

**Report**  
**TO**  
**THE PRESIDENT**  
**BY THE**  
**EMERGENCY BOARD**

**APPOINTED APRIL 18, 1960, PURSUANT TO EXECUTIVE  
ORDER 10874 OF THE SAME DATE, UNDER SECTION 10  
OF THE RAILWAY LABOR ACT, AS AMENDED**

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**To Investigate and report on certain unadjusted disputes  
between the Long Island Rail Road Co. and certain of  
its employees represented by the Brotherhood of Rail-  
road Trainmen**

**(NMB Case No. E-213)**

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**WASHINGTON, D.C.**  
**MAY 18, 1960**

**(No. 129)**

## LETTER OF TRANSMITTAL

WASHINGTON, D.C.

May 18, 1960.

The PRESIDENT

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

Mr. PRESIDENT: The Emergency Board No. 129 created by you on April 18, 1960, pursuant to your Executive Order No. 10874 of the same date, under section 10 of the Railway Labor Act, as amended, to investigate and report to you on certain unadjusted disputes between the Long Island Rail Road Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen, has the honor to submit herewith its report and recommendations based upon its investigation of the matters in dispute.

Respectfully submitted.

CURTIS G. SHAKE, *Chairman.*

EDWARD A. LYNCH, *Member.*

LLOYD H. BAILER, *Member.*

**REPORT TO THE PRESIDENT BY EMERGENCY BOARD  
NO. 129, APPOINTED ON APRIL 18, 1960, PUR-  
SUANT TO SECTION 10 OF THE RAILWAY LABOR  
ACT, AS AMENDED**

***To investigate and report on certain unadjusted disputes  
between The Long Island Rail Road Co. and certain of its  
employees represented by the Brotherhood of Railroad  
Trainmen***

**INTRODUCTORY**

By his Executive Order No. 10874, dated April 18, 1960, the President of the United States created an Emergency Board, pursuant to section 10 of the Railway Labor Act, as amended, to investigate and report on certain unadjusted disputes between the Long Island Rail Road Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen. On the same day the President named as members of said Board: Curtis G. Shake, Chairman, 305 Busseron Street, Vincennes, Ind.; Edward A. Lynch, member, 1320 Howard Avenue, Pottsville, Pa.; Lloyd H. Bailer, member, 50 Broad Street, New York, N.Y.

Pursuant thereto, the National Mediation Board designated said Board as Emergency Board No. 129, and directed it to convene at 45 Broadway, room 705 at 10 a.m. on April 26, 1960. The Mediation Board also arranged with Ward & Paul of Washington, D.C., for reporting service.

The Board met at the time and place as directed, and organized by confirming the aforesaid designations of its chairman and official reporters.

The appearances for the parties were as follows:

On behalf of the Carrier:

Otto M. Buerger, General Counsel; William A. Colton, General Attorney; James T. Gallagher, Assistant General Counsel, Long Island Rail Road Co.

Edward F. Butler, Esq., Thomas J. Nevins, Esq., of Conboy, Hewitt O'Brien & Boardman, 39 Broadway, New York, N.Y., Associate Counsel.

On behalf of the Organization :

Harold J. Pryor, Deputy President and General Chairman; H. T. Burke, Vice Chairman; C. J. Quinn, Secretary; J. J. Walsh, John Manor, Nick Artura, Nick Sosnicki, and J. Pierce, Local Chairmen, Brotherhood of Railroad Trainmen.

Public hearings were held on April 26, 27, 28, and 29, and on May 3, 4, 5, and 6, on which last-mentioned date the hearings were concluded. The Board then went into recess, to reconvene in executive session at Washington, D.C., on May 12, 1960, to consider its report and recommendations.

At the hearing the Organization offered five exhibits which were received in evidence. It had no witnesses and produced no testimony, other than the statements of its deputy president. The Carrier introduced 17 exhibits and 11 witnesses testified in its behalf. Among the Carrier's witnesses were five operating executives, representing other carriers engaged in railroad commuting service in the New York and Atlantic seaboard areas. The introduction of this evidence was strenuously objected to by the Organization on the ground that it was immaterial to the issues. The Board overruled the objection on the theory that the objection went to the weight of the evidence rather than its competency, whereupon the representatives of the Organization withdrew from the hearing while these witnesses were testifying.

Another unfortunate incident occurred which should be mentioned for the record. At the hearing held on May 3, the Organization advised the Board that it would expect to produce 300 or 400 of its members to testify in rebuttal. The Board stated that while it was not disposed to unduly restrict the parties as to the witnesses they might wish to bring in, it was unrealistic to expect so large a number of witnesses to be heard.

Late in the evening of the same day the Board received a telegram from the Carrier's general counsel (a copy of which was also sent to the Organization's deputy president), advising that mimeographed letters signed by the deputy president had been distributed on the railroad's Jamaica Station platform requesting the Brotherhood's members to make every effort to attend the Board's hearing on the following morning "without fail." On receipt of this message the Board immediately dispatched a telegram to the deputy president, with a copy to the Carrier's general counsel, advising that a general invitation to the Organization's members to attend the hearing would tax the capacity of the hearing room, exceed the number of witnesses that the Board could reasonably hear, and would go beyond the limits of reason requisite to the orderly process necessary in meeting the obligations placed on the Board by the President of the United States.

The Board requested the Organization to limit its witnesses for May 4 to 20.

At the opening of the session on May 4, between 300 and 400 members of the Organization were in attendance in uniforms. The Carrier's counsel stated on the record that its service had been seriously interrupted by reason of its trainmen having walked out. The Organization's deputy president stated he had not received the Board's telegram, which was understandable in view of the late hour at which it was sent. The deputy president also disputed the Carrier's version of the effect upon train service created by this mass attendance. It does appear that some of the trainmen in attendance at the hearing on May 4 were not scheduled at the particular hour involved to be engaged in train operation. Nevertheless, it is established beyond doubt that the Organization's action as here described produced some disruption of train service.

Since the capacity of the hearing room was approximately 100, the Board took the position that it would not proceed until the number in attendance was reduced to the figure indicated in its telegram of the night before. After a short delay most of the trainmen departed and the hearing proceeded in order. However, it should be noted that when the Organization was called upon for its rebuttal, it closed its side of the case without calling any of its members.

The Board deems it necessary to point out that the action of the Organization in calling a substantial number of its members off duty during the hearing, without any attempt being made to insure uninterrupted train operation, was contrary to the underlying purpose of the emergency dispute procedure provided for in the Act. As previously indicated, this action also interfered with the Board's endeavor to fulfill its obligation to conduct a calm and orderly inquiry into the controversy between the parties.

A repercussion of the above-mentioned incident was a telegram addressed to the Executive Secretary of the National Mediation Board by W. P. Kennedy, National President of the Brotherhood of Railroad Trainmen, which was passed on to the Board by the Executive Secretary, and in which Mr. Kennedy stated that his office had no knowledge that a work stoppage was contemplated and that he had not been consulted about it. Subsequently, the Organization's deputy president read into the record a later telegram which he said he had received from Mr. Kennedy in which it was stated that the previous telegram had reference to any legal action in connection with work stoppage on the Carrier's railroad, and that the deputy president was still authorized to represent the Organization in this proceeding.

