Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED AUGUST 4, 1950, PURSUANT TO
SECTION 10 OF THE RAILWAY LABOR ACT

To investigate and make recommendations concerning certain disputes between the New York Central Railroad Co., Lines East of Buffalo, the Carrier; and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brotherhood of Railroad Trainmen, labor organizations

(NMB Case No. A-3419)

NEW YORK, N. Y.

SEPTEMBER 13, 1950

(No. 91)

SEPTEMBER 13, 1950.

The PRESIDENT,
The White House,
Washington, D. C.

Mr. PRESIDENT: We have the honor to transmit herewith our report and recommendations as an Emergency Board created by Executive Order No. 10147 of August 4, 1950, to investigate and make recommendations concerning certain disputes between the New York Central Railroad Co., Lines East of Buffalo, a Carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, labor organizations.

Very respectfully,

FRANK M. SWACKER, *Chairman.*
PAUL G. JASPER, *Member.*
WAYNE QUINLAN, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD (NO. 91) CREATED AUGUST 4, 1950, BY EXECUTIVE ORDER 10147

The Executive order creating the Board is as follows:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE NEW YORK CENTRAL RAILROAD CO., LINES EAST OF BUFFALO, AND CERTAIN OF ITS EMPLOYEES

WHEREAS a dispute exists between the New York Central Railroad Co., lines east of Buffalo, a Carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, labor organizations; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a Board of three members, to be appointed by me, to investigate the said dispute. No member of the said Board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The Board shall report its findings to the President with respect to the said dispute within 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 New York Central Railroad Co., Lines East of Buffalo, or by its employees, in the conditions out of which the said dispute arose.

(Signed) HARRY S. TRUMAN.

THE WHITE HOUSE,
August 4, 1950.

Pursuant to the Executive order, under date of August 7, 1950, the President designated the following named persons to constitute said Board:

Hon. Paul G. Jasper, Chief Justice of the Supreme Court of Indiana, Fort Wayne, Ind.;

Mr. Wayne Quinlan, attorney, Oklahoma City, Okla.;

Mr. Frank M. Swacker, attorney, 120 Broadway, New York City.

The latter was chosen chairman.

Hearings began at the United States Courthouse in New York City on August 14, 1950, and continued from day to day thereafter.

The following were the appearances for the organizations:

Thomas J. Harkins, assistant grand chief engineer, Brotherhood of Locomotive Engineers, 352 Clay Avenue East, Roselle Park, N. J.

C. H. Keenen, vice president, Brotherhood of Locomotive Firemen and Enginemen, 486 East State Street, Salamanca, N. Y.

J. F. Casey, vice president, Order of Railway Conductors, 287 State Street, Portland, Maine.

W. L. Reed, assistant to the president, Brotherhood of Railroad Trainmen, 16 West Front Street, East Mauch Chunk, Pa.

W. D. Palmer, general chairman, Brotherhood of Locomotive Engineers, 711 S. A. and K. Building, Syracuse 2, N. Y.

W. O. Cooney, general chairman, Order of Railway Conductors, 310 Laurel Road, Rochester 9, N. Y.

H. W. Evans, general chairman, Brotherhood of Locomotive Firemen and Enginemen, 406 Jefferson Building, Warren and Jefferson Streets, Syracuse 2, N. Y.

James Anderson, general chairman, Brotherhood of Railroad Trainmen, 710 Eckel Theatre Building, Syracuse 2, N. Y.

And for the Carrier:

August Hart general manager, Syracuse, N. Y.

F. B. Hank, general manager, New York, N. Y.

W. V. McCarthy, assistant to general manager, Syracuse, N. Y.

W. G. Abriel, manager, personnel, New York, N. Y.

R. C. Bannister, assistant to vice president, Personnel and Public Relations, New York, N. Y. (Counsel).

During the course of the hearings it became apparent that the Board would be unable to conclude the investigation and render its report within 30 days of the Executive order and accordingly the parties stipulated and the President approved an extension of 30 days for the rendition of said report.

