

Report
TO
THE PRESIDENT
BY
Emergency Board
No. 180

**APPOINTED BY EXECUTIVE ORDER 11664 DATED MARCH
31, 1972, PURSUANT TO SECTION 10 OF THE RAILWAY
LABOR ACT, AS AMENDED.**

To investigate the dispute between the Penn Central Transportation Company and certain of its employees represented by the United Transportation Union.

**(National Mediation Board Case No. A-9138, Sub Nos. 1
through 10)**

**WASHINGTON, D.C.
MAY 15, 1972**

TRANSMITTAL LETTER

WASHINGTON, D.C.
May 14, 1972.

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT: The Emergency Board you created on March 31, 1972, by Executive Order 11664, in accordance with Section 10 of the Railway Labor Act, as amended, has the honor to submit this report.

This Board was created to investigate the dispute between the Penn Central Transportation Company and certain of its employees represented by the United Transportation Union, AFL-CIO. In fulfillment of its obligation the Board held hearings and considered the evidence and arguments presented by the parties.

Respectfully,

(S) FRANK J. DUGAN, *Member.*
(S) JAMES J. SHERMAN, *Member.*
(S) FRANCIS A. O'NEILL, JR., *Chairman.*

HISTORY OF THE EMERGENCY BOARD

Emergency Board No. 180 was created by Executive Order No. 11664, issued on March 31, 1972, pursuant to Section 10 of the Railway Labor Act, as amended. The Board was appointed to investigate and report on the dispute between the Penn Central Transportation Company and certain of its employees represented by the United Transportation Union.

The President appointed the following persons as members of the Board: Francis A. O'Neill, Jr., retired Chairman of the National Mediation Board, Chairman; Professor Frank J. Dugan, Georgetown University Law Center, Member; and Professor James J. Sherman, University of South Florida, Member.

The Board convened in Washington, D. C. on April 4, 1972, to discuss procedural matters with the parties. Public hearings were held in Washington, D. C., on April 10 thru 14 and April 17 thru 21 and closing arguments were presented on May 3, 1972. During the hearings the parties were given ample time and adequate opportunity to present evidence and argument before the Board. The record of the proceedings consist of nearly 1,700 pages of testimony, 55 exhibits, and closing briefs. A number of films also were shown depicting rail operations relating to the issue. In addition, Board Members Dugan and Sherman, accompanied by representatives of the Carrier and the Union, spent two days observing rail operations in Washington, Baltimore, and Buffalo.

With the consent of the parties, Board Chairman O'Neill conducted a series of discussions with the representatives of the Carrier and the Union in an effort through mediation to find a means of resolving the dispute. These meetings did not result in an agreement.

Because of the extensive record and the desire of the Board to observe operations and conduct discussions with representatives of the parties, the Carrier and the Union stipulated to, and the President granted, an extension from April 30, to May 15, 1972, of the time within which the Board was required to file its Report.

INTRODUCTION

The dispute between the Penn Central Transportation Company, hereinafter referred to as the Penn Central, and the United Transportation Union, hereinafter referred to as the UTU, concerns the number of trainmen to be employed on trains in freight, yard, passenger, and other classes of service. At the present time, the size and composition of train crews, or the "crew consist," are governed by provisions of an agreement commonly referred to as the Luna-Saunders Agreement which became effective on January 25, 1966. This agreement provides, with certain exceptions not relevant here, for a basic crew consist of one conductor (foreman) and two brakemen (helpers).

The Penn Central was formed by the merger of the Pennsylvania and New York Central Railroads on February 1, 1968, and by the inclusion of the New Haven Railroad on January 1, 1969. The Company has more than 20,000 miles of track in the 16 states comprising the highly industrialized and populated northeast quarter of the U.S., as well as two provinces of Canada. Penn Central operates in this area with almost 320,000 trains a year which involves the movement of about 20 million freight cars. The road currently employs a total of about 83,000 persons, of whom approximately 18,800 are trainmen involved in this proceeding. Of the latter number, about 17,300 are employed in freight and yard operations, 1,000 in commuter or suburban passenger service, and 500 in intercity passenger service.

