Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10904 DATED JANUARY 12, 1961, 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 Lighter Captains' Union, Local 996, International Longshoremen Association.

(NMB Case A-6352)

WASHINGTON, D.C.
MARCH 6, 1961

(No. 134)

WASHINGTON, D.C., *March 6, 1961.*

THE PRESIDENT
The White House
Washington, D.C.

MR. PRESIDENT: The Emergency Board created on January 12, 1961, by Executive Order 10904, 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 employees represented by the Lighter Captains' Union, Local 996, I.L.A., a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

JAMES T. O'CONNELL, *Chairman.*
HAROLD M. GILDEN, *Member.*
DAVID R. DOUGLASS, *Member.*

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I. BACKGROUND OF THE DISPUTE

A. Parties Involved

The parties to this dispute are certain employees known as "Lighter Captains", represented by the Lighter Captains' Union, Local 996, International Longshoremen's Association and The New York Harbor Carriers' Conference Committee representing the seven railroads which operate in the New York Harbor area.

The Organization represents a group of employees who perform service for seven individual railroads within the Lighterage Limits of New York Harbor. There is a total of approximately 820 men shown on the combined seniority rosters. In the neighborhood of 650 men have regularly assigned jobs at this time. The number of such jobs depends in great part upon the ebb and flow of the carriers' volume of freight movement within New York Harbor.

The New York Harbor Carriers' Conference Committee represents the Baltimore and Ohio Railroad Company, The Central Railroad of New Jersey, The Erie-Lackawanna Railroad Company, The Lehigh Valley Railroad Company, The New York Central Railroad Company, The New York, New Haven and Hartford Railroad Company, and the Pennsylvania Railroad Company.

B. Creation of the Board

Directly following the expiration of the moratorium provisions of Article VII of the agreement dated July 22, 1957, the Organization, by letter dated October 31, 1959, served a notice 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 agreement. A typical such notice is shown as Appendix 1.

The Carriers in turn served a Section 6 notice upon the Organization by letter dated November 2, 1959. Such notice is shown as Appendix 2.

The Organization, following two untimely notices for proposed change in the vacation agreement, served a Section 6 notice covering proposed vacation agreement changes by letter dated May 26, 1960, shown as Appendix 3.

Initial conference was held April 29, 1960, between the parties (The New York Harbor Carriers' Conference Committee and the

negotiating committee of the Lighter Captains' Union). Twelve additional meetings were held up to and including September 29, 1960, at which time the Organization broke off negotiations and set October 21, 1960, as the date to strike.

The Carriers' Conference Committee invoked the services of the National Mediation Board on September 29, 1960. Thereafter, ten meetings were held during November under the auspices of the National Mediation Board. At the last meeting, November 29, the Organization again terminated conferences and threatened to strike to obtain their demands.

On December 6, 1960, the National Mediation Board proffered arbitration which the Carriers accepted and the Organization refused.

On January 12, 1961, the President of the United States issued an Executive Order creating Emergency Board No. 134 and thereafter under date of January 17, 1961, the National Mediation Board closed its file on Case No. A6352 for reason of the dispute being referred to the Emergency Board.

The Emergency Board consisted of James T. O'Connell, Washington, D.C., Chairman, Harold M. Gilden, Chicago, Illinois, and David R. Douglass of Oklahoma City, Oklahoma.

C. Summary of Proceedings of Emergency Board No. 134

Emergency Board No. 134 commenced hearings in the United States Courthouse, Foley Square, New York City, New York, on January 25, 1961. Such hearings were continued until February 3, 1961, when the Board was recessed until February 13, 1961, to enable the Board to study the exhibits which were submitted under date of February 3, 1961.

The Board reconvened on February 13, and held 5 days of hearings until 4:10 p.m., February 17, 1961, when the hearings were closed.

Following February 17, 1961, the Board met with the parties, both separately and jointly, in New York City and in Washington, D.C., to explore the possibility of achieving an agreement disposing of all the issues. It finally developed at the meeting with the parties February 28, 1961, certain issues could not be resolved by agreement.

In the course of the Board's proceedings, the parties twice entered into stipulations in which they agreed that the time limit within which the Board must make its report could be extended. The most recent of these stipulations requested an extension of time which would permit the Board to report not later than March 11, 1961. On February 21, 1961, the National Mediation Board advised the President of this request and recommended its approval. The President approved the request.

D. Description of the Operation

The Carriers employ non-self-propelled lighters in their handling of eastbound freight from the New Jersey side of the Hudson River to various piers on the New York side and occasionally to oceangoing vessels. The westbound freight is handled in the same manner from the New York side to the New Jersey side. There has been a steady, general decline in tonnage handled for the past several years.

The lighters used are of three general categories: open barges or scows, closed barges (including cement boats and refrigerated boats), and hoist boats. Lighter captains are not used on car floats (barges carrying railroad freight cars). The boats each have a small cabin which is occupied by a lighter captain when he is on duty.

Originally, lighter captains were assigned to specific boats and were required to live on the boats. Quarters aboard the boats were provided so that a captain and his family could make their home on the boat. However, some years ago the "family boat" operation ceased to exist and eventually the captains were not required to be aboard 24 hours per day. The present agreement gives regularly assigned captains an 8-hour day with a 5-day workweek.

The Carriers each have established home terminals for their harbor operations. These are the points where the railroad trackage terminates and where eastbound freight is placed upon lighters for movement to locations within New York Harbor. Manifests and bills are handled by clerical forces at the home terminals. Shipments are also checked by clerks. The lighter captains are not required to be present at the home terminal outside of their regularly assigned hours even when their boats are being loaded or unloaded.