The evidence indicates that the dispute had its inception in a disagreement between the parties concerning the proper application of an award of the National Railroad Adjustment Board, its No. 12111, hereinafter referred to. That dispute caused the general chairman of the Trainmen handling the matter for the organizations to call in the grand lodge officers of the four-train service organizations. After they got into the matter the dispute was greatly enlarged to include not only the aforementioned award but also several others. Failing to reach any understanding concerning these disputes, when negotiations were terminated, the grand lodge officers announced that a strike ballot would be prepared and spread among the affected employees. That was done.

The strike ballot included not only the matters which primarily had been the subject of negotiation, but all grievances of the affected employees, including some not even processed in the usual fashion up to and including some submitted and pending before the National Railroad Adjustment Board. Also it included claims of a multiple nature related to the ones, the subject of the original dispute, amounting to over a quarter of a million dollars, which had never theretofore been presented to the carrier, and as to which the latter claimed they were barred by the limitations agreement. The strike ballot also included demands for certain rule changes, the most important of which was for the termination of the limitations agreement; it also included demands for a large number of improvements in the facilities used by the employees, such as washrooms, lockers, bunkhouses, et cetera.

Mediation was invoked by the Carrier and in the course of such mediation a number of grievances were settled by the Carrier. It is reasonably to be assumed that had they been progressed in the usual fashion, the same result would have occurred without the necessity of mediation.

Award 12111 involved a practice of the Carrier of requiring the road train crews to set off some of the cars from their train at North Bergen Yard and the balance in the Weehawken Yard, all within the Weehawken Terminal Yard limits. It was claimed that this constituted requiring road crews to perform yard service and claim was made for a yard day for each member of the crew involved in such operation. The National Railroad Adjustment Board sustained this contention. The Carrier immediately started checking the claims filed by employees who had performed the service and paid $163,000 of such claims. The general chairman, however, of the Trainmen's organization insisted that there were numerous additional claims which had not been paid by the Carrier, and the latter offered to conduct a joint check of the records with the organization to develop any additional claims. That offer, however, was rejected by the general chairman, who thereupon called in the grand lodge officers. Up to this time the only contention asserted on behalf of the employees was that some who had filed claims had not been paid. Numerous other employees had performed similar service but had never filed claims and up to this point no contention was made on their behalf. When the grand lodge officers came into the matter, however, they insisted that all employees who had performed the work should be paid whether they had filed claims or not; furthermore they insisted that in cases where the whole train had been left at the North Bergen Yard excepting the caboose and the latter only taken to the Weehawken Yard, that the award was applicable; they also insisted that where a similar

operation had occurred at Bellman's Yard (within the same terminal) the award should apply.

The Carrier insisted that the award was not applicable in the cases of handling of cabooses only, or at Bellman's Yard, and offered to join with the organizations in seeking an interpretation from the National Railroad Adjustment Board. The organizations declined this offer and the carrier applied ex parte for an interpretation on these points, and the Board rendered such an interpretation, holding that its original award did not embrace the two issues in dispute. By the strike ballot, the organizations enlarged the demand to include not only satisfaction of these disputed points but also to claim that the road crews involved were entitled to not 1 but 2 days' pay in addition to their road pay on the theory that they had performed service both at the North Bergen Yard and Weehawken Yard, and they further, for the first time, asserted claims with respect to each transaction on behalf of yardmen not used, who it was claimed, should have performed the work. These latter claims ran all the way from 1939 to 1948 (when the operation was changed because of the award) and were first presented to the Carrier in 1950, and the Carrier claims they are clearly barred by the limitations agreements with the organizations which require such claims to be presented within 60 days.

