Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10888 DATED SEPTEMBER 28, 1960, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between certain carriers represented by the New York Harbor Carriers' Conference Committee, and certain of their employes represented by labor organizations, members of the Railroad Marine Harbor Council.

(NMB CASE NO. A-6217)

WASHINGTON, D. C.
DECEMBER 10, 1960

(Emergency Board No. 133)

LETTER OF TRANSMITTAL

WASHINGTON, D.C.
December 10, 1960.

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

Mr. PRESIDENT: The Emergency Board created by you on September 28, 1960, by Executive Order 10888, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between certain carriers represented by the New York Harbor Carriers' Conference Committee, and certain of their employes represented by labor organizations, members of the Railroad Marine Harbor Council, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

DUDLEY E. WHITING, *Chairman.*
BENJAMIN C. ROBERTS, *Member.*
WILLIAM H. COBURN, *Member.*

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I. BACKGROUND OF THE DISPUTE

A. Creation of the Board

In May, July, and November, 1959, the Organizations served a series of notices on the Carriers under the provisions of section 6 of the Railway Labor Act, as amended, for proposed changes in and additions to the effective working agreements. The Carriers replied by asserting that the notices prior to November 1, 1959, were barred by the moratorium provisions of article 5 of the October 22, 1957 agreement, and that portions thereof were not bargainable under the Act. They did agree, however, to meet with the Organizations to discuss the proposals and at the same time submitted counterproposals.

The legal position of the Carriers thus asserted has been continuously reserved through the negotiations and through these proceedings, although they do not ask this Board to pass upon the validity of same.

The only progress made during the course of the negotiations was the agreement upon a grievance procedure and the establishment of a New York Harbor Marine Board of Adjustment.

On May 2, 1960, the services of the National Mediation Board were invoked. Mediation failed to produce agreement, and on September 28, 1960, the President issued Executive Order No. 10888 creating this Emergency Board to investigate and report upon the dispute. Subsequently, the time for filing a report was extended to December 10, 1960 by the President upon the consent of the parties.

The Emergency Board consisted of Dudley E. Whiting of Detroit, Mich., as chairman; Benjamin C. Roberts of New York City; and William H. Coburn of Washington, D.C.

B. The Demands

At the time the demands were served upon the Carriers, the Organizations comprising the Railroad Marine Harbor Council were the Associated Maritime Workers Local No. 1 of the International Organization of Masters, Mates & Pilots; Local No. 1, International Organization of Masters, Mates & Pilots; Local No. 3 International Organization of Masters, Mates & Pilots, and the Marine Engineers Beneficial Association No. 33, AFL-CIO. During the course of the

negotiations the Seafarers International Union of North America, Atlantic and Gulf District, Railroad Marine Division, AFL-CIO, was certified as the representative of the employes formerly represented by the Associated Maritime Workers, Local No. 1. This Organization continued as a member of the Railroad Marine Harbor Council. No single set of demands was filed by the Railroad Marine Harbor Council. Each of the Organizations filed its own. They were diverse and, in some cases, inconsistent. This lack of coordination in the section 6 demands by the several Organizations, whose membership must be treated uniformly with respect to many of the issues before this Board, complicated the Board's task and, as a consequence, we will discuss below only those issues which our investigation discloses to be essential to a final disposition of the dispute. It would appear to the Board that if the Council is to be effective as an instrument for bargaining and to attain stability in the collective relationships with management in the New York Harbor, there must be cooperation among its members to achieve a uniformity of demands and consistency of action.

C. Description of the Operation

The 12 Carriers before this Board are engaged in the transportation of passengers and freight over the waters of New York Harbor. Two Carriers operate passenger ferry service between lower Manhattan and New Jersey using steam-powered ferry boats. Freight movements in the harbor are accomplished by the use of scows, barges, lighters, and car floats towed by steam and diesel-powered tug boats. Such freight movements fall into two categories: First, those in which the freight is removed from a railroad car and loaded upon a lighter, scow or barge; and second, those in which freight cars are placed on a car float and thence towed by a tug boat to another point in the harbor. Generally, such freight movements are confined to what is known as the lighterage limits in the harbor. The volume of business has been declining since 1956. The total annual tonnage hauled by the marine departments of the Carriers in New York Harbor declined from 26,179,577 in 1956 to 18,372,480 for 1959, the latest available figures.

