Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10963 DATED SEPTEMBER 1, 1961, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate and Report on Disputes Between the Pullman Co. and the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. and Certain of Their Employees Represented by the Order of Railway Conductors and Brakemen

(NMB CASES A–6380, A–6400)

WASHINGTON, D.C.
DECEMBER 11, 1961

(Emergency Board No. 139)

LETTER OF TRANSMITTAL

WASHINGTON, D.C.,
December 11, 1961.

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

Mr. PRESIDENT: The Emergency Board created by you on September 1, 1961, by Executive Order 10963, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate disputes between the Pullman Co. and the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. on the one hand, and certain of their employees represented by the Order of Railway Conductors and Brakemen, a labor organization, on the other hand, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

DAVID H. STOWE, *Chairman.*
BYRON R. ABERNETHY, *Member.*
H. RAYMOND CLUSTER, *Member.*

REPORT AND RECOMMENDATIONS OF EMERGENCY BOARD

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REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD

Appointed by Executive Order No. 10963, dated September 1, 1961, pursuant to Section 10 of the Railway Labor Act, as amended

I. INTRODUCTION

On September 1, 1961, the President of the United States, by Executive order and pursuant to section 10 of the Railway Labor Act, as amended, created this Emergency Board No. 139 to investigate and report on two separate but related unadjusted disputes which threatened substantially to interrupt interstate commerce. The first dispute involves the Pullman Co. and certain of its employees, represented by the Order of Railway Conductors and Brakemen; the second dispute involves the Chicago Milwaukee, St. Paul and Pacific Railroad Co. and certain of its employees, represented by the Order of Railway Conductors and Brakemen.

On September 7, 1961, the President appointed as members of the Board: David H. Stowe of Bethesda, Md., chairman; Byron R. Abernethy of Lubbock, Tex., member; and H. Raymond Cluster of Baltimore, Md., member.

The Board convened in Chicago, Ill., on September 11, 1961, and between that date and October 18, 1961, held 18 days of hearings. The record of the proceedings consists of over 3,600 pages of testimony, together with 59 numbered exhibits, and a large number of miscellaneous documents and reports. Because of the extended hearings and the size of the record, the Board found it necessary to request extension of the legal time limit within which it was required to make its report to the President. The parties agreed to and the President approved requested extensions to December 15, 1961.

The disputes now before the Board involving both the Pullman Co. and the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. on the one hand, and the Order of Railway Conductors and Brakemen on the other, arose simultaneously with both companies, and involves essentially the same issues, except that fewer matters are at issue in the Milwaukee dispute than are involved in the dispute with the Pullman Co.

The disputes result from a series of notices served pursuant to the provisions of section 6 of the Railway Labor Act. The Order of

Railway Conductors and Brakemen served identical notices to both companies on February 27, 1959, of its desire to change the provisions of their respective agreements with regard to rates of pay only, but further advised that should the companies serve counterproposals on the organization, it reserved the right to amend its proposal, to propose new rules, or to eliminate or change any of the rules in the current agreement.

The Pullman Co., under date of March 10, 1959, and the Milwaukee Road, under date of March 11, 1959, responded, acknowledging receipt of the organization's notice. The Pullman Co. suggested a conference on March 30, 1959; the Milwaukee suggested a conference on March 31. Both companies also advised the organization of their intent to submit counterproposals. The Pullman Co. on March 30, and the Milwaukee Railroad on March 31, served their counterproposals on the organization. Both employers made counterproposals on the wage issue. The Pullman Co. also proposed on its own behalf eight rules changes. The Milwaukee Railroad proposed changes in three rules.

The organization, on March 24, 1959, gave additional notice to both companies of its desire to make rule changes. It proposed changes in 18 rules and the addition of 1 new rule to the agreement with the Pullman Co., and changes in 12 rules in the agreement with the Milwaukee Railroad Co. On November 7, 1959, the organization gave both companies further notice of its desire to add new rules to the agreements. It proposed adding a rule establishing a job stabilization plan to both agreements, and proposed the addition of seven more new rules to the Pullman Company Agreement.

With the assistance of the National Mediation Board, a mediation agreement was executed between the organization and the Pullman Co. on December 5, 1960, which resolved the wage issue raised by the organization's first section 6 notice, but left under the jurisdiction of the National Mediation Board, docketed as Case No. A–6380, the various rules changes proposed by both parties. A similar memorandum of agreement was executed by the organization and the Milwaukee Railroad on December 5, 1960, which resolved the wage issue between these parties on essentially the same terms as the Pullman Co. settlement, and which also left the proposed rules changes under the jurisdiction of the National Mediation Board, docketed as Case No. A–6400.

On December 5, 1960, the Pullman Co. added as a further counterproposal on its part, a proposed rule calling for mandatory retirement of Pullman conductors at age 65.

The case before this Emergency Board then consists of those various counterproposals made by both parties during 1959 and 1960, which

still have not been resolved. During the course of the hearings, the parties reached agreement on nine issues in the Pullman Co. dispute. After settlement of those issues, the Board was left with the responsibility to investigate and make recommendations on 25 issues in the Pullman Co. dispute, and 13 issues in the Milwaukee Railroad Co. dispute.

The organization developed the presentation of its case around the rules, present and proposed, which were involved. In some cases, more than one subject matter issue was involved in a single rule. The companies organized the presentation of their cases around specific subject matter issues raised by the proposals of the parties. It appears a more workable device for discussing the issues raised by the several proposals to adopt the companies' plan, and to discuss the matters before the Board in terms of the specific issues raised.

Although the matters in dispute are generally the same in both cases, the organization was unwilling on this occasion to enter into a standby agreement whereby the Pullman settlement of common issues would be adopted by the Milwaukee Railroad Co., which had been the practice of these parties on prior occasions. Accordingly, the Board must make recommendations in both cases.

Also, although the issues in the Milwaukee case all have their counterparts in the Pullman case, it seems desirable to treat them in separate sections of this report, and to make separate recommendations as to each issue. However, in order to avoid unnecessary duplication, where discussions and findings with respect to issues in the Pullman Co. case are applicable to corresponding issues in the Milwaukee case, they are simply referred to in connection with the Board's Milwaukee recommendations.

II. THE PULLMAN CO. CASE

Tabulated below are the issues which the Board was required to investigate, and upon which it must report in the Pullman case.[1] They are so arranged here as to indicate the identification number given the issue by the company, the number of the rule or memorandum of the current agreement primarily involved unless it is a proposed new rule, the subject matter at issue, and the party making the proposal.

[1] A comparable tabulation of the issues in the Milwaukee case appears in section III, p. 52 of this report.

ISSUES IN THE PULLMAN COMPANY DISPUTE

Company issue	Rule involved	The issue	Proposed by—
1	Memorandum.	Elimination of "frozen line" memorandum of understanding.	Company.
2	64	Number of cars requiring assignment of Conductor.	Company and organization.
3	4	Basic month	Organization.
4	13	Elimination of deduction for sleep periods on trips of 12 hours or more but less than 16.	Do.
5	New rule	Second conductor to be operated on more than eight cars in service.	Do.
6	39	Guaranteed basic monthly pay for extra conductors.	Do.
7	39	Guarantee of ten days' pay for conductors recalled from furlough.	Do.
8	7	Pay for all deadhead hours	Do.
9	10	Minimum day payment for extra conductors performing station duty.	Do.
10	64	Elimination of requirement to assign conductor to layover cars.	Company.
11	Memorandum.	Compensation for wage loss	Do.
12	25	Definition of Pullman conductors' work	Organization.
13	64	Definition of a Pullman car	Do.
14	49	Presentation of witnesses at disciplinary hearings.	Do.
15	49	Withholding name and address of passenger when requested to do so.	Do.
16	Memorandum.	Payment for deadhead service not performed.	Do.
17	New rule	Accounting for company funds	Do.
18	do	Coach solicitation	Do.
19	do	Meal arrangements for conductors assigned to special or troop trains.	Do.
20	do	Lodging arrangements for conductors assigned to special or troop trains.	Do.
21	do	Conductors' authorization of porters' loss of rest.	Do.
22	do	Conductors' authority to vacate coach passengers.	Do.
23	do	Instructions to conductors by railroad officials.	Do.
24	do	Job stabilization and severance allowance.	Do.
25	do	Retirement of conductors at age 65	Company.

The mere listing of these issues emphasizes not only the extent of the problems referred to this Board, but the failure of the parties themselves to resolve through negotiations the less pressing and critical issues between them. Many of the issues now presented by both parties have been submitted to and rejected by one or more prior Emergency Boards. They have been revived and presented again to this Board in spite of the fact that pertinent circumstances and conditions have not changed in any significant degree since they were last rejected. Some of these proposals, furthermore, could have ramifications throughout a multitude of interrelated rules, the full effect of which could be comprehended only by the parties themselves, who daily live with and administer the agreement.

In 1950, Emergency Board No. 89, commonly referred to as the second Tipton Board, found in the multitude of issues presented to it by these same parties, and in the nature of those issues, evidence of an unhealthy aspect of labor relations between the company and the organization. The case presented to this Board, and the inability of the parties to negotiate a settlement of more of these issues, indicates no improvement in labor relations between the Pullman Co. and the organization. On the contrary, there is evidence of a continuing deterioration of relations between the parties.

This growing deterioration of relations may be explained in part by a growing sense of insecurity on the part of both. The company, like many railroads, continues to be faced by a serious and continuing decline in business. This, in turn, has meant a serious and progressive decline in employment opportunities for conductors. The parties appear to have responded to their mutual problem with an atmosphere of growing mutual mistrust rather than with a sincere effort to seek a constructive solution to their common difficulties.

This decline in business and growing employment insecurity for conductors serves to point up not only the concerns of the parties, but also major considerations which must influence the Board in arriving at its recommendations.

Due to its financial position, the company is understandably concerned about costs, and is inclined to react negatively to any proposed rule change which will increase conductor payroll costs. In turn, it has proposed rules changes, most of which are designed to effect reductions in employee costs. It has tended to persist in this attitude without serious regard for the displacement of conductors who have given many years of service to the Pullman Co. and are now at an age where it is difficult to obtain other employment.

The conductors, on the other hand, are understandably seriously concerned with the problem of employment security. They have

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proposed many rules changes designed to create more regularly assigned jobs for conductors, and have resisted all company proposals which would reduce costs at the expense of jobs for conductors. The organization has maintained this position without serious regard for the financial position of the company, or the effect of its proposals on the labor costs which the company must bear.

The relationship of the Pullman Co. to the railroads is still another factor which must enter into the Board's considerations.

Prior to 1947, sleeping cars on most railroads in the United States were owned and operated by the Pullman Co., a wholly owned subsidiary of Pullman, Inc. In 1940, the Department of Justice brought an antitrust suit against Pullman, Inc., for monopolistic practices in restraint of trade. As a result, the court directed the separation of the manufacturing of sleeping cars from the operation of sleeping cars. It was left to Pullman, Inc., to decide which of these businesses it wished to continue. It chose to dispose of the business of operating sleeping cars.

Four buying groups were interested in purchasing the Pullman Co. The court, after due consideration, approved the purchase of the company by a group of 53 railroads, and since 1947, Pullman Co. stock has been wholly owned by these railroads.

Throughout the consideration of the antitrust case, the court made it quite clear that it intended that the monopolistic situation which led to the original suit should not arise again. The court required that all railroads must have an equal opportunity of utilizing sleeping cars on their lines, and, if they desired to do so, also to operate their own sleeping cars.

The operating contract between the Pullman Co. and each railroad for which Pullman provides sleeping car service is known as the uniform service contract. Under this contract, Pullman undertakes to provide sleeping-car service for contracting railroads as required, and to maintain a pool of sleeping cars for this purpose. At the present time, Pullman operates 2,364 sleeping cars, of which 428 are owned by the Pullman Co. and 1,936 are owned by the various railroads but are leased to Pullman for operation.

The uniform service contract provides for the accounting of all revenues and all operating expenses on a line basis with a guarantee of 3 percent return on the depreciated value of Pullman-owned cars. In general, if the sleeping-car operations on a particular line produce a profit, the profit is shared with the railroad on a prescribed basis. If the revenue received by Pullman from these lines is not sufficient to cover the expenses, the railroad is obligated to pay Pullman the amount of the deficit. Thus the burden of any losses sustained in the

operation of sleeping cars on any line falls on the railroad company. When the Pullman Co. shows an overall profit for any particular year, the railroads which own it naturally benefit thereby.

Finally, the Board must keep in mind the fact that many rules and practices which may not at first appear justified to those not familiar with the railroad industry, have become firmly entrenched in that industry and in the Pullman Co. through years of collective bargaining. Important rights of the parties in relation to one another have been defined in these rules and practices. They should not be considered, modified, or abolished in isolation; neither should they be changed in the absence of clear justification and a showing that other rights of the parties will not be distorted.

Viewing this case as a whole, two problems seem to emerge as matters of major concern: the basic month and employment stabilization. The report treats each of these items under its own major heading. The first is treated under the heading "Basic Month"; the second, under the heading "Job Stabilization."

