

In the Matter of the Arbitration)

Between:)

CARRIERS REPRESENTED BY THE)
NATIONAL RAILWAY LABOR CON-)
FERENCE AND THE EASTERN, WESTERN)
AND SOUTHEASTERN CARRIERS' CON-)
FERENCE COMMITTEES - otherwise)
referred to as the Carriers)

- and -)

ORDER OF RAILWAY CONDUCTORS AND)
BRAKEMEN - otherwise referred to)
as the ORC&B or the Organization)

OPINION AND AWARD

of the

BOARD OF ARBITRATION

On July 1, 1967, the above-named parties, having appeared before Emergency Board No. 171 and having thereafter returned to further negotiating efforts, executed a Memorandum of Understanding disposing of all the differences which had arisen in connection with their 1966-67 negotiations. Two of these differences were disposed of by referral to arbitration. The Memorandum's arbitration paragraph designates the undersigned as the Board of Arbitration and directs us to proceed on the basis of the record adduced before Emergency Board No. 171.

Broadly speaking, both of the issues before us have to do with the Organization's claim for correction of what it considers inequities in the compensation of Conductors when compared to the

compensation of Engineers. The first issue involves the basic daily rate and goes back to the parties' so-called "yellow sheet" agreement of 1957. The second issue involves the average basic daily rate and is concerned with the relative functioning of the graduated-scale system in effect for Conductors and the graduated-scale system in effect for Engineers. We are designating the two issues as Issue No. 1 and Issue No. 2 and will deal with them in this order.

ISSUE NO. 1

Preliminarily to be noted is that there is some disagreement between the parties as to precisely which categories of Conductors were intended to be covered in the arbitration of Issue No. 1. We want to go on record as being convinced that not the slightest element of bad faith lies behind this disagreement.

The matter need not be resolved one way or the other, for, as will be seen, the organization's claim with respect to Issue No. 1 is being denied on the merits. The result is thus quite the same whatever the coverage one party or the other had in mind.

Turning to the merits, the following is the background. In June 1957, the parties arrived at a 3-year agreement which, among other things, provided for annual cents-per-hour increases effective on the first day of November 1956, 1957 and 1958.

This wage-increase agreement was accompanied by the adoption of the so-called "yellow sheet" agreement:

The Carriers' Conference Committees will assure the Order of Railway Conductors and Brakemen Committee that the Brotherhood of Locomotive Engineers will not be treated more favorably in the matter of increased wages than other organizations which have accepted the so-called 1956 pattern have been treated, short of an Emergency Board. In the event of an Emergency Board recommendation calling for greater increases than those involved in the above-referred-to pattern, which is accepted by the parties, or if negotiations subsequent to an Emergency Board recommendation should result in increases on behalf of engineers greater than the pattern, the ORC&B Committee and the Committees representing the carriers will resume negotiations with the understanding that conductors represented by the Order of Railway Conductors and Brakemen will, by subsequent adjustment, be accorded the same wage consideration, in money if expressed in money or in percentage if expressed in percentage, as the case may be.

About a month later, the Carriers and the Brotherhood of Locomotive Engineers also reached a 3-year agreement calling for wage increases on the first day of November 1956, 1957 and 1958. The wage increases of this agreement, however, were expressed in percentage rather than dollars-and-cents terms.

The Carriers and the ORC&B thereupon disagreed on how the "yellow sheet" agreement should properly be implemented. The source of the disagreement was that the Engineers' increases had been expressed in percentage terms and that, by virtue of the higher basic rates of the Engineers relative to those of the

Conductors, the money yield was greater for the Engineers even if one applied the very same percentage figures to the two crafts' respective basic rates. The contrary applications contended for by the Organization and the Carriers were these: the Organization argued that the Conductors were entitled to the same amount of money that the Engineers received, no matter what the form in which the increases were expressed; whereas the Carriers contended that the equal-treatment objective required no more than such makeup payments, if any, as would be yielded by applying the Engineers' percentage figures to the Conductors' basic rates. Under the Carriers' interpretation, practically nothing was due the Conductors. Under the Organization's interpretation, something much more substantial--about 1.6 percent of Conductor basic rates--was due the Conductors.