The principal function of lighter captains is in connection with the loading or unloading of a lighter at points in the harbor other than at the home terminal. The captain's main duty is to check the unloading of his boat and to obtain proper receipt for the delivered freight. He likewise checks freight being loaded to determine if there is any shortage or damage. The actual work of unloading and loading is performed by Longshoremen.

The Organization, in its presentation of the case, pointed out a number of other duties which are performed by lighter captains. A few such duties are: placement of bumpers; splicing of lines; preparation of certain reports; supplying their cabin stoves with coal; handle doors, shoveling snow, checking lines and providing a degree of protection by keeping a watchful eye on the boat and on the cargo.

There are two electrically refrigerated barges upon which the lighter captains are required to regulate the temperature-setting devices.

Some boats are equipped with hoisting devices. In some instances captains operate the machinery thereon. For this service, certain differentials in base pay are allowed.

The Carriers produced exhibits designed to show that the restriction of Rule 28, in prohibiting the shifting of captains from one boat to another results in an unproductive and highly inefficient operation. It was the purpose of such evidence to indicate that a great portion of an assigned captain's time is dead time—waiting for his boat to be worked. The Carriers urged that Rule 28 be eliminated so that captains may be moved from a boat that is not being worked to one which is ready to be worked. An inspection trip through the harbor, made by the parties and the Board Members, tended to substantiate the Carriers' assertion that the present operation is not efficient.

The Carriers emphasized the fact that there are lighter captains on the boats between 5 p.m. and 8 a.m. *only* when a boat is being loaded or unloaded at a point other than the home terminal. During such time boats may be moved about the harbor without a lighter captain aboard. The Carriers assume the risk of pilferage and miscellaneous damage to cargo and equipment during the captains' off duty hours. The Carriers' position in a nutshell is that the only need for a lighter captain is when a boat is being loaded or unloaded at a point away from the home terminal.

The present agreement's Rule 28 provides that "Except as it may be necessary to provide relief for regularly assigned captains or to obtain services of a properly qualified employe, regularly assigned captains will not be shifted from one boat to another in the course of the day." Rule 17 provides that "Eight hours' service within nine (9) consecutive hours shall constitute a day's work."

The usual time for going to work is 8 a.m., but such time may be set up to 7 a.m. without penalty. Rule 22 has to do with overtime and provides for payment at the time and one-half rate for all time on duty after completion of the day's work (exclusive of time actually worked and exclusive of meal periods) with a maximum of 10 hours and 40 minutes. All time actually worked (when the boat is loaded or unloaded) after the completion of a day's work is paid for at the time and one-half rate.

Evolving from the days when a captain was assigned to a boat for 24 hours per day, the practice has developed to give preference to a captain to perform any overtime services in connection with the boat to which he is regularly assigned.

There is no extra board operation such as is employed in yard switching operations where the recognized operating crafts of the railroad are employed. Generally speaking, a railroad may continue a regu-

larly assigned yard crew on duty at the expiration of 8 hours for the performance of continuous work, paying for all time after 8 hours at the time and one-half rate. If it appears to a carrier that the amount of overtime will be of such duration that it would be less expensive to use an extra yard crew at the straight time rate, the carrier may exercise its managerial prerogative in the interest of an economical operation and call an extra crew for such service.

There is no "call rule" or payment providing for a guarantee of a certain amount of time to captains called out for service during their off duty hours. Such rules are fairly common in some agreements of the nonoperating crafts. Such rules, for example, may provide that an employee, who is required to perform work outside of the hours of his assignment, and not continuous with the hours of his assignment, shall be entitled to payment at the rate of time and one-half for all time on duty with a minimum of 2 hours and 40 minutes at the overtime rate.

Under the present practice, a regularly assigned captain is considered entitled to be on duty and under pay if his boat (to which he is assigned between 8 a.m. and 5 p.m.) is loaded or unloaded at any point in the harbor (other than at his home terminal) at any time outside of the hours of his assignment. Under the present practice, if the "Captain's Boat" is unloaded at 2 a.m., he is paid at the overtime rate from the previous 5 p.m., as per the formula contained in Rule 22, regardless of whether he was actually held on duty pending beginning and during the unloading. The Carrier has been paying the captain for all such time (1) when he has been required to remain after 5 p.m.; (2) when required to report during the night so as to be present during the loading or unloading of the boat; and (3) when neither held on duty nor called and used.

E. The Demands, in General

The Organization seeks a basic daily wage increase from $18.69 to $25. In addition, the Organization seeks all of the increase which the Non-ops obtained by virtue of incorporating the 17 cents per hour rise in the cost-of-living adjustment into their rates of pay in their August 19, 1960, agreement; plus an additional 20 cents per day, increased travel time payments, a cost-of-living escalator clause, and a penalty payment of 13 hours at time and one-half rate if ordered out before 8 a.m.

The Organization also seeks certain changes concerning time limit on claims and grievances, notification regarding suspension or abolishment of positions and the duration of the working agreement.

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The Organization seeks changes in the vacation agreement and an increased number of paid holidays.

Greater insurance benefits are sought by the Organization, equally covering all working employees, furloughed men, and retired employees along with full coverage for all dependents of the aforementioned categories.

The Organization seeks a number of miscellaneous changes such as pay for jury service, pay for sick leave and establishment of a graduated severance pay schedule.