The rest of the issues presented appear to involve matters of less pressing concern. They also involve considerable variety in subject matter, but nevertheless tend to fall into related groups. For convenience, the Report treats such related groups of issues together under the following major headings: "Working Conditions and Other Benefits"; "Conductors' Work"; "Grievances and Claims"; and "Miscellaneous Demands."

A. Basic Month

(Issue No. 3; Rule 4)

Rule 4 of the current agreement provides that 205 hours' work credited according to the applicable rules of the agreement shall constitute a basic month's service; that conductors performing 205 or more hours of credited service of any type shall be paid a basic month's wage for 205 hours, plus compensation at the appropriate hourly rate for each hour in excess of 205; and that regular assignments shall not be scheduled to produce credited hours in excess of an average of 215 for a 30-day month.

The basic pay for conductors who are on regular assignment, or who perform 205 or more hours of credited service per month, is a monthly salary, which varies according to the conductors' length of service. A derived or equivalent hourly rate for conductors is also established, however, and is used for some purposes, such as payment for overtime hours, for extra road service, and for a variety of nonroad services. This hourly rate is arrived at by dividing the established monthly rate of pay by the number of hours in the basic month. For

still other purposes, a daily equivalent of the basic hours per month is established. Under the 205-hour basic month, the daily equivalent is 6:50 hours (6 hours and 50 minutes).

Under the terms of rule 5, conductors on regular assignments of less than 205 hours' work per month receive their established monthly wage, without deduction. Other rules of the agreement establish the appropriate rate of pay for hours worked in excess of 205. They provide that hours worked in excess of 205, but not in excess of 215 shall be paid at pro rata (straight time) hourly rates, and that hours worked in excess of 215 shall be paid at punitive rates (one and one-half times the straight-time hourly rate).

The organization has proposed that rule 4 be changed to provide that 180 hours, instead of 205 hours, shall constitute a basic month's service without any reduction in the basic month's pay. It also proposes that all hours of credited service in excess of 180 hours during a month be compensated for at the appropriate hourly rate calculated on the basis of a 180-hour basic month; and that regular assignments shall not be scheduled to produce credited hours in excess of an average of 190 for a 30-day month. It further proposes that all other rules in the agreement be amended to conform to the 180-hour basic month.

The organization's purpose in making this proposal is to establish a workweek for conductors more nearly comparable to the 40-hour workweek now prevalent throughout most of the railroad industry, and thereby also to provide additional jobs for conductors who are now on furlough. The company opposes the proposal.

The 40-hour workweek has long been accepted and is firmly established throughout American industry, including the railroads. In 1919, the established basic month for all railroad employees was 240 hours. Through collective bargaining—some of it on recommendation of prior emergency boards—the monthy hours have gradually been reduced until today, and for some time past, 95 percent of the employees in the railroad industry work not more than a 40-hour week or its equivalent. Of the 5 percent of all railroad employees who still have not attained the equivalent of the 40-hour workweek or less, Pullman conductors represent only a small part. Others comprising the 5 percent are the Pullman porters and dining car employees.

Both the company and the organization agree that a basic month of 170 to 174 hours would be the mathematical equivalent of the 40-hour week. The requested basic month of 180 hours, therefore, would still be more than the mathematical equivalent of a 40-hour week. The company estimated that with a basic month of 180 hours, the average schedule work hours would be approximately 177, which also

is more than the mathematical equivalent of the 40-hour week. Thus, if it can be assumed that Pullman conductors are entitled to a workweek similar to that of the other 95 percent of the employees in the industry, the organization's request appears to be reasonable and justified.

The question which necessarily arises, then, is whether conductors are entitled to be treated in the same manner as the rest of the employees in the industry in the matter of a standard workweek. The company contends that they are not; that their work cannot be scheduled on a 40-hour basis; that their work is not burdensome; that most of them already have more free time at home than regular 40-hour-a-week employees; and that a pattern of 205 hours has become established and recognized as the appropriate basic monthly equivalent of the 40-hour week for Pullman conductors, porters and dining car employees.

It certainly is true that conductors' work is not subject to organization on an 8-hour day, 5-day week basis. But neither was it subject to organization on an 8-hour day, 6-day week basis when the Tipton Board of 1945, commonly referred to as the first Tipton Board, recommended and the parties negotiated, a reduction in the hours of the basic month designed to give conductors the approximate equivalent of the 48-hour week in average scheduled hours. The nature of conductors' work was no deterrent to an attempt to treat conductors like other railroad employees in going to the 48-hour week or its equivalent at that time. In fact, the first Tipton Board rejected the proposed 210-hour month on the ground that conductors must not be permitted to get out of line with, but must be treated like, the rest of the employees in the railroad industry. As the Board put it, the 210-hour month "would make the pullman conductors' standard week somewhat below 48 hours, the accepted standard in the railroad business."

It also may be true that conductors' work is not unduly burdensome. But there is great variation in the onerousness of work, and neither in industry generally, nor in the railroad industry, has the standard workweek varied according to the burdensomeness of the work involved.

As for the amount of free time enjoyed by conductors, many do have longer periods of consecutive free days, and a total of more days at home than do most 40-hour-a-week employees, but they have this only because of the long consecutive hours they work while on duty—up to 20 hours or more out of each 24, for 2 or 3 and sometimes more consecutive days in some cases. While they may have more consecutive days at home in a month, they frequently also have longer periods of

consecutive days and nights away from home, and must provide meals and lodging away from home at their own expense. Thus, while conductors may enjoy some advantages over the normal 40-hour-a-week industrial or railroad worker, there are also disadvantages connected with their work. And the inescapable fact remains that these employees do work considerably more hours per month than 95 percent of all railroad employees.

The Board therefore sees no valid reason, in the nature of conductors' work, for maintaining that these employees should be treated differently than 95 percent of the employees in the industry in the matter of the standard workweek.

Neither can this Board agree that a pattern has become established by prior Board actions which recognizes the 205-hour basic month as the appropriate equivalent of the 40-hour week for conductors, porters, and dining car employees. The first Tipton Board, for example, recommended a 225-hour basic month on the assumption that the resulting average scheduled work hours would be significantly below 225 hours, and still "would merely place the pullman conductors in line with the railroad industry," which it found to be on the 48-hour week. The Leiserson Board, Emergency Board No. 66 (1948), which recommended the 40-hour week for all nonoperating railroad employees, at no point presumed to establish the 205-hour month as the appropriate equivalent of the 40-hour week for dining car employees. Rather, it recommended a reduction in their basic month approximately the equivalent of the reduction in workweek recommended for the rest of the nonoperating employees. That is, the reductions were considered to be approximate equivalents. There was no attempt to say that the results after the reductions were the appropriate equivalents of one another. Moreover, it made this reduction not in the hope of actually reducing the hours worked, but as a means of giving the dining car employees a wage increase as "some compensation for their long hours." It did so on the finding that the hours of these employees could not be shortened without curtailing the service itself.

The Cole Board, Emergency Board No. 73, in 1949, recommended a reduction in the basic month for express messengers from 190 to 170 hours in order to give them the equivalent of the 40-hour workweek. When the McDonough Emergency Board (No. 81) recommended the 205-hour basic month in 1950 for dining car stewards, it was recommending only approval of the stewards' request. The stewards in turn were merely requesting a basic month equivalent to that of the cooks, chefs, and waiters whom they supervised. There was no attempt at this point to hold that the 205-hour month was the appropriate equivalent of the 40-hour week for these employees.

Emergency Board No. 116, the Cayton Board, in 1957, recommended a basic month of 205 hours for dining car stewards as part of a package settlement which included wage increases and holidays, among other things.

Only Arbitration Board No. 193, in 1954, seemed to find a 205-hour basic month pattern in the fact that conductors, porters, and dining car employees had eventually all gotten to 205 hours as a basic month. But even Arbitration Board No. 193, with its repeated reference to changes "for the time being" and "at this time" seemed to suggest that the decision need not be taken as a final and definitive establishment of the 205-hour basic month as the appropriate Pullman conductor equivalent of the 40-hour workweek elsewhere in the railroad industry. On the contrary, it seemed to imply future progress toward the 40-hour week equivalent.

Finally, evidence before the Board establishes that because of flexibility in scheduling, conductors have not received the full benefit of previous reductions in the hours of the basic month. Of the 133 runs in operation and the 528⅔ conductors working, as of July 1, 1961, 50 runs and 220 conductors were still being scheduled above 205 hours per month. Because of actually scheduling overtime or scheduling so close to the 205 hours, 387 conductors on 81 runs were actually working above 205 hours per month, or the equivalent of a 48-hour week. A majority of the men on nearly half the runs were working in excess of 210 hours per month. Some further reduction in the basic month therefore seems called for in order to assure conductors of the intended benefits of even the 205-hour month.

The cost of the organization's proposal remains to be considered. Admittedly, granting this request of the organization will increase conductor wage costs. The company estimates that the 180-hour month will require the addition of 65 regular conductors and in terms of salaries for these conductors and higher rates for extra and overtime work, will increase its total conductor costs $561,000 per year. These added costs unfortunately must be assumed at a time when the company's business is and has been declining. But the Board cannot ignore the fact that the Pullman Co. is in practical effect a financial and operating facility of the railroads which own it or use its services. These added costs, divided among the roads using Pullman services, will not, in our opinion, place an unreasonable burden upon them.

There is also the company's contention that the really serious cost aspect of this proposal lies in the fact that granting the conductors a basic month of 180 hours will be an invitation to the Pullman porters to make a similar demand. We cannot know what the porters or other

employees of this or other companies may have in mind. Neither are we in a position to determine whether all of the conditions or circumstances surrounding the employment of other crafts are such as to warrant the same decision in some other case which might arise in the future. We do note, however, that historically the basic month of Pullman porters has not been adjusted simultaneously with that of conductors.

The basic month for porters, for example, remained at 240 hours for approximately 4 years after that for conductors had been reduced to 225. Then the porters and the Pullman Co. voluntarily negotiated a decrease in the basic month for porters to 205 hours, while the basic month for conductors remained at 225 for at least another year before being reduced to 210 hours. It was not reduced further until 1954, when an arbitration board awarded conductors the 205-hour basic month, approximately 5 years after the company agreed to that basic month for porters.

In any event, this Board cannot judge the merits of the dispute before it on the basis of potential demands of another craft, about which it can only conjecture. It has before it evidence upon which to judge the merits of the conductors' request. That evidence amply supports the request, and provides no valid reason for longer denying this small segment of the railroad industry the reduction in monthly hours necessary to establish working hours comparable to the standard workweek and monthly hours now prevailing for 95 percent of all railroad employees.

This Board therefore concludes that the organization's request for a basic month of 180 hours is a reasonable and justified proposal.

The Board recommends that the organization's proposal that the basic month be reduced from 205 hours to 180 hours, and that such other changes be made as are necessary to make other rules in the agreement conform thereto, be adopted.

B. Job Stabilization

The business of the Pullman Co. has decreased drastically during the last 15 years. The number of sleeping cars owned by the company decreased from 1,510 in 1949 to 428 as of September 1, 1961. The number of Pullman car departures declined from over 2,700 per day in 1952 to 783 in July 1961. The number of revenue passengers dropped from nearly 26 million in 1946 to less than 4.5 million in 1960. Gross revenues, despite substantial fare increases, declined from approximately $132.5 million in 1946 to some 56 million in 1960.

The effect of this decline upon the employees of the company can be seen by comparing employment figures in 1946 and in 1960. An

average of 36,982 employees were employed in 1946; an average of 7,320 were employed in 1960. The average number of Pullman conductors employed dropped from 2,683 in 1946 to 727 in 1960. As of June 30, 1961, there were 702 active Pullman conductors, of whom 492 were required to fill regular assignments and 210 were on the extra board. In addition, as of that date, there were 438 furloughed conductors.

No one who testified before the Board on behalf of either party expressed any hope that there would be an upturn in Pullman Co. business in the future. However, there was some difference of opinion as to the continuation of the downward trend. It was the company's feeling that a segment of the traveling public still prefers rail travel to air travel and still desires sleeping car accommodations; and that there will continue to be sleeping car transportation for the foreseeable future. However, whether the Pullman Co. will retain its present proportion of this business, or whether some of it will be taken over by the railroads is another question, and the answer depends, in the company's view, on whether Pullman can keep its costs, including conductor costs, at a competitive level.

The organization, on the other hand, feels that the company is carrying out a planned policy of liquidation designed to put it out of business. The organization is also convinced that even if the company remains in business, it intends to change the nature of its services to the railroads from providing sleeping cars complete with sleeping car personnel—conductors and porters—to providing only the bare sleeping cars, leaving the carriers to provide their own personnel. This, of course, would result in the disappearance of the work of the Pullman conductors.

It may be that the organization has cause to believe that the company is bent upon its own liquidation, and also that it intends to eliminate conductors by means of leasing "bare" cars to the railroads, but we are not able to make such findings on the evidence in the record before us. However, it is clear from the record that Pullman conductors' jobs may be seriously threatened in three ways: (1) Continuing decline in public demand for sleeping car services; (2) mergers, consolidations of railroads, and abandonment of railroad lines; and (3) the taking over of sleeping car service from Pullman by railroads.