## THE ISSUES

### *The Organization's Demands*

1. All short turnaround passenger rules now providing for 26 days' work be revised to read "22 days' work" and that said rules continue to contain all provisions now existing.
2. All men in local freight service be given a 5-day workweek with 7 days' pay.
3. Yard brakeman's rate for all switchtenders.
4. All assignments not now receiving 95 cents airhose allowance in yard service will be given said allowance under the same conditions that other men are paid.

### *The Carrier's Demands*

1. Payment of standard rates of pay in passenger and freight service.
2. Carrier will have the sole prerogative of arranging its runs to meet the requirements of its service.
3. Discontinuance of payments under so-called "make whole" rule.
4. Elimination of time and one-half payments for a second tour of duty within 24 hours in road freight service.
5. Eliminate requirements with respect to the manner in which road crews pick up and dispose of their train and handle their cabin car.
6. Carrier will have the prerogative of transferring extra men from one yard to another without agreement.

## BACKGROUND OF THE CASE

### Introduction

The Long Island Rail Road Co. operates passenger and freight service by rail between the western termini of Manhattan and downtown Brooklyn, and Montauk and Greenport at the eastern end of Long Island. The Carrier's traffic consists primarily of passengers. The bulk of its passengers are commuters. The Long Island is the only class I railroad in the United States which derives more revenue from passenger than from freight service. In 1959 passenger revenues accounted for 81.3 percent of the Carrier's combined passenger and freight revenues. In the same year the Long Island accounted for 7.5 percent of the total revenue passenger miles of all class I railroads, 21.0 percent of all passengers carried, and 24.4 percent of all commuter passengers carried. It carries more passengers than any other class I railroad in the United States—74 million in 1959.

The 1959 operating results of the Carrier in absolute figures are summarized in the following table:

|   |                  |
|---|------------------|
| Revenue passenger-miles.....              | 1, 646, 973, 000 |
| Total passengers carried.....             | 73, 934, 636     |
| Commutation passengers carried.....       | 53, 980, 708     |
| Freight revenue.....                      | \$12, 525, 910   |
| Passenger revenue.....                    | \$54, 331, 710   |
| Total freight and passenger revenues..... | \$66, 857, 620   |

|   |             |
|---|-------------|
| Miles per revenue passenger-----                | 22.28       |
| Revenue per passenger-----                      | \$0.73      |
| Revenue per passenger-mile-----                 | \$0.0330    |
| Net railway operating income <sup>1</sup> ----- | \$1,113,000 |

<sup>1</sup> See discussion below of the special financial status accorded the Carrier by State law, which must be considered in connection with any interpretation of railway operating income.

The Carrier's total employment in all categories of personnel amounts to approximately 7,000 persons. These employees fall into two broad groups consisting of operating and nonoperating personnel. The operating group consists of employees who are directly involved in train movement.

Wages comprise the largest single item of expense in the Carrier's operations, followed by the cost of "fuel, material and supplies." The Carrier's total wage bill has been steadily rising as in the case of its other expenses. Its wage bill also has been absorbing an increasing proportion of total operating revenues, however. Thus wages paid by the Carrier represented 46.4 percent of its revenue dollar in 1946, but 59.1 percent of its revenue dollar in 1959. For all class I railroads, wages absorbed 52.1 percent of the revenue dollar in 1946, as compared with 49.0 percent in 1959. Thus the wage bill for all class I carriers absorbed a declining proportion of total revenues during this 15-year period, in contrast to the trend on the Long Island. It also is apparent that wages consumed a higher proportion of the revenue dollar in 1959 on the Long Island than on class I railroads as a whole.<sup>1</sup>

The Brotherhood of Railroad Trainmen represents those operating employees of the Carrier who are classified as road and yard conductors, ticket collectors, road and yard brakemen and switchtenders. (The BRT is a national organization which represents employees in this general category on carriers throughout the United States.)

In terms of the class of service involved, these employees are divided into those who are engaged in passenger service, freight service, and yard service. Conductors and brakemen are used in all three types of service. Ticket collectors are found only in passenger service. (The latter employees are usually referred to as independent ticket collectors, as distinguished from brakemen in passenger service who are entitled to a collector's rate of pay since they also collect tickets. The passenger service brakemen are commonly called collectors or simply "trainmen.") Switchtenders are used only in yard service. There are approximately 180 conductors and 746 collectors

<sup>1</sup> The term "wages" as used here includes health and welfare benefits but excludes payroll taxes.

(brakemen and independent ticket collectors) employed in passenger service on the Long Island. Of this number, 827 men hold regular assignments and the remainder are on the extra list which is used to cover vacancies in regular assignments due to vacations, sickness, etc., and to handle trains to racetracks during the racing season. There are approximately 133 trainmen (conductors and brakemen) holding regular and other assignments in the Carrier's freight service. The present yard service force (conductors, brakemen, and switchtenders) amounts to approximately 325 men, including employees on the extra list.

### **Operating and Financial History of the Carrier**

The Carrier has experienced a steady decline in both passenger and freight traffic since the end of World War II, due to the competition of alternative modes of transportation. This trend has occurred in the face of a 35.7-percent increase in the population on Long Island since 1946. Between that year and 1959, the Carrier suffered decreases of 24.5 percent in total revenue passenger-miles and 47.6 percent in total revenue ton-miles. Due to the relatively greater decline in freight traffic, the Carrier's dependence on passenger traffic has steadily increased. However, freight traffic is normally the profitable phase of a rail carrier's operations.

In 1949 the Carrier went into bankruptcy and remained in that condition for 5 years. In 1954 an agreement was reached between the Pennsylvania Railroad Co. (the Carrier's sole owner and principal creditor) and the Long Island Transit Authority (a state agency) which provided a plan for redevelopment that was implemented by legislation of the State of New York. The principal features of this plan were: (1) For 12 years beginning in 1954 the Carrier became a railroad redevelopment corporation, a new type of railroad corporation as compared with the ordinary corporate status of rail carriers; (2) 12-year rehabilitation program was outlined which was estimated to cost \$65,613,000; (3) during the 12-year redevelopment period the Carrier was given the right to charge fares sufficient to meet operating expenses plus the cost of the improvement program; (4) during the first 9 years of the plan, all nonreal estate State and local taxes (which previously amounted to \$500,000 annually) were eliminated and real estate taxes were stabilized at less than \$1,800,000 annually as compared with a previous level in excess of \$3,500,000.

In addition to the foregoing relief, the Pennsylvania Railroad advanced new money to the Long Island in the total amount of \$5,500,000 (now partly repaid). The P. RR. also waived for the duration of the rehabilitation program its right to receive annual interest of



\$2,092,100 on \$52,228,000 of the principal debt owed to it by the L.I. RR., and waived any right to dividends and deferred principal payments.

The special status and privileges thus accorded the subject Carrier resulted from the general recognition by public authorities and others that it provides a service that is highly essential to the communities which it serves. Under the new rate policy approved by the State of New York, there were five fare increases from August 1954 through 1959. In the period since 1946, revenue per passenger-mile has risen from \$0.0136 to \$0.0330, an increase of 142.6 percent in fares. The Carrier's present fare level compares with average revenue per passenger mile of \$0.0295 for all class I railroads. A major reason for the increases in fares charged by the Carrier has been successive increases in wages and salaries, which have followed the national pattern fixed by collective bargaining between railroads and the various labor organizations.

