Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11027 DATED JUNE 8, 1962, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate a Dispute Between the New York Central Railroad Company System and the Pittsburgh and Lake Erie Railroad Company and Certain of Their Emyloyees Represented by the Order of Railroad Telegraphers.

WASHINGTON, D.C.
AUGUST 30, 1962

(National Mediation Board Case Nos. A–5809 and A–6063)

Emergency Board No. 148

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *August 30, 1962.*

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

Mr. PRESIDENT: The Emergency Board created by you on June 8, 1962 by Executive Order 11027, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between the New York Central Railroad Company System and the Pittsburgh and Lake Erie Railroad Company and certain of their employees represented by the Order of Railroad Telegraphers, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

JOSEPH SHISTER, *Chairman.*
J. HARVEY DALY, *Member.*
WALTER F. EIGENBROD, *Member.*

Report and Recommendations of Emergency Board

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REPORT TO THE PRESIDENT

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EMERGENCY BOARD

Appointed by Executive Order Number 11027 dated June 8, 1962, pursuant to Section 10 of the Railway Labor Act, as amended.

This is an Emergency Board report and recommendations in a dispute between the New York Central Railroad Company System and the Pittsburgh and Lake Erie Railroad Company (hereafter also referred to as the Carrier or the New York Central) and certain of their employees represented by the Order of Railroad Telegraphers (hereafter also referred to as the Organization), which has been found to threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

I. INTRODUCTION

On June 8, 1962, the President of the United States, by Executive Order and pursuant to section 10 of the Railway Labor Act, as amended, created Emergency Board No. 148. The President appointed as Chairman, Joseph Shister of Buffalo, N.Y., and as members, Walter Eigenbrod of Huntsville, Ala., and J. Harvey Daly of Washington, D.C., to investigate this dispute and report to him concerning it.

The Board convened in New York City, N.Y., and held hearings from June 19 through July 6, 1962. The record of the proceedings consists of 1,815 pages of testimony and 39 exhibits.

In view of the voluminous record, the vital importance of the issue, and because of other relevant considerations, the Board—with the approval of the parties—requested an extension of the time limits for submitting its report and recommendations to the President. The request was granted and the time thus extended to August 31, 1962.

The Carrier is a class I railroad serving the northeastern and some midwestern parts of the United States, operating from New York City and Boston on the east coast through Buffalo, Pittsburgh, Cleveland, Detroit, Chicago and St. Louis. The Carrier maintains approximately 18,000 miles of track, which represent over 5 percent of the track of all class I railroads in the United States.

The Order of Railroad Telegraphers is one of the national organizations representing non-operating railroad employees for collective bargaining purposes and, at the present time, represents station agents, telegraphers, tower men and certain other employees engaged in communication duties.

II. HISTORY OF THE DISPUTE

This dispute originated on March 27, 1958, when the Organization, pursuant to section 6 of the Railway Labor Act, served notice upon the Carrier that it wished to amend the current agreement by adding the following rule:

> No position in existence on March 4, 1958, will be abolished or discontinued except by agreement between the Carrier and the Organization.

The Carrier maintained that the Organization's request was barred by the moratorium provisions of the National Agreement of November 1, 1956. Nevertheless, Carrier representatives met with Organization representatives in an attempt to resolve the dispute. Following the meetings and considerable interchange of correspondence between the parties, the Organization invoked the services of the National Mediation Board which thereupon classified the dispute as case No. A–5809.

Mediation efforts, which began on March 16, 1959 and lasted several days, were unproductive. On March 31, 1959 the mediator transmitted to the Carrier the amended proposal of the Organization, which reads as follows:

(a) Work and positions now or heretofore assigned to employees subject to this agreement shall not be assigned to employees not subject to this agreement.

(b) Any function performed by work now or heretofore done by employees subject to this agreement shall continue to be work subject to this agreement and done by employees covered by this agreement, irrespective of any change in the means or methods by which such function or work is performed.

(c) Positions occupied by employees and work performed by occupants of positions coming within the classifications now named or hereafter named in the agreement between the parties, belonging to the employees establishing seniority under the agreement and neither position or work will be removed from the jurisdiction of the Organization except by mutual agreement.

(d) Any employee who is separated from the service in accordance with provisions of the agreement or who is deprived of employment through no fault of his own or due to a reduction in force will be granted severance pay in sufficient amount to guarantee him a minimum compensation of the equivalent of 5 days each week or 40 hours each week at the straight time rate of the position last occupied for a period of time equal to the time he has had an employment relationship with the carrier with a minimum of 1 year. This compensation can be terminated within the limits named only by demise of the employee.

(e) Merger or the consolidation of positions may be effected only by mutual agreement between the parties. Any agreement to merge or consolidate positions shall contain, but not be limited to, the following provisions:

1. Locations or stations separate and distinct one from the other where one employee only and represented by the Organization is stationed shall be involved.

2. Hours of service at each location shall be posted at each location.

3. Rate of pay of not less than 20 percent in excess of the higher rated position.

4. Transportation to be furnished by the Carrier, except employees will not be required to travel on freight trains. If the occupant of the position volunteers to use his own means of transportation mileage of 12 cents per mile will be paid, but one employee shall not bind his relief or successor in this respect. Traveling to be done within assigned working hours.

5. Any additional force at either location as needed shall be taken from the employees represented by the Organization.

6. Allocation of the merged position and rights of the employee not used.

7. The occupant of the merged position shall be compensated under the rules of the agreement if work is performed by other employees at either location within or outside the assigned hours.

The Carrier declined to accept the amended proposal, maintaining the same position it did when declining the original one.

On May 5, 1959, the Organization, pursuant to section 6 of the Railway Labor Act, notified the Carrier that, without necessarily withdrawing its original proposal, it wished to incorporate into the agreement the amended proposal. In July 1959, the Carrier rejected the amended proposal, contending that no new section 6 notice could be served while the original notice was still in the mediation stage; that the issue at hand was not bargainable under the Railway Labor Act; and that the proposal was barred by the moratorium provisions of the National Agreement of November 1, 1956. The Organization then again invoked mediation, and the National Mediation Board classified this dispute as case No. A–6063.