In order to protect its members from this threatened loss of employment, the organization has proposed a new rule, which is discussed below as issue No. 24.

The company has proposed a new rule calling for the mandatory retirement of Pullman conductors. This rule, which is discussed as

issue No. 25, is not directly related to the organization's proposed rule dealing with loss of jobs by conductors, but it is concerned with the general problem of conductor employment. Because both of these proposals are designed to affect job stability, we have included them in this section of the report.

1. Job Stabilization and Severance Allowance

(Issue No. 24; New Rule)

There is no rule in the current agreement covering loss of jobs by conductors. The organization has proposed a new rule which provides in effect that no conductor shall be furloughed, dismissed, or placed in a worse condition with respect to his rate of pay, rules or working conditions, because of the termination, cancellation or modification of any contract between the Pullman Co. and any railroad, or because of the merger, consolidation, transfer, or abandonment of any railroad. It provides that if the number of positions are reduced as a result of any of the actions specified above, the company is obligated to establish a like number of positions on the remaining operations. The proposed rule further provides that if for any reason the position of a Pullman conductor is discontinued and no other conductor position is available, then the displaced conductor shall be entitle to the benefits of the Washington Job Protection Agreement of 1936.

In essence, there are two principal features of this proposal: A job freeze, and a severance pay plan.

As for the job freeze, the proposal as interpreted by the organization would require that so long as any Pullman conductor work remains in a particular seniority district, the number of Pullman conductor positions in that district would not be reduced, but in the event of a discontinuance of any conductor assignments, the remaining work would be divided among all the existing positions; and each conductor would continue to receive his full basic month's pay regardless of the amount of assigned work.

This phase of the proposed rule would have the effect of freezing conductors' jobs, whether or not there was work which warranted their existence. This is illustrated by the example used during the hearings, that if there were an 11-man run and a 3-man run in a given district and the 11-man run were either terminated or taken over by a carrier, the remaining Pullman conductor work in the district which was previously done by 3 men would, under the proposed rule, be divided among the total of 14 conductors, at full monthly pay.

This requirement that conductors be continued in employment, regardless of how small an amount of work there may be for them to

do, is extreme and does not represent a constructive approach to the problem. It will not preserve work for conductors, but is more likely to destroy the company and all conductor work along with it. The Board must reject this part of the proposal for lack of merit.

The severence pay feature of the organization's proposal provides that conductors whose jobs are terminated for any of the reasons mentioned under the job freeze proposal, or for any other reason such as loss of business, and for whom no other conductor work is available under the job freeze plan, shall receive benefits similar to those provided under the Washington Job Protection Agreement of 1936 for employees who lose their positions as the result of the merger or consolidation of railroads. The idea of some form of severance benfits for employees in the railroad industry is not new. Employees adversely affected by the consolidation or merger of their railroad employers have been guaranteed such benefits since 1936 under the Washington Job Protection Agreement of that year. The area of employment job protection in the railroad industry has been extended by the Interstate Commerce Commission which has, in connection with its approval of the abandonment of service by various carriers, ordered protective measures for employees along the lines of those provided in the Washington agreement.

The most recent extension of the area in which the principle of employee job protection has been applied in the railroad industry is found in the agreement executed on October 29, 1961, between the Southern Pacific Co. (Pacific Lines) and the Order of Railroad Telegraphers. This agreement, among other things, provides certain benefits for telegraphers who lose employment because of technological and organizational changes instituted by the Southern Pacific.

There are two essential differences presented by the organization's proposal for severance benefits here, and the provisions for such benefits already existing in the railroad industry, to which we have referred. In the first place, the proposal before us would provide such benefits to all conductors deprived of employment, from whatever cause. No distinction is made as to loss of work due to decline in passenger demand, as opposed to loss of work resulting from mergers, consolidations and abandonments, or takeover of service by railroads.

Existing severance pay plans in the railroad industry provide benefits for employees who suffer loss of employment because of mergers, consolidations, and abandonments. But we find no example in the industry of severance allowances to employees who lose their jobs due simply to declining railroad business. We see no reason for recommending that Pullman conductors be afforded severance pay benefits not generally available in the industry.

The second difference is that in all of the situations in the industry in which severance benefits are not provided, the cause of the job loss to employees involved is under the control of their employer. In the instant case, while the Pullman Co. is the nominal employer of Pullman conductors, it is not the Pullman Co., but its customers—the railroads—whose decisions cause the termination of conductor jobs under consideration here. Any real solution to the problem of Pullman conductors who are displaced due to mergers of railroads and takeovers by railroads of sleeping car service can only be accomplished by cooperation among all of the interested parties—the Pullman Co., the organization and the railroad users of Pullman service. We can see no practical method or equitable justification for imposing upon the Pullman Co. alone the responsibility for providing severance benefits to Pullman conductors displaced by mergers between railroads over which Pullman has no control, or by decisions of railroads to dispense with Pullman services, over which Pullman also has no control. In each of these cases, as far as Pullman is concerned, there is simply a loss of business to it.

In view of the broad nature of the proposal, and the company's lack of control over conductors' loss of employment, we do not think that the organization's proposal as to severance benefits can be recommended as a solution of the problem to which it is directed.

Although, for the reasons set forth above, we have concluded that the organization's proposal should be withdrawn, we do not in any way belittle the importance and urgency of the problem which it was designed to solve. As we have indicated, the threat to Pullman conductors' employment is both real and immediate. These employees are all men with long years of service with the Pullman Co., and have attained middle age or beyond. The skills which they have acquired are unique to their occupation and are not readily usable in other fields. For these reasons they find little employment opportunity elsewhere.

We think that in two specific sets of circumstances which we have pointed out: (1) Mergers, consolidations, or abandonments by railroads and (2) takeovers by railroads of sleeping car operations, some form of job protection for Pullman conductors who are adversely affected thereby, should be considered.

The loss of jobs by Pullman conductors because of a merger, consolidation, or abandonment, presents a particularly inequitable situation. In each of these cases, all of the employees of the railroads involved would be protected by the Washington Job Agreement. The Pullman conductors, whose jobs are affected in precisely the same way and for precisely the same reasons as the jobs of the railroad em-

ployees, do not receive the protection of this agreement. The reason for this is purely and simply because the railroads operate their sleeping car service through a separate corporate structure, the Pullman Co., which is not a party to the merger. We can see no equity in this difference in treatment of Pullman conductors who lose their jobs because of the merger, consolidation, or abandonment, and of employees of the railroads involved who lose their jobs for the same reason.

The loss of conductor jobs which may be caused by railroads taking over their sleeping cars from the Pullman Co., and operating them with railroad employees instead of Pullman conductors, is unique in the industry. Under the uniform service contract, any railroad user of Pullman service may, on proper notice, terminate its use of Pullman service, reclaim the sleeping cars owned by it, and operate these cars itself. The Pullman Co. has no control whatsoever over the railroad's decision.

It is difficult to relate this kind of job insecurity of Pullman conductors to that of any other group of railroad employees although the basic cause of the job loss seems not too different from job loss due to reorganization. In any case, such a takeover, when it occurs, can result in wholesale unemployment of Pullman conductors; witness the New York Central takeover in 1958, as a result of which 122 Pullman conductors lost employment. We have already indicated that the problem is not likely to be solved by the organization and the Pullman Co. alone. Another Board has said, in the New York Central case, that the problem cannot be solved by the organization and a particular railroad alone. It appears to us that the railroads, the Pullman Co., and the organization, all three must be involved. We think that at the very least, the Pullman Co. and the organization should jointly attempt to devise some program for protection of Pullman conductors under these circumstances, which they can present to the railroads as a group, or to an individual railroad at such time as it indicates its intention to reclaim its sleeping cars. One approach, which was apparently given some thought in connection with the New York Central and which seems to us to have merit, would be to give displaced Pullman conductors some preference in filling new assistant train conductor positions which are created as the result of such takeover.

We feel that the organization and the Pullman Co., if they determine to make a thorough and sincere effort, can originate a more workable solution to the problem of greater job security for Pullman conductors than the proposal which was submitted to this Board.

The Board recommends that the proposal of the organization with respect to job stabilization be withdrawn.

2. Retirement of Conductors at Age 65

(Issue No. 25; New Rule)

At the present time, there is no rule in the agreement requiring Pullman conductors to retire at any age. However, there is a practice of some forty years' standing that they retire on the first of the month following the attainment of age 70.

The company has proposed a rule under which conductors would be required to retire at age 66 on and after January 1, 1962, and at age 65 on and after January 1, 1963.

The organization opposes any change in the present retirement practice.

We have discussed at some length under "Issue 24, Job Stabilization and Severance Allowance," the problem of job stability for Pullman conductors in connection with threatened loss of employment.

In addition to the problem of conductors who may lose their jobs in the future, there is the current problem of conductors who have already lost employment; there were 442 conductors on furlough as of January 1, 1961. Any comprehensive program of stabilizing Pullman conductors' employment must also concern itself with the possibility of providing work for these men. One constructive means of so doing is through a compulsory retirement program for older conductors. We feel, however, that the company's proposal represents a too rapid decrease from the present practice of retirement at age 70 to compulsory retirement at age 65 in 1963. We think that a plan which will spread the reduction in required retirement age from the present 70 years to 65 years over a 5-year period would be more equitable to the employees concerned and would still accomplish the job stabilization purpose.

The Board recommends that the company's proposal for a retirement plan should be withdrawn. It further recommends that the parties should negotiate an agreement rule which provides for compulsory retirement of conductors, with the retirement age reduced to age 65 by the end of a 5-year period.

C. Conductors' Work

The current agreement between the Pullman Co. and conductors in the service of the Pullman Co., as represented by the Order of Railway Conductors and Brakemen, contains no scope rule as such. Different provisions of the agreement, however, do deal with various matters of scope and the right of conductors to perform certain work. For example, the preamble of the agreement expressly states that the

rules and regulations therein contained apply with respect to the work customarily performed by the conductors.

Rule 25, dealing with basic seniority rights in section (c), gives the conductors in any district the exclusive right "to perform all Pullman conductors' work arising therein, as established by past practice and custom," subject to such exceptions as may otherwise be contained in the rules.

Rule 64 represents an attempt to draw a line of demarcation between those situations in which a Pullman conductor has a right to operate on a train, and those in which the company has the option of using a conductor, a porter in charge or an attendant in charge. In general, the rule draws the line on the principle that a conductor must be operated on a train carrying at the same time two or more Pullman cars in service, and that the company has the option of using a porter in charge or an attendant in charge on trains carrying only one Pullman car in service.

The memorandum of understanding regarding conductor and optional assignments, frequently referred to as the frozen line memorandum, provides an exception to the general two-car rule of rule 64, by providing that in the application of rule 64, fifty-one listed one-car lines shall continue to be operated in charge of conductors as long as those lines remain in existence.

Rule 64 of the frozen line memorandum were first adopted by the parties, pursuant to the recommendations of the First Tipton Board in 1945, as a compromise settlement of a dispute at that time over the company's use of porters in charge and attendants in charge to perform work which the conductors were insisting should belong exclusively to them. Both were renegotiated and reexecuted when the current agreement was negotiated and signed September 21, 1957.

The dispute now before this Board includes, among others, 11 proposals regarding conductors' work which would either modify the existing rules or add entirely new rules to the agreement. The company has proposed elimination of the frozen line memorandum; changing the two-car rule of rule 64 to a three-car rule; and elimination of the requirement to assign conductors in layover cars. The organization has proposed changing the two-car rule of rule 64 to a one-car rule, requiring a conductor to be assigned at any time one or more Pullman cars are used in service; more precise definition of conductors' work than that now found in the agreement; the incorporation in rule 64 of a definition of a Pullman car; and the addition of six new rules. All three of the company's proposals are designed to eliminate current obligations which are proving costly to the company. If adopted, the proposals would save the company money by eliminat-

ing the need for conductors' services. By the same token, they would all aggravate the persent critical problem of the employment security of conductors, without making any provision for the conductors displaced.

Four of the organization's proposals are designed to secure more job opportunities for conductors, without regard for the earlier compromise settlement, and without serious concern for the cost to the company. Five of the new rules proposed by the organization would either limit the responsibility of conductors, or would relieve them of specific duties which they find unpleasant, but which have historically been part of the duties of conductors.

1. Elimination of Frozen Line Memorandum of Understanding

(Issue No. 1; Memorandum of Understanding)

Rule 64 of the current agreement provides, among other things, that management shall have the option of operating conductors, porters in charge, or attendants in charge, on all trains carrying one Pullman car in service, except with respect to certain conductor operations as specifically covered in a memorandum of understanding regarding conductor and optional assignments, first made a part of the agreement in 1945, and reexecuted at Chicago, Ill., September 21, 1957.

