assignment; and yet the receiving time in stations prior to train departures varies between 45 minutes and more than 5 hours. There is ample evidence that conductors are not in any sense overburdened by their receiving assignments, and no attempt was made to show that the Company has abused its discretion in making such assignments.

Under the Organization's proposal, either the management would be required to impair the Pullman service, by depriving passengers of the opportunity to entrain and retire substantially in advance of train departures, or additional costs of considerable magnitude would be imposed upon the Company.

While the Organization's proposal prohibits conductors from lifting Pullman tickets for cars other than their own, it retains the provision specifying that only when conductors are available shall they perform the receiving service for the cars they will handle on the road. In effect this provision recognizes that the receiving service may have to be performed by conductors other than those assigned to the road service. The manifest purpose of the proposal, then, is to provide additional station-duty work for extra conductors, without increasing in any way the productive service to be rendered. It has been estimated that 26 additional extra-conductor assignments would be required, at an annual cost to the Company of $113,245. There appears to be no merit in the demand.

The Board recommends that the Organization's proposal with respect to limitation on receiving service be withdrawn.

28. Days Off Duty on Runs Requiring Less Than Three Conductors

There are regular operations in the Pullman service in which one conductor, working every day, can perform all the service required in the operation within the number of hours constituting the basic month, but without having sufficient time off duty at his home terminal for needed rest and for normal social and family life. The parties are agreed that additional home-terminal lay-overs are necessary under such circumstances.

To meet situations of this character, the present rule (16) provides that not less than 96 hours off duty each month in 24-consecutive-hour periods, or multiples thereof, shall be allowed at the designated home terminal; and, by way of affording more liberal relief periods (six in place of four), a special rule (18) provides that conductors operating exclusively on one-night round-trip runs, where the scheduled reporting time at the home terminal is between the hours of 6 p. m. and midnight, the scheduled release time for the return trip is between the hours of 6 a. m. and 11 a. m., and the credited hours for the round trip are 9:45 hours or less, shall be allowed a 24-hour relief period after four consecutive round trips.

The Organization proposed, as an exception to the general rule (16), that on runs which require less than three conductors, not less than four calendar days off duty each month shall be allowed at the desig-

nated home terminal; and that the special rule (18) governing relief periods on one-night round-trip runs be eliminated. The Company also proposed the elimination of the special rule, but it opposed the substitution of four calendar days off duty each month, in runs which require less than three conductors, for the four 24-consecutive-hour periods specified in the present rule.

In the judgement of the Board, the Organization's preference for four calendar days is not directed, as alleged, to requiring the establishment of more satisfactory lay-over periods, but rather, as was amply demonstrated by specific examples in the course of the proceeding, to requiring the use of additional conductors by way of relief. The proposal would require 13 additional conductors, at an estimated annual cost to the Company of $58,137. There appears to be no justification for the demand. The Company, on the other hand, is seeking to restrict the relief periods now provided for one-night round-trip runs to the basis specified in the general rule, without any showing that the special rule is either unfair or unduly burdensome. For this demand, too, there appears to be no justification. While the Organization also proposed the elimination of the special rule, it did so on the assumption that its general proposal would be approved. The same considerations which support the retention of the present rule (16) dealing with days off duty also support the retention of the present rule (18) dealing with relief periods on one-night round-trip runs.

The Board recommends that both the Organization's proposal and the Company's proposal with respect to days off duty on runs requiring less than three conductors be withdrawn.

29. Assignment of Conductors to Extra Sections of Trains Carrying Regular Equipment

The question here at issue concerns the manner in which a regular conductor shall be operated when the train to which he is assigned is split into two or more sections, and the basis of payment that shall be used when he operates on other than the first section under such circumstances.

The present rule (22) provides that conductors shall be paid at their respective established hourly rates for all hours credited each month for extra road service; that "extra road service" is any revenue-producing trip, exclusive of an extended special tour, not covered by a conductor's regular assignment; and that the work of conductors operating on extra sections of trains and of helper conductors shall be classified as "extra road service." The Company proposed, aside from certain more or less formal changes in the wording of the rule, that the work of conductors operating on extra sections of trains and of

helper conductors shall be classed as extra (road) service, "except when extra sections of trains include a regular car or cars ordinarily handled by a regularly assigned conductor and the regularly assigned conductor is assigned to such an extra section of a train"; and that "the work of a regularly assigned second conductor" is not "to be classed as helper conductor work." The Organization proposed no change in the present rule, and opposed the Company's demand.

Under the Company's proposal conductor work on second sections of trains would not be recognized, as under the present rule, as extra work, to be normally assigned to extra conductors, and to be paid for as extra service regardless of whether the conductor who performs that service is a regularly assigned conductor or an extra conductor; where a regularly assigned conductor performs service on an extra section of a train which carries one or more cars of the conductor's regular assignment, or where he works as a regularly assigned second conductor, he would be paid under the rules (20 and 21) governing full-time or part-time regular assignments, and not on the hourly basis, involving additional compensation, applicable to extra conductors performing extra road service. This proposal was frankly submitted as a means of reversing the principle of award No. 4007 of the third division of the Adjustment Board, which decision, the Company contended, "was based upon a literal interpretation of the language" of the rule, but did not give effect to the real intent of the rule to provide a basis of payment for extra conductors only, in the specified circumstances. In the judgment of the Board no adequate grounds were adduced for reading the alleged intent into the unambiguous language of the present rule; and in any event the Company's proposed rule would remove from the category of "extra road service" situations in which extra sections of trains carry but one of many cars that might be included in the conductor's regular assignment, and hence may embrace, for all practical purposes, what virtually amount to new assignments. Such a rule would seriously impair the integrity of regular assignments, without adequate justification.