This "yellow sheet" controversy was referred to the National Mediation Board for an interpretation. By way of a written instrument handed down in August 1958, the NMB sustained the Carriers' position. This document includes a table which shows that, save for minimal differences, the increases granted the Conductors under the Carriers-ORC&B agreement of June 1957, were the same in monetary amounts as would have been true had the increases been a matter of applying the Engineer percentage figures to Conductor basic rates.

We have given this factual background because there is no doubt that it represents the origin of the Organization's claim: as it sought to do in the 1959 negotiations, the Organization is here seeking to obtain what it believes itself to have been entitled to under the "yellow sheet" agreement. This is the above-identified 1.6 percent, except that the Organization adds that, as a result of influences at work in the intervening years, the 1.6 percent has grown to 1.8 percent.

As finally put before us, however, the Organization's position is that, whether or not the "yellow sheet" agreement was intended to put the two crafts' increases on a par in money terms, and whether or not the NMB correctly interpreted the "yellow sheet" agreement, the 1956-58 wage movement had the effect of widening the spread between Engineer and Conductor basic rates. This widening of the spread has never been closed, the Organization submits, and the 1956-58 wage movement must thus be seen as having given rise to an inequity which clearly requires correction.

As already indicated, we disagree with the Organization on this issue.

Putting aside the "yellow sheet" agreement and its interpretation by the NMB, what needs to be examined are the two 1956-58 agreements in and of themselves. Stating it otherwise, our function is to have a de novo look at the two agreements.

The picture is this:

- It is true that, money-wise, the Conductor increases were smaller than the Engineer increases.
- It is equally true that, in terms of percentages applied to the crafts' respective rates, the Engineers and the Conductors received identical increases (save only for the minimal differences we have previously noted, which, as the issue is presented to us, are properly ignored).
- It is not true that both agreements were expressed in dollars-and-cents terms; nor is it true that both agreements were expressed in percentage terms. The fact, rather, is that the Engineers' agreement was a percentage agreement and that the Conductors' agreement was a dollars-and-cents agreement.

Given this picture, we cannot properly make a decision which begins and ends with the fact that the Conductors received less money. We must give equal recognition to the fact that, in percentage terms, the Conductors did as well as the Engineers. And what must be decided is whether the two agreements are more validly compared on a money basis or a percentage basis.

We think the latter is the better choice. There was a time when wage movements in the railroad industry were customarily negotiated in dollars-and-cents terms. For reasons to be discussed under Issue No. 2, the dollars-and-cents approach was replaced by the percentage approach as the customary way of negotiating wage increases. And it seems to us to be of overriding significance that the time here in question (the 1956-58 wage movement) marked the beginning of the percentage-increase trend. In selecting the percentage basis of comparison, we are in tune with what was, has been, and is happening. To choose the money basis of comparison would be to resurrect what had begun to be discarded. We thus reject the Organization's claim on Issue No. 1.

ISSUE NO. 2

As noted, this issue is concerned with the relative performance of the graduated-scale system in effect for road-freight Engineers and the graduated-scale system in effect for road-freight Conductors. The coverage of the arbitration of this issue is confined to Conductors in through-freight and local-freight road service.

The framework is essentially as follows. In mid-1955, against background circumstances to be dealt with below, the Carriers and the ORC&B adopted a graduated-scale system based on train length. In adopting it, the parties instituted a new and additional form of pay (i.e., it was not a matter of modifying a graduated-scale system previously in effect). The terms of the graduated-scale system have remained unchanged since the time of its adoption. In relevant part, they are as follows:

Basis of Pay

<u>Maximum number of cars (including caboose) hailed in train in road movement at any one time on road trip anywhere between initial starting point and point of final release</u>	<u>Amounts to be added to the Basic Daily Road Freight Rates in effect as of June 15, 1955</u>
	<u>Conductors, Brakemen and Flagmen</u>
Less than 81 cars	\$.20
81 to 105 cars	.55
106 to 125 cars	.95
126 to 145 cars	1.20
146 to 165 cars	1.30

Add 20¢ for each additional
block of 20 cars or portion
thereof.