The memorandum of understanding, commonly referred to as the frozen line memorandum, designates 51, one-Pullman car runs which must be operated in charge of conductors for as long as such runs remain in existence. The runs may be discontinued by the railroads, but if subsequently reinstated must again be operated by conductors rather than porters in charge or attendants in charge. At the present time, only 13 of these 51 lines remain in operation. Ten of them are one-car operations and three are two-car operations.

The company proposes the elimination of the frozen line memorandum from the agreement. The effect of eliminating this memorandum would be to permit the company to man all one-Pullman car operations either with porters in charge, attendants in charge, or Pullman conductors, at the company's option.

The organization not only opposes the proposal on its merits, but contends that the elimination of the frozen line memorandum is not a bargainable issue; that the Pullman Co., in 1945, agreed to continue permanently to operate these frozen lines in charge of conductors as long as the present one-car runs remained in existence, and thereby waived the right to subsequently attempt to change the memorandum.

The board finds at the outset that this is a bargainable matter. Al-

though the agreement provides for conductor operations on these runs as long as they remain in existence, the parties are clearly free to renegotiate or change this provision at any time by mutual agreement. This is a negotiated agreement, and as such is subject to renegotiation by the parties at their mutual will. The primary question which this Board faces, therefore, is whether the proposed change in the agreement should or should not be recommended on the basis of the evidence which it has before it.

The frozen line memorandum was first made a part of the agreement between the parties in keeping with the recommendations of the first Tipton Board in 1945, as part of a general settlement of several issues involving the scope of conductors' work. The frozen conductor operations therefore represent only one small part of a larger compromise settlement, and are necessarily an integral part of the larger whole. The only significant changes in conditions and circumstances since 1945 are: (1) The 51 originally frozen lines are now reduced to 13 actually operating today, 10 with 1 car and 3 with 2 cars; (2) while these were deficit operations in 1945, and continue to be deficit operations today, the extent of the deficit per line has increased.

Since the frozen line memorandum was only part of a much larger settlement originally, to open it up for review on its merits now would call for a reopening of the entire question of scope and the proper distribution of work as between the conductors on the one hand, and porters in charge or attendants in charge on the other. The Board cannot justifiably modify one small part of a general compromise settlement of many matters of scope without reconsidering all aspects of that compromise settlement.

Furthermore, while the few remaining frozen line operations admittedly represent deficit operations, the company was fully aware that all were deficit operations at the time it first agreed to the frozen line memorandum. We do not feel that the problems of these frozen lines are such as to justify the reopening of the full question of scope of conductors' work at this time. The memorandum appears to have been a reasonable and equitable solution of part of a larger problem in 1945. We think it continues to be so today.

The Board recommends the company's proposal to eliminate the memorandum of understanding regarding conductor and optional assignments be withdrawn.

2. Elimination of Requirement to Assign Conductor to Layover Cars

(Issue No. 10; Rule 64)

Rule 64(e) presently requires that when passengers are permitted to occupy cars in charge of conductors beyond the scheduled arrival

time at a foreign or home terminal, the conductor shall not be released from duty until the time passengers are scheduled to vacate the cars.

Further, under an interpretation issued by the Third Division of the National Railroad Adjustment Board, award No. 3759, dated January 19, 1948, rule 64(a) was interpreted to require that conductors be assigned when two or more cars are laying over, either at a passing or an outlying point.

The company proposes a change in rule 64(e) which would permit the company the option of assigning or not assigning a conductor to cars under either of the above situations, depending upon the company's determination of service requirements. Thus, the company could decide whether a conductor could be released upon arrival of the train at the terminal, even though passengers continued to occupy the cars; it could also decide whether a conductor should be assigned to cars occupied by passengers or their baggage while laying over en route at either a passing point or an outlying point.

The 1950 Tipton Board had before it a proposal similar to that now presented by the company, to permit optional assignment of conductors under these circumstances. It also had before it a proposal of the organization to further spell out the first requirement (retention of conductors until passengers vacate cars at the terminals) as applied to extra conductors used in extra service, and to spell out the requirement that conductors be used when two or more cars are held at a point en route pending further movement. That Board stated:

"No adequate grounds were adduced for changing the present rule.

"The company's proposal would expand the management's options in using conductors, and to that extent would restrict the prevailing work rights of conductors. On the other hand, while the apparent intent of the changes proposed by the organization is to retain its existing rights, the incorporation of the new provisions into the agreement might, through their intepretation, lead to an expansion of those rights. The present rule as interpreted by the National Railroad Adjustment Board in light of particular circumstances, appears to deal with the situation on a reasonable and equitable basis."

The Tipton Board recommended that both the company and the organization withdraw their respective proposals.

We have carefully considered the record concerning this issue, including awards Nos. 6475 and 9176 of the Third Division, issued subsequent to the 1950 Tipton Board report. We find no reason in the record to change the existing rule.

The Board recommends that the company withdraw its proposal on the elimination of requirement to assign conductors to cars parked at terminals or en route.

3. Minimum Number of Cars Requiring Assignment of a Conductor

(Issue No. 2; Rule 64)

Rule 64 and other pertinent provisions of the present agreement, such as the frozen line memorandum, provide in effect that:

(1) Pullman conductors shall be operated on all trains carrying more than one Pullman car in service.

(2) The company has the option of assigning conductors, porters in charge, or attendants in charge, on all trains carrying 1 Pullman car, except on the 51 one-car lines specified in the "frozen line" memorandum discussed above.

(3) The company has the option of assigning conductors, porters in charge or attendants in charge on trains where there is a combined service movement of two Pullman cars, having one or both terminals different, where such combined movement is for a period of less than 5 hours, railroad scheduled time; except that a conductor must be assigned to certain such service movements of less than 5 hours when two movements are combined as a result of one car of the movement being dropped and another car added at the point the first car is dropped.

(4) The company has the option of using conductors, porters in charge, or attendants in charge for the collection of Pullman tickets and cash fares for cars at outlying or passing points, where the cars will be in charge of a conductor on leaving such points, except that a conductor must be assigned to perform this work at a passing point for two or more cars which are being loaded at the same time in the same station prior to attachment to through trains on which Pullman conductors are operated.

Both parties propose changes in these rules.

The organization proposes that conductors shall be operated on all trains while carrying, at the same time, one or more Pullman cars, either sleeping or parlor, in service. The effect of the organization's proposal would be to remove the company's option to use porters in charge or attendants in charge in lieu of conductors on any Pullman car in service, and to require the assignment of a conductor at any time one Pullman car or more is operated.

The company's proposal is that conductors must be operated on all trains while carrying, at the same time, more than two Pullman cars in service; and that a conductor must be used to collect Pullman tickets and cash fares at passing points for more than two Pullman

cars which are being loaded at the same time in the same station prior to attachment to a through train on which a Pullman conductor is operated. The company's proposal would give the company the option of using porters in charge or attendants in charge on all trains carrying one or two Pullman cars, whether or not a combined service movement, and without regard to the period of time involved in the movement. It would also give the company the option of using porters in charge or attendants in charge for the collection of Pullman tickets and cash fares for cars at outlying or passing points, for one or two cars which are being loaded at the same time in the same station, prior to attachment to through trains on which Pullman conductors are operating.

It is obvious that here again, we are dealing essentially with a scope rule. Historically, Pullman conductors have never had the exclusive monopoly of work which they seek in their current proposal. Their demand for it was rejected by the first Tipton Board in 1945. We see nothing in the evidence before us which would justify recommending they be given that exclusive monopoly today.

On the other hand, the two-car rule, as a basis for determining the proper scope of conductors' work, vis-a-vis that of porters in charge and attendants in charge, appears to have been given recognition as early as 1919 by the Director General of Railroads, when he protected the right of the company to use porters in charge of Pullman cars, at porter in charge pay, when used on one car; but required that the conductor's rate should be paid to a porter in charge of more than one car. In 1945, the first Tipton Board resolved a controversy involving several matters of scope by recommending, among other things, the two-car rule, which was subsequently agreed to by the parties and which is embodied in present rule 64 and related provisions. The company agreed to this rule, along with the frozen line memorandum, as part of a compromise settlement, and with full awareness that it would be costly.

Under all of the circumstances prevailing then, the present rules appear to have been a reasonable, equitable, and warranted solution of this scope problem in 1945. We do not think that circumstances, conditions or economic and employment trends in the Pullman Co. have changed since 1945 to an extent which justifies a modification of practices so firmly entrenched in the tradition and employment relations practices of these parties.

The Board recommends that the proposals of both parties in respect to the minimum number of cars requiring the assignment of a conductor be withdrawn, and that the current rules remain in effect.

4. Second Conductor to be Operated On More Than Eight Cars In Service

(Issue No. 5; New Rule)

There is no rule at the present time governing the number of cars in service requiring the assignment of a second conductor. The organization proposes a new rule requiring that a second conductor be assigned to operate on all trains where more than eight Pullman cars are in service, and that lounge, club, and observation cars operated by the company shall be counted as Pullman cars in service. It also proposes that a second conductor shall be assigned to special trains carrying more than 10 Pullman cars when all Pullman cars carried are operated on a per diem basis, or on special or extra sections handling military movements exclusively.

It is the position of the organization that eight cars is the maximum that a conductor can properly handle and perform his duties. The company opposes the organization's proposal.

At the present time, it is the company's practice to assign an additional conductor for either part or all of a run where the requirements of the service indicate the need for one. Daily consideration is given to this problem by company representatives by checking the operating characteristics of all regular, extra, and special conductor assignments, and by direct road service inspections, as well as through frequent consultations with conductors and consideration of requests by conductors for assistance.

A similar but not identical proposal was made by the organization in 1950, before the second Tipton Board. That Board recommended that the organization's proposal with respect to car limitations be withdrawn.

In 1957, the organization proposed a similar car limitation but withdrew the proposal after an exchange of letters confirming an understanding that a second conductor would be assigned by the company to "heavy trains or special trains where one Pullman conductor cannot properly handle the ticket lift and render proper service to our passengers." The organization claims that, in spite of its commitment, the company has failed on some occasions to assign an extra conductor to heavy trains.

The effect of the organization's proposal would be to establish an inflexible and arbitrary rule as to the number of Pullman cars in road service that could be assigned to one conductor. It is apparently based upon the assumption that the number of Pullman cars in operation on a train is the primary if not sole factor in determining the need for an extra conductor. The evidence is convincing, however, that

there are many other factors of service and operating conditions beside the number of cars on a train which directly affect the work requirements of a conductor. They include such factors as the number of sleeping space units available; the percent of occupancy of the accommodations on a train; the portion of the conductor's work that is completed at the station prior to departure of a train; the frequency of scheduled stops; and the "consist" of the train. These, along with others, were set out in detail by the second Tipton Board.

It is completely unrealistic to conclude that the volume of work of conductors depends exclusively upon the number of cars. The Board is of the opinion that the present system of management's determining when operating factors require the addition of a second conductor should be continued. In the exercise of its judgment, management should be alert to all circumstances, and should assign a second conductor in accordance with the understanding reached by the parties in 1957.

The Board recommends that the organization's proposal of a new rule requiring that a second conductor be assigned to operate on all trains while carrying, at the same time, more than eight Pullman cars in service, be withdrawn.

5. Definition of Pullman Conductor's Work

(Issue No. 12; Preamble and Rule 25)

While there is no provision in the current agreement which is designated as a scope rule, or which defines in detail or with precision the job duties of a Pullman conductor, there are two provisions which do appear to establish a contractual right of conductors to work which has been theirs by practice and custom. These are the preamble and rule 25.

The preamble to the present agreement provides in part:

"It is hereby understood and agreed between the Pullman Co. and conductors in the service of the Pullman Co., represented by the Order of Railway Conductors and Brakemen, that the following rules and regulations shall cover the Pullman Co. and all Pullman conductors employed thereby, with respect to the work customarily performed by such conductors, their rates of pay and working conditions, and that this agreement shall be in effect on and after September 21, 1957."

Rule 25, which was given its present form by Special Board of Adjustment No. 199, in 1957, in response to the organization's demand for a contract definition of Pullman conductors' work, provides in part as follows:

"*Rule 25. Basic Seniority Rights and Date*

"(c) In any district, the right to perform all Pullman conductors' work arising therein, as established by past practice and custom, shall belong exclusively to the conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained."

The organization proposes to add to the agreement, following paragraph (c) of present rule 25, a question and answer defining what is meant by Pullman conductors' work as "all work customarily performed by Pullman conductors," and specifying five particular areas of work.

Similar organization proposals for a definition of Pullman conductors' work have been presented to and rejected by the first Tipton Board, the second Tipton Board, and Special Board of Adjustment No. 199. Also, in 1947, the organization had proposed the adoption of a similar scope rule, and a conforming revision of rule 25. Agreement was subsequently reached by the parties without incorporating any part of the proposal in the settlement.

Special Board of Adjustment No. 199, in 1957, however, did recommend changes in rule 25 and in the preamble, which were subsequently agreed to by the parties, and which produced the language found in the present agreement, confirming the conductors' exclusive "right to perform all Pullman conductors' work * * * as established by past practice and custom," subject to the other rules and exceptions contained in the agreement, and their right to work "customarily performed" by them.

