

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**APPOINTED BY EXECUTIVE ORDER 10630 DATED
AUGUST 13, 1955, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED**

**To investigate a dispute between New York Central System, Lines
East and certain of its employees represented by the Order of
Railway Conductors and Brakemen.**

(NMB Case No. A-4712)

**NEW YORK CITY, N. Y.
SEPTEMBER 14, 1955**

LETTER OF TRANSMITTAL TO THE PRESIDENT

NEW YORK CITY, N. Y.,
September 14, 1955.

THE PRESIDENT,
THE WHITE HOUSE, *Washington, D. C.*

MR. PRESIDENT: The Emergency Board appointed by your Executive Order 10630 of August 16, 1955, pursuant to Section 10 of the Railway Labor Act as amended to investigate a rules controversy between the New York Central System, Lines East, a Carrier and certain of its employees represented by the Order of Railway Conductors and Brakemen, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

MORTIMER STONE, *Chairman.*
ARTHUR STARK, *Member.*
DUDLEY E. WHITING, *Member.*

INTRODUCTION

On April 1, 1954, the Order of Railway Conductors and Brakemen served notice on Carrier, New York Central System, Lines East, requesting 21 rules changes in the road conductors' agreement. Simultaneously, a strike ballot was circulated. Thereafter, conferences were held between Carrier and the Organization; mediation by the National Mediation Board followed, and many issues were disposed of. As to those not settled, the National Mediation Board proffered arbitration. This was declined by the Organization.

After further efforts by that Board, and after a strike date was set by the O. R. C. & B., President Dwight D. Eisenhower, by Executive Order, dated the 13th day of August 1955, created this Emergency Board to investigate and report to him on the dispute.

Members of the Board appointed by the President were:

Mortimer Stone, *Chairman*

Arthur Stark

Dudley E. Whiting

Pursuant to said Order, the Board convened in New York City on August 23, 1955 at 230 Park Avenue, New York City. Ward and Paul, of Washington, D. C., were appointed official reporters of the proceedings. Public hearings were held beginning on said date and continuing to August 31, 1955.

The Order of Railway Conductors and Brakemen was represented by J. A. Paddock, *Senior Vice President*, J. E. Magill, *Vice President*, and Val Simons, *General Chairman*, New York Central, Lines East. The Carrier was represented by L. W. Horning, *Vice President*, and G. E. Dwyer, Thomas M. Healy, and Martin M. Lucente, *Counsel*.

1. Short Turn-Around Passenger Service

The Proposals

The first dispute presented to this Board concerned a proposed change in the Basic Day Rule (Article II of the Road Conductors' Agreement) to provide that for short turn-around passenger service, 100 miles or less should constitute a day's work, and miles in excess of 100 should be paid for at the mileage rate provided.

It was proposed next that article III, section (a) be amended to provide overtime payments to Conductors in short turn-around service for (1) all time held for duty in excess of 6 hours, within 8 consecutive hours; (2) for all time in excess of 8 consecutive hours, computed continuously from the time first required to report to the final release at the end of the last run.

These proposals would in substance make the Conductors' Basic Day, in short turn-around service, 100 miles instead of 150 miles and would substitute 6 hours' work within 8 hours' spread of assignment in place of 8 hours' work within 9 hours' spread of assignment before beginning of overtime. Since these changes cover short turn-around passenger service only, they were argued separately from the other desired rules changes.

During the hearings the Organization in effect amended its proposals, stating that its intention with respect to the basic mileage day proposal was to accelerate the point for payment of overmiles, but not to change the mileage rate. This would still be computed by dividing the basic daily rate of pay by 150. With respect to the 6 within 8 hour proposal, it stated that its intention was to provide for overtime pay after 8 hours for assignments with a spread of more than 8 hours, and overtime pay after 6 hours for assignments with a spread of less than 8 hours.

