

REPORT  
TO  
THE PRESIDENT  
BY

EMERGENCY BOARD

NO. 177

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APPOINTED BY EXECUTIVE ORDER 11543  
DATED JULY 7, 1970, PURSUANT TO  
SECTION 10 OF THE RAILWAY LABOR ACT,  
AS AMENDED

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To investigate the dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the United Transportation Union.

National Mediation Board Cases A-8381 and Sub Nos. 12, 13, 14, 15 and 16.

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WASHINGTON, D. C.  
August 6, 1970

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August 6, 1970

The President  
The White House  
Washington, D. C.

Mr. President:

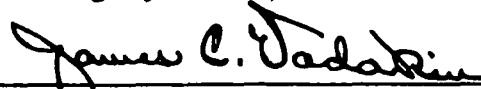
The Emergency Board appointed by you July 7, 1970, by Executive Order No. 11543 in accordance with Section 10 of the Railway Labor Act, as amended, has the honor of submitting to you its report and recommendations. This Board was created to investigate the fireman manning dispute between the carriers represented by the National Railway Labor Conference, and certain of their employees represented by the United Transportation Union.

Respectfully submitted,



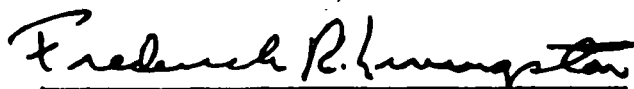
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Willoughby Abner, Member



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James C. Vadakin, Member



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Frederick R. Livingston, Chairman

## REPORT TO THE PRESIDENT BY EMERGENCY BOARD NO. 177

### THE FIREMAN MANNING ISSUE

The fireman manning issue is the Nation's longest extant labor dispute. And it is also the most studied, reviewed and volatile issue on the American labor scene. Despite the intensive efforts of a veritable who's who of distinguished labor experts, the parties have failed to agree upon a solution. The dispute has been punctuated by recurrent national crises arising from actual and threatened nation-wide rail stoppages.

We deem it useless and inappropriate to burden the President with repetition of contentions so well-known and a history so long. Suffice it to say that Congress for the first time in history enacted a law in 1963 calling for compulsory arbitration in order to prevent a nation-wide rail strike. Pursuant to that statute, Arbitration Board 282 was established with representatives from labor, management and the public to review and make a final and binding award. Congress, being reluctant to impose arbitration under our system of free collective bargaining, specifically provided that the award could not be binding for a period in excess of two years.

The Board found:

The record contains no evidence to support the charge, frequently and irresponsibly made, that firemen presently employed in road freight and yard service throughout the country are being paid to do nothing and actually perform no useful work.

However, after reviewing a series of factors, the Board found that "In road freight service the usual presence of the head brakeman in the cab obviates the need for a fireman . . . "

In summarizing, the neutral members of the Board stated that:

In short, although our findings on this issue do not coincide on all points with those of the Presidential Railroad Commission, and although we think it clear that firemen are presently performing useful services, we agree with the Commission "that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels." Like the Commission, however, we also believe that this conclusion should not "preclude the occasional assignment of firemen-helpers on some of the road freight or yard runs which are atypical and which have unusual characteristics."

Arbitration Board 282 provided certain safeguards with respect to firemen who were affected by the Award and provided further that 10 percent of the road freight and yard crews, to be designated by the union based upon considerations of safety or undue work burden, could be retained.

The issuance of Arbitration Award 282, on November 26, 1963, was followed by a plethora of litigation relating to its application and interpretation, some of which persists to this day. The constitutionality of the law and the authority of the Board were the subject of attacks in the courts. The record is replete with charges and countercharges alleging failure to bargain in good faith following the expiration of the

Award. We see no useful purpose in recounting or assessing these charges. Rather, we address ourselves to finding a solution that the parties can live with and that is consistent with the public interest.

In the recent past, the mediation facilities of the National Mediation Board were utilized and all steps under the Railway Labor Act were exhausted. The union was thus free to strike when the parties agreed to maintain the status quo and make a further attempt at settlement under the auspices of a mediator to be selected by the Secretary of Labor. The Chairman of this Board was designated by then Secretary of Labor Shultz. Intensive mediation meetings were conducted during the period from January until mid-June. During the course of his mediation efforts, most of the basic ingredients of a long-range settlement were agreed upon. The keystone was the establishment of a new dual purpose classification combining the functions of the fireman and brakeman. This new formula became feasible as a result of the formation of the United Transportation Union.<sup>1/</sup> Unfortunately a stalemate was reached over the issue of portable radios and the mediation effort was terminated.

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<sup>1/</sup> On January 1, 1969, the Brotherhood of Locomotive Firemen and Enginemen and three of the four other unions representing railroad operating employees -- the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and the Switchmen's Union of North America -- merged to form the United Transportation Union. The UTU has over 262,000 members. The independent Brotherhood of Locomotive Engineers has 35,700 members and is not a party to this dispute.