The affairs of the Carrier are currently under the jurisdiction of Judge John P. Fullam of the United States District Court for the Eastern District of Pennsylvania in Philadelphia as a result of a petition for reorganization filed on June 21, 1970, under Section 77 of the Federal Bankruptcy Act. The Court appointed as trustees: George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and W. Willard Wirtz.

The UTU has approximately 243,000 members in the United States and represents railroad operating employees on carriers throughout the Nation. The Union was formed in 1969 by the merger of four organizations representing operating employees: the Order of Railway Conductors and Brakemen, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America. Representation on the Penn Central is handled for the UTU by 10 elected, full-time General Chairmen having responsibility for separate geographic districts of the road. Among other duties,

they negotiate and administer nine labor contracts, one covering two districts, incorporating the crew consist provisions of the Luna-Saunders Agreement.

HISTORY OF NEGOTIATIONS

The dispute presently before this Emergency Board, was initiated by Penn Central to reduce the size of train crews, and arises directly from its bankruptcy and the efforts of its trustees to reorganize the road. The reorganization plan filed by the trustees with the Bankruptcy Court includes what the trustees believe to be three indispensable prerequisites for revitalizing the road as an income producing property. These are: (1) full reimbursement from the government for passenger services losses including former Penn Central trains now operated by AMTRAK, (2) abandonment or subsidization of some 9,000 unprofitable miles of trackage, and (3) a reduction in employment of 9,800 employees who the Penn Central management and trustees consider to be unnecessary. Successful completion of the reorganization, according to the trustees, assumes that the Company will continue to improve its financial position and attain projected increases in the volume of traffic and freight revenues by the end of 1975. The trustees allege that the alternatives to successful reorganization are nationalization, fragmentation or liquidation. Obviously, none of these alternatives are acceptable to them.

Carrier representatives stated before this Board that since the initiation of the reorganization, the Company's total employment has been reduced by 10,000 or nearly 12 percent. These reductions were achieved principally among non-operating clerical and maintenance forces. The trustees now seek to reduce train and engine service employment by approximately 9,800, this includes the elimination of 5,700 trainmen jobs, as opposed to employees. The Carrier states that these jobs are not necessary for safe and efficient operation, but they are required by prior labor agreements and by State full-crew laws.

Until recently, four States in the area served by the Penn Central had full-crew laws or regulations requiring a minimum train crew of one conductor and two brakemen in road freight and yard service and other requirements in passenger service. The New York law prescribing the minimum number of trainmen was repealed in 1966. This year the Ohio law was repealed, and the Indiana law was amended to permit a reduction in crew consists. Crew requirements in Massachusetts are established by

regulation rather than by law, and the Company is currently petitioning for relief. The Carrier indicates, however, that it cannot obtain complete relief from the repeal or amendment of the States laws or regulations until an agreement is reached with the UTU.

The notices served by the Penn Central on June 7, 1971, pursuant to Section 6 of the Railway Labor Act, on each of the Organization's ten General Chairmen, proposed abrogation of the Luna-Saunders Agreement and establishment of a rule giving management the "unrestricted right, under any and all circumstances" to determine crew consists. Both sides agree that the notice is nearly identical to that served by the industry in 1959 when crew consist first became a matter of national concern. After receipt of the Carrier's notice, the Union's General Chairmen on the Penn Central served counterproposals which generally seek an increase in the number of trainmen.

Negotiations between the parties began on June 16, 1971, and continued intermittently in July and August. There were nine joint sessions with varying numbers of General Chairmen who did not bargain in concert, but acted separately for their respective members. The Company from the outset stressed its need for a quick resolution of the dispute and made a number of alternative bargaining proposals. All of the proposals provide for negotiations and final determinations if a agreement is not reached within a short period. The Carrier also offered "reasonable protection" to employees adversely affected by new crew consist rules.¹

A list of 57 train assignments distributed throughout the Penn Central system, which in the Company's opinion are illustrative of crews that could be reduced, were given to a number of the General Chairmen at their request. During the last formal meeting between the parties, held in Miami, Florida, on August 19, the union chairmen are reported to have reiterated their need to review the Carrier's proposals, formulate their own proposals and study crews. However, on September 10, the Penn Central notified the UTU that it was terminating direct conferences because of lack of progress and, "The critical financial condition of the Company, . . . makes it imperative for survival that the question of crew consist be concluded 'with all expedition'." In mid-September, first the Union and then the Carrier requested the services of the National Mediation Board (NMB).