The Carriers seek basic relief concerning the assignment rule. The Carriers want to be able to use a lighter captain on one or more boats during his day, without being penalized for such handling.

The Carriers also ask for changes concerning use of men for work performed outside of their assigned hours of duty. The Carriers desire to abolish certain practices regarding overtime work.

The Carriers' Section 6 notice also proposes a reduction in the number of paid holidays.

The Carriers' proposal is for a completely new agreement designed to reduce the expense of their harbor operations while maintaining the present wage rates.

F. History of Collective Bargaining

For many years, and until after the 1954 Holiday Agreement, the Organization joined with the Nonoperating Railway Labor Organizations in negotiations and received the national pattern as a result of such joinder.

In 1957 the Organization chose to go its individual way and negotiated directly with the Carriers. In the agreement signed July 22, 1957, the Organization received a wage increase in lieu of the cost-of-living escalator clause which the nonoperating employees received.

Following expiration of the moratorium October 31, 1959, the Organization again chose to negotiate apart from the nonoperating group.

II. FINDINGS

A. General Considerations

The Board finds no reason, after hearing testimony presented, to differ with the conclusions of Board No. 133, that marine employees of the carriers concerned are railroad workers and that "in considering such general matters as basic 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." This Board also feels that this

group, by tradition and by nature of occupation, is more closely related to the nonoperating employees than to the operating employees. It is a point of interest that the group of employees before this Board is apparently the last segment of railroad labor to reach a settlement.

B. Basic Economic Issues

The organization has argued that they should receive (in their basic wage rate) the equivalent of the 17 cents per hour received by the nonoperating employees of the railroads in the Agreement of August 19, 1960. In considering this demand, the historical facts should be clearly understood. In the 1956–57 negotiation, the nonoperating employees continued in existence a cost-of-living escalator clause. This provided them, from the date of their agreement until the effective date in the August 19, 1960, agreement with cost-of-living increases totaling 17 cents. In the last mentioned agreement the parties agreed to cancel the escalator clause and convert the total of adjustments under the escalator clause (17 cents) into basic rates of pay. On the other hand, the organization of lighter captains in their 1957 agreement canceled the escalator clause and agreed to wage adjustments totaling 5½ cents in lieu thereof. In essence, their current demand is that they should at least maintain the wage relationship they had with nonoperating employees prior to the wage effects which these particular provisions have had during the life of the current contracts. The Board has given much time and thought to this argument but concludes that such a finding on their part is not required in equity. The preexisting wage relationship between the two groups was destroyed by the voluntary agreements of the 1956–57 period. It cannot and should not be restored through recommendation by this Board although there is no bar to its being an item of negotiation between the parties in future collective bargaining.

2. Although the Organization requests the reestablishment of an escalator clause on wage increases they presented no substantial testimony in support of their demands for such an action. Current agreements affecting employees in the railroad industry do not contain such a clause and this Board does not favor reestablishment.

3. Although the Organization has requested an increase from the present daily wage to a wage of $25 per day and the Carriers have recommended no change in the current rate—no significant evidence was offered which would weigh sufficiently to prevail against the pattern established for the nonoperating employees of the railroads.

4. Although the Organization has requested that any rate increase be retroactive to November 1, 1959—it would seem undesirable to depart from the date of July 1, 1960—which is the effective date in

all related settlements. Also, there is a request that any agreement entered into extend for no longer than 1 year. There seems no reason to support such a request—as the requirements of the Railway Labor Act with regard to reopening and the serving of notices are clear and direct and have been generally effective. The Non-Ops' agreement of August 19, 1960, establishes November 1, 1961, as the date prior to which no notice of wage increases may be served—and it seems desirable to adopt the same date for the parties before this Board.

5. The present agreement provides for seven paid holidays, which is consistent with the railroad industry pattern. The Organization requests that this be increased to 12—but offered no convincing testimony in support. The Carriers asked a reduction to three, but gave no testimony in support. There seems no valid reason to depart from the seven provided for in the current agreement. Reasonable adjustments in eligibility were made in the Non-Ops' agreement and should be adopted here.

6. The Organization has requested "twelve days sick leave with pay." There are provisions in the Railroad Retirement and Railroad Unemployment Insurance Acts for sickness benefits—and it appears undesirable to introduce a conflicting concept of "sick leave with pay."

7. The Organization seeks to extend full coverage under the health and welfare plan to retired employees and their dependents. While the social desirability of such an extension might be argued, it has as yet acquired little prevalence in industrial and commercial activities outside the railroad industry—and does not exist in the railroad industry. It would not appear sound to institute such a program for their particular group.

8. The Organization seeks to extend full coverage of the health and welfare plan to men on furlough for the duration of the furlough. This matter has been considered for related groups of employees by previous boards—and negotiated in agreements now current. In general, extension for a 3-month period has been agreed upon and such a provision would be fair and reasonable in this instance.

9. The Organization has requested that dependents' coverage under the health and welfare plan be made identical with employees' coverage. Current agreements covering the nonoperating employees of the railroads now provide this with certain minor exceptions—and no testimony offered would negate the desirability of extending this benefit to this group.

Note: Since the new contract with the Travelers Insurance Company, No. GA-23000 became effective on March 1, 1961, during the

proceedings before the Board, the parties reached agreement concerning health and welfare benefits as follows:

> Recognizing the desirability of continuing uninterrupted the health and welfare benefits of the employees of the Carriers represented by the Union, the parties hereto mutually agree and stipulate as follows:
>
> "Effective March 1, 1961, hospital surgical and medical benefits shall be improved and group life insurance provided in the same manner and to the same extent as provided for by that certain agreement generally referred to as the Non-Op Agreement of August 19, 1960.
>
> "It is understood and agreed that the additional cost of the aforesaid improved benefits shall be considered a wage equivalent and a credit against future wage increases granted in the disposition of Case A–6352."