Nature of The Service

On the New York Central, Lines East, short turn-around service is confined almost entirely to commutation service into and out of New York City. To transport people to and from their work, peak service is required between 7:30 a. m. and 9:30 a. m. and between 4:30 p. m. and 6:30 p. m. Schedules, therefore, include many split runs with considerable intervening release time.

There are presently 85 conductor assignments on the 3 commuter divisions. Actual miles operated vary from 52 to 202, with an average of 112.8. The spread of assignments varies from 6 hours 7 minutes to 13 hours 35 minutes, with an average of 10 hours 43 minutes.

Daily earnings in July 1955, ranged from the minimum guarantee of \$15.90 to \$29.78, with an average of \$20.36. Monthly earnings varied from the minimum guarantee of \$468.00 to \$784.23, with an average of \$571.82. (These figures, while taken from the Harlem-Electric Division, largest of the 3 divisions with 44 of the 85 conductor assignments, are typical of the entire service.)

Position of the Organization

The claims of the short turn-around conductor service have never been given proper consideration, largely because the number of conductors in commutation service is, percentagewise, very small, and only a few railroads are concerned.

Conductors are the executive officers of their trains. They are responsible for collecting fares and keeping order, and in case of emergency must assume command. But Conductors in short turn-around service have the longest hours and the fewest days off of any group in the transportation industry (or any other industry).

Under the dual system of compensation the primary basis of pay is mileage produced rather than time consumed. The basic-day rate is not the measure of earnings (as in other industries) but simply the means of computing the mileage rate. In short turn-around service, the conductor seldom makes more than a 150-mile run, so is at great disadvantage as compared with the over-the-road conductors. Actually, he is on an hourly rate rather than a mileage basis.

In recent years there has been a great increase in the speed of trains, with resultant benefit to the over-the-road conductor. But short turn-around conductors have not benefitted in a corresponding manner, because of the mileage limitations imposed on commuter service.

This service, in its limited mileage, is analogous to local freight service in which the engineers, firemen, conductors, and brakemen all have the 100-mile basic day. Even in the commutation service the enginemen have the 100-mile basic day. Only the passenger train crews still have the 150-mile day.

There is no justification for holding conductors for 1 hour without pay (as happens under the 8 within 9 rule) since release time is of no benefit to them. The 8-hour day is prevalent in American industry, and should be granted these employees, particularly since they do not receive a punitive rate for overtime.

Payment of overtime after 6 hours, where the spread of the assignment is less than 8 hours, should be granted to create greater overtime

earnings opportunities for men now receiving only minimum pay. In fact, the principal purpose of both Organization demands is to give additional pay benefits to these minimum paid conductors in order to bring their earnings more in line with those of fellow conductors and in line with the living costs in the New York City area.

Position of the Carrier

The rules which the Organization now seeks to change are national in scope and are in force on virtually all the railroad lines in the United States. They were established, and have always been discussed and modified, through national handling. There has been no general demand for change on either a national or regional basis. The rules should not now be changed since the request is made on behalf of employees on only one part of a single railroad.

Other Boards have considered—and denied—these and similar proposals. No additional evidence has been presented which would warrant this Board making a different finding.

The proposed changes would upset existing pay differentials between groups of employees represented by different brotherhoods. These have long been accepted in the railroad industry and no basis has been shown to warrant changing them. In fact, any change would result in an immediate movement by other groups to restore the historic differentials.

The present rule for paying 8 hours' service within 9 hours is in harmony with the generally recognized 8 hour day in other industries, where employees normally have an unpaid lunch hour. Overtime in suburban service is not productive to the Carrier and not under Carrier's control; it results from the necessities of the service, and no change in the overtime rule which would penalize the Carrier is justified.

While the amount of release time may seem excessive, many conductors have obtained outside employment during their off hours and conductors in commutation service can be at home daily without the expense and family disruption of long absences required of over-the-road service conductors.

The earnings of conductors in this service are now comparable with those in other services. The latest available figures show that the conductors in commutation service averaged \$6,852 per year. This may be compared with \$5,097 earned last year by general foremen in freight houses, and with \$4,839 earned by station agents.

