

Report
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 183

APPOINTED BY EXECUTIVE ORDER 11694 DATED JANUARY 2, 1973, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED.

To investigate the dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada.

(National Mediation Board Case No. A-9182)

**WASHINGTON, D.C.
FEBRUARY 1, 1973**

WASHINGTON, D.C.
February 1, 1973.

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT: The Emergency Board created on January 2, 1973, by Executive Order 11694, pursuant to Section 10 of the Railway Labor Act, as amended, has the honor herein to submit its report and recommendations.

The Board was created to investigate a dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada. Hearings have been held and the arguments and evidence of the parties have been considered.

The Board acknowledges with appreciation the able assistance of Thomas H. Roadley, Office of Labor-Management Relations Services of the U.S. Department of Labor, who was appointed as Special Assistant to the Board. Mr. Roadley rendered valuable aid to the Board during the proceedings and in preparation of this report.

Respectfully,

(S) ALEXANDER B. PORTER, *Chairman.*

(S) HILLARD KREIMER, *Member.*

(S) EVA ROBINS, *Member.*

(III)

BACKGROUND

Local 1330 of the Brotherhood Railway Carmen of the United States and Canada (BRCUSC) represents all of the approximately 200 employees of the Port Authority Trans-Hudson Corporation (PATH) who are involved in this dispute. These employees are primarily engaged in the repair, maintenance, inspection and cleaning of rail car equipment and its appurtenances.

PATH, which is a wholly-owned subsidiary of the Port Authority of New York and New Jersey, is a rail rapid transit system within and between the States of New York and New Jersey. It operates a 13.9 mile, 13 station system which connects the cities of Newark, Jersey City and Hoboken with Manhattan. PATH is an interstate connector and transports over 70 percent of all rail passengers entering New York from New Jersey. Approximately 145,000 passengers are transported by PATH each weekday. Of these, nearly half are carried during the two daily rush periods. The Carrier currently employs a total of approximately 1,100 workers who help maintain and operate a fleet of about 300 passenger rail cars.

In 1962, PATH acquired the bankrupt Hudson and Manhattan Railroad and initiated long-range rehabilitation. The modernization program has cost more than \$170 million to date and is anticipated to require an additional \$80 million to complete. In 1963, the first year of operation of the system by PATH, the deficit was \$2.3 million. The operating deficit has increased to approximately \$20 million for 1972. The causes for this increasing deficit are not peculiar to PATH but are shared by virtually all other public transit operators in the nation. Major causes include the phenomenon of peaking during rush periods, the upward spiral of the economy, the increasing costs of labor and the great expenditures for improvement of the system. In contrast to these ever rising costs, the Carrier's ability to meet its expenses through higher fares is sharply limited by public pressure to maintain fare stability.

CHRONOLOGY OF THE DISPUTE

By notice dated December 16, 1971, Local 1330, BRCUSC, in accordance with Section 6 of the Railway Labor Act, as amended, requested improvements in wages and certain fringe benefits. Negotiations be-

tween the parties were held and subsequently PATH served counter notice dated January 4, 1972.

An application by PATH dated February 14, 1972, to the National Mediation Board was docketed as NMB Case No. A-9182 on March 7, 1972. Mediation was undertaken on March 21, 1972, and continued intermittently until November 1972. On November 8, 1972, the National Mediation Board proffered arbitration to the parties, in accordance with Section 5, First of the Railway Labor Act. The Brotherhood declined the proffer and on November 27, 1972, the parties were formally advised by the NMB that it was terminating its services. The Brotherhood subsequently announced that its members would withdraw from service as of 12:01 A.M., January 3, 1973.

The National Mediation Board, pursuant to Section 10 of the Railway Labor Act, notified the President that a dispute existed which, in its opinion, threatened substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service. The President thereupon created this Emergency Board on January 2, 1973.

HISTORY OF THE EMERGENCY BOARD

Emergency Board No. 183 was created by Executive Order 11694 dated January 2, 1973, pursuant to Section 10 of the Railway Labor Act, as amended. The President directed the Board to investigate an unadjusted dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada.