¹ It is conceded that some 92 percent of the employees now have a guarantee of life-time employment.

The organization maintains that during the period of direct negotiations there was a series of events which prevented the General Chairmen from giving appropriate attention to this dispute. Between July 16, and August 2, 1971, the UTU conducted a number of selective strikes against certain major roads as a result of a wage and rules dispute involving the Nation's carriers. The Penn Central and other carriers which were not struck countered the Union's action by promulgating the work rule proposals contained in their Section 6 notices. The Union contends that while implementation of these rules did not change the size and make up of train crews, it "had a severe effect in changing the particular work of many assignments throughout the system . . ." and "operated to becloud the handling of the crew consist negotiations." A tentative settlement on August 2, 1971, ended the self-help action of the parties. A week later the UTU began its first triennial convention in Miami, Florida which ended on August 27.

After the crew consist case went to the National Mediation Board, the UTU argued that a number of other disputes between the parties, which are largely unrelated to the crew consist issues, but which had been docketed earlier by the Board, should be mediated before or concurrently with the question of train crew sizes. Following a number of procedural meetings it was decided to handle the other cases concurrently but separately with the crew consist case. Throughout the mediatory period the Union insisted upon handling crew consist on the local properties of the Carrier, and a number of meetings of this nature were held. However, in January, 1972, when the Mediation Board attempted to continue system wide sessions in Washington, D.C., on the merits of this dispute and the other cases, the UTU objected, and advised the Board that its representatives were available on the local properties.

On February 1, 1972, the National Mediation Board reached a conclusion that it could not resolve the dispute through mediation. In accordance with the mandate of Section 5 First of the Railway Labor Act, the Board requested the parties to voluntarily submit the dispute to arbitration. The proffer of arbitration was accepted several days later by the Company, but when the UTU failed to reply, the Penn Central on March first withdrew its original acceptance of arbitration and the NMB terminated its services in accordance with the Act. This left the Carrier legally free to promulgate its crew consist Section 6 notice and the Union free to strike on April 1, 1972.

The Carrier next notified the UTU General Chairmen that the crew consist rule proposed in their Section 6 notice of June 7, 1971, would be put into effect on April 1, 1972. The letter notifying the Union of the Company's intent to promulgate the rule, which was dated March 1, 1972, also stated that the Carrier recognized the need to provide "reasonable protection for employees adversely affected by the application" of their notice, and that consequently the proposed rule changes were not intended to modify or suspend guarantees providing employees protection. On the following day the President of the Penn Central, W. H. Moore and the President of the UTU, A. H. Chesser, met with other International Union officers and the ten General Chairmen in Cleveland, Ohio. At this meeting the Company's offer to engage in intensive negotiations was rejected by the Union because the Carrier refused to withdraw its promulgation. Also, at this meeting the Company distributed a list of 23 train crew assignments on which they had performed time and motion studies.

Further meetings between the parties were held late in March under the auspices of George S. Ives, Chairman of the National Mediation Board without success. Thereafter, this Emergency Board was created to investigate and report on this dispute.

THE BACKGROUND OF THE CREW CONSIST ISSUE

In addition to the work of the Presidential Railroad Commission and the Award of Arbitration Board 282, this is the third Presidential Emergency Board to investigate and report on the crew consist issue. The findings, recommendations, and awards of these previous public bodies are well known. However, we believe it is appropriate to briefly summarize here their recommendations and other developments relating to the issue before this Board.

On November 2, 1959, the Nation's carriers served Section 6 notices proposing the elimination of rules establishing crew consist in road and yard service and proposing that management be given the right to establish crew sizes. Ten months later the Organizations submitted counterproposals calling for minimum crews of one conductor and two brakemen. The matter of train crews was only one of the number of unresolved issues between the carriers and the five Organizations representing railroad operating employees. These included the four Unions now amalgamated into the UTU. The Presidential Railroad Commission was created by Executive Order on November 1, 1960, after the parties had agreed to submit the crew consist and other matters to study.