10. The request for pay for employees on jury duty was not supported with data which would warrant upsetting the accepted pattern of the railroad industry.

11. The Organization requests amendments in the vacation allowances and the requirements for eligibility for vacation. Detailed testimony was offered by the Carriers showing practice throughout industry. This identical testimony was furnished to Boards Nos. 130 and 133. It was carefully considered by this Board along with the excellent analysis of the same testimony by the two boards who had previously examined it. This current Board finds itself in complete agreement with the recommendations of Board No. 130, as carried out in the agreement of August 19, 1960, reached between the parties before that board pursuant to these recommendations.

C. Local Economic Issues

1. The Organization seeks adjustments in the differentials paid on scows or barges having mechanical equipment. Presently such differentials are paid in varying amounts on hoist-boats in several capacity categories and on mechanical refrigerator barges while none is paid on bulk-cement boats. No differential seems warranted on cement boats. Reasonable adjustment in existing differentials, in the neighborhood of 20%, could well be considered measured against the skill and experience required for the operation of hoist-boats. It should be clearly understood that such differential should be paid only for those days on which the mechanical equipment of the vessels is to be used, for its designed purpose.

2. The Organization seeks to change from 48 hours to 5 days the notice required on discontinuance or suspension of positions. The members of the Board could find no justification in the explanation offered as to what the additional time was needed for, to consider recommending an adjustment.

3. The Organization requests that the present 20 minutes now allowed for travel time in both directions be changed to 1 hour in both directions. In the opinion of the Board the testimony offered as

to the increase in the average daily earnings resulting from the present travel time allowance clearly indicates that is a fair arrangement which compares favorably with general practice in this and other industries.

4. An Organization request to "incorporate the twenty cents per day into the basic rate of pay" refers to a mathematical adjustment for time-keeping purposes, found necessary some time ago to provide equity where variable practices of providing pay for holidays were abandoned, through agreement, to provide for a uniform system. Any change for this part of the railroads' work-force would have far-reaching and confusing effects—and the Board feels that this request should be dropped.

D. Job Stability, Work Practices and Severance

These issues are the most difficult, the most complex and probably the most important in this particular controversy.

1. The Organization, in seeking to obtain the rule that, as they put it, "the starting time shall be 8 a.m.; all time before 8 a.m. shall be compensated at the rate of 13 hours at time and one-half if ordered out prior to 8 a.m."—has opened up for consideration a practice, which is universal although unsupported by written rule, where a captain is paid 10 hours 40 minutes at time and one-half (the equivalent of 16 hours straight time) if his boat is loaded or unloaded starting at any hour before the usual starting time. The Carriers testified strongly that this involved an excessive amount of pay for time not worked and recommended that only the hours actually worked should be paid for. The Board recognizes some merit on both sides and feels that the two parties should agree on a rule for these situations, essentially comparable to usual railroad practice, of providing pay for hours actually worked by the boat, with a minimum guaranty of 2 hours 40 minutes to the captain of the boat, to be paid whether he is physically in attendance or not. The rule should also provide the same compensation to captains called out for such work, when the work is scheduled but not performed.

2. The Carriers are seeking, against the strongest kind of opposition from the Organization, to get a rule which would permit them to use the work force of lighter captains in the most effective way, by allowing them in particular, to use a captain on more than one boat during a normal workday where such boats are actively loading or unloading or otherwise working and it can be worked out in a practical and feasible manner. It is quite clear that it is present practice, although no rule exists that a captain when assigned to a particular vessel "owns" that vessel and is to be with it all times when it is "working", that is—is in regular service, when it is in tow or awaiting a tow,

loading or unloading, is at a dock or location other than the home terminal—and that he is entitled to pay and certain arbitraries for at least an 8-hour workday, 5 days per week until the boat is taken out of service and he is given another assignment in accordance with existing rules. It is equally clear that for 16 hours, on practically every weekday and essentially for Saturdays and Sundays that the boat will be worked at the home terminal in exactly the same way—and often will be towed to outside locations and will be docked at an away-from-home location—and may be moved or otherwise worked with no lighter captain aboard. The Carriers testify that the general operation, as carried on today, is an inefficient and costly one, and particularly detrimental to the Carriers' economic well-being in view of the generally distressed condition of the industry, particularly in its New York Harbor operation. An actual inspection of the operation tends to confirm the general position and no testimony was offered which would refute it. The Carriers claim the right, and even the duty, to institute the most efficient management practices, as long as this does not result in unsuitable and improper work conditions or does not prejudice the well-being of the employees when on the job. They indicate their willingness to work out suitable arrangements, for severance, for retraining or even retention in individual cases—in order to cushion the impact on the existing work force. On the other hand, the Organization insists, and sought to develop through testimony, that regular boat-assignment as currently practiced, is essential to the discharge of the duties and responsibilities of their craft—and that the proposal of the Carriers is designed to bring about, and will bring about, the destruction of their craft and the eventual abolition of all their jobs. They further argue that nothing has changed in many years in the job requirements for lighter captains, that there has been no introduction of labor-saving machinery or equipment, no technological improvements, no species of automation and so nothing has happened which would support the abolition or curtailment of jobs.