After the grand lodge officers came in a joint check of the claims filed was undertaken as a result of which additional claims were found and paid by the Carrier amounting to $50,500, making a total paid by the carrier pursuant to the award of $213,500. In the course of this joint check the employees' representative took off the names of all the other employees who had performed similar service but had not filed claims and so-called "back-in" claims were filed as to them. It is estimated that these new claims involved approximately one-quarter of a million dollars additional. No estimate has been made concerning the amount of the claims for a second yard day for the road crews nor for the claims now asserted on behalf of yardmen whom it is claimed should have been called to perform the work. In connection with the operation involving the taking of cabooses only to the Weehawken Yard, the Carrier asserts that this was done at the express request of the employees concerned as a matter of convenience to them.

In explanation of their unwillingness to go back to the Adjustment Board concerning the four issues, namely, the Bellman's Yard operation, the caboose only operation, the "back-in" claims and the claims for yardmen not used, the organizations say that early in the functioning of the Adjustment Board these four organizations resolved that where once they had taken an issue of principle to the Adjustment Board and received a favorable award thereon, that they would not

go back to the Adjustment Board or to any other forum to procure enforcement of the award nor would they go back to the Adjustment Board with additional cases involving the same principle. Instead they would utilize their economic strength to procure enforcement of the award or principle. In the instant case, however, the action of the grand lodge officers in supposed conformity with this policy involves their constituting themselves claimant, judge and jury to determine the issue of whether or not the award covers either directly or in principle the claims here involved. This leaves the Carrier without any opportunity to contest the issue that is the very basis of the organizations' determination. The Carrier did go, ex parte, when the organizations refused to join with it, to the Adjustment Board for an interpretation of the only issues in dispute at the time, namely, whether the award did embrace the Bellman's operation and the caboose alone operation. The Carrier procured from the Adjustment Board an interpretation that the award did not cover those issues. (However, it should be understood that the interpretation does not hold those issues to be invalid but merely holds they were not passed upon by the award.) With the defense of time limitations as to all these issues and the factual circumstances surrounding the handling of the cabooses as being done for the employees' convenience, the carrier is certainly entitled to a day in court on all four issues.

A side explanation of the organizations' position as to the "back-in" claims is a contention that it has been customary to allow such claims and instances were given where that was done on other roads. The Carrier here denies that such has been the practice on its lines, East, but in any event the situation now is totally different from what it was in the instances cited where "back-in" claims were paid. It was only since 1947 that there were limitations agreements. Accordingly in the entire absence of any limitations, it would have been futile for the Carrier to refuse to pay "back-in" claims as there would be nothing to prevent their being instituted as new claims following a favorable award. Indeed, this was one of the very reasons why the Emergency Boards in national movements recommended the adoption of limitations agreements.

In the course of the controversy over award 12111, three other awards became the subject of controversy. Award 12244 sustained a claim on behalf of conductors operating out of Corning, N. Y., to the effect that their seniority had been violated in certain instances. Contention and argument arose over the application of the award and again the Carrier, after refusal of the organization to join with it, applied ex parte for an interpretation and received one which the Carrier claims upheld its contention as to the scope of the original

award. This the organization denies. Of course, the Adjustment Board is the only body competent to determine the dispute and had the organizations joined with the Carrier in seeking the interpretation the point could have hardly remained in dispute. However, there is nothing to prevent the organization from going back to the Adjustment Board for a further interpretation.

Another award over which a dispute arose was No. 12665. In that case, claim had been made for an additional day's pay at trainman's rate on behalf of firemen working in pusher service out of Clearfield, Pa., because of being required to throw switches. This claim was sustained. In this case, the Carrier not only paid the claims filed, but also other firemen involved in the operation because of a standby agreement. However, the organization now asserts that the principle should be applied at all other locations aside from Clearfield. The award is clearly confined to Clearfield and the Carrier asserts similar operations at other locations are outlawed.