The Engineers' graduated-scale system dates back several decades, and it was expanded, with results financially favorable to the Engineers, in the early forties. This graduated-scale system is based on weight on drivers. The weight-on-drivers formula is geared to the total weight of the engine or engines

powering the train. The greater the total weight, the greater the financial returns for the Engineer.

Factually speaking, the underlying problem is that recent years have seen a marked increase in the weight on drivers whereas the average length of freight trains has remained just about the same. The Organization contends that there has been a relative decline in the yield from the Conductors' graduated-scale system; that the disparate returns from the two graduated-scale systems have substantially increased the spread between the Freight Engineers' and Freight Conductors' respective average basic daily rates; that this is a result which must be taken as an inequity which Conductors cannot realistically be expected to live with; and that it follows that the inequity should be corrected.

The Carriers maintain that the claimed inequity does not exist. They explain their denial by asserting that the proper way to determine whether an equitable relationship has or has not been maintained between the two senior crafts is to compare percentage differentials. Using this criterion, the Carriers submit data intended to demonstrate that long-standing percentage relationships "have been maintained relatively intact since at least 1921, almost half a century." The Carriers add that the Presidential Railroad Commission found no inter-craft graduated rate inequity. For these reasons, the Carriers see the Organization's inequity claim as a subterfuge designed to break the "pattern."

After urging that the Organization's proposal is not intended to restore the traditional wage relationship but is in fact designed to alter it in favor of the Conductors, the Carriers point to what they consider the hazards and ramifications of granting such a request. Among the arguments which the Carriers make in this respect are the following: that any adjustment which results in going beyond the pattern settlements which the Carriers have by now made with practically all the other unions they deal with would have serious "rippling" effects; that this is particularly true with respect to the Brotherhood of Railroad Trainmen, whose jurisdiction (in terms of crafts and classes of employees) substantially overlaps that of the ORC&B; that the BRT, despite the fact that the overlapping part of its membership works under the same graduated-scale system, did not seek an adjustment in it; and that for this Board to make an adjustment on the basis of the record before it--neither the BRT nor the Engineers were heard from--would be to proceed without adequate evidence.*

*We note that both parties have sought to make something of the respective job contents--the respective levels of responsibility, skill and effort--of Engineers and Conductors. For a number of reasons, however, we see this as a fruitless direction and we are therefore proceeding on the basis of comparative wage results alone.

We understand and respect the Carriers' concerns, particularly as they relate to the preservation of the pattern established through negotiations with the various railroad unions. It seems to us, however, that a true inequity is a special and compelling matter and that a general-wage increase pattern cannot be taken as so sacrosanct as to bar corrective measures with respect to a matter of this sort. Our assignment, clearly, is to determine whether the claimed inequity exists and, if so, what should be done about it. It happens that the ORC&B is the only union to have brought the issue to the fore. But we do not think that we can let this cause us either to shy away from the issue or to tread gingerly in approaching it. We must confront and meet the issue, and we do not think that we are lacking in sufficient evidence for doing so.

* * * * *

We believe that mid-1955 must properly be made the point of departure for our considerations. It was in March 1955, that Emergency Board 109--which had before it these same two parties--filed its report; and it was in June 1955, that the parties, in response to that report, established the Conductors' graduated-scale system.

Board 109 considered the Organization's contention that the traditional wage relationship between Engineers and Conductors had become distorted to the detriment of the Conductors. The

Organization sought the application of the Engineers' weight-on-drivers system to Conductors. Board 109 rejected the latter as an inappropriate remedy, but it made these crucial findings:

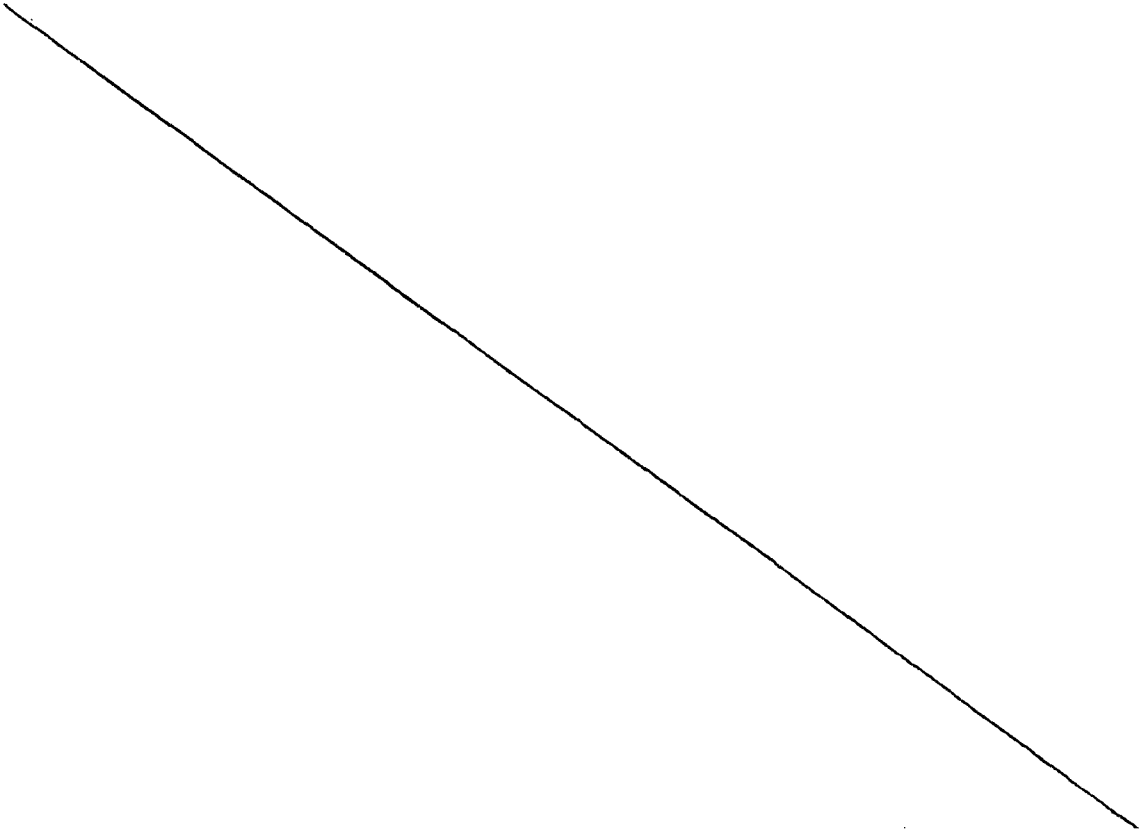
- That the wage relationship between the two senior crafts on the same train--Engineers and Conductors--is a particularly sensitive one, and that distortions in that relationship must sooner or later be corrected. The point was highlighted in the Board's report by a quotation from the report of a prior Board: that the "most important inequities are those felt and suffered closest to home."*
- That, in through-freight service, a drift had developed in the wage relationship between Engineers and Conductors, and that the drift had become sizable enough to warrant correction.

To reiterate, the Conductors' graduated-scale system came into being in response to the report of Board 109. We have heard lamentations from both parties as to the installation of the system--the Carriers saying that there was no warrant for it and that they did something dictated by bargaining necessity; the Organization saying that not nearly enough was achieved to overcome the drift and that bargaining realities forced it to give in short

*Emergency Board 97

of what should have been done. It seems to us, however, that we must rely on what in fact happened. There was an Emergency Board finding that a drift had developed and the parties thereupon did negotiate and come to an agreement. Whether warranted or not, and whether sufficiently or not, the parties struck a bargain the objective of which must be seen to have been that of arresting the drift and of thus changing the pre-existing wage relationship between Engineers and Conductors. Our task, we believe, is to examine what has happened since then.

Table 1, below, is the foundation for our determination. Its figures are drawn from data appearing in Carriers Exhibit 6 and Organization Exhibit 20.