It appears to the Board that the elements of this phase of the controversy are basic and fundamental to the railroad industry, namely whether operational conditions can be improved in the interests of efficiency and economy even though such changes cause immediate or eventual job eliminations and even when they come about without specific and identifiable technological improvements or the introduction of labor-saving devices. In view of the existence of public commissions currently deliberating on similar problems in this same industry, the Board recommends that the parties seek to have this matter considered by one of those bodies and that they defer final

negotiations on this issue until guidelines are established by one such body.

3. The demands of the Organization include a schedule of severance pay. Close questioning of their witnesses did not evoke a reasonable statement of the purposes of this demand or the uses to which the schedule would be put. The schedule far outreaches any known practice. However, since it would seem reasonable to consider severance arrangements as an essential adjunct to a plan which involved job discontinuance, this issue should be negotiated when the issue, discussed in D.2 above, is negotiated.

E. Miscellaneous

a. The Organization has stated that provisions in current rules and agreements which established time limits for the filing of claims and grievances infringe basic rights under law and equity and should be abolished. The Board feels that in the absence of specific citations in support of such a contention and in view of the practically universal use of such limitations to promote administrative efficiency and speed, no recommendation affecting such limits should be made.

III. RECOMMENDATIONS

A. Basic Economic Issues

1. No increase in wages to equalize 17 cents received by Non-Ops through incorporation of cost-of-living increases.

2. Abandonment of cost-of-living escalator clause.

3. Increase of 5 cents per hour in basic wage to conform to Non-Op pattern.

4. Effective date of wage changes to be July 1, 1960.

5. Retention of seven holidays with pay. Modification of eligibility to conform to Non-Op pattern.

6. Withdrawal of demand for sick leave pay.

7. Improvement and extension of health and welfare plans, including life insurance to conform to Non-Op contract. Withdrawal of demands beyond this. (Tentative agreement to this effect executed February 28, 1961)

8. Withdrawal of claim for pay for jury duty.

9. Improvement of vacation provisions to conform to Non-Op pattern.

B. Local Economic Issues

1. Increase in wage differentials for operating vessels using mechanical equipment.

2. No change in 48-hour notice on discontinuance or suspension of position.

3. No change in travel time allowances.

4. No change in practice on "20 cents per day" allowance.

C.

1. The parties should work out a rule covering work outside of regularly assigned daytime hours, which rule will provide pay at time and one-half for duration of actual work performance—with a minimum guaranty of 2 hours 40 minutes.

2. The parties should seek consideration by the Presidential Railroad Commission or the Marine adjunct thereto of their controversy on job assignment to vessels and the possibility of job elimination caused thereby and should defer negotiations on this issue pending the receipt of guidelines from such a public body.

3. The parties should defer negotiation on severance arrangements so that they can be considered in relation to the settlement by the parties of the issue outlined in C 2 above.

D. Miscellaneous

1. No change in existing provisions setting time limits during procedures on claims and grievances.

Respectfully submitted.

JAMES T. O'CONNELL, *Chairman.*
HAROLD M. GILDEN, *Member.*
DAVID R. DOUGLASS, *Member.*

WASHINGTON, D.C., *March 6, 1961*

APPENDIX I

LIGHTER CAPTAINS' UNION

LOCAL 996, I. L. A., IND.
120 Court Street, Brooklyn 1, N.Y.
October 31, 1959

Mr. C. L. WAGNER
Chief of Personnel, Lehigh Valley R.R.
143 Liberty St., New York

SECTION SIX NOTICE FOR A NEW AGREEMENT

DEAR SIR: This is a section six notice of changes we wish to make in our agreement. We shall be pleased to have a conference with you on these proposals, at such time we both find convenient.

No. 1.—Add to the basic rate of pay all of the money the Non-Ops get, and we did not get, through the operation of the escalator clause. This is to be in addition to the $25.00 per day we ask herein.

No. 2.—A basic daily wage of $25.00 per day.

No. 3.—All these proposals to be retroactive to November 1, 1959.

No. 4.—All boats having mechanical equipment for use in operation, or maintenance of the job, to be paid $2.00 per day over the new basic rate of pay. (Hoists, cement boats, mechanical refrigerators)

No. 5.—Twelve paid holidays.

No. 6.—Twelve days sick leave with pay.

No. 7.—Severance pay for those whose jobs are abolished,

1 year and less than 2 years=9 months pay
2 years and less than 3 years=18 months pay
3 years and less than 5 years=27 months pay
5 years and less than 10 years=54 months pay
10 years and less than 15 years=72 months pay
15 years and less than 20 years=100 months pay
20 years and over=120 months pay

No. 8.—Rule 14 c. Positions to be discontinued or suspended—now require 48 hours notice—we seek 5 days advance notice in place of the 48 hour notice.

No. 9.—Rule 27 Travel Time. *27 c.* Change to one hour travel time in both directions daily.

No. 10.—Travelers Insurance. Effective November 1, 1959, all retired employees and their dependents to be protected by the carrier under the health and welfare plan to the full coverage—the full extent of the coverage (the same as) working employees receive under the plan, and the carrier is to pay the full amount of the premiums for the duration of employees retirement.

No. 11.—Furloughed men to be given the same coverage as the working employees, the carrier to pay the premium in full.

No. 12.—Incorporate the twenty cents per day into the basic rate of pay.

No. 13.—The starting time shall be 8:00 a.m. All time before 8:00 a.m. shall be compensated at the rate of 13 hours at time and one-half if ordered out prior to 8:00 a.m.