While the Organization claims its proposals are principally designed to benefit conductors receiving minimum pay, the actual effect would be to grant proportionately greater increases to men already

receiving overtime. This would not accomplish the declared purpose, and, in fact, would only create new inequities.

Finally, the Carrier states that the cost of the proposals is prohibitive. The service is already unprofitable. Granting these proposals would make it even more unprofitable.

Discussion

There is no request here for a wage increase nor evidence that earnings of conductors in short turn-around service are out of line with earnings of conductors in other types of service. Nevertheless, these proposals are designed solely to increase the earnings of certain conductors in short turn-around service.

The proposal to reduce the basic day mileage from 150 to 100 would provide some increase in earnings to about half of the assignments, but the substantial increases would go to those jobs now drawing the highest earnings with no increase to most of the minimum pay assignments.

Carrier's Exhibit 4 contains an analysis of assignments on the Harlem-Electric Division. It shows 44 assignments, 25 of which are for under 100 miles. Ten assignments run between 100 and 150 and 9 are for more than 150 miles. In other words, if the Organization's request were granted, 60% of the men on this Division would not benefit. The conductors who would benefit most would be the 20% who already receive overmiles.

Analyzing the effect of this request from a different point of view, we find 9 of the 44 conductors now receiving minimum earnings (\$468 per month). Of these, 6 would not be helped at all if the basic miles paid were reduced from 150 to 100. One man would be helped only to the extent of 4 miles. In other words, 75% of the "minimum pay" men would receive no benefit.

It is also apparent from these figures that by granting this request the Board would be widening the spread of earnings among the short turn-around conductors; many lower paid employees would not benefit at all—or very little—and many higher paid ones would benefit the most. There is nothing in the record to indicate this is necessary or desirable. In fact, the 100-mile request would create, rather than alleviate inequities within the conductors' group.

The existing rule is national in scope and constitutes an important factor in the pay relationships of conductors and other operating crafts. These relationships have had long acceptance. To change the rule for these employees only would result in feelings of inequity on the part of other groups, and lead to demands for restoration of historic differentials.

The fact that the engineers in short turn-around service has a 100-mile basic day is offset by the fact that the conductor in that service has a higher basic daily rate. Both factors affect the earnings differential. This is the only type of service for which the conductor's rate is higher than that of the engineer. To alter either factor would be to change the long existing earnings differential between them.

Under such circumstances and particularly in consideration of the operation and effect of the change within the group of conductors here involved, we find the proposal inappropriate.

The proposal to change the overtime rule from 8 hours within 9 hours to 6 hours within 8 hours is not a proposal for reduction of the hours of work but simply for an acceleration of the point at which overtime payment begins.

Again, the present rule is national in scope and applies to all operating crafts. It permits split runs with 1 hour of unpaid intervening release time. Such a rule is common to other urban and suburban transit operations. A vast number of office and factory employees in the railroad, as well as other industries, have their 8 hours of work split by an unpaid lunch period of $\frac{1}{2}$ of 1 hour. Hence, the present rule is not out of line with conditions of work in industry, and conforms to the practice in related forms of passenger transportation.

The 6-hour portion of the proposal was stressed on the basis that it would provide additional earnings for the "minimum pay" jobs. In view of the generally accepted 8-hour day, this Board does not believe that alleged earnings inequities should be corrected by the drastic step of establishing, in effect, a 6-hour day for these employees.

A more direct approach is open to the Organization: to raise the minimum daily earnings guarantee. We believe this is a more appropriate way to handle the problem complained of by the conductors, that is, to negotiate the matter of the minimum daily earnings guarantee in short turn-around service.

Recommendation

On the basis of our conclusions above we recommend these proposals be withdrawn. In order to meet the specific issue emphasized by the Organization, we further recommend that the Carrier, upon request, negotiate with the Organization on the minimum daily earnings guarantee in short turn-around service.