This board is in agreement with the second Tipton Board and Special Board of Adjustment No. 199, that the job duties of conductors are not subject to precise definition and enumeration in a rule in the agreement. It agrees with them that any attempt to so define and enumerate conductors' job duties would impose an unwarranted rigidity upon the quality and efficiency of the service, and would run the risk of creating some absurdities in an already complex and highly interrelated set of rules. It agrees with these earlier Boards that, under the circumstances here prevailing, "the best benchmark is that provided by duties customarily performed by conductors." This standard is now embodied in the agreement. Its repeated interpretation and application by the National Railroad Adjustment Board has given meaning and stability to the existing rule, and should adequately protect the conductors' rights in specific contested situations in the future. The adoption of the organization's proposal could only introduce new and unjustified ambiguity, instability, and controversy over what is properly the work of conductors.

The Board recommends that the Organization's proposed definition of conductors' work be withdrawn.

6. Definition of a Pullman Car

(Issue No. 13; Rule 64)

The organization proposes a change in rule 64 and the addition of a question and answer, defining the term "Pullman car." The proposal would have the effect of expressly requiring the company to assign Pullman conductors to cars owned by it or leased to it, which are used in sleeping or parlor car service by any railroad. It is especially directed toward requiring the assignment of Pullman conductors to such cars which may be leased by Pullman to a railroad for operation by that railroad, where the railroad might prefer to operate the cars with its own employees rather than with employees of the Pullman Co.

This proposal arises primarily out of the fear of the organization, which has been alluded to in other sections of this report, that the Pullman Co. intends to begin leasing or renting so-called bare parlor and sleeping cars to its railroad customers; and that these cars will then be operated by the railroad employees instead of by Pullman conductors, as at present. The proposal is designed to prevent this.

The organization contends that this proposal is simply a clear statement of the present rule as it has been interpreted by the National Railroad Adjustment Board. The company contends that the proposed rule goes far beyond the present rule and it not only not justified but would be impossible of performance since the Pullman Co. could not force any railroad to use a Pullman conductor on the equipment which it rents or leases from the Pullman Co., if the railroad preferred to use its own employees. The organization's position is that in such cases, the Pullman conductor would be entitled to pay even though not assigned.

The record shows that on a number of occasions prior to 1945, the company leased cars to railroads for use in their own sleeping and parlor car service. In 1945, rule 64 was written into the contract as the result of a recommendation to the parties by the first Tipton Board in connection with a dispute as to the scope of conductor's work. Rule 64(a) prescribed the number of cars which required the use of conductors and also set forth when porters in charge could be used. It does not appear that at the time this rule was written, the parties considered or were concerned about the problem of the scope of conductors' work in connection with cars leased to railroads for their own use. In 1946, the company leased some sleeping cars to

the New York Central Railroad for use on two special football trains. Each of these cars was serviced by a Pullman porter, but no Pullman conductor was used. The New York Central paid Pullman on the basis of a flat daily rental charge plus the wages of the porters; all revenues went to the New York Central and the New York Central sold its own tickets and otherwise was responsible for the operation of the sleeping cars.

Pullman conductors filed claims contending that, under rule 64(a), they were entitled to be assigned to these cars; these claims were sustained in award 4000 of the Third Division, National Railroad Adjustment Board, issued in July 1948.

Shortly thereafter, certain Pullman cars being used in joint through line service with the Canadian National and Canadian Pacific Railroads were operated in certain Canadian territory with porters but without conductors. Claims were filed and were adjudicated by a special board of adjustment, which denied them in 1949. The special board distinguished these claims from those in award 4000, holding that the work in question in the Canadian case was work which had never belonged to the conductors.

In 1950, each party attempted to have the principle of the specific award favorable to its position with respect to when Pullman conductors had to be assigned to a Pullman car, written into a general rule. These proposals were considered by the second Tipton Board, which recommended that each be withdrawn and rule 64(a) be retained as originally written. That Board noted that other than the award 4000 incident and the Canadian dispute, only one or two controversies under rule 64(a) had been submitted to the adjustment board during the five years since it had been incorporated into the agreement; the Board commented that this record was on excellent one and indicated that rule 64(a) was fair, reasonable, and workable.

Only one other specific instance has been brought to this Board's attention wherein the company has leased cars to railroads without conductors. In the latter part of 1950, the company leased two sleeping cars to a hotel, which used them to accommodate an overflow of guests. Pullman conductors filed claims, contending that they should have been assigned to these cars. These claims were denied by Third Division Award No. 5934, issued in 1952, on the ground that rule 64(a) contemplated cars in service on trains, and these cars were not in such service. The organization's proposal would require the assignment of conductors to the cars in such a case, thus reversing the effect of award No. 5934. We do not think that the evidence presented in connection with this matter justifies any change in rule 64.

During the 15 years of the present rule's existence, there have been fewer than a half dozen incidents of the kind which the organization puts forward as the primary basis for its proposed changes in the rule. The Third Division has enunciated certain principles applicable to these situations, and if the parties disagree as to their application to a specific incident in the future, they have recourse to the National Railroad Adjustment Board for further clarification.

We cannot say whether or not the organization's fears of future operational changes are well founded. Even if they are, however, the organization takes the position that rule 64(a), as interpreted by award 4000, presently requires the very result which it seeks to have spelled out. In view of the fact that the present rule has not been shown to be inadequate or inequitable in the circumstances, we think that the proposal is premature and is not justified by the record.

The Board recommends that the organization withdraw its proposal with respect to the definition of a Pullman car.

7. Accounting for Company Funds

(Issue No. 17; New Rule)

The organization proposes a new rule in the form of a question and answer. "Question: Shall conductors be required to retain reports and company revenue for a trip at a point where the company maintains an office? Answer: No."

The company opposes the organization's proposal.

There is no rule in the present agreement dealing with this matter. In the conduct of Pullman business, conductors are required to prepare certain reports and occasionally to collect cash from passengers. At the end of the trip, the conductor deposits the cash and reports with a company representative at the district office. If the trip terminates at a time when the Pullman office is closed, night depository boxes are available for depositing the reports and cash. At a few points where night depository boxes are not available, arrangements are made with the railroad company concerned to accept conductors' reports and cash. The record shows that at the present time, there is only one point on the entire Pullman system where conductors are required to retain cash after the termination of a trip; this is at St. Petersburg, Fla., where, during part of the year, there are no facilities for the acceptance of conductors' reports and cash. There is no indication, however, that this has placed any undue burden on the conductors involved.

A similar but much broader proposal was considered by the 1950 Tipton Board when the organization proposed that conductors be

relieved of all responsibility for company reports and revenues upon release from duty, whether or not an office was maintained at the point of termination. After carefully reviewing the situation, the Tipton Board concluded: "The present arrangements for the handling of company funds have been in effect for many years and have proved to be fair and reasonable as well as necessary from the standpoint of cost. The organization's demand appears to be without merit." That Board recommended the withdrawal of the organization's broader proposal.

We find nothing in the evidence before us which supports incorporating the proposed rule in the agreement. Since the company now maintains either offices or convenient facilities for depositing company funds and reports at all points except St. Petersburg, and since no specific problems with respect to St. Petersburg have been presented, it appears to the Board that the proposal of the organization is completely unnecessary.

The Board recommends that the organization withdraw its proposal with respect to accounting for company funds.

8. Coach Solicitation

(Issue No. 18; New Rule)

The present agreement contains no rule concerning solicitation of day coach passengers for Pullman accommodations. The organization proposes a new rule providing that Pullman conductors shall not be required to do so.

Pullman conductors have been engaged in the solicitation of coach passengers for the sale of Pullman accommodations since prior to 1930; since 1931, they have received commissions in varying amounts on such sales. The amount of revenue to the company and the amount of commissions to Pullman conductors as the result of sales made in this manner have been substantial. Emergency Board No. 89, which recommended withdrawal of a similar request by the organization in 1950, found that the revenue to the company from sales by conductors for which commissions were payable during the 13-year period from 1937 to 1949 amounted to $21,694,081.00, about one-third of which resulted from coach solicitation. During the same period, total commissions paid to conductors on these sales amounted to $978,985.00.

During presentation of the present case, the company submitted figures for the years 1950 through 1960 showing that total revenue to the company based upon sales by conductors upon which commissions were paid amounted to $30,704,973.99, and that total commissions paid to conductors on these sales amounted to $953,353.22. No indica-

tion was given of the percentage of these amounts directly attributable to coach solicitation. There appears to be no doubt, however, that solicitation of coach passengers for sale of Pullman accommodations by Pullman conductors results in considerable revenue to the company and considerable commission payments to the conductors.

There is no rule in the current agreement which governs coach solicitation by conductors. The company's general instructions require the conductor to make an earnest effort to increase the company's revenue by soliciting coach passengers to purchase Pullman accommodations. No specific requirements or limitations on the amount of time conductors must spend in this activity have been laid down by the company. The conductors are not excused from the performance of any of their regular duties for the purpose of this sales work, but are left to their own judgment as to when and for how long they will engage in it. However, the company has exhorted the conductors to improve their sales performance and has on occasion criticised them for poor performance.

The organization takes the position that the conductors are willing to engage in coach solicitation on a voluntary basis but want to be relieved of any requirement to do so, because it fears conductors will be subject to undue pressure to increase sales, and may be disciplined for failure to perform other duties in order to engage in coach solicitation.

Despite the organization's fears, there is no evidence that any penalties of any kind have been assessed against conductors in connection with their performance as salesmen. With regard to two cases cited by the organization, wherein discipline was assessed against conductors for failure to be on their Pullman cars when they reached a station stop, it must be concluded that, under the practice as it has developed, conductors are not required by the company to solicit in the coaches at any particular time. In view of this, we feel that the company can fairly require them to exercise their judgment so as not to let this sales work interfere with the carrying out of their regular duties.

The evidence and arguments of the organization do not support a change in a practice which has been beneficial to both the company and the conductors over the years.

The Board recommends that the organization's proposed rule with respect to coach solicitation be withdrawn.

9. Conductors' Authorization of Porters' Loss of Rest

(Issue No. 21; New Rule)

The organization proposes a new rule expressly giving Pullman conductors complete authority to change a porter's rest period or to keep a porter on duty when, in their judgment it is necessary to do so; and further providing that a conductor's signature on a porter's time sheet will be a sufficient explanation of why such action was necessary.

Under the company's book of instructions, a porter may not change his rest period without the approval or consent of the conductor. Thus a porter who performs service during his assigned rest period will not be paid for such service unless the conductor signs the porter's time sheet indicating that he authorized the porter to perform that service. A suitable explanation for the failure of the porter to receive his assigned rest must be made under the remarks section of the time sheet and must be signed by the conductor.

Prior to 1957, this was the only form required to be filled out by the conductor specifically in explanation of loss of rest by porters. In August 1957, the company issued a memorandum to all conductors stating that payments to porters because of loss of rest had reached alarming proportions and further stating that many of the explanations in the remarks section of the porter's time sheet had not been satisfactory. Conductors were instructed to make full explanations on the time sheets and, in addition, were instructed to fill out a new form, "Report of Loss of Rest—Car Service Employees," in each instance where porters were not given their scheduled rest periods. The purpose of the proposed rule, as stated by the organization, is to eliminate the requirement that conductors fill out this additional form.

The evidence at the hearings indicated that the time sheets are not examined at the company's district level but go to the company's central payroll office and are used there primarily for the purpose of authorizing the payment of wages. The additional form is in fact a duplicate of the remarks section of the time sheets, and is retained and studied by company officials at the district level for the purpose of controlling the amount of lost rest time. A substantial reduction in the amount of payments to porters because of lost rest occurred after the initiation of the new form.

The explanations required are not lengthy, nor do they occur with great frequency; in 1959, for instance, the average number of reports filed during the entire year was only between ten and fifteen per conductor.

No disciplinary action of any kind has been taken against any conductor as a result of the filing of the new forms and their examination by the company. The only reason given by the organization in support of the proposed rule is that the additional form is unnecessary and, when considered cumulatively with all the other forms which conductors must fill out, is burdensome upon them.

Consideration of all the evidence leads to the conclusion that requiring conductors to file the form in question is designed to accomplish a reasonable end and does not impose an unreasonable burden upon the conductor.

The Board recommends that the organization's proposal with respect to authorization of porter's rest be withdrawn.

10. Conductor's Authority To Vacate Coach Passengers

(Issue No. 22; New Rule)

The organization proposes a new rule expressly authorizing Pullman conductors to request coach passengers to vacate space, which they have usurped in a car under the jurisdiction of a Pullman conductor.

It appears that this proposal, which is in fact a partial definition of Pullman conductors' work, arises out of a case in which a Pullman conductor was disciplined in connection with his actions in asking passengers who had only coach tickets to leave Pullman space. The organization contends that during the argument on the matter before the Third Division of the National Railroad Adjustment Board, the company representative took the position that a Pullman conductor has no right to ask coach passengers to leave a Pullman car, but must advise the train conductor and let the train conductor take care of the matter.