No. 14.—This new agreement to be no longer than one year.

No. 15.—Travelers Insurance. Dependents coverage to be identical with employee's coverage, and in addition to wives and minor children, other dependents as allowed by the Bureau of Internal Revenue shall be covered.

No. 16.—Men will be paid for days on jury duty.

No. 17—Claims and Grievances.—Rule 45. Strike out "sixty days" wherever it is written and replace with:

The expiration of the statute of limitations, or

Before the expiration of the statute of limitations, or

Within the statute of limitations;

Right to appeal to the adjustment board shall run to the expiration of the statute of limitations.

In short, lawful rights to make claims, or take appeals, to process claims or prosecute claims, shall not be abridged—the only restrictions shall be the statute of limitations.

No. 5 under 5 page 23 the booklet

No. 3, "60 days prior to the filing thereof" is no good, strike it out. Replace with:

> Monetary claims shall be allowed retroactively as permitted by state or federal laws as the case may be, and the statute of limitations.

The nine months restrictions in No. 5, page 23 is no good, and is to be discarded and replaced by:

> Provided such action is instituted before the statute of limitations.

All the printed abridgements of rights under 45 are no good and contrary to law, of which please take note.

No. 18.—We request the escalator clause be put into this agreement.

This request is in addition to any other requests we have submitted to you. I assume that eventually a General Managers Committee will be appointed to negotiate.

Yours very truly,

(s) J. G. McLAUGHLIN,
President and Business Manager.

APPENDIX II

November 2, 1959

Mr. J. G. McLAUGHLIN, *President and Business Manager,*
Lighter Captains' Union, Local No. 996, I.L.A.
130 Danforth Avenue, Jersey City 5, N.J.

DEAR SIR: We hereby give notice, under our existing agreement and pursuant to the provisions of the Railway Labor Act, that effective January 1, 1960, we propose to revise such agreement in accordance with the proposal set forth in "Attachment A" appended hereto.

It is our desire that conferences on this proposal be held at the earliest practicable date, and we suggest that the initial conference be held at (time), on (date), at (place). In accordance with the pro-

visions of Section 6 of the Railway Labor Act, please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the initial conference are agreeable to you.

In the event that we are unable to reach an agreement upon the foregoing proposal at such conferences, we further propose that the matter be handled on a joint harbor basis. On the assumption that an agreement may not be reached in our conferences, this carrier has joined with other New York Harbor railroads serving a like notice upon their employees represented by Lighter Captains' Union, Local No. 996, International Longshoremen's Association, AFL–CIO, in designating Messrs. J. J. Gaherin (Chairman), C. E. Alexander, W. G. Chase, F. Diegtel, P. J. Ellis, J. C. Hilly and W. A. Smith, as members of a New York Harbor Carriers Labor Committee with authority to handle this proposal to a final settlement or other conclusion.

If an agreement is not reached in our conferences, we request that you join with representatives of the employees of other carriers who are receiving a like proposal in the creation of an Employees' Committee which will have authority, like the New York Harbor Carriers Labor Committee, to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matter of this proposal.

This proposal is in addition to any other proposals that we have submitted to you and which are now pending.

Very truly yours,

ATTACHMENT A

AGREEMENT BETWEEN THE BALTIMORE & OHIO RAILROAD CO., THE CENTRAL RAILROAD CO. OF NEW JERSEY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO., ERIE RAILROAD CO., THE LEHIGH VALLEY RAILROAD CO., THE NEW YORK CENTRAL RAILROAD CO., THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO., THE PENNSYLVANIA RAILROAD CO., AND EMPLOYES THEREOF IN NEW YORK HARBOR, REPRESENTED BY LIGHTER CAPTAINS' UNION, LOCAL NO. 996, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, EFFECTIVE JANUARY 1, 1960

SCOPE

These rules shall govern the hours of service, working conditions, and rates of pay of employes in scow, barge, and non-self-propelled lighter service; such employes presently being classed as "Captains", their primary work being to tally, check, and/or hoist cargo as prescribed by, and at times and locations designated by the employing carrier, and such other related work as prescribed by the employing carrier.

RULE 1—Employment

Ability, fitness, and seniority entitle employes to be used to perform work within the scope of this agreement. The employing carrier to be the sole

judge as to whether the Captain is qualified therefor. Present practice as to the manner of employes calling in or being notified on the individual carriers to be continued.

RULE 2—Seniority and Roster

(a) Seniority rights of employes as Scow, Barge, or non-self-propelled Lighter Captains will date from the time they last enter, or are transferred to such service.

Any Scow, Barge, or non-self-propelled Lighter Captain transferring to any other class of employment (except as covered by paragraph (c) hereof), will lose his seniority on Lighter Captain's roster.

(b) A seniority roster of all captains showing names and proper dating will be posted in agreed-upon places accessible to all employes interested. The roster will be revised in January of each year and will be open to protest in writing for a period of sixty (60) days from date of first posting under this agreement. A copy will be furnished employes' representatives on request.

The application of this rule shall not operate to change seniority dates established prior to the effective date of this agreement, except as to individual cases pending.

(c) Employes appointed to supervisory positions will retain and continue to accumulate seniority, and upon their return to the service covered by these rules, shall be used in accordance with Rule 1.

RULE 3—Furlough and Recall

When forces are reduced seniority shall govern subject to Rule 1. Employes furloughed in reduction of force, will retain all seniority, and when services are required, will be returned to service in seniority order, provided that, within ten (10) days from the date furloughed, they file their name and address with the proper official and report for duty within ten (10) days after notice by registered mail or certified mail to the last recorded address, return receipt requested, or by personal delivery evidenced by receipt, or be considered as having terminated his employment relationship with the carrier.