2. Traveling (Road) Switcher Service

The Proposal

The Organization proposed a new rule to read as follows:

"Road Conductors who are assigned regular or extra and who are required to operate without regard to the straight-away or turn-around provisions of the

Basic Day Rule, or who, during their tour of duty perform general switching service in their territory amounting to three or more hours in the aggregate, will be considered as performing Road Switcher Service and will be paid the following rate: \$17.73.

"It is understood that Road Switcher Conductors will not be required to perform switching service within the switching limits of yard crews.

"Road conductors performing belt line or transfer services will be considered as performing road switching and will be paid accordingly.

"It is understood that road rules and road working conditions apply to road switcher service."

Background of the Dispute

For many years the Carrier has maintained a number of road assignments designated as "Traveling Switchers" to service industries and do station work outside established yards or at points where yard crews are not maintained. Yard rates of pay are applied to a few of these assignments by agreement of the parties and the remainder are paid local freight rates.

The yard foreman (conductor) rate is \$17.28 per day and the local freight conductor's daily rate is \$15.38. These assignments operate within specified limits in and out of and through their terminals.

The Carrier offered to consider each assignment with the Committee to determine whether or not the work performed was sufficiently comparable to yard service to justify payment of yard rates. The Organization contends that a rule should be negotiated to establish the criteria for payment of the higher rates and requests establishment of a rate which would conform to the local freight differential for a conductor above the yard brakeman's rate.

Discussion

Some of these assignments perform switching service for a major portion of their tour of duty comparable to that performed by yard crews. Others perform service which is comparable to local freight service. The service performed may change from time to time. Under such circumstances it appears appropriate for the parties to negotiate a rule which would establish criteria for determining which assignments are eligible to receive yard rates. The exact criteria can best be determined through direct negotiation by the parties. We find no basis in the evidence to justify recommendation of a rate higher than the rate for yard foreman (conductor).

Recommendation

We recommend that the parties negotiate a rule establishing criteria for payment of yard rates to Traveling (Road) Switcher Conductors.

3. Guarantees—Article VII

The Proposal

The Organization proposed to change paragraph (a) of the rule to read as follows:

"ARTICLE VII

"GUARANTEES

"(a) Regularly assigned local, way freight, mine run, wreck, work and construction conductors who are ready for service the entire month and who do not lay off of their own accord, will be guaranteed not less than 100 miles, or eight hours, for each calendar working day, exclusive of overtime (this to include legal holidays). If, through act of Providence, it is impossible to perform regular service, guarantee does not apply."

Under this proposal conductors in local and mine run service would be covered by the guarantee rule whereas they are not included within the present rule.

Position of the Organization

Conductors in local service on most railroads in the country (outside the eastern territory) are covered by the guarantee. Even on the Big Four, a division of the New York Central, all regularly assigned locals now come under the guarantee rule. It is therefore inequitable for conductors on the New York Central, Lines East, to remain uncovered by this clause. It also would be fair to grant assigned mine runs the same benefits.

Position of the Carrier

The present rule has been in effect since 1913. It resulted from a demand of the Order of Railway Conductors and Brakemen and the Brotherhood of Railroad Trainmen on Carriers in the eastern region, which was granted by a Board of Arbitration. An amendment in 1917 changed the basic day from 10 to 8 hours. Otherwise no changes have been made.

Since 1945 changes have been proposed several times. In all instances the request was included in a large number of demands made by the operating Organizations. No agreement was reached, and no Arbitration Board or Emergency Board has recommended a change in the rule.

Mine run crews should not be covered by the guarantee because the work performed by them depends on the output at the mines, and is not subject to control of the Carrier. Coal mines, for example, have worked irregular hours for many years. Consequently mine run crews do not receive assignments covering the calendar working days of the month. Most of them, in fact, are 5-day assignments.

If the Organization's request is granted, an undue burden would be placed on the Carrier, because it would be forced to guarantee 6 days' work when present needs require only 5.

Additionally, the Carrier maintained that it knows of no monthly guarantee rule, on any railroad, which applies to mine run service—certainly not in the eastern territory. Why, then, should it be applied to the New York Central, Lines East?