The fifteen-member Commission was composed of an equal number of public, carrier, and union members. After lengthly public hearings and field inspection trips, the Commission issued its report on February 28, 1962.

With regard to the size of train crews the Commission concluded that there was some overmanning but little undermanning but that the amount and circumstances could not be determined in that proceeding. They also concluded "that the extent of overmanning, while probably substantially less than estimated by the Carriers, may nevertheless be a more significant problem for some railroads than for others." At the time of the Commission's study, ten States had laws or regulations specifying the minimum number of men in train crew. The Commission also noted with regard to crew consist that "there is no doubt that certain technological, operational, and traffic changes have tended to reduce the actual workload of employees in some classes or kinds of service." Among the changes cited were centralized traffic control, radio communications, hot box detectors, improvements in braking and signaling systems, and modernization of classification yards. They agreed with the Organizations that there had been an increase in the responsibilities of crews because of a number of factors including the increased length of trains.

Regarding the method of determining crew consist, the Report contained the following statement:

In this industry, whatever may be said of others, the employees have a legitimate collective bargaining interest in the matter of crew consist, and it is our view that the collective bargaining process should remain the basic method for resolving disputes concerning this matter. On the other hand, we believe that in this area, . . . the parties should evolve a procedure which will insure an expedited method of final determination, through arbitration, of unresolved disputes where collective bargaining fails to produce agreement. Such procedures will, in our judgment, serve to safeguard the parties' respective interests and at the same time promote the public interest by introducing into railroad operations a somewhat greater degree of flexibility and efficiency.

The Commission then recommended that the parties negotiate a rule providing that questions of crew consist be negotiated on the local properties after reasonable written notice. If the parties were unable to reach an agreement within sixty days, then the issue would be submitted to a special tribunal composed of neutrals

for final and binding determination. These determinations would be limited to considerations of safety and undue work burden. The Commission also made recommendations concerning protective provisions for employees adversely affected by crew consist changes.

Following the Report of the Presidential Railroad Commission further efforts to mediate a settlement failed and Emergency Board No. 154 was established pursuant to the Railway Labor Act. The recommendations in its Report regarding the crew consist issue generally followed those of the Presidential Railroad Commission but contained explicit reference to the local character of the matter and therefore the need for bargaining at that level. The Board also recommended that reductions in employment should not exceed natural attrition.

However the parties were unable to reach agreement despite direct negotiations, intensive mediation, and various alternative proposals for resolving the crew consist and other issues. Finally on August 28, 1963, Public Law 88-108 was enacted creating Arbitration Board No. 282 to render a binding decision on the crew consist and fireman manning issues.

The Award of Arbitration Board No. 282 became effective on January 25, 1964 and remained in effect for two years, expiring on January 25, 1966. It provided for determinations of crew sizes on the local properties through collective bargaining based on specific guidelines to safety and workload. Where disputes could not be resolved they were to be submitted to Special Boards of Adjustment whose decisions, which were final and binding, were to be limited to the application of the safety and workload guidelines. Jobs which were to be eliminated under this procedure were not to result in immediate layoffs but were to be dropped as permitted by natural attrition.

During the two-year period the Award was in effect there were 96 decisions issued by Special Boards of Adjustment and 95 crew consist agreements negotiated throughout the industry. Special Boards authorized the elimination of approximately 87 percent of the jobs presented to them by the carriers. The awards and agreements involved a total of 7,807 crews and authorized abolishment of 8,020 jobs. Slightly more than 75 percent of the crews consisted of one conductor and two brakemen which were marked for reduction to one conductor and one brakeman.

On the former New York Central there were five awards by Special Boards and one agreement reducing crew consists. Almost

86 percent (965 of 1,127) of the jobs which the Company proposed to eliminate were authorized by awards of neutrals or agreed to by the Brotherhood of Railroad Trainmen. There were no awards by Special Boards on the former Pennsylvania Railroad. The Company proposed abolishing more than 2,200 yard and road jobs. However, an accord was reached with the Brotherhood of Railroad Trainmen reducing the size of 204 train crews temporarily for the period from May 8, 1965 to January 25, 1966 when the Award of Arbitration Board No. 282 terminated and the Luna-Saunders Agreement became effective.