RULE 4—Leave of Absence

Employes may, upon request in writing, be granted necessary leave of absence, and when granted in writing at time of request by proper authority of the carrier, will retain their seniority; failing to return at the expiration of such leave of absence, they shall be considered as having terminated their employment relationship with the carrier.

No leave of absence shall exceed ninety days, subject to renewal in proper cases, except that this will not apply to employes representing other employes, covered by this agreement, under the Railway Labor Act as amended, or to employes absent on bonafide personal illness.

RULE 5—Rates of Pay

All employes covered by this agreement shall be paid on the minute basis at hourly rates as follows:

	Straight Time
Captains in scow, barge and non-self-propelled lighter service----	$2.30
Differential for hoisting performed at direction of the carrier---	.10

Captains required to work overtime as provided in Rule 6 shall be paid one and one-half times the straight time hourly rate.

RULE 6—Hours of Work

(a) Employes used to perform work set forth in the scope of this agreement shall be paid for the performance of such work from the time required to report, and when so reporting at the location for which called, on the minute basis at the straight time hourly rate shown in Rule 5 with the minimum of allowance of four (4) hours at the straight time rate for four (4) hours work or less.

(b) An employe required to work longer than four (4) hours shall be granted a meal period of not less than thirty (30) minutes, or more than one (1) hour without pay as designated by the employing carrier.

(d) Time worked in excess of forty (40) straight time hours in a calendar the meal period, work performed in excess of eight (8) hours shall be considered overtime and paid for at the overtime rate specified in Rule 5. Time held on duty in excess of eight (8) hours waiting for cargo to be loaded or unloaded, will be paid for at the straight time rate.

(d) Time worked in excess of forty (40) straight time hours in a calendar week, shall be paid for at the overtime rate specified in Rule 5, except that waiting time paid for at the straight time rate as provided for in the preceding paragraph, shall not be utilized in computing the forty (40) straight time hours.

RULE 7—Holidays

(a) Captains required to work on any of the following holidays will be paid on a minute basis at the overtime rate specified in Rule 5 with a minimum allowance of two (2) hours:

New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas

(b) When any of the above specified holidays occurs on a Sunday the day proclaimed by federal or state authority will be considered the holiday.

(c) A Captain with a current employe relationship and in active service and who has worked not less than 150 calendar days in the preceding calendar year, if not ordered to work on the following holidays, shall be allowed eight (8) hours pay at the straight time rate specified in Rule 5:

New Year's Day, Labor Day, Christmas

If the employing carrier requires a Captain to work on any of these holidays, he shall be paid at the straight time rate in accordance with Rule 6, in addition to the allowance provided in the first paragraph of this Rule 7(c), and the provisions of paragraph (a) of this Rule 7 will not be applicable.

RULE 8—Called and Not Used

Captains ordered to report for work, and who do report, and who through no fault of their own do not perform work, shall be paid on a minute basis from the time reporting to the time released with a minimum allowance of two (2) hours at the straight time rate specified in Rule 5.

RULE 9—Work Locations

The employing carrier shall have the right to use a Captain at more than one work location, and on more than one boat, during a work tour; pay therefor will be allowed in accordance with Rule 6, except that time travelling from one location to another if beyond the eighth hour of work, will be paid for at the straight time rate provided for in Rule 5.

RULE 10—Expenses

(a) All carfare in excess of thirty cents per day will be paid by the employing carrier to Captains living in the Metropolitan District, as such district is

presently defined and understood; also carfare or telephone expenses incurred while on company business.

(b) Captains ordered to report for work, and who do report as ordered, shall be allowed a travel allowance of seventy-five cents for travel actually performed to or from the following outlying locations:

East Chester Creek, West Chester Creek, Fresh Kill Creek to Tottenville, inclusive; Bayway to Perth Amboy, inclusive; Howland Hook, Port Newark, Yonkers, Hackensack River, East Kearney, College Point (east of 129th Street—Map No. 84, U.S. Engineering Office 5–15–42), Hunts Point (defined as a point south of and east of Lafayette Ave. and east of Oak Point Yard), Whitestone Landing, Claremont Terminal (including Caven Point),[1] Black Tom,[1] Bayonne[1]

RULE 11—Loss of Personal Effects

A Captain suffering loss of personal effects normally required to be carried on board for the performance of his duty, in consequence of fire aboard, or shipwreck of the unit upon which he is employed, shall upon presentation to the employer of an itemized statement of the loss sustained, be reimbursed promptly for such loss, in an amount not in excess of $115.00, as may be considered reasonable.

RULE 12—Investigation

Captains required to report for Investigation, and found blameless, shall, except when on duty and under pay, be allowed time held for Investigation at the straight time rate specified in Rule 5.

RULE 13—Attending Court

When attending court as a witness for the railroad and at its request, a Captain will be allowed for such service, the compensation he would have received had he remained available for work inclusive of any overtime actually worked, but exclusive of arbitraries, special, or other incidental allowance. Necessary expenses will be allowed. The fees and mileage accruing to the witness will be assigned to the railroad.

RULE 14—Discipline

(a) Employes will not be suspended or dismissed from the service without a fair and impartial hearing, neither will they be held off duty for minor offenses pending investigation or decision. Witnesses will be examined separately, but in the event of conflicting testimony, those whose evidence conflicts will be examined together.