In June, 1960, approximately 2,212 railroad marine workers were employed in the New York Harbor. Collective bargaining representation for these employes was held by 14 different unions. As noted, the membership of the Railroad Marine Harbor Council before this Board consists of three organizations: The International Organization of Masters, Mates & Pilots holds representation rights for captains, masters and pilots employed by 11 of the 12 Carriers before

this Board. The Marine Engineers Beneficial Association represents engineers employed by four of the Carriers before this Board. The Seafarers International Union represents mates, deck hands, floatmen, and certain shore personnel employed by 7 of the 12 Carriers before this Board. The total number of employes represented by these Organizations was approximately 660 in June, 1960.

D. History of Collective Bargaining

From the evidence it appears that for the period 1932 through 1953 the Organizations representing employes before this Board joined with the Cooperating (nonoperating) Railway Labor Organizations in the handling of National Wage and Rules cases. Throughout this period they received the same basic wage increases and other benefits obtained by such nonoperating unions. The first exception to this uniform pattern occurred in 1952 when the Carriers agreed to pay an additional 25 cents per hour to the licensed captains and engineers in the New York Harbor as an incentive to unlicensed personnel to qualify for promotion.

After 1953 the Organizations disassociated themselves from the nonoperating unions and progressed their own wage movement. In 1955 they sought and obtained a percentage wage increase in advance of the establishment of any railroad wage increase pattern. It was slightly in excess of the comparable cents-per-hour adjustment which was granted in 1956 to other railroad employes.

The major deviation from the national pattern of wage increases and other benefits occurred in 1957 when, after all the remedies provided by the Railway Labor Act, including recommendations by Emergency Board No. 119, had been exhausted, these employes went on strike. As a result, wage increases exceeding those recommended by that Board and those received by other employes in the railroad industry were obtained.

E. The Nature of the Employment

The Organizations representing employes of the Carriers before this Board have insisted in these proceedings that they are not to be compared or associated with nonoperating railroad employes, but should be treated as seamen.

However, any effort to identify the railroad marine personnel, generally employed within the confines of a harbor and working under schedules which are for all practical purposes identical in nature with the shoreside industry, with the offshore marine industry must be rejected. The character of the employment, the working schedules,

the hardships imposed by the necessary absence of the opportunity to be home every day and on days off, etc., are elements of offshore employment which, among others, clearly distinguish the two occupations and make unacceptable the comparison urged by the Organizations with respect to a number of their demands.

The Organizations have been emphatic in their position that the identification of their membership with nonoperating railroad employes by the Carriers has been improper, despite their classification as such by the Interstate Commerce Commission. The Board is of the opinion that the employes represented by the Organizations in these proceedings are engaged in work performance directly concerned with the actual operation in the movement of the Carriers' equipment. Their functions are operational. They are marine operating employes. They also are railroad employes and are not divisible from their fellow railroad employes because they are engaged in marine operations. This is true both as a practical matter as well as by law. They are subject to the provisions and entitled to the benefits of the Railway Labor Act, the Railroad Retirement Act and the Railroad Unemployment and Sickness Insurance Act. These are benefits provided them by law which represent costs to the railroads imposed by statute and which cannot be disassociated from any analysis of the justification for the Organizations' demands which would create a duplication of obligations such as would result from the requests that the Carriers contribute to the various health, welfare and pension plans established by the respective Organizations covering offshore personnel. This would overlap the statutory requirements of the Carriers, and further illustrates the incompatability between viewing the marine employes of the railroads as being the same as offshore personnel.

There have been certain local problems that have arisen from the different character of the marine operations which have been resolved within that context, but the marine employes are railroad workers and in considering such general subject matters as wage increases, holidays and vacation allowances, health and welfare benefits and pensions, the wage relationship and current pattern established within the railroad industry would have a primary position.