The degree to which the Carrier's equipment is utilized is seriously restricted by its heavy reliance upon commuter passenger traffic. There are two traffic peaks in passenger service in a 24-hour period—the 7 to 9:30 a.m. westward movement to New York City (including Brooklyn) and the 4:30 to 7 p.m. eastward movement to Long Island. Approximately 75 percent of the total number of passengers handled per day are carried during 6 hours in a 24-hour period, namely, 7 to 10 a.m. and 4 to 7 p.m. A major portion of the passenger equipment is idle outside the morning and evening rush hours, as well as on weekends.

### **Earnings and Hours of Trainmen**

The hours and pay provisions for trainmen (including conductors) are explained in considerable detail in following sections of this report. Only a summary of earnings and hours data need be given at this juncture.

The average annual earnings in 1959 of all trainmen of the Carrier amounted to \$7,965, as compared with \$7,263 for trainmen on all class I railroads in the United States for that year. Average annual earnings in 1959 for Long Island trainmen by classification ranged from \$9,447.80 for road passenger conductors to \$5,772.72 for switchtenders. In 1946 the Long Island trainmen's average annual earnings were \$101 below the national (class I) average for trainmen, but in 1959 their average annual earnings exceeded the national average for trainmen by \$702. Expressed differently, the average annual earnings of Long Island trainmen have risen 119.5 percent since 1946,

while the corresponding increase for trainmen on all class I railroads has been 94.7 percent. The 119.5-percent increase in L.I. RR. trainmen's average annual earnings since 1946 also may be compared with the increase of 95.9 percent in the average annual earnings for all employees (including salaried personnel) of the Carrier during the same period.

The average number of hours actually worked per week in 1959 amounted to 39.9 for Long Island trainmen and 44.2 for trainmen on all class I railroads. (These figures exclude straight-time hours paid for but not worked.) Trainmen's average weekly earnings for this year were \$152.75 on the subject Carrier and \$139.28 on all class I railroads. Thus it will be seen that the Long Island trainmen have enjoyed higher weekly and annual earnings while actually working fewer hours than trainmen on class I railroads as a whole.

The higher earnings enjoyed by Long Island trainmen reflect, in part, the amount of overtime work available and also the fact that the carrier pays above the standard rates of pay to all trainmen in passenger and freight service. These differentials were negotiated locally, becoming effective September 15, 1955. Since the Long Island trainmen have participated fully in all national increases since that time, these differentials have been preserved.

### **Productivity per Trainman**

The volume of passenger and freight traffic handled per trainman on the Long Island has declined substantially since 1946. In that year there was an average of 964 trainmen in passenger service and the L.I. RR. carried 115,838,758 passengers a total of 2,181,868,000 passenger-miles. This represented 120,164 passengers and 2,263,349 passenger-miles per road passenger trainman. In 1959 there was an average of 934 trainmen in road passenger service and road passenger traffic amounted to 73,934,636 passengers who traveled a total of 1,646,973,000 passenger-miles. Thus the number of passengers carried per road passenger trainman fell 34 percent and the passenger-miles per road passenger trainman decreased 22 percent during this period.

In 1946 the Long Island carried 59,864 tons of freight (revenue and nonrevenue), 1,092,486 ton-miles per trainman in road freight service. In 1959 the corresponding figures per trainman in road freight service were 38,871 tons and 756,434 ton-miles. These comparative figures represent decreases of 35 percent in tons carried and 31 percent in ton-miles per road freight trainman.

No productivity data were presented for trainmen in yard service. In view of the magnitude of the decreases in the Carrier's "output

per trainman" in passenger and freight service, however, and since road passenger and freight trainmen account for approximately 75 percent of all trainmen employed by the Carrier, it is reasonable to conclude that productivity per trainman for passenger, freight, and yard service combined has declined since 1946.

### **History of the Present Controversy**

Effective November 1, 1956, the various railway labor organizations and the carriers agreed upon a 3-year national moratorium prohibiting changes in existing agreements governing wages or other changes which would increase the general level of compensation. The Brotherhood of Railroad Trainmen and the Long Island Rail Road were parties to this moratorium agreement.

In November 1958 the Brotherhood served upon the Carrier a section 6 notice under the Railway Labor Act and requested negotiation on the same demands that are involved in the present controversy. The Carrier took the position that these demands were in violation of the moratorium agreement. It was upheld in this contention by the Disputes Committee set up by the carriers and railway labor organizations to handle such matters. The Brotherhood then withdrew its above-noted section 6 notice.

In April 1959 the Organization served notices on all carriers with which it had contractual relations (including the Long Island) in which it was requested that effective November 1, 1959, all increases in wages granted as a result of cost-of-living adjustments made under the previous 3-year agreement should be included in the basic rates, that thereafter all existing basic rates be increased by 14 percent, and that cost-of-living escalation be continued. At about the same time the other organizations representing operating employees also filed demands for wage increases with the various carriers. The organizations of nonoperating employees likewise submitted demands to the carriers in 1959.

Negotiations were undertaken on a national basis between committees representing all of the carriers (including the L.I. RR.) and the several railway labor organizations. The national negotiations involving the Brotherhood of Railroad Trainmen are presently in mediation under the auspices of the National Mediation Board.

Under date of November 2, 1959, the Organization served 12 demands upon the Long Island. These items included the four demands that had been presented in November 1958 and then withdrawn following the unfavorable ruling of the Disputes Committee. On November 4, 1959, the Carrier submitted a number of counterdemands to the Organization. The Organization subsequently withdrew from

local negotiations all of its demands served on November 2, 1959, except for the four items that had been presented in November 1958.

Local negotiations were had on the Organization's four demands and the Carrier's counterdemands. The mediation services of the National Mediation Board were subsequently invoked but no settlement resulted. The Organization rejected arbitration and took a strike vote. The Mediation Board then certified this controversy to the President, who invoked the emergency board procedure provided for in section 10 of the Railway Labor Act.

### **CONCLUSION**

The foregoing statement on the background of this case represents a brief summary of the large volume of factual data presented during the course of the proceeding. More detailed evidence bearing upon the various demands presented by the parties is set forth in the following sections. All of the facts upon which this Board has relied in writing this report were received in evidence at the hearings and are undisputed.

## ORGANIZATION'S DEMAND NO. 1.

*All short turnaround passenger rules now providing for 26 days' work be revised to read "22 days' work" and that said rules continue to contain all provisions now existing*

### Organization's Contention

This is one of the four demands served on the Carrier by the Organization November 2, 1959, under section 6 of the Railway Labor Act. These demands comprised part of a larger group originally served on this Carrier on November 19, 1958, but they were barred by the moratorium which expired October 31, 1959.

Organization describes its Demand No. 1 as a demand for a "5-day workweek" for its members in short turnaround passenger service. It asserts it has complete moral justification in making such a request. It states all other crafts in the railroad industry, "including our own yardmen," work 5 days a week. Trainmen on this Carrier sought the 6-day workweek in 1946, but did not secure it until 1954. The Organization contends it has waited 6 years for the 5-day week it now seeks.

In support of this demand, Organization offers what it describes as its own "assumption" the statement that the productivity of its trainmen "rates a 5-day workweek. We are handling more commuters on the Long Island now than we have handled in many a moon. Our commuter service has rapidly gone up since 1953 when we started to seriously get into the 6-day workweek and has done so continuously for each year up until the present time. \* \* \* The Carrier only announced last week that in 1959 we carried close to 400,000 more commuters than we handled in 1958, and \* \* \* without an increase of train service employees."