The company states that Pullman conductors have such authority at the present time, and that the case referred to by the organization did not involve discipline of a conductor simply for asking passengers to vacate, but was based upon the discourteous manner in which the conductor made the request.

The company's book of instructions for its employees, under the heading of "Assignment of Space," deals with the duties of conductors in connection with holders of coach tickets who wish to occupy space in Pullman accommodations. Among other things, these instructions, at page 130, include the following sentence:

"Pullman employes are not permitted to question right of passengers holding coach tickets."

When the ambiguity of this sentence was pointed out to the company at the hearing, the company offered to amend the instructions by substituting the following in its place:

"Pullman employes may question passengers holding coach tickets when occupying space in Pullman cars as to whether they desire to purchase accommodations in Pullman cars. Such questioning must be conducted in a courteous manner so as not to cause such passengers to take offense. Coach passengers who do not desire to purchase accommodations in Pullman cars should be requested in a courteous manner to return to the coaches and if they will not do so, the matter must be referred to the train conductor for further handling."

The substance of this amended instruction was acceptable to the organization, but it insisted that since the book of instructions is issued unilaterally by the company, it can be changed at any time and therefore does not give the employees the protection of a collectively bargained rule. The organization's position was that unless the language of the instruction could be given the status of an agreement rule, it would not be satisfied with the company's proposed change.

We think that the issue herein involved has been magnified beyond its actual proportions and that the change in the instructions proposed by the company would adequately take care of the problem which gave rise to the organization's proposed rule.

The Board recommends that the organization's proposed rule with respect to conductors' authority over coach passengers be withdrawn; it further recommends that the company change its book of instructions in accordance with its offer as stated above.

11. Instructions to Conductors by Railroad Officials

(Issue No. 23; New Rule)

The organization proposes a new rule requiring that instructions to a Pullman conductor by a railroad official, when contrary to Pullman Co. instructions to the conductor, must be in writing.

The book of instructions issued by the company presently provides:

"Car service employes are subject to instructions issued by all officers of the company and their representatives who act in a supervisory capacity. While on cars, on trains, in stations and yards, or on other railroad property, they also are subject to instructions of the train conductor and officials of the railroad companies."

The reason for the proposed rule, according to the organization, is that there have been occasions when a Pullman conductor has been instructed by a railroad official to perform some action which

is contrary to the instructions of the Pullman Co., and has been criticized by the Pullman Co. afterward for deviating from Pullman instructions.

During the course of the hearings, the organization suggested that the problem would be eliminated if the Pullman Co. would expressly direct that instructions of railroad officials must be complied with, even though contrary to Pullman Co. instructions. The carrier agreed to add the following language to its instructions, to follow after the paragraph quoted earlier:

"If the orders of a railroad official or train conductor conflict with existing regulations, the conductor or other car service employe shall take no exception but shall carry out the order and report the facts to the proper district representative at the earliest opportunity."

The organization insisted that since the book of instructions is issued unilaterally by the company, the company can change it at any time, and therefore the company's proposal does not give the employees the protection of a collectively bargained rule. The organization persisted in the position that unless the language of the instruction could be given the status of an agreement rule, it would not be satisfied with the company's proposed change.

We think that the company's proposed change in its instructions would adequately take care of the problem which is the asserted basis for the organization's proposed rule.

The Board recommends that the organization's proposal with respect to written instructions be withdrawn; it further recommends that the company change its book of instructions in accordance with its offer as stated above.

D. Grievances and Claims

Three of the issues submitted to the Board involve proposed changes in existing rules governing grievances, claims and disciplinary matters.

The company seeks to change the established method of determining the amount of wage loss for which a disciplined or discharged conductor shall be compensated when his record is cleared of charges, or for which a conductor shall be compensated when he is not given an assignment to which he was entitled under the rules of the agreement.

The organization has proposed two changes in those parts of existing rule 49, which govern procedures in discipline cases.

1. Compensation for Wage Loss

(Issue No. 11; Memorandum of Understanding)

Rule 54 of the current agreement provides that when the record of a conductor is cleared of charges which may have been filed against him, "he shall be returned to his former position or to that for which he is contending and compensated for any wage loss suffered by him."

In order to remove any ambiguity concerning the term "compensated for any wage loss suffered by him," the parties, on August 8, 1945, signed a memorandum of understanding, which was reexecuted September 21, 1957, and is therefore also part of the current agreement. In this memorandum of understanding, the parties agreed that the "compensation for any wage loss suffered" by the conductor "means the wages which the conductor would have earned had he remained at work as a conductor without regard to any amounts he may have earned during the period he was not employed as a conductor."

The memorandum further provides that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the agreement, he shall be paid for trip he lost, in addition to all other earnings for the month.

The company has proposed that this memorandum of understanding be changed to provide that "compensation for any wage loss suffered" by the conductor shall mean the wages which he would have earned had he remained at work, less any actual compensation he may have received in other employment.

Similarly, the company has proposed that in the case of a successful claim by a conductor that he was not given an assignment to which he was entitled under the rules of the agreement, rather than being paid for the trip loss in addition to all other earnings for the month, the conductor shall be paid 3:25 hours (one-half of a minimum day) and, additionally, be compensated for any wage loss suffered by him, with such wage loss being defined as "the amount of wages he would have earned in the assignment to which he was entitled less the actual conductor wages received for the period covered by the assignment loss."

The company further proposes an addition to the memorandum expressly providing that it shall not be applied to situations covered by another memorandum of understanding concerning the manner in which conductors shall be paid when two or more Pullman cars operate in service without a conductor.

Looking first at the third and final part of this proposal, the latter memorandum appears to this Board to contain within itself an ex-

press and sufficiently clear limitation on its application to avoid confusion with other types of situations in which a conductor is not given an assignment to which he is entitled under the applicable rules of the agreement. The parties have recourse through the National Railroad Adjustment Board for the settlement of any dispute as to which rule governs a particular situation.

The primary question at issue here is whether, in the case of suspensions or discharges, or in the case of claims, the employees concerned, when their grievances or claims are upheld, shall receive compensation for wage loss suffered with or without any deduction of other earnings during the time in question. The record before the Board indicates that the present rule has been in the agreement since 1945. It further indicates that these same proposals were before Emergency Board No. 89, in 1950, and were rejected by that Board.

Except for a few spectacular exceptions in connection with missed assignments, in which the company appears to have knowingly assumed a calculated risk when it acted, the evidence fails to indicate that the present rule has constituted any significant burden on the company with regard to either cases of "record cleared of charges" or missed assignments. The Board is not convinced that the changes proposed by the company would be more equitable to all parties concerned. There is no evidence of any significant change in circumstances which would warrant a recommendation of a reversal of policy adopted in 1945, continued in 1950, and reexecuted in 1957.

The Board recommends that the company's proposal with respect to compensation for wage loss be withdrawn.

2. Presentation of Witnesses at Disciplinary Hearings

(Issue No. 14; Rule 49)

Paragraph (h) of rule 49 provides that when the primary accuser of a conductor in a disciplinary case is an employee of the Pullman Co., he shall be present at the hearing. It further provides that any other employee of the company who has made a statement or has knowledge of the facts shall be present if he is "immediately available."

The organization proposes to eliminate the condition of "immediately available" and to require the presence of employees who have made statements or have knowledge of the facts without exception. A second proposal is to add an additional requirement to paragraph (h) that no discipline will be assessed against a conductor based upon written testimony of nonemployees, unless the guilt of the conductor is established beyond a reasonable doubt by testimony

of other witnesses at the hearing. In short, this proposal would prevent the imposition of discipline in any case upon the basis of statements or other written evidence alone.

The problems here are not unique to the Pullman Co. but are peculiar to the nature of railroad operations, in that passengers who may be involved in an incident on a train, which leads to complaints about an employee, may live in a part of the country far removed from the home terminal of the employee about whom the passenger complains or makes a statement; and employees who are witnesses to such incidents may be working at a distance from the place of the hearing at the time it is scheduled to be held. As a consequence of this situation, written statements from passenger and employee witnesses are frequently used as evidence in disciplinary hearings involving railroad employees.

In 1957, as the result of the arbitration award of Special Board of Adjustment No. 199, rule 49(i) was changed to provide that a decision to discipline shall be made only upon evidence in the record which establishes guilt beyond a reasonable doubt. Testimony in the record indicates that in the only Pullman conductor discharge case which has gone to the Third Division since the 1957 rule change, the Division sustained the organization and held that the discharge was improper.

With respect to the requirement that Pullman employees other than the primary accuser, who have made statements or have knowledge of the facts, be present at the hearing if "immediately available," this requirement also was put in the rule in 1957 as the result of the award of Special Board No. 199. Prior to that time, the only time an employee was required to be present was when he was the primary accuser.

Under rule 49, the accused employee is given the names of all employee witnesses contacted during the investigation, and the testimony shows that the company has granted postponements of hearings when requested by the organization because an employee witness needed by the organization was not immediately available at the time of the scheduled hearing.

The changes proposed in paragraph (h) are similar to those submitted to arbitration before Special Board No. 199. That Board rejected these proposals in favor of the modifications of rule 49 which we have discussed. The specific standard of proof written into rule 49 in 1957 has required the Third Division to weigh the evidence, written and oral, and to test it against the standard of "proof beyond a reasonable doubt" rather than "supported by substantial evidence." We think that this review now afforded by the Third Division to conductors disciplined by the company, along with the other require-

ments of rule 49, presents a sufficient safeguard against abuse of conductors' rights by the company's use of written evidence; and that there is not sufficient justification for amending this rule again to eliminate the use of written evidence as the only basis for discipline.

The Board recommends that the organization's proposals with respect to presentation of witnesses at disciplinary hearings be withdrawn.

3. Withholding Name and Address of Passenger When Requested To Do So

(Issue No. 15; Rule 49)

Paragraphs (b), (d), and (e) of rule 49 provide that a conductor shall be furnished a copy of the original letter of complaint which is the basis of a charge against him; that he shall receive a written notice describing the action of which he is accused, and the time and place of the alleged occurrence as precisely as possible; and that he shall receive the names and addresses of all witnesses contacted by the company during the investigation, as well as full and exact copies of any statement to be used by the company at the hearing. All of this, however, is subject to the exception that if a passenger other than an employee of the company or of a railroad is involved, his name and address may be withheld from the conductor and his representative when the passenger specifically requests that this be done.

The proposed changes in these three paragraphs have the purpose and effect of removing the exception and requiring that the passenger's name and address be given in connection with all letters of complaint, witnesses, statements and details of the action with which the conductor is accused.

The Pullman Co. receives occasional complaints of misconduct by a Pullman conductor from a passenger who is unwilling to have his name revealed in connection with the complaint. It is in order to deal with the disciplinary problem raised by such a case that the company feels the exception is necessary and opposes the changes proposed by the organization.

While it is basic to a fair hearing in ordinary circumstances that a conductor charged with an offense be advised of the name and address of the person charging him, it does not appear that conductors' rights have been abused in the narrow area covered by this exception. The company, of course, knows the identity of the complaining passenger; and the evidence is that the company makes a careful investigation in each case before deciding to press charges against the conductor. In most cases, the passenger is willing to reveal his name and the issue involved in the proposed changes does not arise.

During the period from January 1, 1957 to July 1, 1961, there were 88 cases in which Pullman conductors were assessed major discipline—that is, suspension or discharge. Of these, only 21 involved complaints by passengers, and thus could possibly fall within the exception. In only 1 of these 21 cases did the passenger request that his name be withheld. At the hearing in that case, the statement of the passenger whose name was withheld from the conductor was introduced, and on the basis of the statement, the conductor was discharged. No appeal was taken by the conductor or the organization from the decision of the company in this case.

In view of the particular problem which this exception is designed to cover, and the lack of any evidence or experience indicating that conductors' rights have been abused thereby, we do not think that sufficient justification has been shown for the proposed changes.

The Board recommends that the organization's proposal with respect to withholding name and address of passenger when requested to do so be withdrawn.

E. Miscellaneous Demands

Among the issues presented to the Board are eight miscellaneous demands involving various special payments to conductors, working conditions and other benefits. In subject matter they are not closely related to any of those discussed under the major headings which have preceded this. They have a common denominator both in their relationship to conductors' pay, working conditions and benefits, and in their miscellaneous nature. Accordingly, they are grouped together for convenience.

One of these demands was presented by the company; seven by the organization. Five involve proposed changes in four different rules; three require the addition of new rules to the agreement. They include proposals governing sleep deductions on overnight trips of 12 hours or more, pay for extra conductors, pay for conductors recalled from furlough, pay for deadheading, pay for deadhead service not performed, pay for extra conductors performing station duty, and meal and lodging arrangements for conductors assigned to special or troop trains.

1. Elimination of Deduction for Sleep Periods on Trips of 12 Hours or More But Less Than 16 Hours

(Issue No. 4; Rule 13)

Rule 13 of the agreement provides in effect that a deduction of 4 hours for rest, when sleeping space is available, may be made on

one-way trips of 12 hours or more, where the spread of the trip includes the hours from midnight to 6 a.m., the rest period en route to be confined within those hours. It further provides that no deduction for rest may be made on one-way trips of less than 12 hours.