II. THE ECONOMIC ISSUES

A. General Considerations

Since we have found that the employes under consideration here are to be considered as railroad employes the railroad pattern of economic benefits should be applicable to them, and inasmuch as that pattern has been established we need not consider the multiple factors in wage determination that entered into the establishment thereof.

In local negotiations for the marine employes of the railroad in recent years the employes before this Board have received larger increases than other railroad employes. Whatever factors may have led to these deviations, they are not found to be present at this time. None of the evidence and argument presented by the Organizations has demonstrated any justification for preferential treatment to increase the labor costs for these marine operations beyond that justified by the considerations set forth herein.

The wage increase pattern for operating employes of the railroads was established by the award of Arbitration Board No. 254 on June 3, 1960, and has been followed by agreements with other operating crafts. Thereunder, a wage increase of 2 percent was made effective July 1, 1960. A further increase of 2 percent will be made effective March 1, 1961. The accumulated cost of living increases to July 1, 1960 were incorporated into the base rate. The cost of living escalator clause was discontinued from that date and a moratorium on further wage increases until November 1, 1961 was established.

The wage increase pattern for nonoperating railroad employes was established by the recommendations of Emergency Board No. 130 made June 8, 1960, and the subsequent agreement of August 19, 1960. It provided a wage increase of five cents per hour, equivalent welfare plan effective March 1, 1961, which is equivalent to 2 percent, the same incorporation of accumulated cost of living increases into base rates, the elimination of the escalator clause and a moratorium on further wage increases as in the operating employe pattern. In addition, there were modifications in eligibility requirements for holiday pay and for vacations, including the reduction in the period of service for a 2-week vacation.

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It appears to this Board that under the circumstances the employes involved in this proceeding should be given equal and nondiscriminatory treatment with that accorded to all other railroad employes, and that they should be accorded the same pattern of wage increases and economic benefits with the same moratorium provision.

B. Wages and Welfare

Because the Organizations representing the employes before this Board in prior years affiliated themselves with the nonoperating railroad unions in National Wage and Rules cases, the employes here are covered by the welfare plan made available to those employes. They have in this proceeding insisted upon a discontinuance of that plan and the inauguration of participation in health, welfare and pension plans established by the International Organization of Masters, Mates & Pilots, the Marine Engineers Beneficial Association, and the Seafarers International Union. Such a request is wholly impracticable because there would be a duplication of benefits which are provided by law, costs of which are imposed upon the Carriers by taxation.

The improvement provided in the welfare plan of the railroad nonoperating employes effective March 1, 1961, in lieu of the wage increase provided for operating employes at that time, could and should be made effective for these employes in lieu of that part of the operating wage increase pattern. The improvements consist primarily of the addition of life insurance and increased dependent benefits which appear to cover the principal objections by these employes to the existing plan. Effective March 1, 1961, the benefits provided for the dependents will be identical with those for employes except for allowances for doctor's calls at home or in the office. The hospital, surgical and medical benefits for furloughed employes are extended from one month to a maximum of three consecutive months. Group life insurance is provided in the face amount of $4,000.

One of the Organizations representing employes before this Board requested a cumulative sick leave pay allowance. This is not included in the pattern of economic benefits accorded to other railroad employes in 1960 and the Railroad Unemployment Insurance Act provides pay benefits during sickness. There was no showing of any justification for supplementation of such benefits. Under the circumstances, the request should be withdrawn.

In view of the foregoing we conclude that our recommendation should consist of a 2 percent wage increase effective July 1, 1960, the incorporation of accumulated cost of living increases to that date in

the base rates, the elimination of the cost of living escalator clause and a moratorium on further increases until November 1, 1961. In making such wage increase effective July 1, 1960, credit must be given for the 2 cents per hour cost-of-living wage increase received by these employes effective November 1, 1960, there being no reason for giving these employes an advantage due solely to the delay in the resolution of this dispute. In addition thereto, the health and welfare plan should be amended in the same way as provided for in the agreement of August 19, 1960, to be effective March 1, 1961.