The Organization states the length of cars has gone to 80 feet, the number of passenger seats has risen from 76 to 122 without an increase in the number of trainmen.

It is further asserted by the Organization that during the negotiation of this demand on the property, the Carrier gave the Organization projected run sheets predicated on a 5-day week. It had reason to believe the Carrier was favorably disposed toward this proposal, Organization asserts, and displayed at the hearing before the Board, copy of the Carrier's employee newspaper—"The Long Island Rail-

roader"—which carried a story under the caption, "Labor Dickering Under Way; BRT Gets 5-day Offer." The news story stated, in part:

New passenger and collector assignment sheets are being studied by officers of Brotherhood of Railroad Trainmen as a basis for negotiations of the Union's demand for a 5-day week.

The new sheets, representing the first thorough overhauling of passenger assignments in many years, would make possible a 5-day week by permitting more efficient and economical use of train crews. (Tr. 47, 48.)

It is claimed by the Organization that its Demand No. 1 would require the Carrier to hire an additional 22 employees which, at "an average wage of \$7,965 per man per year," would cost Carrier \$175,-230 per year.

### **Carrier's Contention**

The term "short turnaround" service is defined as service in which no single trip exceeds 80 miles.

In the record before us, Carrier cites as an example its Run No. 37 which shows a total spread of assignment—from the moment the employee reports for duty until he is released from duty that night—of 13 hours 27 minutes. From Monday to Friday the basic crew holding this assignment makes its first trip leaving Oyster Bay at 6:12 a.m., arriving in Long Island City at 7:36 a.m., 1 hour 24 minutes later. On their next trip they leave Long Island City at 4:58 p.m., arriving at Oyster Bay at 6:19 p.m. The entire day's work is limited to these two trips. They are required to report at Long Island City 30 minutes ahead of scheduled leaving time, which means that from the time the train arrives at Long Island City at 7:36 a.m. until 4:28 p.m., a total of 8 hours 47 minutes, the members of this basic crew are free to do whatever they wish. During this period they are not subject to call and have no duties to perform for the railroad whatsoever. Yet they receive pay for all of this time except for 60 minutes, which is deducted under the provisions of the "8 within 9 rule." They thus, according to the Carrier, receive 12 hours 27 minutes pay for 4 hours 40 minutes work. This amounts to \$35.42 for the conductor and \$32.13 for each of the collectors in the basic crew. Carrier points out that these payments are for "only 4 hours 40 minutes work on each of those days." This is \$7.54 per hour for the conductor and \$6.84 per hour for the collectors.

Carrier presented to the Board a compilation showing the average number of hours actually worked per week by its passenger conductors and collectors based upon the reported service hours as set forth in the annual report (form A) which has been filed by the Carrier with the Interstate Commerce Commission. This computation excludes the reported straight-time hours which are paid for but which

are not actually worked. It shows that in 1959 the passenger conductors on this railroad averaged 43.9 hours per week actually worked and the collectors 36.3 hours. The Carrier states that there are many more collectors than conductors. Yet the average for both classifications together was 37.8 hours per week. In 1959 conductors worked an average of 5.51 days per week, collectors 5.20 days per week, for an average for both of 5.34 days per week.

The applicable agreement essentially provides that passenger train service employees in short turnaround assignments will receive a monthly guarantee of 30 days' pay for not more than 26 days' work during the month. This guarantee equals 30 times the basic daily rate. Under the existing agreement, the monthly guarantee for conductors is \$621.30 and for collectors is \$563.70. The rule provides that the guarantee shall be applied to the assignment and not to the man working the assignment. These employees receive additional payments and arbitraries which need not be cited here.

While these employees have traditionally received the benefit of wage increases granted pursuant to national agreements, on September 15, 1955, by local agreement, they received increases in rates of passenger conductors of 56 cents per day, passenger collectors and brakemen 24 cents per day, freight conductors 51 cents per day, and freight brakemen 35 cents per day. In other words, the rates paid these classifications of employees on the Long Island Rail Road exceeded the standard rates paid to the same classifications generally on class I railroads in the United States by the amounts per day above listed.

It was stated by Carrier representatives, and not denied by the Organization, that no railroad in the United States has the so-called 5-day week for these classifications of employees and no demands for such 5-day week have been served by this Organization on any other Carrier (Tr. 69, 378).

Emergency Board No. 81 recommended the 40-hour week for yard service employees.

In discussing the Organization's contention that the yardmen were entitled to a 40-hour week, the Board said:

Nor need one look so far afield, say the organizations, since beginning with September 1, 1949, the nonoperating employees of American railroads, constituting more than two-thirds of all of the workers employed by the carriers appearing before this Board, have enjoyed, under voluntary agreement with the carriers, the 40-hour work week without reduction in take-home pay. One must not forget, moreover, say the organizations, that according to the carriers' own figures on actual hours worked, all the road service employees, with some exceptions in local freight service, enjoy a workweek of 40 hours or less, without any disadvantage to take-home pay. Thus it would appear, say the organizations, that yard service employees constitute the sole exception not only in American

industry as a whole but almost without exception, in the railroad industry itself in this matter of the 40-hour week with sustained take-home pay (Tr. 410).

Among the exhibits presented to the Board by the Carrier was one showing that for the year 1959, this Carrier's revenue per passenger was 73 cents and its revenue per passenger-mile was \$0.0330.

Appendix 14 of Carrier's exhibit 2 discloses that in 1946 its "passengers per road passenger trainman" were 120,164 and by 1959 had dropped to 79,159. The same appendix shows that the "passenger-miles per road passenger trainman" in 1946 were 2,263,349 and in 1959 had dropped to 1,763,354. In other words, the "passengers per road passenger trainman" in 1959 was 65.88 percent of what they were in 1946, while the "passenger-miles per road passenger trainman" in 1959 were 77.91 percent of what they had been in 1946.

The same exhibit shows also that the average annual earnings per road passenger trainman in 1946 were \$3,522, while in 1959 they were \$8,516, or 241.79 percent of what they had been in 1946.

This Carrier states its passenger fares are already at the highest levels in its history. They are now 3.3 cents per passenger-mile, representing an increase since 1946 of 142.6 percent. This, it states, compares with the revenue per passenger-mile of all class I railroads of 2.95 cents.

Carrier states its passenger fares "have been pushed to these high levels primarily to meet increased labor costs since 1954." This was pointed out by the Public Service Commission of the State of New York in the report of its investigation of the Long Island Rail Road Co. dated March 3, 1958. In that report, the Commission, referring to the fare increases of December 1955 and January 1957, stated (at pp. 23-24) :

There is and should be no mystery concerning the reasons which occasioned the filing of these two emergency fare increases. Both were prompted primarily by reason of increases in wages granted the employees of the company. The Long Island employs 7,100 persons to conduct its business in railroad operations. Their wages and salaries follow the national pattern fixed for railroad employees as a result of collective bargaining negotiations conducted between the Nation's railroads and the various brotherhoods.