The Pennsylvania, New York Central and 22 other Eastern railroads signed the Luna-Saunders Agreement on January 29, 1965. As the Carrier testified they believed that more firemen and trainmen jobs could be eliminated by repeal of State full-crew laws than by reductions under the Award of Arbitration Board No. 282 because that Board was without jurisdiction to supercede the provisions of such laws. The Agreement negated crew consist reductions obtained during the period of the Arbitration Award by providing for standard minimum yard and road crews of one conductor and two brakemen. In return the union agreed to withdraw all opposition to repeal of full-crew requirements in the States in which the roads operated. Subsequently, seven other Eastern roads signed the Luna-Saunders Agreement and the Baltimore and Ohio Railroad and its subsidiaries agreed to a separate but identical pact.

In July and December of 1965 before expiration of the Award of Arbitration Board No. 282 Section 6 notices and counter notices on crew consist were served respectively by the Brotherhood of Railroad Trainmen and the carriers. The proposals of the parties were essentially the same as those exchanged prior to the creation of the Presidential Railroad Commission in 1960. The Union's notices were served on some 90 carriers not covered by the Luna-Saunders Agreement with whom it sought negotiations on the local properties while the carriers sought negotiations on a national basis. There followed two years of litigation concerning, among other matters, the status of the Award of Arbitration Board No. 282 and the method of handling negotiations. The courts ruled that crew consists established in accordance with the Award continued in effect after the Award expired and until changed pursuant to the provisions of the Railway Labor Act. The courts further held that the Act did not require national handling of the issue.

On February 5, 1968, shortly after litigation ended and after the procedures of the Railway Labor Act ended, the Union struck the Missouri Pacific, Texas and Pacific, and the Atlantic Coast Line portion of the Seaboard Coast Line Railroad. The Southern Railway and two other carriers which were not struck had promulgated their crew consist Section 6 notices. This self-help action, promulgation and strikes, resulted in an agreement known as the Jacksonville Memorandum which was signed February 9, 1968 by the Union, the struck roads, the Southern Railway.

The Memorandum provided that, subject to the availability of manpower, 50 percent of the road and yard jobs being worked by a consist on one-and-one were to be immediately restored to a one-and-two basis. Negotiations on the local property were to be held to determine if any of the remaining one-and-one crews were to have added a second brakeman or helper. In the event of an impasse the three railroad Presidents who signed the memorandum and the President of the Brotherhood of Railroad Trainmen were to meet to resolve the matter. The final settlements on the roads resulted in the conversion to a one-and-two basis of 89 percent of the one-and-one crews authorized under Arbitration Award No. 282 and 77 percent of the crews so authorized and actually being worked on a one-and-one basis when the Jacksonville Memorandum was signed. By the end of July 1968 the Union and approximately 30 additional carriers had negotiated similar agreements.

The Belt Railway of Chicago was struck by the Brotherhood of Railroad Trainmen on July 29, 1968 and while this stoppage continued six additional crew consist settlements were reached on other roads. On November 6, 1968 the Union struck the Louisville and Nashville Railroad. On the same day the President created Emergency Board No. 172 to investigate the crew consist disputes on the Belt Railway of Chicago, Louisville and Nashville Railroad and the Illinois Central Railroad.

The Board in its Report submitted to the President on December 13, 1968 noted that the crew consist issue had been resolved through collective bargaining on railroads accounting for about three-fourths of the industry's work force and employing approximately 80 percent of the Brotherhood of Railroad Trainmen's membership. The Board recommended "that the parties concerned immediately resume negotiations on their respective properties in a conscientious attempt to resolve the matters at issue without further delay." It was recommended to the parties that the evalu-

ation of criteria relating to safety and work burden "is a matter of joint consideration by the bargainers on the properties."

Following Emergency Board No. 172 there were 46 final crew consist settlements negotiated including agreements covering the Louisville and Nashville, Illinois Central and the Belt Railway of Chicago. On the first two roads the settlements followed short strikes.