Under date of September 1, 1959, the Organization issued strike ballots to the membership. On December 3, 1959, the National Mediation Board informed the Carrier that a strike ballot had been taken by the Organization of its New York Central membership on both the initial and the amended proposals.

At this time, the Chicago and North Western Railway Company and the Order of Railroad Telegraphers were engaged in litigation to determine whether a rule identical with the one in the instant case was a bargainable issue under the Railway Labor Act. On April 18, 1960, the Supreme Court of the United States ruled on the Chicago and North Western case. The decision, reversing the Circuit Court of Appeals, held that the Organization's request was a bargainable issue; that the case was therefore one "growing out of a labor

dispute"; and that the injunction ordered by the Circuit Court of Appeals was forbidden by the Norris-LaGuardia Act.

Following the Supreme Court's decision, mediation efforts in the instant case continued intermittently until January 25, 1962, when the National Mediation Board recommended that the parties submit both disputes to binding arbitration, in keeping with the relevant provisions of the Railway Labor Act. On January 26, 1962, the Carrier accepted the Board's recommendation; the Organization, however, on March 5, 1962, declined. The National Mediation Board then notified the parties that effective March 9, 1962, it was terminating its services to the disputants, and on April 9, 1962, the Board closed its files.

On June 4, 1962, the Organization informed the National Mediation Board that a strike was authorized by the membership and that the strike was set for June 12, 1962. The National Mediation Board notified the President of an existing emergency, whereupon the President created this Emergency Board by the issuance of Executive Order No. 11027.

III. POSITIONS OF THE PARTIES

1. Contentions of the Organization

According to the Organization, almost 2,300 telegrapher positions (also referred to as jobs) were eliminated by the Carrier in the period from 1950 through 1961. The most drastic reduction occurred between 1955 and 1961, when over 1,800 jobs were abolished. While the job abolishments have resulted from various technological, organizational, and other changes, the pricipal reason for the reductions has been the closing of agencies and the use of the Central Agency Plan. This plan consists of having one traveling agent, working out of a Freight Service Center, visit and service the customers in the area where agency positions have been abolished.

The Organization claims that the rate of job abolitions on the New York Central has been excessive when measured against the stability of telegrapher employment prior to 1950, and particularly prior to 1955. It has also been excessive, contends the Organization, when gaged against telegrapher position abolishments on other major American railroads. Thus, figures submitted by the Organization show that on the New York Central the percentage decrease in telegrapher positions between 1950 and 1961 was 53.1 percent. By contrast, the decrease on most of the major American railroads during the same period fell within a range of 22 to 32 percent. The Organization stresses the point that most major railroads fell within the above range despite the fact that they operate in different parts of

the country with different terrain and serve regions with varying industrial complexions.

The Organization claims that the job abolitions have occurred without advance consultation by the Carrier either with the employees affected or the Organization representatives. Furthermore, the Organization emphasizes these serious hardships inflicted on the employees adversely affected by the excessive job abolitions: irregular employment, reduced earnings, unreimbursed away-from-home expenses, forced resignations because of concern with lack of adequate job opportunities on the New York Central, early retirement with an attending loss of income, and moving expenses and loss on sale of homes in connection with changes in residence.

The excessive rate of job abolition on the New York Central, argues the Organization, proves that the right to abolish positions cannot be left exclusively within the discretion of the Carrier; the proposed rule is therefore essential. According to the Organization, the rule does not spell a job freeze; it does not explicitly dictate, or even imply, a job freeze. Rather, it provides the mechanism necessary to cope constructively with the problem at hand. It would enable both parties jointly to evaluate the proposed abolishment of any position for the purpose of determining whether such abolition is necessary in the light of all the facts and circumstances at play. It would provide the necessary opportunity to negotiate appropriate wage scales and working conditions for employees whose duties have been changed by job abolitions. It would permit the parties to negotiate appropriate protective measures for the employees adversely affected by position abolishments. And it would provide the flexibility that is needed to meet changing technological and organizational conditions.

Moreover, the Organization claims it would act reasonably and responsibly in administering the rule jointly with the Carrier. In support of that contention, the Organization points out that it has been a well-established and responsible trade union for over 75 years. It further alludes to this fact: The Organization has actually entered into dualization agreements with different railroads, providing for the elimination of unnecessary positions.

The Organization argues that there is adequate precedent for job stabilization agreements on the railroads. Thus, it submitted into evidence a number of such agreements negotiated with various railroads both by itself and other labor unions. And the Organization has put particular emphasis on the agreement it concluded with the Southern Pacific Company (Pacific Lines) on October 29, 1961, dealing with the identical problem which is before this Board. The relevant terms of that agreement provide: (1) When a regular posi-

tion is abolished, the affected employee must be given at least 96 hours' notice. (2) No less than 90 days' notice must be given the general chairman when a position is to be abolished by reason of technological or organizational change. At his option, but prior to the close of the 90-day notice period, the Organization representative may engage in joint discussions with the Carrier representative for the purpose of minimizing grievances and adverse effects on the employees involved. (3) No more than five agencies may be eliminated in any one calendar year except by agreement between the parties. (4) The abolishment of positions is not to exceed the normal annual attrition rate, and in no event may such abolishments exceed two percent per annum on a system basis; the 2 percent figure being calculated from a base of 1,000 positions. Job abolitions resulting from Centralized Traffic Control are exempt from this limitation. (5) With certain exceptions, the number of positions is not to be reduced "until such time as the number of positions which may be abolished under (the) agreement has equalled the difference between the base of 1,000 positions and the number of positions" in effect on October 29, 1961. (6) When assigned to the extra board, telegraphers holding seniority as of September 15, 1961, are guaranteed 40 hours of work per week or pay in lieu thereof. (7) The benefits available under sections 6, 7, 8, 9, 10 and 11 of the Washington Agreement of May 1936, are to be made available to employees adversely affected by technological or organizational change. These benefits are made retroactive for employees adversely affected between April 24, 1958, and September 15, 1961. (8) Preference in hiring is to be given telegraphers formerly employed by the Southern Pacific, within the jurisdiction of the Organization, and whose employment was not terminated by retirement or discharge for cause. (9) The parties are to cooperate in developing training programs designed to improve the qualifications of employees, and to qualify "employees holding seniority but not working to return to work in another capacity."