Each 1-cent-an-hour increase in wage rates adds \$175,000 to the annual operating expenses of the Long Island. During the period extending from August 12, 1954, the date upon which the Long Island qualified as a redevelopment corporation, to January 1, 1957, wage increases and other employee benefits alone added \$5.6 million per year to the company's operating expenses. During the year 1957 and since the filing of the last emergency fare increase, a further increase of 7 cents in hourly wage rates and two cost-of-living escalator increases of 3 cents and 5 cents per hour, respectively, added another \$2.6 million. Thus since the Long Island became a redevelopment corporation, increases in wage rates have added a total of about \$8.2 million to its annual operating expenses. The present railroad wage agreements irrevocably schedule a further increase



of 7 cents in hourly wage rates to become effective on November 1, 1958. This latter increase, when effective, will add another \$1.2 million to the Long Island's annual operating expenses. Neither of the two cost-of-living escalator increases which became effective in 1957 nor the further increase in hourly wage rates scheduled for November 1, 1958, was considered or reflected in the calculations upon the basis of which the last emergency fare increase was made. (Tr. 109-111.)

The Carrier points out that since the above report, there have been two additional emergency fare increases effective April 8, 1958, and December 10, 1959, respectively. It asserts both of them were primarily prompted by reason of increases in wages. The fare increase effective April 8, 1958, was designed to increase revenue \$2,955,000 annually of which \$2,600,000 was to meet wage increases granted in 1957 plus a cost-of-living increase of 2 cents per hour effective May 1, 1958, and a contractual increase of 7 cents per hour effective November 1, 1958. The fare increase effective December 10, 1959, was necessary to offset increased expenses, including a \$613,000 increase in annual wages to employees representing a 3-cents-per-hour cost-of-living increase effective November 1, 1959, and giving effect for a full year to the 8 cents contractual wage increase which was in effect during 11 months of the 12-month base period ended September 30, 1958, and also to offset higher Federal payroll taxes of \$592,000 annually.

The Carrier argues:

If the trainmen on this railroad were presently underpaid—if their demands were merely to bring them up to levels already achieved by comparable crafts—there might be some justification in asking our passengers to pay further increased fares despite the burdensome increases that have already been imposed upon them. There can be no justification whatever for asking them to bear this additional burden to benefit the trainmen on this railroad who as already demonstrated, are enjoying earnings substantially above the levels of their fellow employees and of comparable crafts in the community at large. (Tr. 111, 112.)

Carrier estimate of the cost of granting Organization's Demand No. 1 is \$1,120,327. (App. 16, Carrier exhibit 2.)

All four demands of the Organization are described by the Carrier as a request for a wage increase or a request for payment for work not performed. Any one or all of them would definitely result in an increase in the compensation paid to these employees.

Because the basic defense of the Carrier in respect of all four Organization demands is pertinent, we will set it forth here in some detail.

The Brotherhood of Railroad Trainmen on April 20, 1959, served a request on all carriers in the country that effective November 1, 1959, all increases in wages granted as a result of cost-of-living adjustments made under the previous 3-year agreement (then 17 cents

per hour) should be included in the basic rates and that thereafter all existing basic rates should be increased 14 percent. The Brotherhood of Locomotive Engineers also served a notice under date of March 2, 1959, requesting a 12-percent wage increase after the cost of living adjustment has been included in the basic rate. Employees represented by the Brotherhood of Locomotive Firemen and Enginemen have requested an increase in the amount of 14 percent, with a similar proposal to include cost-of-living adjustments in the basic rate. In addition, all three organizations have requested a continuation of cost-of-living adjustments in the future. The Order of Railroad Conductors & Brakemen and the Switchmen's Union of North America have served demands closely similar to those of the Brotherhood of Locomotive Engineers. The railroad industry was also served notices by practically all of the other remaining organizations representing the employees of the railroad industry.

It is the Carrier's argument here that in the railroad industry "it has been customary to handle requests for wage increases on a national level."

The Carrier argues that this is reflected in the proposals made nationally and calls particular attention to the notice served by the Brotherhood of Railroad Trainmen for a 14-percent wage increase, specifically the following:

In the event you do not concur in the above changes or settlement is not reached in conference, it is requested that this company join with other companies in authorizing a National Conference Committee to represent them in dealing with the subject. (Carrier exhibit 12, app. 1.)

In accordance with what the Carrier calls "the usual practice," the demands of the several railway labor organizations are now in the course of national handling. This includes the notice of the Brotherhood of Railroad Trainmen which currently is in mediation.

The Carrier has placed in this record appendix 2-A which is a compilation of the progression of wage increases nationally in the railroad industry from August 1, 1937, to May 1, 1960. It is reproduced here:

## APPENDIX A

## POST DEPRESSION GENERAL WAGE INCREASES

[Cents per hour—Railroad Employees]

| Effective date of increase | Amount of increases            |                                |                               | Cumulative increases           |                                |                               |
|----------------------------|--------------------------------|--------------------------------|-------------------------------|--------------------------------|--------------------------------|-------------------------------|
|                            | Road<br>operating<br>employees | Yard<br>operating<br>employees | Non<br>operating<br>employees | Road<br>operating<br>employees | Yard<br>operating<br>employees | Non<br>operating<br>employees |
| Aug. 1, 1937               |                                |                                | 5.0                           |                                |                                |                               |
| Oct. 1, 1937               | 5.5                            | 5.5                            |                               | 5.5                            | 5.5                            | 5.0                           |
| Dec. 1, 1941               | 9.5                            | 9.5                            | 10.0                          | 15.0                           | 15.0                           | 15.0                          |
| Feb. 1, 1943               |                                |                                | <sup>2</sup> 7.0              |                                |                                |                               |
| Apr. 1, 1943               | 4.0                            | 4.0                            |                               |                                |                                |                               |
| Dec. 27, 1943              | 5.0                            | 5.0                            | <sup>2</sup> 2.4              | 24.0                           | 24.0                           | 24.4                          |
| Jan. 1, 1946               | 16.0                           | 16.0                           | 16.0                          |                                |                                |                               |
| May 22, 1946               | 2.5                            | 2.5                            | 2.5                           | 42.5                           | 42.5                           | 42.9                          |
| Sept. 1, 1947              |                                |                                | 15.5                          |                                |                                |                               |
| Nov. 1, 1947               | 15.5                           | 15.5                           |                               | 58.0                           | 58.0                           | 58.4                          |
| Oct. 1, 1948               |                                |                                | 7.0                           |                                |                                |                               |
| Oct. 16, 1948              | 10.0                           | 10.0                           |                               | 68.0                           | 68.0                           | 65.4                          |
| Oct. 1, 1950               | 5.0                            | 8.5                            |                               |                                |                                |                               |
| Jan. 1, 1951               | 5.0                            | 2.0                            |                               |                                |                                |                               |
| Feb. 1, 1951               |                                |                                | 12.5                          |                                |                                |                               |
| Mar. 1, 1951               | 2.5                            | 2.0                            |                               | 80.5                           | 80.5                           | 77.9                          |
| Apr. 1, 1951               | 6.0                            | 6.0                            | 6.0                           |                                |                                |                               |
| July 1, 1951               | 1.0                            | 1.0                            | 1.0                           |                                |                                |                               |
| Jan. 1, 1952               | 4.0                            | 4.0                            | 4.0                           |                                |                                |                               |
| Apr. 1, 1952               | -1.0                           | -1.0                           | -1.0                          |                                |                                |                               |
| July 1, 1952               | 2.0                            | 2.0                            | 2.0                           |                                |                                |                               |
| Oct. 1, 1952               | 2.0                            | 2.0                            | 2.0                           | 94.5                           | 94.5                           | 91.9                          |
| Dec. 1, 1952               | 4.0                            | 4.0                            | 4.0                           | 98.5                           | 98.5                           | 95.9                          |
| Jan. 1, 1953               | -1.0                           | -1.0                           | -1.0                          |                                |                                |                               |
| Apr. 1, 1953               | -3.0                           | -3.0                           | -3.0                          |                                |                                |                               |
| Oct. 1, 1953               | 3.0                            | 3.0                            | 3.0                           | 97.5                           | 97.5                           | 94.9                          |
| Dec. 16, 1953              | 5.0                            | 5.0                            |                               |                                |                                |                               |
| Oct. 1, 1955               | 6.5                            | 6.5                            |                               |                                |                                |                               |
| Dec. 1, 1955               |                                |                                | 14.5                          | 109.0                          | 109.0                          | 109.4                         |
| Nov. 1, 1956               | 12.5                           | 12.5                           | 12.5                          |                                |                                |                               |
| May 1, 1957                | 3.0                            | 3.0                            | 3.0                           |                                |                                |                               |
| Nov. 1, 1957               | 7.0                            | 7.0                            | 7.0                           |                                |                                |                               |
| Do. 1                      | 5.0                            | 5.0                            | 5.0                           |                                |                                |                               |
| May 1, 1958                | 4.0                            | 4.0                            | 4.0                           |                                |                                |                               |
| Nov. 1, 1958               | 7.0                            | 7.0                            | 7.0                           |                                |                                |                               |
| Do. 1                      | 1.0                            | 1.0                            | 1.0                           |                                |                                |                               |
| Nov. 1, 1959               | 3.0                            | 3.0                            | 3.0                           |                                |                                |                               |
| May 1, 1960                | 1.0                            | 1.0                            | 1.0                           | 152.5                          | 152.5                          | 152.9                         |