With respect to the inclusion of locals in the guarantee, the Carrier asserts that the guarantee rule since its inception in 1913 on a regional basis, has included way freight, not locals. As for the Big Four example cited by the Organization, the Carrier points out that actually the Big Four has practically no service which comes under the local freight class, so its inclusion is without significance.

Again the Carrier emphasizes that no railroad in the East has a guarantee for local service. Why, then, require the New York Central, Lines East, to initiate the practice?

Finally, local freight crews receive the highest rates in road freight service and their type of work enables them to secure substantial earnings from present assignments. No expansion of the guarantee rule on the grounds of providing greater compensation is justified.

Discussion

"Prevailing practice" has been cited by both sides. The Organization points to the western territory where local service, and in some cases mine run service, is included in the guarantee. The Carrier points to the eastern territory where, with a possible exception, neither one has been included. Without determining which situation should be given the greatest weight, it is evident that in the instant dispute a request is made by one organization to include conductors on 1 division of 1 railroad—and this is neither regional nor national handling.

However, the most important consideration is the nature of the work, which presumably accounts for the exclusion of these runs from the guarantee. The facts are that almost all mine run assignments are made on a 5-day basis, because that is all the service that is required. The irregularity which characterizes this service still exists, and the Organization has not presented testimony which convinces this Board that changed circumstances warrant a change in the rule.

In local service the situation is somewhat different. Many industries are now on a 5-day week and therefore require no service on the 6th day. This has led to arrangements between the Carrier and its employees (on a local basis) providing for some 5-day assignments.

In addition, some 6-day assignments may be annulled because of lack of work.

On the other hand, the Board recognizes the similarities between way freight (covered by the guarantee) and local service (not so covered). And it is undenied that a great many railroads in the country provide the guarantee for local service.

We conclude that on the basis of all the evidence the Organization's request cannot be granted. However, we suggest that the parties negotiate a guarantee for conductors in local freight service, and that the parties give consideration to crediting overtime earned against such guarantee.

Recommendation

The Organization withdraw this proposal, and give consideration (with the Carrier) to the suggestion above.

4. Conversion Rule—Article XI

The Proposal

The Organization proposed to change the rule to read as follows:

"Conductors in through or irregular freight service who are required to pick up and/or set out a car, or cars, at three or more points or perform station switching at any point during any one trip or tour of duty shall be paid the local freight rate of pay for the entire service performed.

The following pick ups and/or set outs shall not count as stops:

1. Stops made at foreign line junction points, not exceeding three in number, when interchange cars only are picked up and/or set off.
2. Stops made for the purpose of setting out defective cars.
3. It is understood that through freight service as a class of service is basically confined to the picking up and/or setting out of cars during its trip or tour of duty. Station switching performed at more than one point will be considered as a combination of through freight and local service and the provisions of Paragraph A-2 of Award 168 will apply. Loading or unloading freight will be considered the same as station switching."

Position of the Parties

Provisions of the present Conversion Rule which (1) exclude certain stops, and (2) exclude certain movements from "Station Switching," should be eliminated, according to the Organization. The reason given is that the proposed rule represented the wishes of the conductors on the New York Central, Lines East, and that they considered the proposal to be fair and equitable. The Organization stated that paragraph 3 of the proposal is a just request because exorbitant use of through freight crews to perform station switching encroaches upon the fundamental incentive system under the dual basis of pay.

The Carrier contends that elimination of the exceptions would

mean payment of local rates for service which has always been accepted as through freight service; that award 168, by its terms, does not apply to, nor supersede, conversion rules, and that the request in paragraph 3 would require double payment for the same service.

Discussion

The elimination of some of the stops now excluded from those counted for conversion from through to local freight rate of pay would result in payments of the local rate for service universally considered to be through freight service. Examples are: picking up train and caboose at initial terminal, setting same off at final terminal, setting off and picking up cars for doubling hills, and setting off or picking up cars to adjust tonnage of train to engine rating.