The organization proposes that this rule be changed to apply only to such one-way trips of 16 hours or more, and that no deductions for rest be made on any one-way trips of less than 16 hours.

The record indicates that approximately 79 conductors operating on 25 lines would be affected by this proposed change. The amount of rest time actually deducted on these operations as regularly scheduled varies from 2 to 4 hours. The company estimates that 98 conductors would be required to perform the same work under the organization's proposal under the 205-hour basic month, and that still more would be needed if the hours in the basic month are reduced.

The scheduling of sleep periods en route, with deductions for the scheduled hours of rest, has been a consistent practice of the Pullman Co., at least since 1919. In 1945, the organization first demanded that all hours en route, including time spent sleeping, be credited as time worked. This proposal was rejected by the first Tipton Board, which recommended for single overnight trips, that conductors who are on duty 12 hours or more should have the usual 4-hour rest deduction, but those on duty less than 12 hours should have no rest deduction at all. This recommendation was subsequently embodied in the agreement, and is the provision now governing this matter.

On two occasions since 1945, in 1949 and 1956, the organization has proposed a similar rule. The proposal was rejected by the second Tipton Board in 1950, and was voluntarily withdrawn by the organization in 1956.

The proposal now before this Board is less comprehensive than the organization's proposals of 1945, 1949, and 1956. It is restricted to one-way, overnight trips of less than 16 hours, and does not extend to other regular or extra service trips. It does not request, as did the earlier proposals, pay for time spent sleeping. Rather, it asks that the conductor on these trips remain on duty without sleep, and without rest deduction up to 16 hours.

The record shows that regularly scheduled conductors on longer runs work 20 or more hours per day for up to 2 days in succession; and that conductors on special service assignments may work 18 or more hours per day for 10 or 15 days or even more in succession. It is therefore obvious that there is no physical necessity for conductors to have sleep during a single, one-way overnight trip of less than 16 hours.

If this is an economic deduction on the part of the company under the present rule, as contended by the organization, the proposal is likewise for an economic gain on the part of the organization. If viewed solely on the basis of conductors' physical need for sleep during the trip, the deduction is not justified. But when viewed in the full context of historical practices, and the history of negotiations on deductions for rest periods, it must be concluded that this deduction is a long and well established feature of employment conditions on one-way, overnight trips. We see no evidence of any change in circumstances and conditions affecting this matter which justifies the proposed rule change.

The Board recommends that the organization's proposal to eliminate deductions for sleep periods on one-way, overnight trips of 12 hours or more but less than 16 hours be withdrawn.

2. Guaranteed Basic Monthly Pay for Extra Conductors

(Issue No. 6; Rule 39)

Rule 39 requires that the extra board of a district is to be maintained by using thereon the number of conductors which shall afford as nearly as possible minimum earnings of three-fourths of a basic month's pay for each conductor who does not lay off of his own accord. This rule further expresses the intention of the parties to allow conductors working on the extra board an opportunity to average as nearly as possible full time before additional conductors are recalled from furlough, obtained by transfer, or employed. An extra board is maintained in any district where the extra and relief work is sufficient to afford a conductor three-fourths of a basic month's pay. The rule does not guarantee three-fourths of a basic month's pay.

The organization has proposed that the extra board of a district must be maintained by using thereon the number of conductors necessary to afford as nearly as possible minimum earnings of a basic month's pay for each conductor who does not lay off of his own accord, and that an extra board must be maintained in any district where the extra and relief work is sufficient to afford a conductor a basic month's pay. The proposal further requires that a conductor carried on the extra board for a full calendar month shall be guaranteed his basic month's pay unless he lays off of his own accord. A conductor carried on the extra board less than a full month would be paid proportionately.

The company proposes that the present rule be left unchanged.

The conductor work of a district that is not performed as part of a regular assignment awarded by bulletin is considered as work of

the extra board at that point. The amount of such work is dependent upon the demand of the travelling public from day to day, and the need for vacation reliefs or relief work in regular assignments. Thus the number of conductors on an extra board of a district or agency depends upon the amount of such work.

Under the present rule, the extra board is operated as follows: on the fifteenth of each month the average earnings of conductors who worked on the extra board during the preceding month are calculated. If the average pay for these conductors falls below three-fourths of a basic month's pay, a sufficient number of conductors are furloughed so that in the current month those on the extra board average three-fourths of a basic month's pay. The number on the extra board may also be adjusted on the basis of past experience, particularly with respect to heavy travel months in various sections of the country.

In the opinion of the Board, the organization's proposal to further limit the number of conductors on the extra board, and to guarantee a basic month's pay to each conductor assigned to the extra board for an entire month, would have several adverse results.

It is clear that many extra conductors are working the number of hours required to make a basic month or more; many other extra conductors however, are working three-fourths of a month or less. If the organization's proposal were adopted, the company would have to decide whether to continue this latter group of extra conductors and pay them for work they did not perform or whether to furlough them. The company states that if the proposal were adopted it would find it necessary immediately to furlough from fifty to sixty conductors now assigned to extra boards.

The use of extra boards is the long established method in the railroad industry of taking care of additional work as it arises, and in the Pullman Co. of taking care of service required over and above regular assignments. In the opinion of the Board, the proposal to guarantee all men on the extra board a month's pay would to all intents and purposes eliminate the extra board as such, for all conductors would either be receiving a basic month's pay and thus be equivalent to regularly assigned conductors, or would be on furlough. Furthermore, it is clear that this proposal, when considered together with the organization's companion proposal to guarantee 10 days' pay for each conductor recalled from furlough, would provide a strong inducement to the company to schedule regularly assigned conductors on an overtime basis rather than to incur the risk of paying conductors on the extra board for work which they do not perform.

The evidence adduced is not convincing that the operation of the present rule has resulted in any inequities to conductors on extra boards, or that the company has abused its managerial function in its method of operating these boards.

The Board recommends that the organization withdraw its proposal with respect to limiting the number of employees on extra boards and guaranteeing a basic month's pay for all conductors who are on extra boards for the entire month.

3. Guarantee of Ten Days' Pay for Conductors Recalled from Furlough

(Issue No. 7; Rule 39)

Under present rule 39, conductors may be recalled from furlough in accordance with a specified procedure to meet work requirements. They are paid for such work as they perform with no guarantee of any kind.

Under the organization's proposal, a conductor recalled from furlough or a person employed as a conductor would be guaranteed not less than 10 consecutive days at his daily rate of pay from date of recall or employment, provided he is available for work during the 10-day period. A conductor recalled from furlough who is again furloughed within 10 days from date of recall would be guaranteed not less than 10 consecutive days' pay.

The company proposes no change in the present rule.

There is no rule comparable to this proposal found anywhere in the railroad industry, or to our knowledge in any other industry, where an employee recalled to work is automatically guaranteed pay for a designated number of days regardless of the number of days he may be needed.

While it is claimed that this proposed guarantee would give some job stability to those furloughed conductors who now receive sporadic and short-term assignments, it is the opinion of the Board that its effect would be to make less likely the recall of furloughed conductors for such brief assignments as are now available and are now being filled by them, but would in fact result in the regularly assigned conductors and extra board men performing considerably more of the available work on an overtime basis. The Board does not feel that any desirable results could be obtained by this proposal.

The Board recommends that the organization withdraw its proposal to guarantee 10 days' pay for extra conductors recalled from furlough

4. Pay for All Deadhead Hours

(Issue No. 8; Rule 7)

Under the present rule, conductors in deadhead service are credited for actual time up to 10:15 hours (1½ days) for each 24-hour period from time required to report until released, with a minimum credit of 6:50 hours (1 day). If not furnished a berth in a Pullman car on an overnight trip, the conductor is paid actual time for deadhead service from time required to report until release. Different deadhead trips completed within a 24-hour period may be coupled and treated as one movement if no other class of service intervenes.

The organization proposes that conductors in deadhead service shall be paid actual time from the time they are required to report until they are released, subject to sleep deduction.

Deadheading occurs most often in connection with returning an extra conductor to his home station on completion of a one-way trip; returning a regularly assigned conductor to his home station when train delay on an outbound trip causes him to be too late to fill his return assignment; moving a conductor from his home station to an outlying point where his services are required; or returning him from an outlying point to his home station.

Prior to 1936, time spent deadheading on pass was paid for on the basis of 8 hours per day. In 1936, the parties agreed to increase pay for deadheading from 1 day (8 hours) to 1½ days (12 hours) for each 24 hours of elasped time. In 1945, and again in 1949, the organization proposed an increase in the number of credited hours for each 24 hours of elapsed time while deadheading. These proposals were rejected by the first and second Tipton Boards respectively. Deadheading has historically been paid on a lower basis than service hours. There has been no change in deadhead service conditions since the subject was reviewed by the 1945 and 1950 Tipton Boards.

We find no basis in the record which would indicate that the same payment should be made for deadhead trips as is made for service trips. We therefore believe that the rate of compensation which has historically prevailed for deadhead trips should be maintained.

The Board recommends that the organization withdraw its proposal with respect to pay for deadheading.

5. Payment for Deadhead Service Not Performed

(Issue No. 16; Memorandum of Understanding)

Included in the agreement between the parties is a memorandum of understanding concerning the manner in which conductors shall

be paid when two or more Pullman cars operate in service without a conductor. It was embodied in the agreement as the result of a mediation agreement executed May 16, 1949, and was reexecuted on September 21, 1957.

This memorandum governs solely payments to conductors for service which is never performed by them; that is, it fixes the payments to conductors when they are deprived of certain assignments to which they might otherwise be entitled under the agreement.

The first paragraph of the memorandum further quite specifically limits its application to those situations in which cars operate in service without a conductor, under certain exceptional and clearly specified circumstances. The memorandum prescribes the method of calculating the pay to which such conductors shall be entitled in five different specific situations under points (1) through (5).

The organization has proposed two changes in this memorandum of agreement. First, it proposes that the memorandum be applicable in situations involving one or more Pullman cars rather than those involving two or more such cars as at present. In view of the Board's recommendation for withdrawal of the organization's proposal that conductors be operated on trains carrying one sleeping car, there can be no justification for this proposed change in the memorandum of understanding.

Second, the organization proposes that point (5) of the memorandum be changed to provide payment for a deadhead trip from the other district or agency back to the conductor's home station, in addition to the payment for the service trip to that other district or agency as presently provided for.

In this matter, the organization appears to seek a change in point (5) because it may have some disagreements with the company in specific instances as to whether the failure to assign a conductor available at his home station constitutes a violation of the memorandum of understanding or a violation of rule 38. It also argues that under the other points of the memorandum, conductors are allowed constructive pay for both a service trip and a deadhead trip, and only in the case of point (5) is their constructive pay limited to pay for a service trip alone.

In view of the fact that the first paragraph of the memorandum of understanding expressly limits its application to those situations in which cars operate in service without a conductor under circumstances comparable to those involved in the claims which gave rise to the mediation agreement (docket No. 3099), dated May 16, 1949, it would seem that there should be no great difficulty in distinguishing the proper application of this memorandum in relation to rule 38 or

other provisions of the agreement. In fact, in the one claim processed involving this question (award No. 9587), The National Railroad Adjustment Board, Third Division, made just the distinction about which the organization appears to be concerned, and in doing so upheld the organization's claim. The Board therefore sees no reason to modify point (5) because of any possible confusion in its application to specific situations. No example of such confusion has been produced, in which the employees do not have an adequate source of redress through the normal grievance and claims procedure.

Next, the organization argues that only under point (5) is a conductor allowed constructive pay solely for a service trip, while under points (1) through (4), he receives constructive pay for both a service and a deadhead trip.

The Board notes first that there is no evidence of any change in conditions since this memorandum was first signed in 1949, which warrants a change in policy at this time.

Further, this memorandum of agreement is designed to apply to a specific type of situation in which the company may not be at fault, but nevertheless agrees that it will not assert an inability to place a conductor on the cars because of nonavailability. It thus constitutes a special method of determining the proper constructive pay for assignments missed, as an exception to the methods normally used under other terms of the agreement.

One consistent pattern runs through all five points of the memorandum. Each instance in which the assignment will ultimately take the employee to a district or agency office away from his home station, figuratively leaves him at that other district or agency office for further assignment from that point. Point (5) as presently written is therefore entirely consistent with the other points of the memorandum in this respect. The organization's proposal would make point (5) inconsistent with the others in this regard. Considering the specialized application of this memorandum of agreement, the Board sees no reason for recommending the change in point (5) proposed by the organization.

The Board recommends that the organization's proposal with respect to payment for deadhead service not performed be withdrawn.

6. Minimum Day Payment for Extra Conductors Performing

(Issue No. 9; Rule 10)

Under present rule 10 (a) and (b), extra conductors are credited for station duty on an hourly basis with a minimum credit of ½ day for each call; regularly assigned conductors are allowed a minimum

payment of 1 day for each call. These payments are also applicable to extra and regular conductors when required to load trains, or when required to report for road service and not used.