<sup>1</sup> Cost-of-living adjustments.<sup>2</sup> Average of sliding-scale increases.

## Discussion

A review of the foregoing table leads to the conclusion that the pattern principle has been the dominant force—in fact, controlling force—in fixing wage relationships between the various groups of railroad employees. It is quite apparent that a very careful balance has been maintained in the wage increases granted to the various employee groups. It is noted that over the years from August 1, 1937, through November 1, 1959, all railroad groups received increases totaling \$1.525 per hour, except that the nonoperating employees received four-tenths of a cent per hour more. This difference was created in the 1943 settlement when some of the lower rated nonoperating employees were given a larger increase for the purpose of bringing up substandard wages. With that one exception, this table shows that wage increases were kept in balance, and where some group momen-

tarily received a greater increase than others, steps were taken to restore the balance.

Emergency Board No. 33 had the following to say in its report in 1946:

At the outset of consideration of this proposal, we are confronted with the situation that there were sitting concurrently two Boards of Arbitration constituted under the Railway Labor Act, considering similar demands. On April 3d these Boards rendered their decisions in each case, awarding an increase of 16 cents per hour in the basic hourly rates.

This, it is asserted—and we believe correctly—fixes a pattern binding upon the Board, and we accordingly recommend a like increase. \* \* \*

To attempt to remove alleged inequities by a finding in excess of that awarded would be immediately to create new inequities within the industry itself and would result in demands by the other groups of employees of the industry for an equalization. (Tr. 382, 383.)

The report of Emergency Board No. 57, dated March 27, 1948, stated:

The right of each organization to bargain separately or in groups is fully recognized by this Board. Nevertheless, the wage structure applicable to the employees represented by the five operating organizations must be considered as well as the traditional differentials between them and the nonoperating employees. Nor must it be forgotten that the present wage controversy is but the remainder of the 1947 joint wage movement by the five operating organizations.

We therefore deem it essential under these circumstances to adhere to the 15.5 cents per hour pattern. (Tr. 383.)

In 1954 the Order of Railway Conductors & Brakemen, in addition to their wage requests, was asking for graduated rates of pay for train and yard service employees based upon the weight on drivers of the locomotives with which the employees work. The Organization accepted all of the benefits of the pattern settlement made within the operating organizations at that time, but insisted upon a supplemental memorandum providing that the pattern settlement agreement did not dispose of its demand for the graduated rates. This demand was referred to Emergency Board No. 109. That Board recommended that the demand be rejected and withdrawn. Its reasoning was as follows:

Every wage rate, differential, element of compensation, and pay rule for an operating classification appears to have a close relationship to the wage structure of other operating classifications. Operating employees work in close proximity, frequently away from continuing supervision; the road crews are paid on a mileage basis; under the seniority and promotion rules the same employee may work from day to day in different classifications and in different types of service; employees hold membership in unions with overlapping jurisdiction. The result is that all operating employees are particularly sensitive to changes in the wage structure of other operating employees. Labor costs of competing carriers are likewise sensitive to differential pay rules.

One consequence of this highly interdependent wage structure for operating classifications is that the attempt to change one rate or pay rule may generate more trouble and dissatisfaction than it cures.

Piecemeal adjustments in the wage rate structure tend to generate a succession of attempts for further modifications and patches on the rate structure. Each of these attempted adjustments is cumbersome and time-consuming under the protracted processes of railway labor relations. Moreover, an initial change in wage rate relationships may not persist as subsequent movements restore the old relationship. A recognized need to change the wage structure may not eventuate as a consequence of conflicting piecemeal adjustments. An illustration is provided by the differential between rates for yard conductors and brakemen in the 1947-48 wage movement. (Tr. 385, 386.)

Arbitration Board No. 201 included the following in its report in March 1955:

\* \* \* piecemeal adjustment of any of these differentials on the basis of inadequate investigation carries serious threat of creating even more inequities. \* \* \* Historical or differential patterns should not be altered on a piecemeal basis without a strong showing of need therefor. (Tr. 387, 388.)

The most recent national wage movements of 1955-56 also resulted in pattern settlements. All organizations agreed eventually to a 3-year agreement providing increases of 12.5 cents, effective November 1, 1956; 7 cents effective November 1, 1957; and 7 cents effective November 1, 1958, plus cost-of-living adjustments under an escalator clause. Only the Brotherhood of Railroad Trainmen failed to make a settlement during mediation. Their case was presented to an Emergency Board, which recommended acceptance of the pattern. The only variation was that yard trainmen, who had requested paid holidays, had the option of taking in the second and third years of the agreement 2 cents in the form of paid holidays and 5 cents in the form of a wage increase, or taking a 7-cent wage increase. The total cost to the carriers was the same.

In 1954 the Carrier here involved changed its short turnaround passenger rule from 30 days to 26 days. Organization Demand No. 1 currently before us asks that the 26 days fixed in 1954 be now reduced to 22 days.

Carrier here points out that it was not possible to make a settlement nationally with the Brotherhood of Railroad Trainmen in 1957 until the Pennsylvania Railroad agreed to make the same kind of a settlement (reduce 30 days to 26 days) on its railroad as had previously been made on the Long Island Rail Road.

This having been done, a national settlement was reached, and an exception was made in the moratorium so that similar settlements could be made on other commuter railroads despite the existence of the moratorium.