C. Holiday Pay

The Organizations representing employes before this Board proposed an increase from 7 to 11 paid holidays with changes in eligibility and pay for work on holidays. In view of our general observations with respect to these economic issues, the most that can be recommended is a modification of the eligibility requirements for the present 7 paid holidays to include extra men with 60 days seniority who worked a majority of the work days in the preceding 30 days and who were available for work on the day before and the day after the holiday. This was the modification provided in the pattern of benefits established for other railroad employes.

D. Vacations

The Organizations representing employes before this Board requested changes in the vacation agreement to provide for increased vacations at the several length of service points established, a reduction of the qualifying work days in the prior year to 120, counting of sick days as days worked for that purpose, pro rata vacation for those who worked less than 120 days, changes for employes entering the Armed Services, and provision for pay for vacations earned upon termination of employment by discharge, resignation or death.

The recommendations of Emergency Board No. 130 and the agreement of August 19, 1960, improved the vacation agreement, effective in the calendar year 1961, to provide for 2 weeks vacation after 3 years instead of 5 years, a reduction in the number of days required to have been worked in the prior year from 133 to 120 days for employes eligible for 1-week vacation to 110 days for employes eligible for a 2-week vacation, and to 100 days for employes eligible for a 3-week vacation, and for payment of earned vacation to those whose employment is terminated by quitting, discharge, or death. Since the same basic vacation agreement is applicable to these employes, the Board concludes that the same modifications should be made applicable to these employes and that their other requests for changes therein should be withdrawn.

III. STABILITY OF EMPLOYMENT AND SEPARATION PAY

A. The Demands

The Organizations representing employes before this Board presented demands for a rule establishing a fixed consist of crews upon the various vessels operated, a scope rule allocating to each job classification the work historically performed by it, a rule providing for notice of the abolishment of positions graduated from 5 days to 60 days depending upon the length of service, and a rule providing for separation pay based upon length of service. The Carriers contended that the demands were prematurely served under article 5 of the agreement of October 22, 1957, and that the subject matter of these demands was not bargainable under the Railway Labor Act. The Carriers also submitted counterproposals to eliminate any requirement for the use of any specific class or grade of marine employes and to give the management the unrestricted right to determine when and if marine employes should be used.

B. General Considerations

The investigation by this Board discloses that these demands encompass the most vital issue in the dispute. The Organizations adamantly insist upon the adoption of some rule which will require the Carriers to maintain the existing classifications of work, and job assignment, to be changed only under the provisions of section 6 of the Railway Labor Act, while the Carriers have adamantly insisted that they must retain their right to determine what forces are necessary for the marine operation.

It appears that the position of the Organizations has been the result of the fear of loss of jobs by the employes, incited by the prior abolition of work classifications or jobs, such as the oilers on the diesel tug boats, and by technological changes which have been occurring and which they anticipate will continue.

C. Consist of Crew

The request for a fixed crew consist upon the vessels operated would result in freezing the positions presently existing and in the addition of an assistant captain's position on ferry boats, so it would mean that regardless of the circumstances or the need for such positions, they

could not be eliminated except under the provisions of section 6 of the Railway Labor Act. This request has not been justified on the basis of safety, economy or efficiency of operation.

It is apparent to the Board that if by such requests the Carriers were required to continue the employment of unnecessary personnel, their operation would be neither efficient nor economic and could only result in reduced traffic and fewer jobs for these employes.

The Board is convinced that the Organizations are not desirious of compelling a consist of crew that would overman a vessel in operation and impose unnecessary personnel requirements. Basically, they appear to seek to insure themselves against the elimination of classifications or positions without sufficient notice to the Organizations and to the individual involved so that there can be adequate opportunity to review the anticipated elimination and, when agreement cannot be reached, to have an impartial review and an adjudication of this dispute.

It appears that the railroad industry and the Organizations representing maintenance of way employes have approached the problem of elimination of jobs by changes in work methods and arrived at an agreement which appears fairly to protect the rights and interests of the employes and the responsibilities of the Carriers. We think a combination of that approach with others, such as that in the union agreement applicable to the Banner Boats in the New York Harbor, would afford appropriate measures to alleviate and dissipate the fears of the employes while retaining the rights of the Carriers to exercise their legal responsibilities to manage their properties in a safe, efficient and economical manner.