The Organization points out that the fixed standards contained in the Southern Pacific Agreement are not so ideally suited for coping with the problem at hand as is the proposed rule, mainly because the rule provides the flexibility required to deal with changing conditions. The Organization is not, however, averse to utilizing the guideposts in the Southern Pacific Agreement for resolving the present issue.

The Organization does not deny that all agency closings and the establishment of the Central Agency Plan have been approved by the various state regulatory commissions, before which the Organization has appeared in opposition to the proposed changes. But the

Organization points out that these State agencies are concerned with a very restricted view of public necessity and convenience; which is why they do not address themselves to the impact of job abolitions on the affected employees. By contrast, argues the Organization, the Interstate Commerce Commission does take into account the employee impact of its rulings in such matters as line abandonments and similar problems.

According to the Organization, the use of the Central Agency Plan has been detrimental to the economic interests of the Carrier in a twofold way: First, the elimination of resident agents and the substitution of traveling agents has meant the loss of employees who, through their standing and contacts in the community, helped acquire traffic for the Carrier. Secondly, the accelerated resignations and retirements entailed by the job abolitions, have necessitated the hiring of new and inexperienced telegraphers with the resulting costs involved in training.

Finally, the Organization disputes the Carrier allegation that it is in a weak economic position. The Organization contends that the New York Central is a very powerful corporation with diversified interests, and that both its net income and cash flow positions are sound.

2. Contentions of the Carrier

The Carrier claims that the proposed Organization rule—either the original or amended one—spells a position freeze. The Carrier admits that the literal wording of the rule does not call for a position freeze; it endows the Organization with veto power. However, argues the Carrier, in actual practice the rule would mean a position freeze, given a realistic appraisal of the Organization's policies and practices.

A position freeze, contends the Carrier, is altogether contrary to the public interest and prevailing national labor policy. Such a freeze would obstruct the technological and organizational changes which are the very lifeblood of economic progress in this country. And that is precisely why the President, the Secretary of Labor, other high Government officials, the Presidential Railroad Commission, and every Emergency Board which has dealt with the problem, have all spoken out unequivocally against the job freeze principle.

The Carrier claims that not only is a job freeze contrary to the public interest and national labor policy, but that it would impose a prohibitive cost burden. That is evident, argues the Carrier, from these figures: If all the 999 telegrapher positions eliminated between March 1958 and March 1962 had been retained, by virtue of a job freeze, the Carrier's annual expense would have increased by almost $7 million. Moreover, acceptance of the job freeze principle in this

case would set a pattern for the other nonoperating unions on the New York Central. And if all the 5,665 nonoperating positions abolished between March 1958 and March 1962 had been retained through a job freeze, the Carrier would be saddled with an increased annual expenditure of more than $35½ million.

The Carrier argues that it cannot afford anything even remotely resembling either of those burdens, because of its very weak economic and financial position. And in support of that contention the Carrier alludes to these data: The net income of the New York Central, which stood at $52,283,814 in 1955, has dropped almost steadily since then to a *deficit* of $12,549,048 in 1961. Similarly, the Carrier's cash position has deteriorated almost continually since 1955; thus, its working capital fell from $28.5 million in that year to a *shortage* of $2.6 million in 1961.

The Carrier argues that the closing of agencies and the use of the Central Agency Plan was an absolutely necessary organizational response to the drastic decline in traffic entailed by the competition from other transportation media and the decline of the region served by the Carrier. Because of the relatively flat territory—with the attending population distribution—in which the Carrier operates, coupled with the relative absence of good roads, telephone communication, and motor vehicle transportation in the early stages of the development of the New York Central, agencies came to be located close to each other—by 1954 the average distance between them was 8½ miles. But when traffic began to decline drastically in the 1950's, the agents at many of these stations simply did not have enough work to keep them busy anywhere near a full day. In fact, some agents had so little to do that they conducted other businesses during working hours, with the knowledge and permission of the Carrier.

The Carrier stresses the point that all agency closings and the use of the Central Agency Plan have been approved by the various State regulatory commissions, before which the Organization has appeared in opposition, and that therefore the public's interest has been fully protected. Furthermore, argues the Carrier, while some shippers opposed the Central Agency Plan when it was first proposed because they were unfamiliar with it, there are almost no shippers who now find it unsatisfactory. On the contrary, many shippers have admitted that they are getting better service under this plan than they did under the resident agent policy.

The closing of agencies has not been the reason for the loss of revenue traffic, claims the Carrier. Thus, less-than-carload freight declined drastically long before the use of the Central Agency Plan; it fell from over 3½ million revenue tons in 1946 to a little over 1½

million in 1950. Nor, argues, the Carrier, has it attempted to discourage traffic, as the Organization alleges. Quite the contrary, it has introduced new passenger equipment, the Flex-O-Van for certain types of freight, and other such constructive changes—all designed to increase traffic.

The Carrier argues that there has been no excessive abolition of telegrapher positions. The data presented by the Organization in support of its contention about excessive abolition are quite meaningless, claims the Carrier. For the experience of each road is bound to be different, in view of the fact that the various railroads operate in areas with different physical characteristics, serve regions with different industrial complexions, and have different ratios of telegraphers to other employees. According to the Carrier, the best single objective measure of whether telegrapher job reductions on the New York Central have been excessive is the change in train-miles during the relevant period. Now, by that measure, the job abolitions have been well within reasonable limits. Thus, the reduction in telegrapher positions between 1950 and 1961 was 48.7 percent, and the fall in train-miles was almost identical—48.5 percent; the corresponding figures for the period between 1955 and 1961 were 34.9 percent and 39.4 percent.