The fourth award which the organizations claim has not been complied with is award No. 12666. This was a protest claim against the failure of the Carrier to use firemen on certain Diesels around Grand Central Station in conformity with the agreement. The protest was sustained by the Adjustment Board and a form order entered which allowed the Carrier 30 days to comply as to any requirement for the payment of money. However, as the claim was merely a protest and no money claimed, the 30-day provision had no application. The Carrier, however, assumed that it did and did not put the firemen on until the 30 days had elapsed; the organization insisted that 15 days was abundant time and made claim for pay lost for the remaining 15 days.

It will be seen from the foregoing that these matters which were primarily responsible for the strike ballot are clearly matters cognizable by the Adjustment Board. Of the remaining grievances included on the strike ballot (excluding those since settled), there are approximately 90 cases which are within the peculiar cognizance of the National Railroad Adjustment Board. They are all cases involving the interpretation or application of existing agreements. Indeed, 22 of them are cases now pending before the National Railroad Adjustment Board. All these cases can also be handled by a Special Adjustment Board or by arbitration. It is not an abnormally large docket of cases for a road of the size involved and apart from the delay of the Adjustment Board itself, both parties have been dilatory about the presentation of their claims.

The growing practice of creating an emergency in order to bring about the appointment of an Emergency Board in the hope that it

will make favorable recommendations concerning contentions about grievances, with no binding effect if the reverse recommendation should be made, has been roundly condemned by several emergency boards and commented on by the National Mediation Board in its annual report. In the instant case it has reached a flagrant form. Here is an effort to extort the payment of hundreds of thousands of dollars based merely on grand lodge officers' own conclusion that their interpretation of awards must be accepted without question, notwithstanding the fact that clear legal defenses are asserted, upon grounds which no one could properly call frivolous. We urged upon the employees the foregoing considerations and that they submit these issues (as well as the other grievances) to the National Railroad Adjustment Board or a Special Adjustment Board or an Arbitration Board, and the carrier, as an inducement to that end, offered concessions which to us seemed the maximum that could reasonably be demanded or expected. However, the organizations refused to so agree.

There was also included in the strike ballot a number of demands which were not in the nature of grievances cognizable by the Adjustment Board. On the whole they appeared to us rather to have been incorporated as make-weight to the demands concerning grievances in order to justify the creation of an emergency.

We shall deal briefly with these demands.

The first and most important of these is a request for the abolition of all rules providing time limitations on the filing and handling of claims. This subject has been before two previous Emergency Boards in the national handling of rules movements and was strongly recommended by each of these Boards. As was explained, at the time of the passage of the Railway Labor Act no limitation provision was incorporated therein purposely because of the fact that there were thousands of claims then pending before Regional and System Adjustment Boards, that had been deadlocked and as to which there was no machinery for dissolving the deadlocks. As a result of this situation claims as much as 20 years old and involving enormous sums of money had been asserted and the Adjustment Board had no choice but to sustain them. However, the time is long since passed when there was any justification for failure to bring forward any old claim. As a result of the recommendation of those emergency boards and pursuant to negotiations between the Carriers generally and the national officers of the organizations, agreements were reached in 1947 and 1948 for the adoption of limitations agreements which national agreements contained counterconsiderations granted by the carriers. On this property, two of the organizations did not even wait for the

consummation of the national agreements but voluntarily entered into agreements with this Carrier on the subject. The organizations are enjoying the counterconsiderations and to approve of their demand to cancel the obligation of the agreement while continuing to enjoy its benefits would be grossly inequitable. Quite apart from this, however, it would be a most grievous backward step to terminate the time limitations agreements. The palpable object of the demand in this case apparently is to eliminate the defense against the "back-in" claims previously referred to.

Another demand in the strike ballot is for the better maintenance of cabooses and passenger rider cars for train crews. The carrier has shown that it is and has been improving this situation steadily and as fast as opportunity would afford.

Another request was for the adoption of a final terminal delay rule for conductors and trainmen. This matter has been and is the subject of national handling and the Carrier is willing to abide the outcome of that handling.