The Chicago and Northwestern Railroad is one of the few carriers in the Nation still operating under awards and agreements established pursuant to the Award of Arbitration Board No. 282. It was one of the 90 carriers upon whom the Brotherhood of Railroad Trainmen served notices in 1965 demanding the restoration of crews consisting of at least one-and-two. After the Jacksonville Agreement the matter was pursued by the Union on this railroad, but litigation ensued and such litigation is still pending in the Circuit Court of Appeals for the Seventh Circuit.

DISCUSSION

Although the hearings in this case produced a myriad of conflicting evidence and argument, there was one proposition or opinion about which the parties expressed complete agreement. They both stated repeatedly that the crew consist issue could and should be resolved by collective bargaining. As might be expected, there were differences of opinion to explain the lack of progress in the bargaining which preceded this hearing. The Carrier introduced testimony that the Union obstructed the bargaining process by the introduction of mostly unrelated issues causing the Mediation Board to be bogged down in procedural problems. It also charged that the Union would never bargain seriously over the elimination of jobs without the pressure of terminal procedures. On the other hand, the Union presented evidence to prove that the Carrier never gave the bargaining process a chance; it rushed through its bargaining obligation with no intent to seek agreement and sought only to set the stage for a legislated solution to this dispute.

An examination of the record leaves no doubt that, for whatever reason, little serious bargaining has taken place to date. Because of this fact, and since both parties appear to be willing to give bargaining another try, this Board proposes that this opportunity be made available. However, in an effort to avoid another premature impasse, future bargaining efforts are to be given a simple but somewhat novel assist. The Board will attempt to

expedite the bargaining process by revealing in this report its conclusions based upon careful examination and evaluation of all evidence and arguments. Being thus aware of the Board's conclusions, it is anticipated that the parties will limit their efforts in negotiation to issues with obvious merit. In addition to revealing its conclusions, the Board will recommend a procedure designed to give the parties additional incentive to meet and confer in a sincere effort to reach agreement.

From the array of evidence, argument, opinion and other information made available to the Board, including the observations made by Board members in on-site inspection of railroad facilities, it concludes that consistent overmanning exists in some areas and some relief should be provided to the Carrier. However, it believes that management should not have the unilateral right to determine the size of crews. Nor is it entitled to a system wide crew consist rule of one conductor and one brakeman because the duties of crews differ so much from time to time for varying reasons. Furthermore, it is obvious that on parts of this road, crews of one conductor and two brakemen, or perhaps more, are necessary. Management so acknowledged.

This diversity of operations makes the degree of overmanning, and specific instances thereof, impossible to determine in a proceeding such as this. Such determinations can be made, and in many cases are already known, only by the individuals directly involved, the Carrier and Organization representatives at the local level.

The Carrier raises the additional point that its bankruptcy is a central issue in this dispute and that eliminating the cost of overmanning is indispensable to the successful reorganization of Penn Central. The Board agrees that overmanning is one of the circumstances which contributes to the Company's unprofitability. This does not mean that this Carrier should be given preferential treatment in the form of reducing operating expenses simply because it has experienced financial difficulties. The Board would make no such decision based purely on the Carrier's ability or inability to pay. However, it does recognize that there are circumstances associated with the operation of Penn Central which differentiate it from every other carrier and that these differences justify a greater sense of urgency. Among these circumstances are extraordinary operating costs resulting from the operation of the railroad in the highly industrialized eastern sector of the country with terminal intensive operations and numerous short

hauls. All these factors appear to result in a highly labor intensive operation on the Penn Central calling for unique remedies.

Bearing on the issue of whether a crew consisting of a conductor and two brakemen constituted overmanning, the Organization testified that such crews were necessary to provide safe operations and avoid undue work loads, thus protecting the lives of employees and the public as well as the property of the railroad. In countering this argument the Carrier produced testimony regarding various technical devices which either replaced or immensely improved upon the traditional visual inspection to prevent road accidents. For example, yardmasters control humping and classification operations with the use of radios and remotely controlled automatic switches and retarders. Hotbox detectors and dragging equipment detectors reduce the need for visual inspection by train crews. And, the extensive use of radio communication clearly increases the safety of operations and reduces the work load of employees.