Since the only reason offered by the Organization in support of its proposal was that it constituted the wishes of the conductors, we are unable to evaluate the details involved in the change proposed. If it is appropriate to modernize or simplify the rule, that must be done by negotiation between the parties. We are unable, on this record, to recommend a new rule or the details of any change in the existing rule.

The proposal in paragraph 3 is that performance of station switching at one point by a through freight conductor would require payment to him of local freight rate for the entire tour of duty and, if required to perform station switching at a subsequent point, he would be paid therefor on the minute basis at local freight rate, in addition to the payment for his entire tour of duty.

This proposal would result in double payment for the same service. The Organization justifies it as a penalty to discourage the exorbitant use of through freight crews to perform station switching. There is no proof of such exorbitant use of through freight crews. That allegation was based in part on the decrease in local freight service; but this can better be explained by the loss of local freight business to motor truck carriers.

Double payment, to through freight conductors at local freight rates, for local freight work, might well be considered an inequity by conductors in local freight service. Under all of the circumstances we cannot recommend the proposal.

Recommendation

We recommend that the proposal be withdrawn but, in view of the complicated nature of the rule, we suggest that the parties consider the possibility of simplifying the rule through direct negotiation.

5. Deadheading—Article 15

The Organization proposes virtually to rewrite Article 15—Deadheading. In part it would continue existing provisions of the Article under changed wording.

In some service it proposes full mileage payments where one-half mileage with minimum of one-half day is now paid.

In some service it proposes payment at the rate of pay of the train on which deadheaded rather than that of the service required.

In case of holding for 6 hours before getting out, it proposes a full day's pay in addition to pay for the deadhead trip while under the existing rule 1 day's pay covers both.

Under its sections 11 and 12 it proposes a regular reporting place for going on and off duty with an arbitrary for travel between that point and the places of starting and completing assignment.

There is no showing in the record that the existing provisions as to these matters are not just, that they are not common in the industry or that they are not equal to those applied to other operating employees, and no substantial reasons are presented for their change, except as to emergency and extra conductors.

It is urged that the existing provisions are unfair to the emergency conductor, who is called from his regular assignment, then is considered as having terminated his service when he works into a terminal where an extra conductors' list is maintained and deadheaded home at one-half miles with minimum of one-half day. It is urged that the emergency conductor should not be penalized by his promotion and that when he reduces his earnings to less than those of his regular assignment, he is entitled to redress for such loss. However, we think the remedy for such situation does not lie in increasing the deadhead pay regardless of his earnings, but in negotiation of a rule for protection of his earnings in such case.

The most strenuously urged reason for modification of the deadhead rule lies in its application to extra conductors who fill vacancies or are called to work at outlying points. There Carrier now pays deadheading only for the first trip out and final trip back. The Organization insists that conductors be paid separately miles or hours, with a minimum of a half-day for that deadheading, each day in each direction.

It appears from the record that prior to 1926 when a vacancy existed or an extra job was required at an outlying point, the conductor called for the run customarily stayed on the run for its duration, unless the run operated 6 days or less per week, in which case the conductor was returned to his home terminal at the end of the work

week and the conductor first out covered the job the next week. Dead-head payments were limited thereby to one outbound and one inbound payment per week.

Thereafter by agreement between the Carrier and the General Committees of the Order of Railway Conductors and Brakemen and the Brotherhood of Railroad Trainmen jointly, trainmen were called for such service on the first in, first out basis and returned each night, but the deadhead mileage was paid only to the first man going to cover and the last man returning from covering the position.

This informal agreement has been in effect for many years without protest, and without interruption except for one situation where for less than a year payments were made, allegedly by error, for daily deadheading.

Acceptance of the Organization's proposal would require Carrier to give 2 days' pay for each day's service as this work is now handled; 1 day's pay for the work and one-half day for deadheading each way. No justification therefor appears. If the long followed agreement of the General Chairman is no longer acceptable to the Organization and it is unwilling to revert to the prior system of weekly or job duration service, then it would be appropriate to negotiate a mutually acceptable basis of handling extra conductors in such cases and the deadhead pay in connection with such service.