(b) Time lost attending hearing will be applied against suspension, and notice of discipline will be worded accordingly. Time lost as a result of appeals from discipline, will not be applied against suspension.

(c) An employe required to attend hearing may be accompanied by a representative of his own choosing, who will be permitted to question the witnesses so far as the interests of the employe are concerned.

(d) Employes disciplined will be given notice thereof in writing at time that discipline is applied.

(e) An employe who considers that an injustice has been done him, and who has appealed his case in writing to his superior officer within ten (10) days, will be given a hearing at which he may be accompanied by a representative of his own choosing to assist him in presenting his case. Appeals may be handled

[1] The foregoing allowances not to apply to Captains of an employing carrier maintaining a terminal at these locations.

through the officers of the company, in their line of succession to the highest officer of the company designated by the Management to hear such appeal.

(f) If the charge against an employe is not sustained, it shall be stricken from his record, and payment made for wages lost, if any.

RULE 15—Claims or Grievances

(a) All claims or grievances must be presented in writing either by the employe involved, or on his behalf and in his name, by the representative properly authorized to act in his behalf, to the officer of the Carrier authorized to receive same, within (30) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier will, within thirty (30) days from the date same is filed, notify whomever filed the claim or grievance (the employe or his representative), in writing the reason for such disallowance. If not so notified, the claim or grievance shall be considered as having been denied.

(b) If a claim or grievance denied in accordance with the provisions of the foregoing paragraph (a) is to be appealed, such appeal must be in writing, and must be taken within sixty (60) days from the date on which the claim was initially denied. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer, shall be barred unless within three (3) months from the date of said officer's decision, proceedings are instituted by the employe or his duly authorized representative, before the appropriate division of the National Railroad Adjustment Board, or a system, group, or regional board of adjustment that has been agreed to as provided in Section 3 of the Railway Labor Act. It is understood, however, that the parties may, by agreement, in any particular case extend the three (3) months' period herein referred to.

(d) Any adjustment growing out of claims or grievances covered by this Rule, shall not exceed in amount the difference between the amount actually earned by the claimant, either in employment with the Carrier, or otherwise, and the amount he should have earned from the Carrier if he had been properly dealt with under this Agreement.

RULE 16—Vacations

(a) Effective with the calendar year 1960, an annual vacation of five days with pay will be granted to each employe covered by this agreement who renders compensated service on not less than one hundred sixty (160) days during the preceding calendar year.

(b) Effective with the calendar year 1960, an annual vacation of ten (10) consecutive work days with pay will be granted to each employe covered by this agreement, who renders compensated service on not less than *160* days during the preceding calendar year, and who has *five* or more years of continuous service, and who, during such period of continuous service, renders compensated

service on not less than 160 days (182 days in 1949 and 192 days in each of such years prior to 1949), in each of five (5) of such years not necessarily consecutive.

(c) Effective with the calendar year 1960, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this agreement, who renders compensated service on not less than *160* days during the preceding calendar year, and who has *fifteen* or more years of continuous service, and who, during such period of continuous service renders compensated service on not less than 160 days (182 days in 1949 and 192 days in each of such years prior to 1949) in each of fifteen (15), of such years not necessarily consecutive.

(d) Service rendered under agreements between a carrier, and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, shall be counted in computing days of compensated service, and years of continuous service for vacation qualifying purposes under this agreement.

(e) Calendar days in each current qualifying year on which an employe renders no service because of his own sickness, or because of his own injury on the job, shall be included in computing days of compensated service, and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than five (5) years of service; a maximum of twenty (20) such days for an employe with five (5) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

(f) In instances where employes have performed seven (7) months' service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employes in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier.

(g) Vacations may be taken from January 1 to December 31st, and due regard consistent with requirements of service shall be given to the desires and preferences of the employes in seniority order when fixing the dates for their vacations.

The local committee of the organization signatory hereto, and the representatives of the Carrier, will cooperate in assigning vacation dates.

(h) Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the Management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.

(i) Allowances for such days for which an employe is entitled to a vacation with pay, shall be 8 hours at the straight time rate specified in Rule 5.

(j) No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due.

Effective with the year 1960, it is understood that if an employe who performed the necessary qualifying service in the same year prior to the year of his

death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof, payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any.

(k) Vacations shall not be accumulated or carried over from one vacation year to another.

RULE 17—Effective Date

This agreement supersedes all existing agreements, shall be effective as of January 1, 1960, and shall be construed as a separate agreement by and on behalf of each carrier party hereto, and its employes represented by the labor organization party hereto; it shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

APPENDIX III

[The following is a vacation notice for improving the vacations sent to all the Carriers May 26, 1960 by the Lighter Captains Union.]

May 26, 1960.

DEAR SIR: This Union demands forthwith action concerning the following proposals, Vacation agreement:

1. After two years service two weeks vacation.
2. After ten years service three weeks vacation.
3. After twenty years service four weeks vacation.

The above proposals are expressive of our wishes in the fewest possible words. They have to be fitted into the vacation agreement with changes of words, letters etc.

With respect to ten days—thirty days—conference—you may delegate an official of the N .Y. Harbor Carriers Conference, 342 Madison Ave., New York City where you are represented. That could be done Friday June 3, 10:30 where we meet with your representative in negotiations. In the circumstances that would be forthwith and within ten days.

Yours very truly,

J. G. MCLAUGHLIN,
President-Business Manager.

U.S. GOVERNMENT PRINTING OFFICE: 1961