Shortly thereafter, on July 7, the union called a strike of three railroads — Baltimore & Ohio, Southern Pacific and Louisville & Nashville — and the carriers threatened to call a lockout of all the Nation's railroads. On the same day, the President declared a national emergency under the provisions of the Railway Labor Act and by Executive Order created this Board to investigate and report its findings.<sup>2/</sup>

### The Issues

This dispute arises out of notices of proposed rule changes served by the Brotherhood of Locomotive Firemen and Enginemen, now the United Transportation Union (UTU), on November 15, 1965, and the counterproposal of the carriers served on January 31, 1966.<sup>3/</sup>

The UTU represents nearly all of the approximately 20,000 firemen currently employed on passenger, freight and yard locomotives in the United States. More than 130 railroads, represented by the National Railway Labor Conference, including almost all Class I carriers are involved. These roads account for approximately 95 percent of the industry's total track mileage.

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<sup>2/</sup> Copy of the Executive Order together with names of the railroads covered is attached as Appendix A, and a chronology of the dispute is attached as Appendix B.

<sup>3/</sup> These notices are attached as Appendix C.

The UTU notice seeks to restore a significant portion of the 18,000 firemen jobs eliminated under the provisions of Award 282. The carriers' notice, in turn, seeks to achieve the unrestricted right to determine when firemen shall be used on diesel locomotives. Use of firemen on passenger locomotives is not in question.

The Board convened on July 15 in Washington, D. C., organized, adopted rules of procedure and commenced public hearings. Hearings were held on July 15, 16, 17, 22 and 23. The parties were afforded full opportunity to present oral testimony, exhibits, argument with respect to the issues and briefs.

### The Record

In support of its proposal, the UTU presented witnesses and numerous documents to sustain its position that firemen are essential to rail operations for reasons of (1) safety, (2) avoidance of undue work burdens, (3) efficiency of operations and (4) providing a pool of trained men for promotion to engineer. Stress was placed upon safety history since the implementation of Award 282. Econometric charts and expert testimony were offered in support of the contention that an increase in accident rates was related to reduction in the number of firemen. Engineers and firemen described their present working conditions and it was asserted that the job title "fireman" is no longer descriptive. Medical testimony was heard bearing upon the stress under which an

engineer works in the absence of a fireman. In addition, statistical data were presented relating to the shortage of engineers arising out of the elimination of firemen.

The carriers offered rebuttal exhibits designed to prove that changes in safety statistics bore little or no relationship to the presence of a fireman in the cab. Evidence was also presented to the effect that railroad operating efficiency had improved and that technological changes introduced since Award 282 made the role of the fireman even less essential than it was at the time of the 282 hearings.

Great weight was placed upon the financial dimensions of the UTU request. The carriers asserted that acceptance in 1969 of the union proposal leading to the addition of 18,000 firemen would have resulted in increased costs to the Nation's railroads of \$233 million over the present \$179 million cost of firemen, or a total cost for firemen of \$412 million. This figure represents approximately two-thirds of the net operating income for the Nation's railroads in the year 1969. It is projected that 1970 operating income will be less than 1969. During the six-year period since the issuance of Award 282, the industry has saved over one billion dollars through the elimination of firemen jobs. The carriers estimated that labor costs represent approximately 51 percent of railroad revenue dollars.



## CONCLUSIONS

The Board, after hearing the witnesses, arguments of counsel and carefully reviewing the transcripts, exhibits and briefs, has reached the following conclusions:

1. It was unanimously found by the public neutral members of all previous boards that there is no need for firemen on freight and yard diesel locomotives except under rare operating conditions.

2. The new evidence presented to this Board is not sufficiently compelling to warrant a contrary conclusion. The great bulk of the exhibits and oral testimony constituted repetition of evidence submitted before the Presidential Railroad Commission and subsequent boards. Neither the new evidence relating to safety or work burden supports the asserted need for restoration of firemen.

3. Imposed recommendations or binding arbitration have failed to resolve the issue. Award 282 became a battleground for litigation and unfortunately failed to achieve the objective of Congress, i. e. , that this issue be put to rest.

4. In determining the issue of appropriate manning, this Board is convinced that only a solution freely arrived at through the collective bargaining process will provide any reasonable hope for long-term stability. We therefore place great weight on the framework for manning worked out by the parties during the mediation conducted under the

auspices of the Chairman and this Board. During that mediation process, the parties were in accord as to the basic structure for mutually satisfactory manning levels. As in all negotiations no item agreed upon becomes binding until all outstanding issues are resolved. There were some gaps here that prevented complete and final agreement; however, this Board firmly believes that its recommendations should be predicated upon the formula tentatively developed by the parties. This is particularly appropriate because the tentative understanding here affects the basic items and the unresolved items only constitute a fleshing-out of the parties' own basic agreement.