Actually, argues the Carrier, there is no surplus of telegraphers on the New York Central; there is, instead, a shortage. Witness the fact that between March 4, 1958 and January 1, 1962, it hired 333 new telegraphers. The Carrier admits that there is a surplus in some seniority units, but points out that there is a more than a compensating shortage in the others. The solution for such imbalance, claims the Carrier, is not a job freeze, but an appropriate change in seniority policy and practices.

The Carrier contends that displaced employees have not suffered any significant hardships. To begin with, some resigned because they acquired better jobs on other railroads or in other industries. Those who retired early were already well along in years; and there are good retirement benefits provided for railroad employees. Again, those who were compelled to accept irregular employment were able to draw unemployment compensation benefits which, in both magnitude and eligibility requirements, are significantly more liberal than in industry generally. As for moving about to various locations by the men on the extra board, such moves are a practice of very long standing on the railroads. And aside from all that, argues the Carrier, the provisions of the Washington Agreement of 1936 are quite irrelevant to the present problem. For the purpose of that agreement was to permit employees adversely affected by railroad coordinations (mergers, consolidations, etc.) to share in the savings entailed

by such coordinations. But there are no savings to be shared here. The Carrier's policies here at issue have been necessary for mere survival.

The various job stabilization agreements cited by the Organization in support of its case are also quite irrelevant, argues the Carrier. For the facts and circumstances attending the negotiation of those agreements were significantly different from the facts and circumstances involved in the instant dispute. Specifically with regard to the Southern Pacific Agreement, the Carrier notes that the Southern Pacific has not utilized the Central Agency Plan, that Centralized Traffic Control was exempt from the job abolition limitations even though the Southern Pacific was planning additional installations of Centralized Traffic Control at the time the contract was consummated, that the Southern Pacific had just about completed the closing of agencies when the agreement was signed, and that the Southern Pacific is a very prosperous road operating in a growth region.

IV. APPRAISAL OF PROPOSED SOLUTIONS

1. The Organization's Original Proposal

The Organization's proposed rule served upon the Carrier on March 27, 1958, states:

> No position in existence on March 4, 1958, will be abolished or discontinued except by agreement between the Carrier and the Organization.

The Organization claims that the rule does not necessarily mean a freeze of positions. And the literal wording of the rule certainly supports the Organization's interpretation thereof. After all, the rule says absolutely nothing about a freeze. There is also evidence in the record that the Organization has actually agreed to the dualization of agencies with other Carriers. Moreover, the Organization, while arguing that many of the jobs eliminated under the Central Agency Plan should have been maintained, has voiced no opposition to the introduction of technological changes—e.g., Centralized Traffic Control.

But even though the rule does not spell a job freeze, it would give the Organization an absolute veto power over the Carrier's right permanently to abolish positions because of technological, organizational, or other changes. Whatever the merits of the Carrier's judgment that a given position should be permanently discontinued, the Carrier would be unable to proceed with such abolition if the Organization disapproved. Under the proposed rule the Carrier would even lack the right of appealing the Organization's disapproval to an impartial body.

The Organization contends, however, that in applying the proposed rule it would act reasonably and responsibly. But we are not implying that the Organization would necessarily behave otherwise. What we are implying is this: The Organization, quite naturally, would view "responsibly" and "reasonableness" from its vantage point. This view, again quite naturally, would not necessarily coincide with that of the Carrier. Yet under the proposed rule there would be no way of resolving these conflicting views. The Organization's word would be final; its veto power absolute.

Such veto power is totally inconsistent with prevailing American collective bargaining practice. It would imprison the Carrier in an administrative strait jacket. Nor can it logically be argued that the problem at hand cannot be resolved short of reliance on absolute veto power. As the analysis will show, there is an equitable and constructive solution which does not obliterate the Carrier's administrative initiative in an area where such initiative is a *sine qua non* for the efficient operation of the railroad.

The Organization argues that the Carrier would not be permanently saddled with the proposed rule. In the words of the Organization Counsel: "Under the Railway Labor Act and under the terms of this rule, this rule does not run into perpetuity. A 30-day notice to change it or eliminate it can be served at any time, and if such a notice were served and the Organization had a record of irresponsible behavior under it, the change would be inevitable" (Tr. 1725–26). The argument is, however, unpersuasive. There is no denying that such a 30-day notice could be served by the Carrier. It hardly follows, however, that "change would be inevitable." Experience clearly shows that railroad collective bargaining rules, once established, are not easily changed; quite the contrary. Furthermore, even if significant change did materialize, it would probably not occur without considerable friction. And this Board could hardly recommend a rule which would either saddle the Carrier with an undue burden or lead to conflict and instability.

In the light of the above findings, we recommend that the Organization withdraw its proposed rule.

2. The Organization's Amended Proposal

The amended proposal by the Organization, dated May 5, 1959, still retains the veto power feature of the original proposal. This Board, therefore, recommends that this proposal also be withdrawn by the Organization, for reasons already elaborated.

3. The Southern Pacific Agreement

The Organization, while stressing that its proposed rule is the ideal way of dealing with the problem of permanent job abolitions on the New York Central, because it provides the needed flexibility, has nevertheless stated that the fixed standards for job abolitions and agency closings set up in the agreement between the Organization and the Southern Pacific have led to "* * * all the objectives of the proposed rule." (Tr. 1737.) The Organization would, therefore, be agreeable to accepting the relevent guideposts contained in the Southern Pacific Agreement—the basic provisions of which have been summarized in section III above.

There are, however, some basic differences between the situation characterizing the Southern Pacific settlement and that obtaining in the present case. As a consequence, we consider it improper to recommend the adoption of the Southern Pacific Agreement *insofar as the limits on job abolitions and agency closings are concerned.* The differences in question are these:

(a) The Southern Pacific has not utilized the Central Agency Plan. By contrast, far and away the principal reason for job abolitions on the New York Central has been the Central Agency Plan. Furthermore, at the time the Southern Pacific Agreement was executed, the Southern Pacific was not planning to close any significant number of additional agencies. On the New York Central, however, the elimination of jobs through the closing of agencies and the use of the Central Agency Plan is not yet complete. As many as seventy-five additional agency positions may still be eliminated through that medium. Finally, the Southern Pacific Agreement exempts Centralized Traffic Control from the formula limiting job abolitions; and when the Southern Pacific Agreement was consummated, that Carrier was planning to make additional installations of Centralized Traffic Control that would lead to the abolition of 60 or more positions.