Recommendation

We recommend that the Organization withdraw its proposals for amending the deadheading rule; but if requested the Carrier should join in negotiating a mutually acceptable basis of handling extra conductors and deadhead pay in connection with service at outside points.

6. Switching Trains and Coupling Hose—Article 41

The Proposal

Article 41 of the Agreement now reads as follows:

"ARTICLE 41

SWITCHING TRAINS, COUPLING HOSE, CHAINING UP CARS

(a) Conductors shall not be required to switch trains where switching crews are located and on duty, except when it is not practicable to have such work performed by switching crews.

(b) Conductors shall not be required to chain up cars, couple or uncouple air hose or couple or uncouple steam hose where car repairers or inspectors are located and on duty, except when it is not practicable to have such work performed by car repairers or inspectors."

The Organization seeks to delete paragraph (a) and to amend paragraph (b) to read as follows:

"(b) Conductors shall not be required to chain or unchain, couple or uncouple air hose or couple or uncouple steam hose where car repairers or inspectors are located and on duty. When road crews are required to perform such service, the conductor shall be paid an allowance therefor of ninety-five cents."

Position of the Organization

Paragraph (a) should be deleted because it is inconsistent with article 37 which provides for the separation of road and yard work and with the long recognized principle that yard work and road work are separate services which cannot be combined. Such principle was confirmed and preserved by the Cheney Arbitration Award, No. 168 (Organization Exhibit 12).

The proposed modification of paragraph (b) conforms to the principle of the Cheney Arbitration Award which was rejected by this Carrier under the saving clause. This proposal merely seeks a provision for conductors comparable to that granted by this Carrier to yardmen by Article 55 of the Yardmen's Agreement dated August 1, 1955.

Paragraphs (a) and (b) in the existing Rule constitute a temptation to the Carrier to require performance of these services despite the stated restrictions. The Organization's proposals are designed to eliminate this temptation by removing the exceptions.

Position of the Carrier

Paragraph (a) confirms the Carrier's right to require conductors to switch trains where switching crews are not located and where they are not on duty. No grievance or time claim has ever arisen out of the application of that provision. There is no valid reason to eliminate it so it should be retained.

Since the introduction of air brakes it has been a primary function of conductors to couple and uncouple air hose, a simple operation. For many years these employees have sought to restrict their performance of such work unless paid extra for it. The theory that it is not their work, unless they receive extra pay, is not valid. There have been no grievances about the application of paragraph (b) nor any showing that its application has resulted in unfair treatment. The proposal should be denied.

Discussion

Article 37, in brief, provides that yardmen will not be permitted to perform road work when road conductors are available, and vice versa. Article 41 (a) is not wholly inconsistent therewith. Since there have been no grievances or claims arising out of the application of this provision, under all the circumstances we cannot recommend its deletion.

Conductors have always performed the services specified in article 41 (b), which merely restricts such performance at locations where carmen are located and on duty. The evidence indicates that carmen are employed in major passenger terminals and yards for this purpose. Conductors are rarely required to perform this service except in situations where they have always performed such service, regardless of the presence or absence of carmen. Examples are: between engine and first car, between caboose and rear car, between cars for set-off or pick-up, and between cars when doubling over train.

The Cheney Award, cited by the Organization, applied only to yardmen, as does the cited Agreement of August 1, 1955. The rule applicable to road trainmen, represented by the same organization which represents yardmen, is the same as the present rule for conductors. Since yard and road service are separate and distinct services, the yard award and agreement provide no proper basis for granting this proposal; particularly so when cognizance is taken of the much greater incidence of coupling and uncoupling cars in yard service.

Recommendation

We recommend that the proposals be withdrawn.

Respectfully submitted,

MORTIMER STONE, *Chairman.*

ARTHUR STARK, *Member.*

DUDLEY E. WHITING, *Member.*