5. The Board's recommendations, therefore, constitute a combination of the parties' agreement coupled with the Board's best judgment as to the method for rounding out those agreements in such manner as to provide a reasonable and workable whole. These recommendations are designed to meet the basic operating needs of the carriers both in terms of operating efficiency and safety and at the same time to provide reasonable job security and safeguards for all UTU members covered by this report. Adoption of these recommendations will serve the interests of the industry, its employees and the public.

## RECOMMENDATIONS

1. A new dual purpose or combination classification should be established combining the present functions of firemen and brakemen on diesel road locomotives and firemen and yardmen on yard locomotives. The appropriate descriptive title for such dual purpose classification should be determined by the parties.

2. No new hires would establish firemen seniority after the date of the agreement. Present firemen should be given job protection and the fireman classification should be eliminated through the process of attrition.

3. A training program should be developed by the carriers with the active participation of UTU to qualify employees for promotion to either conductor or engineer based on the needs of the service.

4. In order to provide an opportunity for men holding firemen seniority who were assigned to less desirable jobs as a result of Award 282, all such employees should be granted free exercise of seniority on an agreed upon date to be known as "Sadie Hawkins Day." At that time all firemen would be given the opportunity to indicate their respective preferences for available jobs and be assigned to the job preferred in order of their respective seniority.

5. The exercise of seniority as set forth in recommendation 4 above should be subject, however, to the obligation recognized by UTU

to fill "must fill" jobs (passenger firemen, jobs required by full crew laws and hostler jobs). "Must fill" jobs should be filled for as long as the requirements of the service demand and the carriers, in turn, should make appropriate accommodation to compensate those employees for loss of earnings resulting from such assignments.

6. The UTU should give its commitment that it will not oppose repeal of state full-crew laws.

7. There should be a five-year moratorium on the filing of any notices inconsistent with the manning recommendations set forth above. A committee should be established to review propriety of questionable notices.

8. The parties have had extensive discussions relating to the method of implementing the basic manning formula. They did not reach agreement on all aspects. Since tentative agreement on each item was contingent upon achieving a complete agreement, we make no comment upon those detailed matters.

An important unresolved item relates to the sharing of savings resulting from the introduction of the combination classification and gradual elimination of the fireman classification. Economists for both sides developed savings data during the prior informal discussions of the parties. We have been informed that this data can be brought up to date within a day or two. However, none of that material has been made

available to this Board. Therefore, we have insufficient information upon which to make meaningful recommendations as to the method and timing for distribution of such savings.

Under the statute the parties are free to engage in self-help unless they conclude an agreement within 30 days following the submission of this report. The members of the Board believe that the remaining outstanding items are susceptible to early resolution. We strongly urge the parties to resume negotiations promptly with a view toward reaching an early complete agreement.

9. If within 10 days of this report the parties fail to reach complete agreement, we recommend that the Secretary of Labor appoint a special mediator to assist them. If mediation does not resolve the outstanding issues within 5 days they should be submitted to expedited arbitration.

We recommend this expedited procedure in light of the extended negotiations that have already taken place and mindful of the 30-day period fixed by the statute. We sincerely hope that the parties can reach complete agreement through their own free collective bargaining. If, however, such bargaining fails, this schedule will permit the arbitrator sufficient time to consider the open matters and issue his award prior to the statutory deadline.

## RELATED ISSUES

There are two issues that warrant discussion:

1. Use of Radio. The parties agree, (i) that portable radio is a desirable and appropriate communication device; (ii) that there should be agreed-upon specifications as to the size of radio to be utilized; (iii) that a procedure should be developed for phasing out existing divergent local radio arbitraries (special payments); (iv) that use of fixed radio in the engine or caboose is not in issue; (v) that the use of portable radio is not a part of the fireman manning issue.

The carriers maintain, however, that it is a related issue and inseparable from the duties of employees involved and should therefore be part of any settlement based on a dual-purpose classification. The union, however, insists that portable radio is not related; but it is prepared to set up a committee to enter into immediate negotiations on this subject with the carriers either separately or in conjunction with the current wage negotiations.

There is real merit to the carriers' position that use of portable radio is an integral part of job duties of classifications involved here. Furthermore, technological change is essential to the growth of the railway industry, and there should be no roadblocks to such reasonable change.

Experience shows, however, that not all labor relations problems can be resolved in one fell swoop; rather they must be addressed by segments. With potential solution so near at hand to the age-old fireman manning issue that long sought goal should not be lost because it might be desirable to add another segment.

This Board therefore recommends that the portable radio issue not be included as part of this dispute but rather should be handled in some other manner mutually satisfactory to the parties. However, working out such mutually satisfactory arrangement should not delay or be a barrier to the negotiations on the manning issue. We recommend, in turn, that UTU should refrain from processing or filing any individual carrier notices seeking radio arbitraries during the period of national negotiations on use of portable radio.