The President appointed the following as members of the Board: Alexander B. Porter, Arbitrator from Washington, D.C., Chairman; Eva Robins, Arbitrator from New York City, member; and Hillard Kreimer, Attorney and Arbitrator from Pittsburgh, Pennsylvania, member.

The Board convened *ex parte* with representatives of PATH and BRCUSC on January 17 and 18, 1973, respectively, in New York City. Exhibits submitted during these meetings and transcripts were exchanged between the parties on January 19. Public hearings were held on January 23, also in New York City, and the parties submitted closing briefs on January 25.

The parties were given full and adequate opportunity to submit evidence and present arguments before this Board. A formal record of the proceedings was made consisting of 373 pages of testimony, and 24 numbered exhibits, 18 introduced by the Carrier, and six introduced by the Brotherhood.

WAGES

The Brotherhood seeks the following wage increases :

Effective date :	Percent wage increase
February 14, 1972-----	7
June 14, 1972-----	7
February 13, 1973-----	10

It proposes that the agreement between the parties cover the 18 month period from February 14, 1972, until August 13, 1973. It further proposes the elimination of Step 1 in all existing positions, for pay purposes.

PATH offers the following wage increases :

Effective date :	Percent wage increase
February 14, 1972-----	5. 6
May 1, 1973-----	6. 0

PATH feels the agreement between the parties ought to cover a two-year period from February 14, 1972, to February 13, 1974. It is willing to eliminate, for pay purposes, Step 1 in the apprentice position.

For wage comparison purposes, reference herein to "Carmen wages" shall be understood to refer to the wage rates of Step 2 Car Repairmen, Electricians, Machinists and Car Inspectors. A summary of the wage rates for Carmen reveals :

Date of contract:	Date of increase	Hourly rate	Hourly increase
1962 ¹ -----		\$2. 7413	-----
May, 1965-----	May, 1965-----	3. 7125	\$0. 9712
August, 1967-----	August, 1967-----	3. 8750	. 1625
August, 1967-----	February, 1968-----	3. 9500	. 075
August, 1967-----	November, 1968-----	4. 2250	. 275
April, 1970-----	April, 1970-----	4. 5250	. 30
April, 1970-----	December, 1970-----	4. 7975	. 2725
April, 1970-----	March, 1971-----	4. 9900	. 1925
April, 1970-----	August, 1971-----	5. 2400	. 25

¹ Rate in effect at time of PATH takeover.

THE BROTHERHOOD'S CONTENTIONS

In support of its wage proposals, the Brotherhood's fundamental contention is that, although it once was the wage leader among the rail and transit units in the New York Metropolitan Area, its position is now at or below that of the other units. When it signed its first agreement with PATH in May, 1965, the Brotherhood asserts, PATH Carmen's wages were 35 to 79 cents an hour higher than their counterparts on the Class 1 national railroads (including PATH's connecting carriers), the New York Transit Authority, and the Long Island Rail

Road. As of February, 1972, the Carmen's wage rates were slightly below those of their Long Island Transit counterparts and not far ahead of the passenger carmen on the national railroads.

The advantageous position reached in 1965 was the result, says the Brotherhood, of a trade-off of certain work rules for higher wages, resulting in the 97 cent (34 percent) increase between 1962 and 1965 shown in the table above. According to the Brotherhood, the greater productivity gained through the elimination of those work rules has continued to benefit the Carrier during the intervening years. It has not been reflected in the Carmen wages after 1965, however. At the same time, the Brotherhood maintains, Carmen on the other comparable carriers have gained ground on PATH Carmen without having to sacrifice such work rules to nearly the same degree.

In addition to the productivity gains associated with elimination of work rules in 1965, the Brotherhood sees a further productivity gain as a result of the increase in the number of passenger rail cars serviced by its members since 1967. The added cars are said to be serviced by a work force no larger now than before the cars were purchased. Nor is this added work the only consequence of the introduction of the new equipment. The Carmen say they were encouraged by management to take special training in the servicing of the new equipment. Of greater significance for present purposes, the Carmen allege that at least one member of management assured them they would be compensated at the same rates as PATH Motormen in the future, if they undertook such special training.

Finally, the Brotherhood believes it has been disadvantaged over the years, because it is the last of the 9 unions in PATH with whom the Carrier negotiates during each round of collective bargaining.