T A B L E 1

AVERAGE BASIC DAILY RATES - CONDUCTORS AND ENGINEERS
IN THROUGH-FREIGHT AND LOCAL-FREIGHT SERVICE

Year	<u>THROUGH FREIGHT</u>				<u>LOCAL FREIGHT</u>			
	<u>Conductors</u>	<u>Engineers</u>	<u>Dollar Difference</u>	<u>Conductors Rate as Percent of Engineers Rate</u>	<u>Conductors</u>	<u>Engineers</u>	<u>Dollar Difference</u>	<u>Conductors Rate as Percent of Engineers Rate</u>
1922	\$ 5.92	\$ 7.27	\$ 1.35	81.4%	\$ 6.35	\$ 7.40	\$ 1.05	85.8%
1944	8.57	10.30	1.73	83.2	9.15	10.46	1.31	87.5
1954	14.95	17.87	2.92	83.7	15.47	17.41	1.94	88.9
1955	15.34	18.25	2.91	84.1	15.80	17.86	2.06	88.5
1956	16.65	19.27	2.62	86.4	17.09	18.86	1.77	90.6
1957	18.00	20.94	2.94	86.0	18.47	20.42	1.95	90.5
1958	19.30	22.48	3.18	85.9	19.85	22.05	2.20	90.0
1959	19.93	23.41	3.48	85.1	20.50	22.83	2.33	89.8
1960	20.37	24.01	3.64	84.8	20.94	23.32	2.38	89.8
1961	20.98	24.89	3.91	84.3	21.54	24.06	2.52	89.5
1962	20.93	24.89	3.96	84.1	21.43	23.97	2.54	89.4
1963	21.04	25.03	3.99	84.1	21.56	24.14	2.58	89.3
1964	21.68	26.09	4.41	83.1	22.21	25.15	2.94	88.3
1965	22.77	26.84	4.07	84.8	23.36	25.95	2.59	90.0
1966	22.75	26.86	4.11	84.7	23.37	25.94	2.57	90.1

As a matter of our underlying thinking, we state that we are in accord with Board 109 that the wage relationship between the two senior crafts working on the same train is a most sensitive one. We only add that it strikes us that it is not merely in the railroad industry that the "close to home" comparison is of particularly hard impact. We think it is a matter of human nature, making itself felt quite as much in factories, clerical offices and professional suites.

We next turn to what our approach is in determining whether a renewed drift has in fact taken place. We think three things warrant separate discussion: 1) why we consider average basic daily rates the appropriate rates here to employ; 2) whether a dollars-and-cents or a percentage comparison should be made in looking at the differentials separating the two crafts; 3) what period should be used as the base from which to make our comparisons.

The Use of Average Basic Daily Rates

The selection we are here making is based on the following. First, both parties addressed themselves to Issue No. 2 in terms of the average basic daily rates and we see no other measure of compensation which might serve as a more valid basis for gauging the relative functioning of the two graduated-scale systems. Second, it is clear that the average basic daily rates incorporate and substantially reflect the effect of the operation of the two graduated-scale systems.

To the extent that other factors have influenced the relationship between the average basic daily rates of Engineers and Conductors, there appears to be no reliable way to separate their impact from the impact of the graduated-scale system. Third, average basic daily rates were used in the proceeding before Board 109, and it seems to us to be desirable to follow through with consistency on this score.

Money vs. Percentage Comparison

As Table 1 shows, the spread between the two crafts, when judged in terms of dollars and cents, has substantially widened by practically any period-to-period comparison, and the Organization is urging that the dollars-and-cents approach be taken. For the reasons which follow, we think it would be wrong to do so.

As we have pointed out under Issue No. 1, the dollars-and-cents approach for negotiating wage increases gave way to the percentage approach about a decade ago. The percentage approach has by now become the customary approach and we think that this is itself enough to favor the percentage basis of comparison. We want here to touch on two further considerations.