2. Compulsory Retirement. The UTU and the carriers are to be commended for their joint efforts to have the Railroad Retirement Act of 1937 amended to provide for compulsory retirement at age 65 on a graduated scale. Unfortunately Congress saw fit to limit itself to an amendment encouraging retirement at age 65 through the penalty of lesser benefits to railroad personnel who continue to work after age 65. While it is yet too early to predict the practical application of this amendment, it is anticipated that the benefit penalty is insufficient to induce the approximately 4,000 engineers now 65 and over to retire

when it is still possible for them to continue employment at much higher income levels. Compulsory retirement of all train crew members at age 65 would appear to be highly desirable in terms of public safety and it would in turn provide promotional opportunities for present firemen eligible to qualify as engineers. The attrition process would thus be accelerated redounding to the long range welfare of the industry. It is hoped that Congress will see fit to amend the act in accordance with joint recommendations of UTU and the carriers.

#### SUMMARY

Under these recommendations no fireman will be separated and those assigned to undesirable jobs pursuant to Award 282 will be given an opportunity on "Sadie Hawkins Day" to have a free exercise of seniority. At the same time, the manning needs of the industry are met through the establishment of the new dual-purpose classification, while providing an orderly basis for eliminating the fireman classification through attrition.

The Board members are convinced because of the insights gained from their intensive mediation efforts that acceptance by the parties of the foregoing recommendations would represent the best possible hope for final resolution of this dispute through the collective




bargaining process. Such resolution would negate the need for voluntary arbitration, preclude a strike over the manning issue and foreclose a mandated settlement by the Congress.

We note that prior boards concerned with this dispute have consistently had a peroration citing the great public interest in railway labor peace and calling upon the parties to correct their tendency to postpone real collective bargaining until the final hour. This would appear unnecessary here, where the parties are on the very threshold of settlement. They need take only one small step to conclude a final and complete agreement, an agreement that is substantially their own. To paraphrase Neil Armstrong — they need take only one small step for agreement, one giant leap for railroad labor relations.

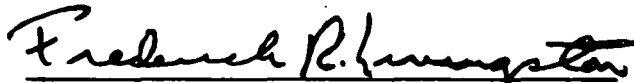
Respectfully submitted,



Willoughby Abner, Member



James C. Vadakin, Member



Frederick R. Livingston, Chairman

Washington, D. C.  
August 6, 1970

APPENDIX A

THE WHITE HOUSE

EXECUTIVE ORDER

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CREATING AN EMERGENCY BOARD  
TO INVESTIGATE DISPUTES BETWEEN  
THE CARRIERS REPRESENTED BY  
THE NATIONAL RAILWAY LABOR  
CONFERENCE AND CERTAIN OF  
THEIR EMPLOYEES

WHEREAS disputes exist between the carriers represented by the National Railway Labor Conference, designated in List A attached hereto and made a part hereof, and certain of their employees represented by the United Transportation Union, a labor organization; and

WHEREAS these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive 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 these disputes. 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 the disputes within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers represented by the National Railway Labor Conference, or by their employees, in the conditions out of which the disputes arose.

/s/ RICHARD NIXON

THE WHITE HOUSE,

July 7, 1970.

# # #

LIST A  
EASTERN RAILROADS

Akron & Barberton Belt Railroad Company  
Akron, Canton & Youngstown Railroad Company  
Ann Arbor Railroad  
Baltimore and Ohio Railroad Company  
Baltimore and Ohio Railroad Company (Buffalo Division)  
Baltimore and Ohio Railroad Company (Strouds Creek and Muddlety  
Territory)  
Baltimore and Ohio Chicago Terminal Railroad  
Bangor and Aroostook Railroad  
Bessemer and Lake Erie Railroad  
Boston and Maine Corporation  
Buffalo Creek Railroad  
Central Railroad Company of New Jersey  
New York and Long Branch Railroad  
Central Vermont Railway, Inc.  
Cincinnati Union Terminal Company  
Curtis Bay Railroad Company  
Delaware and Hudson Railway Company  
Detroit and Mackinac Railway Company  
Detroit and Toledo Shore Line Railroad  
Detroit, Toledo and Ironton Railroad  
Erie Lackawanna Railway

LIST A

EASTERN RAILROADS – Continued

Grand Trunk Western Railroad

Greenwich and Johnsville Railway Company

Indiana Harbor Belt Railroad

Indianapolis Union Railway Company

Lehigh and New England Railway Company

Lehigh Valley Railroad

Maine Central Railroad Company  
Portland Terminal Company

McKeesport Connecting Railroad Company

Monongahela Railway

Monon Railroad

Montour Railroad

New York, Susquehanna and Western Railroad

Norfolk and Western Railway Company  
Lines of former New York, Chicago and St. Louis Railroad  
Lines of former Pittsburgh and West Virginia Railway

Northampton and Bath Railroad

Penn Central Transportation Company  
Former Pennsylvania Railroad Company  
Former New York Central Railroad Company  
Former New York, New Haven and Hartford Railroad Company