THE CARRIER'S CONTENTIONS

PATH considers its offer of 5.6 percent for 15 months and an additional 6 percent for 9 months a fair one which takes into account the appropriate and customary criteria in the determination of wages. It disputes the propriety of the Brotherhood's comparisons with New York Transit Authority and with the Long Island Rail Road. It does not argue for a comparison with its connecting carriers in New Jersey (Erie Lackawanna, Central of New Jersey or Penn Central). Its position is that three distinct units exist: PATH, the connecting carriers, and the combination Long Island Rail Road/New York Transit Authority. Each has its own problems and priorities which are reflected in the individual pay rates and other contract terms. PATH points out that it is fundamentally a New Jersey operation. Its trackage is primarily in New Jersey. The bulk of its passenger traffic is made up

of New Jersey residents commuting to and from New York and it cannot in any sense be viewed as a New York operation.

The Carrier's position is that external wage and fringe comparisons are inappropriate unless one also compares working conditions, the differences in the areas of operations and living areas of the workers, the variations in fringe benefits and the internal pay structures of the systems. In addition, historical relationships of job to job and the entire pay structure rather than random rates have significance. As an example of the latter, the Carrier refers to the Transit Authority's 4-step system for Car Maintainers and PATH's 2-step pay system for Carmen, and considers it invalid to attempt to compare the top rates of each without weighing the number at the beginning and intermediate steps.

The Carrier also argues strongly that the concept of "parity" has an adverse effect on the wage relationships within PATH and on other systems and their internal relationships. The factors which should be considered in wage determination, according to the Carrier, include fairness and equity to the Carmen and to the Carrier; comparability factors within the operating environment; *quid pro quo* wage adjustments for work rule flexibility; and parity where applicable.

It is disputed that the large increase given the Carmen in 1965 was totally or even primarily a trade-off for work rule changes or that it was or should be a continuing differential.

BOARD'S WAGE CONCLUSIONS

The Board agrees with the Carrier that there is no single yardstick—whether it be parity, comparability, productivity, cost of living, working conditions, or some other standard—for determining the appropriate wage level of the Carmen. Rather, one must look at a broad range of factors in order to arrive at a fair and equitable pay rate tailored to the particular circumstances of *these* employees at *this* carrier. Obviously, in arriving at any final figure, consideration must also be given to the overall pay and benefit package.

The Board has concluded from all of the evidence presented that the Carmen are entitled to wage increases exceeding those offered by the Carrier but well below the inflated increases sought by the Brotherhood. As will appear, the Board has further concluded that no substantial increases in fringe benefits are justified, in view of the wage increases recommended. The Board is persuaded that a two-year contract is warranted. Its recommendations concerning wages are for two annual wage increases to become effective as follows:

Effective date:	Percentage increase
February 14, 1972	6.6
February 14, 1973	7.9

The parties have cited various comparable pay rates for similar jobs. A summary of these and their hourly pay rate fluctuation since 1962 is attached as Appendix A.

The Board sees justification for the structure of the Carrier's wage proposal, but not for the effective dates or the amounts. No rationale has been shown for delaying the second increase until 3 months after the anniversary date of the contract. Indeed, if internal comparisons are proper, it is noted that increases were made at least annually in the first two years in the "4th round" of increases for other PATH crafts. The Board rejects as unrealistic and unwarranted the Carrier's 15 month/9 month offer.

PATH's first year offer for Carmen is 5.6 percent. It does not explain the basis upon which the 5.6 percent was arrived at, except as it refers generally to Pay Board considerations. The structure shown in the internal wage analysis contained in Appendix A, particularly in the 1969, 1970, 1971, and 1972, increases of other crafts and of the Motormen, indicates that the 5.6 percent, on a comparable basis, is inadequate to meet reasonable standards of equity.

As to the second increase for these employees effective, as the Board considers justified, on February 14, 1973, the Board notes that the PATH Journeymen under the TWU contract and the PATH Electricians under the IBEW contract received substantial increases in the second or third years of their most recently negotiated contracts and in some instances, two increases per year. While the Board is not recommending that the parties here necessarily break up their second year increases into two bites, it does recommend that the second year increase be raised from the Carrier's 6 percent offer to 7.9 percent, at all steps of the wage scale.