One is that the very purpose of the switchover to the percentage-increase approach was to do something about the squeeze which had developed for higher-paid employees vis-a-vis lower-paid employees. Inflation reduces the purchasing power of the dollar,

and to maintain the same money spread between higher-paid employees and lower-paid employees, is detrimental to the former. This is what was happening in the years following World War II and the corrective response was the adoption of the percentage-increase approach. The Conductors, being among the industry's higher-paid employees, have benefitted from the use of that approach. If we are to have respect for consistency, we cannot consider the corrective measure as proper when it comes to comparing the Conductors with lower-paid employees and as improper when it comes to comparing them with Engineers.

The other consideration we want to touch on concerns the approach taken by Board 109. It is true that Board 109 concluded that neither the dollars-and-cents figures nor the percentage figures could be dismissed as without relevance and that the substantive recommendation which it made appears to have proceeded from primary reliance on the former. It is equally true, however, that the Board made the statement: "The crucial question is the way in which the parties ... have in fact conceived of wage relationships;" that this led to its emphasis on the fact that wage movements in the industry had up to then been negotiated in dollars-and-cents terms; and that it broadly hinted that the future might well bring a change in this custom. The change having in fact taken place, we are pursuing a course which, in principle, is quite the same as that pursued by Board 109.

The Base-Period Question

We have already explained why we are making mid-1955 the point of departure for our considerations. The question, here, is how long a period thereafter should be made the base for the purpose of comparison. It is our considered opinion that the first one-year period following the adoption of the Conductors' graduated-scale system must properly be made the base.

We have not come to this conclusion without awareness of two things. One is that a one-year period is relatively brief, and in many other circumstances would have to be rejected as an inadequate base. The other is that this particular one-year period stands out as a high one for Conductors vis-a-vis Engineers. We believe, however, that the following is of overriding significance.

The first point is that the rise in the Conductors' relative position as compared to prior years owes its existence to the parties' own collective-bargaining action--namely, the establishment of the graduated-scale system for the Conductors. The second point is that the very deterioration which the Organization is here complaining of began in 1957 and steadily continued thereafter (for eight years). Thus, if one adopted a base period extending beyond 1956, one would discard part of what is to be measured. Or, stating it otherwise, since what happened in the two or three years after 1956 is part of the development here at issue, we cannot simply throw out those years by tucking them away, so to speak, into the base period. We do not think that the

"make-the-base-broad" statistical principle should be followed to the point where its use would serve more to obscure than to reveal.

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So approaching Table 1, we see the following as to through-freight service. In 1956, the average basic daily rate of Conductors had an 86.4 percentage relationship to the average basic daily rate of Engineers. In the decade which followed (1966 is the latest period for which the record provides wage data), the Engineers' average basic daily rate increased by 39.4 percent whereas the Conductors' average basic daily rate increased by 36.6 percent--a 2.8 percent lag. As a result of this disparity in aggregate percentage wage progress, the ratio between the two crafts fell from 86.4 to 84.7 percent.

We do not see how this can be seen as anything but a renewed drift, and we believe it adds up to an inequity requiring correction. We come to this conclusion both by the extent and by the history of the disparity's growth. No elaboration is required as to the extent of it. And as to the history of it, the point is the one already suggested under the discussion of the base-period question: with the exception only of the last two years, the fall in the Conductors' relative position was a matter of steady deterioration.

We have applied the same comparative mathematics as to local-freight service. The picture here is less pronounced, both as to the magnitude and the character of the drift, and we

want it understood that our holding should not be taken as a holding that an inequity exists wherever any sort of departure from a traditional wage relationship can be demonstrated. However, by agreement of the parties, both classes of service are included in the case before us. We therefore think that we should proceed with commonality in approach and direct the particular result for each class of service which is produced thereby.

Rounded to the nearest full cent, the following are the adjustments which are required to restore the 1956 average-basic-daily-rate ratio between Engineers and Conductors: an increase of 46 cents per day for Conductors in through-freight service and an increase of 13 cents per day for Conductors in local-freight service. For the reason given below, we are converting these amounts to 45 cents per day and 15 cents per day.