The organization proposal would change the minimum credited hours for extra conductors from a half-day to a full day, thus eliminating the differential between extra conductors and regular conductors which has existed for many years.

The present rule has had a long history. Provision for the payment of Pullman conductors for station duty first appeared in the supplements to general order 27 of the Director General of Railroads, dated April 14, 1919. At that time, an arbitrary payment of 3 hours for conductors who performed other than road service work was established, without regard to whether the conductors were on regular or extra assignment. This rule was subsequently placed in the agreement between the parties and remained until 1944. At that time, the organization proposed minimum payments for station duty of 3½ hours for extra conductors and 7 hours for regular conductors, on the ground that regular conductors assigned to station duty were deprived of layover time that they had earned, and that the increased minimum payment requested would act to deter the company from assigning regular conductors for this duty. It also contended that station duty should be assigned to extra conductors as work properly belonging to them. This proposal was considered by the first Tipton Board, which accepted the organization's reasoning on the proposal and recommended that it be adopted. Present rule 10 resulted from that recommendation.

In 1949, and again in 1956, the organization proposed that the differential between regular and extra conductors which it had sought and obtained in 1945, be eliminated by increasing the minimum payment for extra conductors from ½ day to 1 day. The 1949 proposal was rejected by the second Tipton Board in 1950, and the 1956 proposal was withdrawn by the organization as part of a settlement in 1957.

We think that the guarantee of ½ day to extra conductors who are called to perform station duty or to load trains for less than ½ day, or are called for road service and not used, is a fair arrangement and is consistent with other such arrangements in the railroad industry. The first Tipton Board found that a full day's pay rather than a half-day's pay was justified for regular conductors purely because of its deterrent effect. The second Tipton Board in 1950 found merit in this reason for the differential and rejected a proposal to eliminate it. We find no changes in circumstances since 1950 which justify any different conclusion.

The Board recommends that the organization withdraw its proposal with respect to minimum payments under the station duty rule.

7. *Meal Arrangements for Conductors Assigned to Special or Troop Trains*

(Issue No. 19; New Rule)

There is no rule in the present agreement governing the subject matter in dispute here. The organization proposes including in the agreement a new rule which would require the Pullman Co. to make necessary arrangements for conductors to obtain meals when assigned to troop trains, camp trains or other special trains which do not carry dining car service, and when the trip, including the deadhead trip to the point where needed for service, exceeds 12 hours. The company opposes the proposal.

The evidence we have does not indicate any real need for this proposed rule. It is obvious that the problem with which it deals arises only on rare and exceptional occasions, and then usually as a result of factors beyond the company's or the Pullman conductors' control. Most such trains on trips exceeding 12 hours, and during normal meal time hours, carry dining car service. Where they do not, conductors assigned to them usually have ample advance notice of their departure time and their destination to permit them to make arrangements for food on the trip. When troop or camp trains are travelling in areas where there are no public eating places available, company representatives in the area usually do make arrangements now for meals or food to be available for car service employees.

Because the railroads and not the Pullman Co. control the operation of the trains, situations might well arise in which, in spite of the company's best efforts, it could not make arrangements for meals under conditions envisioned by this rule. In those cases, the rule could in no way help the conductors obtain needed food. The rule therefore becomes in part an inflexible demand that the company control that over which it has no control. Such a rule is impractical and unwise.

We agree that where the company is able to assist the conductors in obtaining meals on these special service train assignments, it should make every possible effort to do so. But it does not appear to us that any substantial need has been shown for an agreement rule as proposed.

The Board recommends that the organization's proposed new rule with respect to meal arrangements be withdrawn.

8. Lodging Arrangements for Conductors Assigned to Special or Troop Trains

(Issue No. 20; New Rule)

There is no rule in the present agreement governing the subject matter in dispute here. The organization proposes including in the agreement a new rule, which would require the company to supply lodging for conductors assigned to troop trains, camp trains, or other special trains, when those conductors are required to deadhead to an outlying point to go into service on such trains, and when they are held at that outlying point during any of the hours from 9 p.m. to 6 a.m., and lodging is not available.

There is no evidence of any substantial need for this rule. The record reveals no instance of a conductor being unable to obtain satisfactory lodging in connection with assignments to camp trains or other special trains. It reveals only one case of an inability to do so in connection with an assignment to troop trains. The situation in that instance has been corrected through the grievance procedure under existing rules. The pay of the conductor involved was adjusted as requested by the organization, and the local Pullman Co. official was cautioned to avoid such situations by more careful assignment of conductors in the future. There has been no further complaint since that case arose in 1959.

The Board recommends that the organization's proposed new rule with respect to lodging arrangements be withdrawn.

III. THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY CASE

The Milwaukee Railroad Co. operated its own sleeping cars from 1866 to 1955. It has operated its own parlor cars since 1879, and continues to do so today. In 1927 it began the process of turning its sleeping cars over to Pullman to operate, and on April 16, 1955, turned its last sleeping cars over to the Pullman Co.

As the result of an arbitration award in 1948, the company was first required, by contract with the Order of Railway Conductors and Brakemen, to use a conductor whenever it operated two or more sleeping or parlor cars. This requirement remained in the agreement with the organization after the company had disposed of all its sleeping cars and governs its operation of parlor cars. Also, in connection with discontinuing the operation of sleeping cars, the company agreed to the frozen line provision requiring the use of parlor car conductors on three trains, or any new trains substituted for them, whenever they carried one parlor car in service.

At the present time then, the Milwaukee operates no sleeping cars itself. It operates parlor cars on eight regularly scheduled trains. It is the only railroad in the United States on which parlor car conductors are required by contract with the organization. All parlor car operations, moreover, are normally one-car operations, and parlor car conductors are required only by the frozen line provision. Of the three trains originally designated as frozen line, only one remains in operation. It is train No. 2, the Hiawatha, from Minneapolis to Chicago. In order to have a conductor available for that train, the company also uses a conductor on train No. 15 from Chicago to Minneapolis.

ISSUES IN THE MILWAUKEE RAILROAD COMPANY DISPUTE

Company issue	Comparable Pullman issue No.	Rule involved	The issue	Proposed by—
1	1	Memorandum.	Elimination of frozen line provision.	Company.
2	2	49	Number of cars requiring assignment of conductor.	Company and organization.
3	3	4	Basic month	Organization.
4	6	34	Guaranteed basic monthly pay for extra conductors.	Do.
5	7	34	Guarantee of 10 days' pay for conductors recalled from furlough.	Do.
6	8	7	Pay for all deadhead hours	Do.
7	9	9	Minimum day payment for extra conductors performing station duty.	Do.
8	10	49	Elimination of requirement to assign conductors to layover cars.	Company.
9	11	42 and 50	Compensation for wage loss	Do.
10	12	New rule	Definition of parlor car conductor's work.	Organization.
11	14	37	Presentation of witnesses at disciplinary hearings.	Do.
12	15	37	Withholding name and address of passenger when requested to do so.	Do.
13	24	New rule	Job stabilization plan	Do.

The company presently has five parlor car conductors on its employee roster. Two are used on regular assignments on trains Nos. 2 and 15. One is used as a relief conductor on these trains. Of the

other two, one is in a supervisory position. If the frozen line portion of the 1955 memorandum of understanding were eliminated, as requested by the company, there would be no regular work left for parlor car conductors on the Milwaukee.

As pointed out in the introduction to this report, all of the issues in the Milwaukee case are identical with or similar to those in the Pullman case. Tabulated below are the issues which the Board has been required to investigate and upon which it must report in the Milwaukee case. They are so arranged as to indicate the identification number given the issue by the company, the agreement rule or memorandum involved, the subject matter of the proposal, and the party making the proposal. Also, to facilitate a comparison of similar issues in this and the Pullman case, the tabulation includes the comparable issue number in the Pullman Co. case from the preceding tabulation found on page 5 of this report.

The parties used essentially the same basic arguments in discussing these issues in the Milwaukee case as they did in the Pullman case. In every instance, the same principles influenced the Board's decisions insofar as they were applicable to the facts involved. Therefore, our analyses of the issues in the Pullman case are adopted in the Milwaukee case to the extent they are applicable. In the case of only one issue, namely, that of the organization's proposed new rule to provide job stabilization and severance allowance, were the facts sufficiently different to warrant special discussion.

Concerning this issue, the new rule proposed by the organization here is similar in purpose and effect to the rule which it proposed in the Pullman case. But the relevant facts are quite different in the two cases.

Unlike the Pullman conductors, parlor car conductors on the Milwaukee are covered by the Washington job agreement of 1936 in the event of the merger or consolidation of the Milwaukee with some other railroad; it appears they would also be protected under I.C.C. policy in the event of abandonment of lines. Furthermore, the potential loss of jobs by Pullman conductors due to taking over of sleeping car service by railroads is not a threat to parlor car conductors on the Milwaukee.

There are no substantial threats to the job security of Milwaukee parlor car conductors which are not already subject to those protective provisions applicable to the bulk of employees in the railroad industry. Accordingly, there is no justification for the organization's proposal. The Board has recommended withdrawal of this demand, without the additional observations which appeared called for in the Pullman case.

Finally, the record is clear that on many prior occasions of this sort, Milwaukee and the organization have entered into a standby agreement providing in effect, with respect to those items in dispute common to both the Pullman Co. and the Milwaukee Road, that settlement would be made on the basis of the final disposition of such items by the Pullman Co. and the organization. It also establishes that the company offered several times during the current dispute to reach a similar agreement, but the organization declined. Even though no such agreement was formally made in connection with this case, the similarity of issues and facts requires an essentially standby approach to the Milwaukee case.

In view of the almost identical problems involved in these common issues, the extent to which the parties relied on the same arguments in both cases, and the fact that the Board was governed by the same principles in both cases, the Board makes its specific recommendations on particular issues in the Milwaukee case without further discussion or analysis of those issues:

A. Basic Month

(Issue No. 3; Rule 4)

The Board recommends that the organization's proposal that the basic month be reduced from 205 hours to 180 hours, and that such other changes be made as are necessary to make other rules in the agreement conform thereto, be adopted.

B. Job Stabilization and Severance Allowance

(Issue No. 13; New Rule)

The Board recommends that the organization's proposal with respect to job stabilization and severance allowance be withdrawn.

C. Conductors' Work

1. *Elimination of the "Frozen Line" Provision*

(Issue No. 1; Memorandum of Understanding)

The Board recommends that the Milwaukee withdraw its proposal to eliminate Item 2 of the "Frozen Line" Memorandum of April 5, 1955.

2. *Elimination of Requirement to Assign Conductors to Layover Cars*

(Issue No. 8; Rule 49)

The Board recommends that the company's proposal with respect to elimination of requirement to assign conductors to layover cars be withdrawn.

3. *Minimum Number of Cars Requiring Assignment of Conductor*

(Issue No. 2; Rule 49)

The Board recommends that both parties withdraw their proposals and that the present two-car rule be retained.

4. *Definition of Parlor Car Conductors' Work*

(Issue No. 10; New Rule)

The Board recommends that the organization's proposal with respect to definition of parlor car conductors' work be withdrawn.

D. Grievances and Claims

1. *Compensation for Wage Loss*

(Issue No. 9; Rules 42 & 50)

The Board recommends that the company's proposal with respect to compensation for wage loss be withdrawn.

2. *Presentation of Witnesses at Disciplinary Hearings*

(Issue No. 11; Rule 37)

The Board recommends that the organization's proposal with respect to presentation of witnesses at disciplinary hearings be withdrawn.

3. *Withholding Name and Address of Passenger When Requested To Do So*

(Issue No. 12; Rule 37)

The Board recommends that the organization's proposal with respect to withholding name and address of passengers when requested to do so be withdrawn.

E. Miscellaneous Demands

1. *Guaranteed Basic Monthly Pay for Extra Conductors*

(Issue No. 4; Rule 34)

The Board recommends that the organization's proposal for guaranteed basic monthly pay for extra conductors be withdrawn.

2. *Guarantee of Ten Days' Pay for Conductors Recalled from Furlough*

(Issue No. 5; Rule 34)

The Board recommends that the organization's proposal for a guarantee of ten days' pay for conductors recalled from furlough be withdrawn.

3. *Pay for All Deadhead Hours*

(Issue No. 6; Rule 7)

The Board recommends that the organization's proposal with respect to pay for all deadhead hours be withdrawn.

4. *Minimum Day Payment for Extra Conductors Performing Station Duty*

(Issue No. 7; Rule 9)

The Board recommends that the organization's proposal with respect to minimum day payment for extra conductors performing station duty be withdrawn.

IV. CONCLUSION

It is the Board's considered judgment that the findings and recommendations set forth in this report provide a fair and equitable basis upon which the parties should be able to reach agreements in the settlement of these disputes.

Respectfully submitted.

DAVID H. STOWE, *Chairman.*
BYRON R. ABERNETHY, *Member.*
H. RAYMOND CLUSTER, *Member.*

December 11, 1961.

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