Pennsylvania-Reading Seashore Lines

Pittsburgh & Shawmut Railroad Company

Pittsburgh and Lake Erie Railroad, including Lake Erie  
and Eastern Railroad

LIST A

EASTERN RAILROADS — Continued

Reading Company  
    Ironton Railroad

Toledo Terminal Railroad Company

Washington Terminal Company

Western Maryland Railway Company

Youngstown and Northern Railroad Company

WESTERN RAILROADS

Alton and Southern Railway

Atchison, Topeka and Santa Fe Railway Company

Bauxite and Northern Railway Company

Burlington Northern, Inc. (including the former Chicago, Burlington  
    and Quincy Railroad; former Great Northern Railway; former  
    King Street Passenger Station; former Northern Pacific Rail-  
    way; former Pacific Coast Railroad and former Spokane,  
    Portland and Seattle Railway (System Lines))

Butte, Anaconda and Pacific Railway Company

Camas Prairie Railroad Company

Chicago and Eastern Illinois Railroad

Chicago and Illinois Midland Railway Company

Chicago and North Western Railway Company

Chicago and Western Indiana Railroad Company

LIST A

WESTERN RAILROADS — Continued

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Chicago, Rock Island and Pacific Railroad Company

Chicago Short Line Railway

Chicago, West Pullman and Southern Railroad Company

Colorado and Southern Railway Company

Davenport, Rock Island and North Western Railway Company

Denver and Rio Grande Western Railroad Company

Des Moines Union Railway Company

Duluth, Missabe and Iron Range Railway Company

Duluth, Winnipeg and Pacific Railway Company

East St. Louis Junction Railroad

Elgin, Joliet and Eastern Railway Company

Fort Worth and Denver Railway Company

Fort Worth Belt Railway Company

Galveston, Houston and Henderson Railroad Company

Galveston Wharves

Green Bay and Western Railroad Company

Houston Belt and Terminal Railway Company

Illinois Central Railroad

Illinois Northern Railway

Illinois Terminal Railroad

LIST A

WESTERN RAILROADS — Continued

Joint Texas Division of the CRI&P-Ft.W&D Railway  
Kansas City Southern Railway Company, (including KCS affiliates  
at Milwaukee-Kansas City Southern Joint Agency)  
Kansas City Terminal Railway Company  
Lake Superior Terminal and Transfer Railway Company  
Longview, Portland and Northern Railway Company  
Los Angeles Junction Railway Company  
Louisiana and Arkansas Railway Company  
Manufacturers Railway Company  
Minneapolis, Northfield and Southern Railway  
Minnesota, Dakota and Western Railway Company  
Minnesota Transfer Railway Company  
Missouri-Kansas-Texas Railroad Company  
Missouri Pacific Railroad Company (including the former  
Union Railway (Memphis))  
Missouri-Illinois Railroad Company  
New Orleans and Lower Coast Railroad Company  
New Orleans Union Passenger Terminal  
Norfolk and Western Railway Company (former Wabash Railroad —  
Lines East and West)  
Northwestern Pacific Railroad Company  
Ogden Union Railway and Depot Company  
Oregon, California and Eastern Railway Company

LIST A

WESTERN RAILROADS -- Continued

Peoria and Pekin Union Railway Company  
Portland Terminal Railroad Company  
Port Terminal Railroad Association  
St. Joseph Terminal Railroad Company  
St. Louis-San Francisco Railway Company  
St. Louis Southwestern Railway Company  
Sioux City Terminal Railway Company  
Soo Line Railroad Company  
Southern Pacific Transportation Company (Pacific Lines) (Including  
former El Paso and Southwestern System and Nogales,  
Arizona, Yard)  
Southern Pacific Transportation Company (Texas and Louisiana Lines)  
South Omaha Terminal Railway Company  
Spokane International Railroad Company  
Terminal Railroad Association of St. Louis  
Texas and Pacific Railway Company (including the former Midland  
Valley Railway and former Kansas, Oklahoma and Gulf Railway)  
Texas Mexican Railway Company  
Toledo, Peoria and Western Railroad Company  
Union Pacific Railroad Company  
Union Terminal Company (Dallas)  
Union Terminal Railway Company-St. Joseph Belt Railway Company  
Western Pacific Railroad Company  
Wichita Terminal Association



LIST A

SOUTHEASTERN RAILROADS

Atlanta and West Point Rail Road Company,  
The Western Railway of Alabama

Atlanta Joint Terminals

Central of Georgia Railway

Chesapeake and Ohio Railway Company

Clinchfield Railroad Company

Gulf, Mobile and Ohio Railroad Company

Kentucky and Indiana Terminal Railroad Company

Louisville and Nashville Railroad Company

Mississippi Export Railroad Company

New Orleans Public Belt Railroad

Norfolk and Portsmouth Belt Line Railroad Company

Norfolk and Western Railway Company (Atlantic and Pocahontas  
Regions)

Norfolk Southern Railway Company

Seaboard Coast Line Railroad Company

Southern Railway

Alabama Great Southern Railroad (including former New  
Orleans and Northeastern Railroad)