The next request is that a registering time be established for conductors and trainmen holding regular assignments. This applies to freight service only. The request was to have the men report at a fixed time (related to the scheduled time of the train) instead of being called as at present. Some assignments are now so arranged. Because of the irregularity, even as much as 6 hours, in departure of freight trains from terminals, it is not believed the change sought would be practical in operation.

The next request was for new or improved facilities for sleeping accommodations, washrooms, lockers, et cetera, at numerous points. The Carrier showed that it was now in the process of making many of such improvements and had completed some and had others planned; and expressed its disposition to do everything possible in regard to such accommodations as speedily as could consistently be done. We think that most of the reasonable requests will, in normal course, be complied with.

Another request of the organizations was that the Carrier provide or furnish free transportation for (*a*) employees going to and from work at certain outlying points; and (*b*) free transportation over foreign lines for employees and their families to be used for personal travel in locations where there was a lack of or infrequent passenger service on the Carrier's own line. As to the first of these requests, the Carrier has expressed a willingness to negotiate concerning what might be done; but, as to the second of these requests, the Carrier has refused to comply. We see no basis upon which the organizations could demand the second of these requests as a matter of right.

Another request of the firemen's organization is that crew dispatchers be assigned to the West Shore engine house at East Buffalo, N. Y. It appears that the basis of this request is that they wish such a man stationed there so that they can procure information by telephone concerning their standing to go out instead of calling the Chief Crew Dispatcher at the Buffalo terminal. The Carrier takes the position that it is an exclusively managerial determination as to whether or not they should assign such employees; and further the management showed that there has been a substantial decrease in the number of crews going on duty at this engine house and that there is no sufficient need for the maintenance of a crew dispatcher there.

The next request was a protest by firemen against being run through terminals over two seniority districts between Corning and Buffalo. This is clearly an Adjustment Board case. The Carrier claims there is an implied agreement covering the operation of interdivisional runs, whereas the organization denies it. Of course, it is peculiarly within the province of the Adjustment Board to determine.

The next is a protest of the employees against the establishment by the Carrier of a new icing station at Waynesport, N. Y., and discontinuance of icing cars at Buffalo and Selkirk. The Carrier points out that the facility now near completion at a cost of over a million dollars will greatly expedite the handling of perishable traffic, cutting out delays at the former icing stations and will accomplish a substantial reduction in expenses. The Carrier is under obligation, both by the Interstate Commerce Act and by its duty to its stockholders, to accomplish economies through more efficient operation. The choice of a site for a facility of this character in nowise encroaches upon any agreement with the organizations and is purely a managerial prerogative. The objection made by the organizations is that it will tend to lengthen the time necessary for the through crews to make their runs. This, however, is a normal incident of the dual basis of pay system. If any violations of agreements should arise as a result of the change in operation, that would, of course, be cognizable by the Adjustment Board.

Another request is that the Carrier provide "adequate office space" for conductors on passenger trains. That is rather a difficult subject to deal with. Generally, on passenger trains which carry Pullmans there is no difficulty on the subject. On coach trains, however, it frequently is very inconvenient for the conductor to make out his reports when a train is crowded. Various suggestions were made to improve the situation and they are under consideration and they should be further developed.

Another request was that freight conductors be relieved from making out wheel reports at terminals. This has always been a function of conductors. Apparently what brings about the request at this time is the large number of cars incorporated in trains. A change was recently made in the form of these reports which has the effect of very largely reducing the amount of work involved. We can see no basis for recommending that they be altogether relieved of this work.

In conclusion we recommend as we did to the parties that the grievance matters be submitted to the National Railroad Adjustment Board, or a Special Adjustment Board, or an Arbitration Board; as to the other demands we believe that all reasonable steps to satisfy those which we believe to be reasonable are being taken. As to the others, we recommend that they be withdrawn.

Respectfully submitted.

THE EMERGENCY BOARD,
FRANK M. SWACKER, *Chairman.*
PAUL G. JASPER, *Member.*
WAYNE QUINLAN, *Member.*

NEW YORK, N. Y., *September 13, 1950.*

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