In effect, therefore, the Board is recommending for acceptance by the parties a total increase of 14.5 percent.

The effect of the increases recommended is to raise the pay of the Car Repairmen at Step 2 from \$5.24 to \$5.5858 per hour in February, 1972, and to \$6.027 per hour in February, 1973. It will be apparent from the wage figures set forth in Appendix A that these hourly rates are broadly consistent with the rates already negotiated for other PATH unions, notably the other PATH Journeyman unions, and for carmen on the other carriers shown in the appendix. The Board believes extended discussion of the historical relationships among the various groups shown in Appendix A is unnecessary, since the long range trends are self-evident. Without attempting such an analysis, the Board deems it necessary to comment generally upon the comparability and parity arguments advanced by the Brotherhood.

It will be evident that the Board has not accepted the Brotherhood's claim of parity with the PATH Motormen. It may well be, as the

Brotherhood claims, that in 1967 Car Repairmen received some oral assurance of future pay comparability with the Motormen as an inducement to enrolling in special training. The fact is, however, that such assurances were not translated into actual wage parity during the negotiations which produced the parties' 1967 and 1970 agreements (See Appendix A). It is now rather late to attempt to translate such assurances into a binding agreement for Carman-Motorman parity.

With regard to comparability, the Board has already indicated that it has considered the rates for other PATH Unions and for Carmen on other broadly comparable carriers to the extent such comparisons are meaningful. Some of these rates are more favorable than the PATH Carmen's; others are less so. But each of the other carriers has significant differences from PATH Carmen. While useful as guides to equitable wage rates, they should not be controlling and have not been so considered by the Board. Of the comparisons given, the Board believes those with other PATH Journeymen Unions shed the most useful light upon the wage issues before it.

There is much testimony as to the comparability of the "incidental work rule" of PATH Carmen and the provisions of other railroad agreements reflecting work rule buyouts. It is apparent to the Board that a valuable work rule is contained in the Carmen contract which allows more flexibility than is contained in at least those other agreements referred to in the testimony.

Whether in fact the incidental work rule was "bought-out" with the large 1965 increase, or represented the consideration for only a part of that increase, may not be susceptible of proof at this time; and the Board finds not especially illuminating the "t'is=t'aint" argument presented to it. It is clear, however, that this provision in the agreement may well have been the *quid pro quo* for part of the substantial 1965 increases.

The "productivity" argument of the Brotherhood refers not only to the work rule provision, but also to the "contracting-out" right which the Carrier obtained in the 1965 agreement, and to the addition of new cars to be serviced by relatively the same number of employees.

The Carrier, on the other hand, refers in its productivity argument to the claimed abuse of the generous sick leave provisions of the agreement as having a high cost factor both in payment for sick leave and in payment to a substitute on straight time or overtime rate. It argues that the Brotherhood's productivity argument is somewhat tarnished by an absentee record for illness which equals an average of 20 days per employee per year, if extended absence is included, or 15 days per employee per year, if excluded.

The Board considers that the productivity arguments have some significance. To an extent, past productivity increases have long since been reflected in the wage rates and it must be assumed that successive contract terms were negotiated with an understanding of the value of the work rule. The Board thinks it might better be left to the parties to attempt to achieve common understanding of the various inter-related problems affecting productivity and to negotiate toward their resolution.

Finally, note should be taken of PATH's contention that it is essentially a New Jersey operation and, hence, cannot be equated with the operations of other rail and transit units in the Metropolitan Area. As its earlier comments regarding the limitations of comparability indicate, the Board is mindful of the differences among the Metropolitan Area carriers and has taken such differences, including PATH's New Jersey-oriented character, into account in arriving at its wage recommendations.

The Board does not recommend eliminating the first step of all job classes. This should not be taken as a judgment on the merits of the two steps in any of the classes. On the present record, there is simply not enough information available on which to reach a conclusion. The Board has no information as to the effect on the total pay structure of elimination of the first step even in the classifications where substantial experience on the job does not appear to be required. The Board is aware of the disarrangement to an orderly pay structure which can result from uninformed modification of even a single step in a classification system and therefore it refers this question back to the parties for resolution.

However, in the Apprentice classification, the Carrier having agreed to the elimination of the first step, the Board recommends that the Brotherhood accept this modification.