### RECOMMENDATION

It is very clear from the record before us, particularly those sections herein quoted, that to recommend that the Carrier accept Organization's Demand No. 1 would be to do violence to that balance among and between the wage rates of the several classifications of labor in this industry which management and labor have been so careful to preserve throughout the history of national wage handling in this industry from 1937 to date.

In recommending that the Organization's Demand No. 1 be withdrawn, we are consistently following the findings and recommendations of earlier Emergency Boards which were faced with a similar problem.

## ORGANIZATION'S DEMAND NO. 2

*All men in local freight service be given a 5-day work-week with 7 days' pay*

### Organization's Contention

The Organization argues that employees engaged in local freight service are "still working 7 days a week; they, incidentally, did not get a 6-day week in 1954 when the passenger men did [and they] are also entitled to a 5-day workweek on the same basis of moral equity that every other person in the railroad industry, particularly those in the nonoperating crafts, enjoy" (Tr. 56).

The Organization said it recognized that if Demand No. 2 were granted, it would mean additional expense to the Carrier. The Organization estimates that in freight service a 5-day workweek will cost the Carrier \$64,826.32.

### Carrier's Contention

This Carrier's regular freight service requires 4 conductors and 8 brakemen 7 days a week and 12 conductors and 26 brakemen 6 days a week. There are, in addition, designated extra assignments to cover some of the scheduled runs, work trains, etc. The number of men assigned to these latter jobs varies from day to day.

The basic day of freight trainmen is 8 hours or 100 miles, as compared with 8 hours or 135 miles in passenger service. Unlike passenger trainmen, freight trainmen are paid at time and a half for time over 8 hours. As in passenger service, a freight trainman must be paid a basic day's pay no matter how short his hours or brief his trip. Overmiles payment, when earned, is in addition to the basic daily rate. Trainmen in freight service, unlike passenger trainmen, do not have a monthly guarantee of 30 days pay for 26 days' work. Freight service men, however, have an additional arbitrary allowance for deadheading and other miscellaneous items. The rates of pay for local freight service are higher than in through freight service. The rates are as follows:

|                           | Through freight |          | Local freight |          |
|---------------------------|-----------------|----------|---------------|----------|
|                           | Conductors      | Brakemen | Conductors    | Brakemen |
| Rate per mile.....        | \$0.2008        | \$0.1819 | \$0.2064      | \$0.1862 |
| Rate per day.....         | 20.08           | 18.19    | 20.64         | 18.62    |
| Regular hourly rate.....  | 2.51            | 2.275    | 2.58          | 2.3275   |
| Overtime hourly rate..... | 3.765           | 3.4125   | 3.87          | 3.491    |

In 1959 conductors in road freight service on this Carrier worked an average of 4.8 days per week and earned an average of \$8,378.46 for the year.

The freight brakemen worked an average of 4.9 days per week and earned an average of \$7,439.22 for the year.

These 1959 earnings do not reflect for the full 12 months of 1959 the increase of 3 cents per hour which became effective November 1, 1959. The daily rate of conductors in local freight service is now \$20.64 and the rate of brakemen is \$18.62.

It is pointed out by the Carrier that these rates are above the standard rates in the rest of the railroad industry by 51 cents per day for conductors and 35 cents per day for brakemen.

Carrier argues that to grant this demand would be to increase the rates of these employees by 40 percent. The Carrier estimates that this demand would add \$423,121 per year to its operating costs.

Gross revenues from freight operations of this Carrier in 1950 were \$13,738,482, from which the Carrier derived a net operating income of \$2,769,397.

Gross freight revenue for the year 1959 was \$12,525,910, which resulted in a net operating deficit of \$240,634 in freight service.

It is quite apparent that this Carrier's freight service is no longer a profitable operation. Because of the fact that this Carrier serves only Long Island, it can enjoy no through freight service. It receives freight that is destined for customers located on Long Island. It asserts it is facing severe competition from the motortrucking industry. It cited to this Board the example of one of its largest customers to which it had been for years delivering approximately 3,000 carloads of bulk cement per year. It asserts that since the beginning of 1960 it has lost most of this traffic to truck and water carriers.

### **Discussion**

The principle involved in Organization's Demand No. 2 is the same as that involved in its Demand No. 1. The granting of Demand No. 2 would have the same disturbing effect upon the national wage structure of the industry which we discussed in great detail in our discussion of Organization's Demand No. 1. Because of these facts we find no merit in Organization's Demand No. 2.

### **RECOMMENDATION**

We recommend that Organization's Demand No. 2 be withdrawn.



## **THE ORGANIZATION'S DEMAND NO. 3**

### **Yard Brakeman's Rate For All Switchtenders**

The current wage rate for switchtenders is \$2.4225 per hour, or \$19.37 per day. Yard brakemen receive \$2.655 per hour, or \$21.33 per day. The Organization says that switchtenders cannot live on their prevailing wages and the effect of the demand is for a wage increase of approximately 9 percent for that group, or \$32,133 annually.

Differentials have generally prevailed with respect to the wage rates of yard brakemen and switchtenders as far back as 1918, when the Government took over the operation of the railroads. Efforts to equalize these rates were denied by the U.S. Labor Board, in 1920; National Mediation Arbitration Board No. 36, in 1944; and Emergency Board No. 57, in 1948.

There is a factual basis for higher wages for yard brakemen than for switchtenders. Brakemen ride cars in switching operations, couple and uncouple hose, and are exposed to the elements in the performance of their work. On the other hand, the principal functions of switchtenders are to set switches and to pass signals as directed by those in charge of car movements. Their work is on the ground, and while not so engaged they ordinarily have the protection of shelters. Their duties are less hazardous and less strenuous than those of yardmen.

The Carrier has significantly pointed out that if the existing wage relationship between switchtenders and yard brakemen is disturbed, it may be anticipated that yardmen and other groups of employees will demand increases to restore the historical and traditional differentials. This would result in a chain reaction to which there would be no practical end. Such situations are certainly not to be encouraged.

### **RECOMMENDATION**

It is the recommendation of the Board that the Organization's Demand No. 3 be withdrawn.

## THE ORGANIZATION'S DEMAND NO. 4

***All assignments not now receiving 95-cents airhose allowance in yard service will be given yard allowance under the same conditions that other men are paid***

The historical background for this dispute will be found in the decision and award of Referee George Cheney, dated August 1, 1951, and involving the Brotherhood of Railroad Trainmen and certain participating Eastern, Western, and Southeastern Railroad Carriers. In that award the Referee found that the coupling of airhose was a "typical example of overlapping craft lines, and an illustration of tasks which are common to both the carmen and trainmen crafts"; that it was proper to assign such tasks to trainmen in accordance with operational necessities; and that there was an element of personal hazard involved in the performance of such work. The rule providing for the payment of 95 cents additional compensation to employees in yard service who are required to perform this function resulted from the Cheney award. Its counterpart is to be found in Rule 135 of the agreement before us, and it would appear that rules of similar import prevail throughout the industry with a few exceptions. On the Norfolk & Western and Reading Railroads, all yard trainmen are paid 40 cents per tour of duty for which they may be required to couple hose at any time; and the Pennsylvania has agreed to pay yard trainmen 48 cents per tour in return for the right to require them to chain or unchain cars; couple or uncouple air, signal or steam hose; lift drop-type draw bars on locomotives; and test air brakes.