Statistical evidence, also bearing on the issue of safety, was produced by both parties. The Organization argued that its evidence proved one-and-one crews to be unsafe. However, this evidence which basically showed an increase in train accidents and employee injuries during the period when carriers were operating with reduced crew size, was found to be inconclusive because, as the Organization's witness acknowledged, there were numerous other variables which could not be isolated from the statistical record and these could have been contributing factors to accidents and employee injuries. On the other hand, the Carrier presented statistical evidence which was more specific and, hence, more persuasive. This evidence, the experience of other railroads which operated over an extended period of time with one-and-one crews, revealed no increase in accidents or employee injuries directly attributable to reduced crew sizes.

To demonstrate that the presently utilized crew of one-and-two is unnecessary, the Carrier prepared and presented a number of job studies. These studies which the Carrier represented as typical consisted of a description of the tasks performed by a single crew on a single day. The Board does not agree that a one-day study can be taken as representative of crews generally, because management has such complete control of the crews' activities and because of other factors affecting traffic such as the state of the economy, the day of the week, the season of the year, and weather conditions.

Finally, it should be recognized that a decline in employment is

not inevitable. Quite the contrary, with a successful execution of the plan for reorganization and with a general expansion of business already occurring on the Penn Central, there is reason to assume that employment opportunities will actually increase in the near future.

RECOMMENDATIONS

Accordingly, the Board makes the following recommendations:

- (1) The parties should begin bargaining immediately at the local level on the crew consist problem.
- (2) Safety and unreasonable workload should be the criteria used by the parties to bargain.
- (3) The Carrier should not be required to hire new trainmen for the sole purpose of achieving a literal compliance with the current crew consist rule.
- (4) Agreements reached on specified crews should be placed into effect immediately.
- (5) The parties should submit reports to this Board on September 15, 1972, and December 15, 1972, describing the number of crews discussed, the number of agreements, and the number of instances of disagreement.
- (6) This Board shall reconvene on January 4, 1973, to ascertain whether satisfactory progress has been made toward the solution of the crew consist problem. No hearing *de novo* shall be held at that time. In the event the parties have failed to reach agreement the Board will recommend in a final report an ultimate solution within ten days thereafter. This recommendation will be based upon a consideration of the progress the parties have made in bargaining since May 15, 1972, as well as the entire record before this Board.
- (7) Pending this final report by the Board, and for ten days thereafter, the parties should preserve the *status quo*. That is the Carrier shall refrain from promulgating a new crew consist rule and the Organization shall withhold strike action or other activity designed to achieve economic pressure.
- (8) These recommendations, if accepted by the parties, should be consummated by a stipulation to that effect.

In the opinion of the Board, these recommendations should be acceptable to all parties with an interest in the outcome of this dispute—the Carrier, the Trustees, the Court and the Organiza-

tion. The Court and the Carrier should look with favor on the Board's proposal because it contains a promise of immediate relief. The Trustees should acquiesce because, even though there may be some delay occasioned by the Board's procedures, such delay should not interfere with the Trustees' schedule for reorganizing the Penn Central. This Plan of Reorganization has three parts; abandoning some 9,000 miles of unprofitable trackage, excising passenger deficits, and obtaining relief from the expense of unnecessary operating employees. As the Carrier witnesses testified, the individual parts to this plan or reorganization are so interdependent and interwoven that all must be put into effect if the plan is to succeed. However, the two parts unaffected by this dispute cannot be executed before January, 1973. Hence, the extension of time for setting the crew consist issue could hardly impede or delay the execution of the Trustees' plan of reorganization.

The Organization should have no objection to these proposals because they provide for an extension of time to permit the parties to explore all avenues for amicable settlement. This is precisely what the Organization requested time and again at the hearing. Finally, it is difficult to see how any of the parties can have strong objections to the proposals set forth herein. For everyone concerned, there appears to be nothing to lose and possibly much to be gained. Accordingly, the Board urges that these recommendations be adopted in their entirety.

Respectfully submitted,

(S) FRANCIS A. O'NEILL, JR., *Chairman.*

(S) FRANK J. DUGAN, *Member.*

(S) JAMES J. SHERMAN, *Member.*

WASHINGTON, D.C.
May 15, 1972.