HOLIDAYS

According to the Brotherhood, those men who work in the Shop Department, by practice, are permitted to leave their jobs after six hours of work on Christmas Eve and New Year's Eve, provided their work is finished. The men on the road, as well as those on the midnight shift, cannot be so relieved. The Brotherhood proposes that *all* its members receive four-hour holidays on Christmas Eve and New Year's Eve. The Brotherhood further feels the Carrier ought to guarantee payment to each employee who is off due to illness for all contractual holidays falling within a period of two years from the date of illness.

The Carrier contends the extra holidays sought by the Brotherhood would limit its ability properly to inspect the number of cars normally

scheduled for inspection during these periods. This would necessitate overtime to accomplish the work. PATH is prepared, however, to guarantee payment of holidays to each sick employee for a period of one year following his illness.

Members of the Brotherhood presently enjoy eleven paid holidays. This is the same number as those to which members of other PATH unions are presently entitled. The Board does not recommend any contractual increase in this benefit and suggests that the Brotherhood withdraw its proposal. The Carrier's offer to guarantee holiday payments to sick employees for one year after the date of illness is reasonable. The Board recommends that the Brotherhood accept this proposal.

MEAL ALLOWANCE

The present contractual provision described below has been in effect since 1965:

Article II, Section 5

Employees who work overtime shall be paid a meal allowance on the following basis:

\$1.50 after ten (10) continuous hours of work (which includes two (2) hours of overtime).

\$1.50 (additional) after fourteen (14) hours of work (which includes six (6) hours of overtime).

\$1.50 (additional) after each additional four (4) hours of work (which includes ten (10) fourteen (14) etc. hours of overtime).

The Brotherhood seeks to have meal allowances increased to \$2.50 after 10 continuous hours of work and to \$5.00 after 14 continuous hours of work. The evidence and testimony offered by the parties is that:

1. Other PATH contracts covering Signalmen, Electricians and TWU membership provide for precisely the same meal allowances as in the BRCUSC contract.
2. The Transit Authority/TWU contract in New York City provides for \$2.25 meal allowance for the first 2 hours of overtime effective January 1, 1972, and \$4.50 (that is, another \$2.25) after four hours of overtime.
3. In their current negotiations with the Long Island Rail Road, the Brotherhood sought an increase in the meal allowance to \$3.00 for the first 2 hours and for every 4 hours thereafter. The Carrier had offered \$2.00 after 2 consecutive hours. The recommendations of Presidential Emergency Board No. 182 were for \$2.00 effective the date of contract ratification and \$2.25 effective January 1, 1973, citing the Transit Authority contract for comparability.

The Brotherhood refers to increases in food costs since 1965 and to the rate of \$5.00 for meal allowance for management personnel. PATH points out that the present rate is identical to the rate provided for other PATH Journeymen.

Comparison with management, which customarily does not receive overtime benefits, is not appropriate. But comparison of the changed value of a \$1.50 allowance between 1965 and now does point up a valid claim of inequity. Mere application of the Consumer Price Index during that period would indicate the validity of the Brotherhood's argument.

The Board believes an increase to be warranted based on the reality of the increase in food costs since 1965. It recommends, therefore, that the meal allowance be increased from \$1.50 to \$2.25 effective as of February 14, 1973, under present contract language.

VACATIONS

Under the present collective bargaining agreements between PATH and each of the nine unions representing its employees, the following vacations are provided :

Length of service :	<i>Vacation allowances</i>
1 year-----	11 days
5 years-----	16 days
10 years-----	21 days
25 years-----	26 days

The Brotherhood proposes a five week vacation after fifteen years' service and a six week vacation after twenty-five years. It cites no parallel for the six week benefit. Transit Authority employees are said to be entitled to five weeks after fifteen years' service; Long Island Rail Road employees who presently receive five weeks after twenty years have been offered five weeks after eighteen years during current negotiations. The Brotherhood also contends generally that the fifteen year gap between the twenty-one day allowance after ten years and the twenty-six day allowance after twenty-five years is too great.