(b) In large part because of the preceding point, the Southern Pacific could agree to a maximum 2 percent annual job abolition rate and the relevant number of agency reductions. For the New York Central to make such a commitment, however, might well mean that it would find itself saddled with relatively numerous unnecessary positions. True enough, there is obviously no ironclad guarantee that on the Southern Pacific the number of unnecessary positions will not exceed the 2 percent figure. But for reasons already indicated, the number of unnecessary positions that may thus result on the Southern Pacific is bound to be significantly lower than on the New York Central. Moreover, the Southern Pacific is in a much better economic position to bear any such undue burden than is the New York Central.

This brings us to the next fundamental difference between the two Carriers.

(c) The Southern Pacific is a prosperous road and operates in an expanding region. The New York Central is far from prosperous and serves a declining area. Witness these facts: Net annual income on the Southern Pacific has been approximately $50,000,000 in recent years. By contrast, the New York Central had a *net deficit* of $12,549,048 in 1961; in 1960 it earned a net income of $1,038,253; in 1959 the corresponding figure was $8,402,968, and in 1958 $4,050,995.

(d) The Organization contends that an approximate 2 percent annual rate of job abolitions represents the "average" pattern of telegrapher job elimination on most of the major American railroads. Since the average annual abolition rate on the New York Central has been about double that, the Organization contends that the utilization of the 2 percent figure contained in the Southern Pacific Agreement—or something close thereto—would be reasonably appropriate in the present case. But the Board finds the Organization's argument unpersuasive, for the 2 percent figure incorporated in the Southern Pacific Agreement is not a mere application of the "average" on the relevant roads. Quite the contrary. It is the result of voluntary agreement, and therefore reflects the problems and needs of the parties connected with the Southern Pacific.

Nor can it logically be argued that, entirely aside from the Southern Pacific Agreement, the 2 percent annual elimination rate—or something close thereto—is a sound guidepost for adoption on the New York Central. To utilize an "average" figure and apply it to the New York Central is to forsake viable diversity for stagnant uniformity. After full weight is given to the point stressed by the Organization—that the "average" of approximately 2 percent reflects the experience of most of the major railroads operating in different regions with varying terrain and industrial complexions—the fact still remains that it is an "average". This is another way of saying that one would be applying a *composite* statistic to a *single* railroad—the New York Central. There is, however, no assurance—or even any significant probability—that the relevant conditions on the New York Central are mirrored accurately in this composite statistic of 2 percent or something close thereto. To be sure, if there were no way of coping constructively with the problem on the New York Central other than the utilization of this "average", the position of the Organization might well have merit. But that is not so. The solution of the problem at hand should, and can be, molded to the specific needs of the present case, as will be shown below.

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(e) Not only are the relevant conditions different on the two railroads here in question, but there is this further point, touched upon briefly above, which needs stressing: On the Southern Pacific the dispute was resolved by voluntary agreement between the parties. This means that the agreement represents the evaluation of all the relevant facts and circumstances by both parties in the light of their respective objectives, values and interests. But even if this Board were as intimately familiar with all the facts and circumstances as are the parties, and even if the facts and circumstances in the two disputes were not materially different (which they are), we (or any other Board, for that matter) could still not understand the objectives, values and interests of the parties nearly so well as they themselves do.

4. Other Railroad Job Stabilization Agreements

The Organization put into evidence job stabilization agreements reached with various railroads by other unions and also by itself. There is no denying that many of these agreements adequately protect the interests of employes adversely affected by permanent job abolitions; the agreements by the Brotherhood of Railway Clerks are particularly noteworthy in that regard. But it does not follow that these agreements should necessarily set the course for the recommendations of this Board. For all the agreements alluded to are exactly that: Terms voluntarily accepted by the parties. Clearly if the Organization and the Carrier here involved could reach such agreement, that would indeed be the ideal solution. Up to this time, however, no such agreement has been feasible. Hence, this Board must perforce make recommendations in the light of the available evidence. And the evidence indicates that the relevant facts and circumstances in the present case are significantly different from those characterizing the situations which led to the stabilization agreements. Furthermore, where the parties were able to reach voluntary agreement, each party involved appraised the particular facts and circumstances in the light of its objectives, values and interests, and then reached a free and rational conclusion. It would, however, be presumptuous indeed for any Emergency Board to believe that it had the same insight into the objectives, values and interests of the Carrier and of the Organizations as they do. Finally—and aside from the above reasons—the stabilization agreements are not sufficiently widespread to constitute a dominant practice in the industry; they are still the exception and not the rule. In the light of all the above considerations, therefore, it would be improper and unwise for this Board to recommend the adoption of the various guideposts embodied in those agreements.

5. Changes in Seniority Policy

The Carrier has emphasized that telegraphers have not lacked employment opportunities on the New York Central. Actually, contends the Carrier, it has experienced a shortage of telegraphers. In support of its position it cites this fact: Between March 4, 1958 and January 1, 1962, the Carrier hired 333 new telegraphers. According to the Carrier, the source of the problem is not a shortage of positions, but the inappropriateness of existing seniority units. Thus, the Carrier showed that while there was inadequate work for the men on the extra board in one seniority unit, new employees were being hired in another unit. It would follow, according to the Carrier logic, that the solution of the problem lies in transferring extra men from surplus units to shortage units, or in broadening the seniority units. That is not, however, a workable solution for the reasons below.