Cincinnati, New Orleans and Texas Pacific Railway  
(including former Harriman and Northeastern Railroad)

Georgia Southern and Florida Railway

New Orleans Terminal Company

St. Johns River Terminal Company

## APPENDIX B

### CHRONOLOGY OF FIREMAN MANNING DISPUTE

- Feb. 28, 1937      National Diesel Agreement of 1937 signed by carriers and Brotherhood of Locomotive Firemen and Engineers (BLFE) requiring firemen on all passenger trains and on freight and yard locomotives weighing more than 90,000 pounds. Very few diesels were in use at the time; they were introduced for yard switching in 1925 and passenger operations in 1934.
- May 21, 1943      Report of Emergency Board created pursuant to the Railway Labor Act (RLA) recommended no additional manning for freight and yard locomotives sought by BLFE and Brotherhood of Locomotive Engineers (BLE). The Board, however, recommended use of an extra fireman on high speed passenger trains under certain conditions.
- Subsequently, regional agreements were negotiated by the BLFE requiring firemen on road freight diesels of less than 90,000 pounds.
- April 11, 1949      Report of Emergency Board No. 68 recommended against a BLE proposal to employ a second or assistant engineer on diesels.
- Sept. 19, 1949      Report of Emergency Board No. 70. None of the BLFE manning proposals were supported by the Board. The union sought additional firemen on diesels in road service, and proposed use of firemen on diesels of less than 90,000 pounds in yard service and on certain rail motor cars.
- May 17, 1950      National Diesel Agreement of 1950 signed, slightly amending the 1937 manning contract.
- 1956                Carriers served notices on BLFE seeking elimination of rules requiring use of firemen. The notices were later withdrawn for a three-year moratorium on wage demands.

- Nov. 2, 1959      Carriers served notices under Section 6 of the RLA proposing elimination of the 1950 agreement and seeking the unrestricted right to determine when and if firemen shall be used on diesels.
- Sept. 7, 1960      Brotherhoods served Section 6 notices including one by the BLFE calling for the extension of the use of firemen in operations where it was not mandatory under the general rule.
- Nov. 1, 1960      Presidential Railroad Commission (PRC) created after the parties agreed to submit the fireman manning and other issues for study. The principal other issue concerned train crew consist. This issue was handled concurrently with the fireman manning dispute through Arbitration Board 282. The Commission — composed of five public, five carrier, and five union members — attempted, without success, to mediate the dispute.
- Feb. 28, 1962      The PRC submitted its report. On the fireman issue it recommended in major part the carriers' position, concluding that the job of fireman was not so essential for the safe and efficient operation of freight and yard diesels to require rules requiring their employment. The Commission proposed a number of protective provisions for firemen adversely affected by any agreement the parties negotiated based on its recommendations. The carriers accepted the report, and the unions rejected the recommendations.
- Talks resumed within a few months; however, the unions would negotiate only on the original Section 6 demands and counterdemands.
- May 21, 1962      Brotherhoods made application for the services of the National Mediation Board (NMB).
- July 16, 1962      NMB terminated its services after the organizations refused to submit the disputes to arbitration. On the following day the carriers served notice of their intention to revise the work rules effective August 16, 1962.

July 26, 1962  
to  
March 5, 1963      Unions brought suit to enjoin the carriers from promulgating rule changes. The railroads subsequently announced that they would put into effect their original demands contained in their November 2, 1959, Section 6 notices rather than the PRC recommendations.

The Federal courts, including the Supreme Court, ruled that requirements of the RLA had been satisfied and that the companies were free to implement rule changes and the unions to strike unless a Presidential Emergency Board was appointed. Further unsuccessful negotiations followed.

April 3, 1963      Emergency Board No. 154 created pursuant to the RLA to investigate and report on the fireman manning and other issues after the carriers again announced their intention to implement their November 1959 rules changes and the union threatened a nationwide strike. The Board made an intensive but unsuccessful effort to mediate the dispute.

May 13, 1963      Report of Emergency Board No. 154 issued. The Board recommended elimination of firemen's jobs with the right of the union to protest the carriers' action on grounds of safety, or undue burden. Unresolved differences would be subject to arbitration. Provisions to aid negotiations and protect affected employees were included in the recommendations. The carriers accepted the report and the union indicated willingness to consider it a basis for further negotiations.

June 4, 1963      The Secretary of Labor and members of the NMB sought to mediate a settlement when direct negotiations stalemated. At the request of the President the statutory 30 day status quo period was extended from June 13 to July 10.

July 5, 1963      The Secretary of Labor proposed acceptance in principle of Emergency Board 154's recommendations. If the parties reached an impasse, the Secretary would issue a ruling on the differences to be binding for two years. The proposal was accepted by the carriers, but rejected by the Brotherhoods.