This approach involves notice to the Organizations when the Carrier decides to eliminate a position or classification of work. It contemplates that thereafter the representatives of the parties would meet so that all would be fully informed of the circumstances involved in the action and so that they might then negotiate appropriate safeguards for the rights of employes. It also would contemplate a right of the Organizations representing the employes to protest the decision of the Carrier and to have that dispute processed to impartial review and adjudication through the New York Harbor Marine Board of Adjustment on the basis of criteria to be negotiated by the parties as part of this recommended procedure.

If a 60-day notice were required before the elimination of a position or classification of work becomes effective, it should afford the Organization ample oportunity to review the action and, if it desires, to obtain an adjudication under the foregoing procedure.

Under the circumstances set forth in the several sections upon this subject matter, the Board concludes that these procedural provisions would amply protect the Organizations and the employes they represent.

D. Notice of Abolishment of Positions

The circumstances described in the preceding section are distinguishable from the situations where operations are curtailed or eliminated, such as in the lay up of a tug boat, and employes consequently are furloughed. The Organizations have submitted demands for a graduated period of notice dependent upon length of service before the layoff can be effectuated. There is no justification for varying periods of notice under these conditions. A 72-hour notice would appear to be reasonable and is recommended as the appropriate resolution of this problem.

E. Separation Pay

The demands as expressed would require pay to anyone furloughed even though he were meanwhile entitled to the benefits of the Railroad Unemployment Insurance Act and even though he were entitled to recall in seniority order. In the past when circumstances arose in which severance pay was appropriate, such as consolidations, mergers, discontinuances, and most recently in the elimination of the oilers classification, it has been negotiated in the light of the circumstances of the particular case.

There are obviously other and more desirable considerations for employes permanently displaced for various reasons. The best solution would be to provide gainful employment by placing them in some other job according to their seniority or arranging for employment with another Carrier or retraining them for replacement in some other position. Only as a final cushion to the impact upon employes whose employment status is finally severed should severance pay be provided.

The historical practice in the railroad industry has been to negotiate severance pay agreements on a case-by-case basis in light of the circumstances then existing. It appears to the Board that this procedure may involve more problems for both the Carriers and the employes than to negotiate a fixed severance pay provision applicable to appropriate situations in the future. Under the circumstances of this case and the evidence submitted, the parties should be permitted to elect the method to follow.

F. License Requirement

The Organizations representing the licensed personnel before this Board have requested a rule to require the Carriers to employ only persons possessing U.S. Coast Guard licenses in those classifications of work. Presently, the Coast Guard regulations require a licensed master and a licensed engineer on steam-powered vessels, but do not require the possession of such a license in those positions on diesel-powered vessels. The Organizations insist as a matter of job security and safety that only licensed personnel should be employed in those capacities on diesel-powered as well as steam-powered vessels. The Carriers resist such demands on the basis that it interferes with their right to select persons to be in charge of their equipment, that the Coast Guard does not require such licenses and that it might prove difficult to obtain qualified personnel acceptable to them unless there is an accompanying provision in the agreements requiring those eligible for promotion to obtain licenses to perform work in such classifications.

The Coast Guard is the primary agency for the determination of what constitutes safe operations in the Marine Department. However, the record discloses that the masters and engineers on the diesel-powered tug boats are licensed personnel. There has been a practical recognition of the need for such knowledgeable and experienced individuals in the direction and control of the vessels owned by Carriers that navigate the waters of New York Harbor with lighters and car floats in tow. The primary objection of the Carriers to the Organizations' demands has been the lack of any provision for assuring that suitable licensed personnel would be available for assignment to the vessels. While there is now a considerable number of licensed personnel employed by the Carriers who are not working in these classifications, it is not evident whether that situation holds true for each Carrier, or that unlicensed personnel would take the necessary training and examination for the Coast Guard license to meet any future needs of the Carriers. Consequently, we feel that there is merit to the Carriers' contentions and that the Organizations should present a program that satisfies these problems. When this has been done it is recommended that the Organizations' proposals be adopted.