First, the assertion that there is a shortage of telegraphers on the New York Central is true only in a very special sense: The weight of evidence indicates that because of the uncertainty about regular employement stemming from permanent job abolitions through technological and organizational change, and because of other considerations stemming from the same source, the resignation rate among telegraphers has increased. Similarly, older employees have retired sooner than they otherwise would have done. It follows that in the absence of these factors there would in all likelihood be a surplus of telegraphers on the New York Central. And granted that these factors stem from technological and organizational change, it is questionable indeed whether one can reasonably claim that these changes have not diminished regular employment opportunities for telegraphers on the New York Central. Entirely aside from that, however, the solution at hand is one which this Board cannot properly accept. For this Board to recommend radical changes in seniority policy, when there is absolutely no precedent for such change and when the problem can be otherwise constructively resolved by policies anchored in strong precedent, would be the height of irresponsibility. There is more: A recommendation to change seniority policy under these circumstances would contribute to dramatic instability in the relationship between the parties. And this Board was not created to preside over the birth of serious conflict.

6. The Normal Attrition Approach

In view of the recommendations by the Presidential Railroad Commission regarding the displacement of firemen-helpers (Report of the Presidential Railroad Commission, pp. 48–50), and because of other relevant considerations, this Board examined the possibility that

normal attrition (death, retirement, resignation, discharge, and promotion outside the bargaining unit) on the New York Central might provide displaced telegraphers with proper employment opportunities. After careful deliberation, however, this Board has concluded that such an approach is inapplicable here, for the reasons that follow.

First, it is questionable whether the problem at hand lends itself constructively to an attrition approach. For the problem is not one where the employees find themselves completely without work on the New York Central because of job abolitions. Rather, it is one of irregular employment, reduction in earnings, expenses and losses connected with moving to a new location, etc. And the feasibility of the attrition approach becomes even more doubtful when it is recognized that both the retirement and resignation rates have in recent years been significantly influenced by permanent job abolitions. Second, if one were to disregard the preceding point (which one should not, of course), the normal attrition approach would probably necessitate a compulsory retirement age for telegraphers, something to which the Organization is very vigorously opposed. Similarly, the normal attrition approach might well necessitate the altering of existing seniority districts. That would seriously endanger the internal stability of the Organization, which would not be without serious repercussions on the relationship between the parties. It is imperative to emphasize that the objections of the Organization, in and of themselves, would not lead us to reject the normal attrition plan if it were otherwise feasible and constructive, and if there were no other solution available; but, as will be shown below, there is another solution which is feasible and constructive, and which we shall therefore recommend.

V. RECOMMENDATIONS

Far and away the principal reason for the abolition of telegrapher positions on the New York Central has been the closing of agencies and the use of the Central Agency Plan. Moreover, certain aspects of that plan have a different employee impact from other organizational changes or from technological change. It seems appropriate, therefore, to deal separately with the Central Agency Plan.

A. The Central Agency Plan

(1) Notice to Employee

We recommend that when a regularly assigned position is to be abolished, the employee affected should be given at least 5 days' notice thereof. Such a policy imposes no undue burden on the Carrier on the one hand, and spells constructive personnel policy on the other.

(2) *Notification and Discussion*

We recommend that the relevant general chairman should be notified of any position abolishment by the Carrier not less than 90 days prior to such abolition. The notification should take the form of full disclosure of all the facts and circumstances bearing on the discontinuance of the position. Prior to the close of the 90-day notice period, the general chairman or his representative should have the right, at his option, to meet with a representative of the Carrier in joint discussion of the manner in which and the extent to which employees represented by the Organization may be affected by the changes involved, with a view to avoiding grievances and minimizing adverse effects on employees involved.

Such advance notice and discussion before the fact should prove most helpful to both parties and to the relationship between them. It imposes no undue burden on the Carrier; nor does it in any way interfere with the Carrier's proper managerial functions. It merely provides a channel of communication whereby the general chairman is fully informed of the pending change and is thus in a better position to explain it constructively to the relevant employees. That, in turn, should contribute to greater acceptance of the change. For full disclosure at the proper time, it is worth noting, is a powerful persuasive force in the collective bargaining relationship. And the channel of communication can work both ways. It also provides the general chairman with the opportunity of appraising the Carrier of the various problems confronting the affected employees. That should enable the Carrier to map its changes with all due weight given these problems.

In the event there is disagreement between the parties regarding mileage rates and wage scales for traveling agents, we recommend that the matters be submitted to arbitration with all deliberate speed. We believe that this procedure will lead to a more rapid resolution of disagreement than would the alternative procedures available to the parties. As regards the number of traveling agents to be utilized, that matter is analyzed in detail below.

(3) *Arbitration of Disagreement*

We recommend that a period of time following the introduction of the Central Agency Plan in any area, the Carrier should be free to use the number of traveling agents it deems fit; the length of this period should be negotiated between the parties. At the end of this period, the general chairman or his representative should have the right to file a grievance with the Carrier representative if he should find, upon investigation, that the number of traveling agents assigned is inadequate in the light of the assignments involved. The relevant

parties should then discuss the grievance in an attempt to reach agreement. In the event no agreement is reached, the matter should be submitted to arbitration. We recommend that the parties set up relatively brief time limits for the various steps above noted, so that problems can reach terminal disposition in relatively quick order. We also recommend that the parties should negotiate the possible retroactive application of this arbitration procedure.

There is ample justification for the above recommendation. First, to consider the fact—strongly emphasized by the Carrier at the hearings—that approval has to be obtained from each of the relevant State regulatory commissions before the Central Agency Plan can be instituted. That fact is not, however, inconsistent with our recommendation. For the State commissions, in making their decisions, are not bound to, and do not, consider the impact of station closings on the affected employees. Their criterion is the more limited one of public necessity and convenience.

Second, the recommendation does not hamper proper managerial discretion in operating the railroad. To begin with, it applies solely and exclusively to the Central Agency Plan. Furthermore, as we have pointed out, whereas the Organization's proposed original and amended rule would imprison the Carrier in an administrative straitjacket, our recommendation is of a totally different kind. The Carrier is free to abolish agency positions once approval has been obtained from the relevant State regulatory commission. Moreover, the Carrier has the right to institute the number of traveling agents it sees fit, thus retaining necessary administrative initiative. It is only if there is challenge and disagreement, that the matter is processed through arbitration. Moreover, arbitration of a matter such as that here involved—which deals basically with the matter of workloads—is by no stretch of the imagination an improper encroachment on managerial discretion.