- July 9, 1963      The President proposed that the parties submit the dispute to Supreme Court Justice Goldberg for final determination. The offer was accepted by the carriers and rejected by the unions.
- July 10, 1963      The President appointed a special Subcommittee of his Advisory Committee on Labor-Management Policy to review and report on the issues and positions of the parties. The parties agreed to maintain the status quo until July 29.
- July 19, 1963      The Subcommittee submitted its report to the President.
- July 22, 1963      The President proposed a Joint Resolution to Congress providing for a two-year status quo period during which the Interstate Commerce Commission would be given authority to approve interim changes in the work rules pending a negotiated agreement. Subsequently the parties agreed to extend the status quo period to August 29 and negotiations resumed with the mediatory assistance of the Secretary of Labor.
- Aug. 2, 1963      The Secretary of Labor proposed a basis for continuing negotiations on the fireman manning and other issues, but in the meetings which followed the parties remained deadlocked.
- Aug. 15, 1963      Secretary of Labor proposed determination of the fireman manning and crew consist issues by a tri-partite board. The carriers accepted the proposal, but the unions objected to certain procedural matters.
- Aug. 28, 1963      Congress enacted Public Law 88-108 creating Arbitration Board No. 282 to render a binding decision on the fireman matter and the other principal issue in dispute, the consist of train crews other than the engineer and fireman. The arbitration award was to be effective for no more than two years, and secondary issues were to be resolved through collective bargaining. The board was composed of three public, two union, and two carrier members.

Nov. 26, 1963	<u>Arbitration Board No. 282 submitted its Award to the President and the parties. The Board agreed with the PRC and Emergency Board 154 that there was no need for assigning firemen to freight and yard engines except under unusual circumstances. The Award gave the carriers authority to list jobs to be eliminated. The BLFE was given the right to veto 10 percent of the crews designated by the carriers, and the vetos were to be final and binding. Both parties were directed to make their decisions based on considerations of safety, undue work burden and adequate and safe transportation for the public. Firemen affected by the Award were protected by provisions based on seniority and derived in part from understandings reached by the parties in negotiations.</u>
Dec. 6, 1963 to April 27, 1964	<u>The Brotherhoods challenged P. L. 88-108 and the Award of Arbitration Board No. 282 in the courts, contending that the law was unconstitutional and that the Award failed to conform with the statute. The Supreme Court denied certiorari thereby upholding decisions of lower courts approving the law and confirming the Award.</u>
March 4, 1964	<u>Carriers and BLFE agreed to withhold implementation of the Award pending the ruling by the Supreme Court on the application for certiorari in the case challenging P. L. 88-108 and the Award.</u>
April 22, 1964	<u>Secondary issues were settled as a result of negotiations conducted under the auspices of the White House and with the mediatory assistance of the Secretary of Labor and others.</u>
May 11, 1964	<u>BLFE enjoined from engaging in strike activity relative to the carriers' implementing Award 282.</u>
Aug. 2, 1965 to March 22, 1966	<u>Hearings before the Senate Committee on Commerce were held at the urging of the BLFE regarding the administration and application of Award 282. At the conclusion the Committee indicated it would not propose legislation changing the Award, and adopted a resolution urging the parties to resolve their differences by collective bargaining.</u>

- Nov. 15, 1965     The BLFE served Section 6 notices seeking restoration of most firemen's jobs eliminated pursuant to Award 282.
- Jan. 5, 1966     The Joint Board provided by Arbitration Board No. 282 to study the consequences of the Award issued its Report. The two carrier representatives and the BLE representative sustained the elimination of firemen's jobs. The representative of the BLFE did not sign the report and issued a dissenting statement.
- Jan. 31, 1966     Section 6 notices served by the Railroads on the BLFE seeking the unrestricted right to determine when and if firemen shall be used on diesels in all classes of freight and yard service.
- March 31, 1966     The Award of Arbitration Board No. 282 expired. About 18,000 firemen's jobs, approximately 60 percent of those subject to the jurisdiction of the Award, were eliminated while the Award was in effect. During this period the Arbitration Board met a number of times to decide about 200 questions raised by the parties.

The union maintained that the National Diesel Agreement of 1950 became effective upon expiration of the Award and struck 12 roads to enforce its position. The stoppages ended on April 3 after they were enjoined by the District Court for the District of Columbia. At about this time various court actions were instituted regarding the status of the Award upon its expiration. The courts ultimately ruled, in part, that the carriers could no longer eliminate jobs under terms of the Award. The results of the Award remained effective until changed in accordance with the procedures of the RLA, and the union could not strike until those procedures were exhausted. Other questions raised in the courts related to the status of the Award in full crew law States and manning requirements on train runs started since the Award expired.