We recognize the danger of tampering with the graduated-scale system and we are not directing any structural changes in the system as such. The task we have confronted is to find a way to make the adjustments within the framework of the system's present brackets. Any modifications beyond this, we agree, should remain within the province of the parties.

The present graduated schedule calls for additives unencumbered by odd cents--i.e., it is a matter of additives each of which is divisible by 5 cents. This is why we make the conversion from 46 to 45 cents and from 13 to 15 cents. The application we are directing is as follows:

Local-Freight Service

The current 20¢ additive for the "less than 81 cars" bracket is to be increased by 15 cents. Since local-freight Conductors characteristically work within the first bracket, the new 35¢ additive will substantially yield the intended 15-cents-per-day increase.

Through-Freight Service

Each of the current additives for the remaining four brackets (the second through the fifth bracket) is to be increased by 45 cents. To give two examples: the additive for the "81 to 105 cars" bracket is to be increased from 55 cents to \$1.00; the additive for the "126 to 145 cars" bracket is to be increased from \$1.20 to \$1.65. The effect will be to increase by 45 cents the average basic daily rate of the Conductors whose assignments fall within any of these four brackets. We are aware that some through-freight trains are of less than 81-car length. By the same token, however, local-freight trains occasionally are of more than 81-car length. There will be some discrepancies of this nature. But they are unavoidable if the present car-bracket structure is to be retained. And we think they are insignificant when viewed in the perspective of the inequity issue as a whole.

We have determined, finally, that the adjustments should be made effective on August 1, the due date of our decision. We have come to this determination by the process of balancing all the considerations we see in the overall equity picture. It also

may be noted, that the 1955 installation of the graduated-scale system--through also the response to a finding which went to past years--was a prospective one. It seems to us that there is substantial similarity between the installation and an adjustment of this sort of graduated-scale form of pay.


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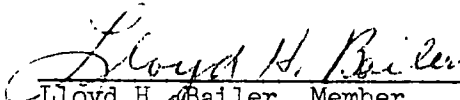
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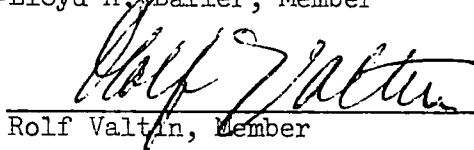
1. The Organization's claim with respect to Issue No. 1 is denied.
2. The Organization's claim with respect to Issue No. 2 is granted to the extent given in the accompanying Opinion. For Conductors in through-freight and local-freight service, effective August 1, 1967, the graduated-scale additives shall be increased to the levels shown below:

<u>BRACKET</u>	<u>ADDITIVE</u>
Less than 81 cars	\$.35
81 to 105 cars	1.00
106 to 125 cars	1.40
126 to 145 cars	1.65
146 to 165 cars	1.75

Add 20¢ for each additional block of 20 cars or portion thereof.


Monsignor George G. Higgins
Chairman


Lloyd H. Bailer, Member


Rolf Valtin, Member

Dated: July 25, 1967

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

Emergency Board No. 171 (Case No. A-6258 and A-7981)

Carriers represented by the National Railway Labor Conference and certain of their employees represented by the Order of Railway Conductors and Brakemen

The following letter was sent to the President July 8, 1967, by the members of Emergency Board No. 171, reporting the disposition of the dispute referred to in Executive Order 11356:

"Washington, D. C.

"July 8, 1967

"The President
The White House
Washington, D. C.

"Dear Mr. President:

The Emergency Board you appointed under Section 10 of the Railway Labor Act by Executive Order 11356 on May 30, 1967, to investigate a dispute between Carriers represented by the National Railway Labor Conference and certain of their employees represented by the Order of Railway Conductors and Brakemen, has the honor to report that during the course of our mediation efforts the parties reached agreement providing for settlement of all matters at issue, and therefore the threatened interruption of interstate commerce posed by this dispute has ceased to exist.

Respectfully submitted,

GEORGE G. HIGGINS
Monsignor George G. Higgins
Chairman

LLOYD H. BAILER
Lloyd H. Bailer, Member

ROLF VALTIN
Rolf Valtin, Member"