Third, the use of arbitration is hardly alien to the experience of either the Carrier or the Organization. So much so, that only as recently as July 1962, various Carriers (including the New York Central) offered to arbitrate the so-called "work rules dispute" with the Operating Brotherhoods. Furthermore, when the National Mediation Board recommended arbitration of the instant dispute on January 25, 1962, the Carrier was quite willing to accept that proposal.

Fourth, our recommendation is not designed to imply that once an arbitrator has ruled on the number of traveling agents, the number so determined must continue indefinitely regardless of changed circumstances. Quite the contrary. The arbitration would pertain to the particular circumstances obtaining at the time of the award. Changed

circumstances would obviously call for a new appraisal of the situation.

Fifth, our recommendation would benefit both parties in that the mechanism for resolving differences would be a speedy one. And that is a matter of no small moment, when one considers the long delays which characterize the adjudication of disputes on the railroads under alternative procedures.

Sixth, our recommendation does not—as the Organization might well prefer—deal with arbitrating the Carrier's right to abolish an agency position. And with good reason. No position can be abolished until approval is obtained from the relevant State regulatory commission; this means that once the Carrier abolishes a position, such abolition does not materially interfere with public convenience and necessity; the public's transportation interest, in other words, is protected. To be sure, the Organization has voiced strong objection to the rulings of the various commissions. But it would be completely improper for this Board to pass on the rulings of the State bodies. Insofar as the employee impact of the Central Agency Plan is concerned—a matter not covered by the State commissions—our recommendation, coupled with protective measures to be discussed below, takes full account of that important question. As for the Organization contention that the Carrier's Central Agency Plan is harmful to the Carrier's economic interests, we find that argument without merit. Not only is this a question best left to the judgment of the Carrier—for after all, it is the Carrier's exclusive interests that are involved—but the available evidence fails to support the Organization's position. Thus, far and away the greatest decline in LCT freight occurred *before* the use of the Central Agency Plan.

(4) *Protective Measures for Displaced Employees*

Employees adversely affected by permanent job abolitions have suffered hardships, as a competent witness for the *Carrier* testified. These hardships, while not so great as claimed by the Organization, have assumed various forms: irregular employment, significant decline in earnings, retirement at an earlier age than would otherwise have been the case with an attending decline in income, accelerated resignations because of uncertainty about current or future regular employment, and moving costs and losses on sale of homes in connection with changes in residence.

There is no denying the Carrier's contention that unemployment compensation is more liberal on the railroads than in American industry generally. Nor is there any denying the fact that the retirement benefits for railroad employees also stack up well in any relevant comparision. Nor, finally, can it be denied that among the employees who resigned because of uncertainty about regular employment, a

goodly proportion did find adequate jobs elsewhere. However, all that hardly alters the fact that employees adversely affected by permanent job abolitions have suffered hardships. True, the crucial question still remains: Do these hardships justify the imposition of relevant protective measures? To that question we now turn.

There is strong precedent in the railroad industry for providing a variety of protective measures to employees adversely affected by permanent job abolitions. Thus, the Washington Job Protection Agreement of 1936 (hereafter referred to as, the Washington Agreement) provides extensive protective measures for employees so affected by railroad coordinations (mergers, consolidations, etc.). More significant for purposes of the present dispute: The Interstate Commerce Commission has applied protective measures essentially similar to those of the Washington Agreement in the case of line abandonments and other such changes requiring the approval of the Commission—the Oklahoma Condition, the New Orleans Condition, and the Burlington Condition are cases in point. These rulings clearly show that, contrary to the Carrier's allegation, protective measures of the type contained in the Washington Agreement are not limmited solely to those instances where there are "savings" to be shared with the affected employees. A line abandonment is no more a "savings" change than is the closing of agencies and the establishment of the Central Agency Plan. True enough, the various State regulatory commissions which approved the agency closings and the Central Agency Plan did not recommend any protective measures for the displaced employees. But, as already pointed out above, these commissions are not required to, and do not, consider the employee impact of job abolitions. This Board, however, is the creature of Federal—not State— authority.

Emergency Board No. 138 recommended the application of the Washington Agreement protective measures to employees adversely affected by technological or organizational change. Emergency Board No. 147 went even further, encompassing in its protective recommendations employees adversely affected by permanent job abolitions stemming from any change—be it technological, organizational, or otherwise. Both of the above Boards, it should be noted, were confronted with the same problem here at issue and involving the same Organization.

There is nothing in the record to show that the facts and circumstances prevailing on the New York Central are fundamentally different from those which generated the above-noted precedent to warrant a radical break by this Board with that precedent. True, as we pointed out in detail above, there are differences between the New York Central and the Southern Pacific. But, as we there indi-

cated, these differences preclude the application to the New York Central of only the limits on job abolitions and agency closings contained in the Southern Pacific Agreement. The differences do not, however, warrant the conclusion that the Washington Agreement protective conditions are inappropriate for the New York Central. There has been no proof by the Carrier that it is unable to bear the costs entailed by the application of such protective conditions. The Carrier's main contention in this context has been that "further protection of employees affected by position changes * * * is unnecessary" (Carrier Exhibit No. 1, p. 21). And we have always analyzed that contention. Finally, it should be noted that the New York Central is in no weaker an economic position than the Chicago and North Western; and in the dispute on the latter road, Emergency Board No. 147 recommended the Washington Agreement protective conditions.

In the light of the above findings, we recommend the following protective measures:

(a) Sections 6, 8, 9, 10 and 11 of the Washington Agreement should be applicable to employees adversely affected by the Central Agency Plan.

(b) Section 7 of the Washington Agreement should be applicable to employees adversely affected by the Central Agency Plan, with this qualification regarding the applicability of section 7(i): The employee's coordination allowance should be reduced to the extent that the sum of his total earnings in railroad *and other* employment and his allowance exceeds the amount upon which his coordination allowance is based.