Aug. 19, 1968 to Oct. 24, 1968	<u>Negotiations conducted under the auspices of the National Mediation Board following unassisted conferences between national representatives of the union and the carriers.</u>
Jan. 1, 1969	<u>The BLFE and three other operating unions merged to form the United Transportation Union (UTO).</u>
Jan. 13, 1969	<u>The NMB proffered arbitration to the parties. The carriers accepted the offer, but the union withheld its response.</u>
April 1969	<u>Informal negotiations began aimed at studying all aspects of the dispute. The negotiations were conducted by a committee composed of three UTU and three carrier representatives.</u>
July 23, 1969	<u>The UTU declined the NMB's proffer of arbitration and several days later announced that the informal negotiations had failed.</u>
Nov. 4, 1969	<u>The NMB released the fireman manning case. Under the procedures of the RLA the parties were legally free to resort to self-help on December 5.</u>
Dec. 1, 1969	<u>The UTU and NLRC, with the assistance of the Department of Labor and the NMB, reached an understanding to renew negotiations with the assistance of a special mediator, thereby postponing appointment of an emergency board or resort to self-help. The Secretary of Labor designated Frederick R. Livingston as the special mediator.</u>
Jan. 26, 1970 to June 11, 1970	<u>Negotiations were conducted with the assistance of Mr. Livingston. Considerable progress was made in the talks based upon a new approach to the manning issue. However, the parties reached a stalemate on the issue relating to the use of radios, and Mr. Livingston withdrew as mediator.</u>
July 7, 1970	<u>The UTU struck the Baltimore &amp; Ohio, Louisville &amp; Nashville and Southern Pacific railroads. Later that day the stoppage was ended when the President appointed Emergency Board No. 177.</u>



APPENDIX C

ORGANIZATION'S NOTICE

NOVEMBER 15, 1965

\_\_\_\_\_  
NAME OF RAILROAD OFFICIAL

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
NAME OF RAILROAD

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the \_\_\_\_\_ Railroad, please accept this as formal notice of our desire to change the collectively bargained agreement governing the employment of firemen (helpers) on other than steam power to the extent provided in Attachment "A", attached to and made a part hereof, such change to become effective at 12:01 a. m. , March 31, 1966.

This proposal is made to you, notwithstanding the fact that upon the expiration of the Award of Arbitration Board 282, the collectively bargained agreement with respect to employment of firemen (helpers) will be in full force and effect. We shall expect that on and after 12:01 a. m. , March 31, 1966, you will comply fully with the collectively bargained agreement with respect to employment of firemen (helpers) on this property, unless another agreement has been reached in the meantime.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conferences may be held to discuss this notice.

Very truly yours,

\_\_\_\_\_  
General Chairman,  
Brotherhood of Locomotive  
Firemen and Enginemen

ORGANIZATION'S NOTICE — Continued

Section A:

1. Firemen (helpers) taken from the seniority ranks of the firemen shall be used on all locomotives in road and yard service, except as specifically provided in Section B.

Section B:

1. DAYLIGHT YARD JOBS, other than those:

- (a) Engaged in switching passenger cars and equipment, or
- (b) Engaged in belt line, transfer, interchange or industrial work, or
- (c) Which are consistently on duty more than eight (8) hours, or
- (d) Whose operations are not confined to an area from which other engines operated without firemen (helpers) are excluded during the period the job works, or
- (e) On which there is need for an employee on the locomotive to relay signals or perform lookout functions by reason of such conditions as curvatures of tracks, overhead or other obstructions, close clearances, unprotected crossings, dangers arising out of mainline movements, hazard to the public or railroad employees, or imposition of onerous working conditions on the engine or train crew.

2. DAYLIGHT BRANCH LINE JOBS, other than those where:

- (a) The number of units in the locomotive consist exceeds one, or
- (b) The total time on duty may be expected to exceed eight (8) hours, or
- (c) The total miles run exceeds one hundred (100), or
- (d) The maximum speed on branch line exceeds thirty (30) miles per hour.

ORGANIZATION'S NOTICE — Continued

- (e) The maximum number of cars in the train may be expected to exceed thirty-five (35), or
- (f) The continuous movement of the train or engines exceeds two (2) hours without relief, or
- (g) Onerous working conditions would be imposed on the members of the engine or train crew if a fireman was not used.

Section C:

1. Notwithstanding the provisions of Section B, a job may be operated without a fireman (helper) only when it becomes necessary to hire a fireman (helper).

2. A junior fireman (helper) may be required to protect jobs in Section B if same is necessary to avoid a new hire.

Section D:

1. The carrier shall hire and place on the firemen's seniority roster sufficient firemen (helpers) to comply with the provisions of this agreement.

CARRIERS' NOTICE

JANUARY 31, 1966

Attachment "A"

A. Eliminate Part B, Section II, of the terms prescribed by the Award of Arbitration Board No. 282.

B. Establish a rule to provide that —

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous and unclassified services) and in all classes of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

C. The adoption of paragraphs A and B above shall not affect the application of the terms of Parts C and D of Section II of the Award by Arbitration Board No. 282 except in so far as may be necessary to reflect the elimination of Part B of Section II and the adoption of the rule set forth in Paragraph B. 1. above.