G. Scope Rule

The Organizations representing employes before this Board presented demands for scope rules which defined the work of the several classifications as the work historically performed. There is no evidence of craft encroachment and that type of definition can serve no useful purpose. It can only tend to create a multiplicity of problems and issues between the parties where none exists. The customary usage of a scope rule is to specify the employes covered thereby. Such purpose would be accomplished by inclusion in the agreement of the representation certification by the National Mediation Board, but otherwise the demand should be withdrawn.

IV. MISCELLANEOUS ISSUES

A. Crossing Picket Line

The Organizations representing employes before this Board requested a provision that they should not be required to cross or work behind a picket line. Aside from the merits of the proposal, it is of questionable legality. The Carriers are required by law to provide service to shippers as common carriers and the issue of whether it may exempt itself from that legal responsibility in the event of a picket line has been a subject of litigation in which a Carrier has been held liable for damage for losses incurred by a shipper. (*Montgomery Ward* v. *Northern Pacific Terminal Co.*, 128 F. Supp. 476.) On these grounds alone, it would be inappropriate to incorporate this provision into the agreements and it is recommended that it be withdrawn.

B. Philadelphia Differential

Local 3 of the International Organization of Masters, Mates & Pilots demanded that, in addition to other wage increases, the masters be paid $1.50 per day to equalize their daily rate with that paid in the Philadelphia harbor. In the settlement of the 1957 strike the then existing differential in the amount of $6 was granted by the Carriers. However, at the request of the Organization representing the masters, $1.50 of this amount was not applied to their daily rate but its total cost to the Carriers was allocated to the wage rates of unlicensed deck classifications.

The Carriers have already borne the cost of the full differential and there is no reasonable basis for requiring them to pay it twice. The present $1.50 differential was established by the Masters and they cannot retrieve it at the expense of a duplicating payment by the Carriers. Thus, the demand should be withdrawn.

RECOMMENDATIONS

We recommend:

1. Wages and Welfare.

a. Incorporate the cost-of-living increases accumulated to July 1, 1960, into the base rates.

b. Increase base rates 2 percent effective July 1, 1960, less the 2 cents per hour cost-of-living increase received by employes effective November 1, 1960.

c. Eliminate the cost-of-living escalator provision.

d. Provide a moratorium on further wage increases until November 1, 1961.

e. Effective March 1, 1961, accord to these employes the improvements in Travelers Insurance Company Policy GA 23,000 provided by the agreement of August 19, 1960.

f. Other demands by the parties should be withdrawn.

2. Holiday Pay.

a. Modify the eligibility requirements to provide holiday pay for extra men with 60 days' seniority who worked a majority of the work days in the preceding 30 days and who were available for work on the day before and the day after the holiday.

b. Other demands should be withdrawn.

3. Vacations.

a. Provide for 2 weeks' vacation after 3 years.

b. Modify the eligibility requirements in accordance with the provisions of the agreement of August 19, 1960.

4. Stability of Employment and Separation Pay.

a. Provide for a 60-day notice to the Organization and the employes involved before the elimination of a position or classification of work becomes effective, during which period the parties shall meet to discuss the action, and to provide further for handling protests of such action through the grievance procedure and by the New York Harbor Marine Board of Adjustment under criteria to be agreed upon.

b. Provide for a 72-hour notice to employes to be laid off when operations are curtailed or eliminated as in the layup of a tugboat.

c. The parties should elect whether to continue to negotiate severance pay agreements in appropriate situations on a case-by-case basis, or to negotiate a fixed provision applicable to future situations.

d. The Organizations requesting license requirements on diesel-powered vessels should present a program that assures an available future supply of suitable licensed personnel. If and when this is done the proposals should be adopted.

e. The applicable representation certifications by the National Mediation Board should be included in the respective agreements in lieu of the demand for a scope rule.

f. Other demands by the Organizations should be withdrawn.

5. The demand for a provision that employes shall not be required to cross or work behind a picket line should be withdrawn.

6. The demand for equalization of captain's rates of pay with those paid in the Philadelphia harbor should be withdrawn.

Respectfully submitted.

DUDLEY E. WHITING, *Chairman.*
BENJAMIN C. ROBERTS, *Member.*
WILLIAM H. COBURN, *Member.*

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