(c) Employees assigned to the extra board should be guaranteed 40 hours a week, *provided* that the parties can reach agreement on the appropriate size of the extra board, *or provided* that the parties can reach agreement regarding work assignment to the employees on the extra board designed to eliminate payment for idle time.

(d) Preference in hiring should be given to telegraphers formerly employed by the Carrier, within the jurisdiction of the Organization, and whose employment was not terminated by retirement or discharge for cause.

(e) The parties should cooperate in designing training programs to improve the qualifications of employees—both those now working and those not working but holding seniority—for the purpose of increasing adequate employment opportunities on the road either through transfer or recall.

(f) The parties should negotiate regarding the possible retroactive application of any of the above recommendations.

B. Permanent Job Abolitions Through Changes Other Than the Central Agency Plan

Emergency Board No. 138 recommended protective conditions for employees adversely affected by technological or organizational changes. Emergency Board No. 147 found that a differentiation between adverse effects stemming from such changes and those stemming from other changes was unwarranted "on grounds of practicality as well as logic." Whereas the ground of "practicality" is a debatable one, we do find that there is no sound basis in logic for such differentiation. True enough, the Carrier contends that there is a logical differentiation to be found. In the words of Counsel for the Carrier: "I do want to say that if—I underline 'if'—Board No. 147 meant that a (protective) condition would have to be applied where a position was eliminated as a result of a decline in traffic, such a position would be utterly ruinous, whether the position is eliminated because of the competition of other modes of transportation or because the economy of the area changes. There is just no saving to be shared with the employees." (Tr. 1805–6.) However, we find this argument unpersuasive for the reasons below.

According to the Carrier approach, the following case would be one where job elimination would stem from other than technological or organization change: In a given area several agencies are closed and the positions eliminated because of a drastic decline in traffic generated by competition from other transportation media and/or changes in the industrial complexion of the area; furthermore, the Carrier does not introduce a Central Agency Plan in that area. Now, one could reasonably conclude that this is a case of job elimination without organizational change. But the crucial question remains: Is there any fundamental difference between this kind of job elimination and one where the Central Agency Plan is used? The answer must be in the negative. For in both instances the basic source of the permanent job abolition is a decline in traffic generated by the competition from other transportation media and/or a change in the industrial complexion of the area. Furthermore, in both instances there are employees who are adversely affected by the job abolitions. Finally, the Carrier contention that "there is just no saving to be shared with the employees" in the case of job abolitions stemming from sources other than technological or organizational change, is identical with its position throughout the hearings—namely, that the protective conditions of the Washington Agreement are inappropriate in the case of the Central Agency Plan because, under that plan, there are no savings to be shared with the employees.

We therefore make the following recommendations to cover employees adversely affected by the permanent abolition of positions caused by any change (other than the Central Agency Plan):

(a) When a regularly assigned position is to be abolished the employee affected should be given at least 5 days' notice thereof.

(b) The relevant general chairman should be notified of any position abolition by the Carrier not less than 90 days prior to such abolition. The notification should take the form of full disclosure of all the facts and circumstances bearing on the discontinuance of the position. Prior to the close of the 90-day notice period, the general chairman or his representative should have the right, at his option, to meet with a representative of the Carrier in joint discussion of the manner in which and the extent to which employees represented by the Organization may be affected by the changes involved, with a view to avoiding grievances and minimizing adverse effects on employees involved.

(c) Sections 6, 8, 9, 10 and 11 of the Washington Agreement should be applicable to employees adversely affected by permanent job abolitions.

(d) Section 7 of the Washington Agreement should be applicable to employees adversely affected by permanent job abolitions, with this qualification regarding the applicability of section 7(i): The employee's coordination allowance should be reduced to the extent that the sum of his total earnings in railroad *and other* employment and his allowance exceeds the amount upon which his coordination allowance is based.

(e) Employees assigned to the extra board should be guaranteed 40 hours a week, *provided* that the parties can reach agreement on the appropriate size of the extra board, *or provided* that the parties can reach agreement regarding work assignment to the employees on the extra board designed to eliminate payment for idle time.

(f) Preference in hiring should be given to telegraphers formerly employed by the Carrier, within the jurisdiction of the Organization, and whose employment was not terminated by retirement or discharge for cause.

(g) The parties should cooperate in designing training programs to improve the qualifications of employees—both those now working and those not working but holding seniority—for the purpose of increasing adequate employment opportunities on the road either through transfer or recall.

(h) The parties should negotiate regarding the possible retroactive application of any of the above recommendations.

SUMMARY OF RECOMMENDATIONS

1. *Permanent Position Abolitions Entailed by the Central Agency Plan*

(a) The Organization's proposal of March 27, 1958, and amended proposal of May 5, 1959, should be withdrawn.

(b) The parties should negotiate an agreement along the general lines of the recommendations set forth in section IV(A) of this report.

2. *Other Permanent Positions Abolitions*

(a) The Organization's proposal of March 27, 1958, and amended proposal of May 5, 1959, should be withdrawn.

(b) The parties should negotiate an agreement along the general lines of the recommendations set forth in section IV(B) of this report.

Respectfully submitted.

JOSEPH SHISTER, *Chairman.*
J. HARVEY DALY, *Member.*
WALTER F. EIGENBROD, *Member.*

WASHINGTON, D.C., *August 30, 1962.*

APPENDIX

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY SYSTEM AND THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY AND CERTAIN OF THEIR EMPLOYEES

WHEREAS a dispute exists between the New York Central Railroad Company System and the Pittsburgh and Lake Erie Railroad Company and certain of their employees represented by the Order of Railroad Telegraphers; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

The board shall report its findings to the President with respect to this dispute within 30 days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the New York Central Railroad Company System and the Pittsburgh and Lake Erie Railroad Company, or by their employees, in the conditions out of which this dispute arose.

(Signed) JOHN F. KENNEDY.

THE WHITE HOUSE, *June 8, 1962.*

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