The Board recommends that the Company's proposal with respect to assignment of conductors to extra sections of trains carrying regular equipment be withdrawn.

XVIII. MISCELLANEOUS MINOR DEMANDS

The miscellaneous minor demands set forth below, together with their disposition, are included in this report chiefly for the purpose of having the record of this proceeding embrace all the 69 issues presented to the Board.

65. Free Medical Service

In connection with conductors excused at away-from-home stations (issue No. 44, at pp. 148–149 of this report), the Organization proposed that only a conductor's illness shall relieve the Company of the obligation to pay held-for-service time under the circumstances there specified; and that in case of illness, the conductor "shall be sent to a doctor." The management construed this stipulation as involving the provision of medical service at the Company's expense. Upon assurance during the hearings that the Organization did not contemplate sending a conductor at any away-from-home station to a doctor at the Company's expense, the issue was withdrawn.

67. Abrogation of Previous Oral Understandings

When, under existing practice, the working agreement between the parties is revised, only such oral understandings as are in conflict with the terms of the revised agreement are abrogated. The Organization proposed that all oral understandings involving the working agreement be cancelled. The Company opposed the Organization's demand. It is doubtless sound policy not to have the written agreement supplemented by oral understandings, since such understandings tend to generate controversy and to render more difficult the interpretation and application of the written agreement. In this instance, however, no evidence of any sort was presented as to the character of the oral understandings sought to be abrogated, and hence approval of the Organization's proposal would be tantamount to recommending the exercise of a blanket and undefined authority. At the hearings the Company agreed to have the oral understandings reduced to writing, but not to eliminate them. In these circumstances the Organization's demand appears to be without merit.

The Board recommends that the Organization's proposal with respect to the abrogation of previous oral understandings be withdrawn.

69. Re-Execution of Specified Memoranda of Understanding

Aside from the memoranda of understanding which have been sought to be incorporated in the agreement by the various proposals of the Organization or the Company, the following memoranda of understanding remain in effect:

Memorandum of understanding concerning granting of leaves of absence in connection with military rehabilitation, dated August 10, 1945.

Memorandum of understanding in regard to establishing full-time station duty assignments at Orlando, Fla., San Antonio, Tex., Phoe-

nix, Ariz., and Tucson, Ariz., designated as line nos. 2052, 3488, 224, and 236, respectively, dated August 8, 1947.

Memorandum of understanding, dated July 2, 1948, concerning relief work in line 5129, New York-Boston.

Memorandum of understanding in regard to assignment of station duty conductors at Chicago, Ill., to protect the transcontinental cars operating between New York and Los Angeles on New York Central "Century" and Santa Fe "Chief" trains, dated May 25, 1949.

Memorandum of understanding in regard to operation of Norfolk district conductors on Southern trains nos. 1 and 8 between Greensboro, N. C., and Winston-Salem, N. C., dated August 15, 1949.

The Organization proposed that all memoranda of understanding not contained in the agreement and made part thereof shall be cancelled. The Company proposed that all the above memoranda should be re-executed, to take effect simultaneously with the rules of the principal agreement when its revision, subsequent to this proceeding, has been accomplished. At the hearings it appeared that the parties were in agreement upon all but one of the above memoranda; and no evidence was presented in support of any cancellation. Furthermore, in view of the recommended withdrawal of numerous proposals, there is no assurance that all other memoranda of understanding will actually be incorporated in the agreement. In light of all these circumstances, there appears to be no justification for cancelling the above memoranda of understanding.

The Board finds the Company's proposal with respect to re-execution of specified memoranda of understanding to be fair and reasonable, and recommends its adoption.

68. Joint Application for Mediation

The present rule (66) provides that should either party to the agreement desire to change any of the rules, the accredited representatives of the party desiring to make such change shall give written notice to the accredited representatives of the other party of such desire, in accordance with the terms of the Railway Labor Act; and that conference shall be held within 30 days and continued without unnecessary delay until the questions at issue are disposed of, or in the event no agreement can be reached the questions at issue shall be submitted to the National Mediation Board. The Organization's proposed rule omits the latter part of the present rule, including the stipulation that, in case of failure to reach agreement, the questions at issue shall be submitted to the National Mediation Board. The Company proposed no change in the present rule. Since no reason was stated, and no evidence was presented, in support of the Organization's proposed

change, the present rule, which conforms to sound and orderly practice, should be retained.

The Board recommends that the Organization's proposal with respect to joint application for mediation be withdrawn.

CONCLUSION

It is the judgment of the Board that an agreement entered into on the basis of the findings and recommendations set forth in this report will constitute a fair and reasonable adjustment of the dispute, and that it will give effect to all the substantially supportable proposals of both the Order of Railway Conductors and the Pullman Co.

Respectfully submitted.

ERNEST M. TIPTON, *Chairman.*
I. L. SHARFMAN, *Member.*
ANGUS MUNRO, *Member.*

NOVEMBER 3, 1950.

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