The Organization is not proposing to broaden the scope of the work that yard trainmen may be required to perform in consideration of the 95-cent payment to all members of the group, but merely to require the extension of such payment to those who are not called upon to render any such service. Such a formula would do violence to the fundamental concept that wages are paid for services rendered and would amount to a mere gratuity. In the view of this Board these consequences are of greater importance than that the members of 16 yard crews would receive wage increases aggregating approximately \$17,685 per year, if the Organization's demand should prevail.

### RECOMMENDATION

It is the recommendation of the Board that the Organization withdraw its Demand No. 4.

## **CARRIER'S DEMAND NO. 2**

***Carrier will have the sole prerogative of arranging its runs to meet the requirements of its service***

### **Carrier's Contentions**

Carrier describes this proposal as the one which would "give us the greatest operating economies." Involved here are Rules 9 and 18(a).

Carrier says Rule 18(a) "requires in substance that when we make timetable changes and propose new crew assignments in passenger service to man the scheduled trains, 'the Brotherhood of Railroad Trainmen and the Carrier will confer for the purpose of discussing objectionable runs,' and Rule 9 provides that we cannot segregate or divide separate assignments if crews are thereby taken off or reduced in number. In practice, under the rules the Brotherhood has exercised a veto power over our crew assignments. They have refused to concur with us in consolidating crew assignments where we have proposed consolidations so as to utilize as much as possible the now long spans of idle time which our short turnaround passenger trainmen, particularly collectors, have in the middle of the day. Under the so-called '8 within 9' Rule, which is Rule 3 of the present agreement, we are required to pay the men for all except 1 hour of idle time within the first 9 hours. The effect of the Brotherhood's resistance to our using the now idle, but paid for, time of these men for productive work, is to saddle this railroad with the cost of personnel who would not be needed if we were permitted to make more efficient use of middle-of-the-day idle time. We estimate that we could save \$601,497 per year if this rule were amended so as to make it understood that we shall have control over these crew assignments" (Tr. 114, 115).

### **Organization's Contentions**

The Organization devoted little time during the hearing to the Carrier's demands. In respect of Demand No. 2, the Organization stated it had encountered little difficulty with the Carrier under Rules 9 and 18(a), and stated flatly it objects to Carrier using crews on swing time.

### **Discussion**

This demand of the Carrier goes to a very basic principle—its right to operate its business and direct its working force efficiently.

It also involves its right to utilize the services of employees, during hours paid for by the Carrier but which are now nonproductive.

We find merit in this demand of the Carrier.

### **RECOMMENDATION**

We recommend that the Rules involved here be revised to give the Carrier the sole prerogative of arranging its runs to meet the requirements of its service.

## CARRIER'S DEMAND NO. 3

### *Discontinuance of payments under the so-called "make whole" rule*

About 1954, while the parties were in mediation, they adopted a so-called "make whole" rule applicable to passenger service, which provides:

*Rule 20(d).* Road Passenger Trainmen used to perform service as Conductors, except at their own volition, and who by reason of such use earn less than they would have received on their regular or extra assignments, shall be paid not less than they would have earned on their regular or extra assignments.

By Rule 45 (d) and (e) of the agreement, the rule quoted above was extended to apply to qualified trainmen assigned to fill vacancies in brakeman and conductor positions in freight service.

The complaint of the Carrier can best be stated in the language of its Freight Trainmaster, as disclosed by the following excerpts from his testimony (Transcript, pp. 338, 339, and 341) :

They [Rules 20(d) and 45(e)] were agreed to with the understanding that the only purpose of the rule in freight service was to take care of regularly assigned trainmen who through no choice of their own were transferred to extra or vacant regular jobs.

It was never the original understanding that the "make-whole" rule in freight service would be abused in the outrageous fashion it has been. Since the adoption of this rule freight brakemen on the extra list who are qualified conductors have conspired in refraining from bidding regular freight conductor assignments. To operate our service, we are forced to assign them to those jobs.

They remain on the brakemen's extra list and when they are assigned as conductors to fill either regular or extra assignments, they claim under the "make-whole" rule the highest earnings of any brakeman's job filled that day from the extra list which their seniority will entitle them to hold \* \* \*.

We think that the rule should be changed so as to make it clear that it shall not apply to extra men or to trainmen who are assigned to advertised vacancies.

The Carrier also established that at the "general picks" held semi-annually since 1956, at which the employees were accorded the opportunity to bid in regular conductors' assignments on the basis of their seniority, fully half of such positions have remained vacant, those eligible to claim them preferring to be on the brakemen's extra list so as to reap the advantages of the "make-whole" rule. As a consequence, the Carrier says it is constantly confronted with the neces-

sity of resorting to the extra lists and of incurring obligations for premium pay to fill positions that ought to have been regularly assigned.

To illustrate how the "make-whole" rule works in freight service, the Carrier cited an instance where a qualified conductor on the extra brakemen's list was assigned to fill a vacant conductor's position on a freight train run, the crew of which actually worked 6 hours and 10 minutes. The compensation of the conductor regularly assigned to this run would have been \$20.64. However, by virtue of the "make-whole" rule, the extra man who filled the position on the day referred to claimed the compensation of a scheduled run, the crew of which was on duty 15 hours, and he thereby collected \$43.05. The Carrier says that on the same day and for the same reason it was also obliged to pay \$43.05 to each of two other brakemen, who actually worked shorter jobs as conductors. Carrier stated the aggregate cost of said rule, for work not performed, is approximately \$50,000 per year.

Although the parties were unable to agree as to the proper disposition of this or any of the other pending disputes through the processes of negotiation or mediation, we are obliged to say that the Organization has not been helpful in furnishing us with a defense of its position with respect to the issue now under consideration. A diligent search of the record before us has failed to reveal a single fact or argument calculated to justify the retention of the "make-whole" rule as it has been applied on this property.

The right of regularly assigned employees to be protected against loss of earnings when they are required to fill other jobs, and the right of extra men to receive the compensation incident to the positions they actually work are proper subjects for appropriate rules. On the other hand, a situation that encourages employees to forego the exercise of their seniority and of claiming available regular assignments, so that they may receive the emoluments of the most profitable extra jobs that may accrue, without working them, is inimical to the best interests of the Carrier and the Organization alike. Such practices do violence to the orderly exercise of the seniority rights of the employees and burden the Carrier with labor costs that are not balanced by work performed.

### RECOMMENDATIONS

It is the Board's recommendation that the parties negotiate revisions of Rules 20(d) and 45 (d) and (e) that will obviate the inequities pointed out above.

## **CARRIER'S DEMANDS NOS. 1, 4, 5, AND 6**

### **Demand 1**

*Payment of standard rates of pay in passenger and freight service.*

### **Demand 4**

*Elimination of time and one-half payments for a second tour of duty within 24 hours in road freight service.*

### **Demand 5**

*Eliminate requirements with respect to the manner in which road crews pick up and dispose of their train and handle their cabin car.*

### **Demand 6**

*Carrier will have the prerogative of transferring extra men from one yard to another without agreement.*

We have carefully reviewed the circumstances involved in each of the questions raised by the above demands. It is our recommendation that all four of these demands be withdrawn by the Carrier.

Dated at Washington, D.C., this 18th day of May 1960.

CURTIS G. SHAKE, *Chairman.*

EDWARD A. LYNCH, *Member.*

LLOYD H. BAILER, *Member.*