The Carrier opposes the Brotherhood's proposal on two primary grounds. First, it maintains the liberalized benefits would result in an additional sixty-six weeks of vacation benefits, weeks in which it would have to fill the resulting vacation vacancies on an overtime basis. Second, it observes that the Brotherhood and all other PATH employees enjoy vacation benefits which are substantially more liberal than those of employees of the national railroads, including PATH's so called "connecting carriers," as well as employees in American industry generally.

The Board finds the latter observation persuasive insofar as the Brotherhood's six week proposal is concerned. At the same time, it finds merit in the Brotherhood's argument that the fifteen year gap between the 21 day and 26 day allowance is too great. The Board recommends, accordingly, that the vacation schedule be amended to provide a five week (25 day) vacation allowance after twenty years of service.

SHIFT DIFFERENTIAL

The Brotherhood requests that any employee who works the P.M. tour or the Midnight tour should receive a premium of 2 percent for each such tour. It claims the shift differential for similar employees of the Transit Authority is 6 percent. It points to the proceedings of Presidential Emergency Board No. 182, in which the Long Island Rail Road offered its employees a 2 percent shift differential and the Board recommended acceptance. According to the Brotherhood, PATH Motormen and Conductors who are assigned to midnight tours need work only 30 hours in that week, thus, in effect, creating a shift differential. Many industries in the Metropolitan New York area enjoy shift differentials between 5 and 10 percent.

PATH emphasizes that, in other Unions, an average of 65 percent of the employees work Midnight tours or on week-ends. None of these receives a shift differential. This contrasts with only 18 percent of the Carmen. According to the PATH agreements with the Brotherhood of Locomotive Engineers and with its Conductors, management is entitled to give a midnight crew a six hour straight running job, without a break either for a lunch period or personal relief time. As a consequence, no separate relief men are required and a substantial savings results to PATH. During a regular eight hour tour, however, there is approximately 60 minutes of lunch and personal relief time required.

It is significant to note that within the PATH system, there is no existing shift differential, as such, for any other group of employees. Nor has the Brotherhood had any such benefit in the past. In view of the present state of development of this type of benefit, the Board does not find it appropriate to recommend the introduction of a shift differential at this time. It therefore recommends that the Brotherhood withdraw its proposal.

MEDICAL PLAN

The Brotherhood proposes the following improvements in Medical Plan coverage:

Dental Coverage (family plan): \$25.00 deductible, 80 percent payment of excess over \$25.00.

Prescription Drug Coverage: 75¢ deductible per prescription.

Optical Plan (family): effective 2/13/73.

Coverage for PATH employees represented by the Brotherhood is based on Article III, Section 10(b) of the present agreement which incorporates the policies unilaterally adopted by the Commissioners of the Port Authority, on such matters as group life insurance, hospitalization, surgical and major medical benefits and excused absences.

The benefits sought by the Brotherhood go beyond those adopted by the Port Authority. None of them are in effect in any form at PATH. There is some testimony that the Transit Authority has a \$25.00 deductible dental plan, will have an optical plan effective February 13, 1973, and has a prescription reimbursement plan. There is also testimony that the Long Island Rail Road has one of the benefits but not all. The Carrier's testimony is that a proposed Long Island Rail Road plan will provide for contributions to a Union-administered fund for the purchase of such benefits as the fund will permit.

In the absence of factual data furnished for comparison of *all* benefits in a medical plan, rather than selected benefits, the Board considers that comparison with the Transit Authority or with the Long Island Rail Road is not appropriate. The Board finds the breakdown of costs contains wide disparity, PATH estimating at \$73,400 and the Brotherhood at \$25,200. It is therefore the Board's judgment that it is impractical to make recommendations on this issue. The matter is returned to the parties for further negotiation.

SATURDAY AND SUNDAY WORK

The Brotherhood requests that any work performed on Saturday or Sunday be performed at double time rates. It is apparent that this demand stems from the Brotherhood's fear that the Carrier may institute a seven-day schedule in lieu of the five-day, Monday through Friday schedule which has long been followed in this unit. The Carrier admits it has considered adoption of a seven-day schedule to facilitate car inspections but insists such a schedule is merely a "possibility" for the future.

The Board notes that there is no evidence in the record of any other rail or transit agreement, either in the New York Metropolitan Area or nationally, which grants premium pay for Saturday or Sunday work, with the exception of the Long Island Rail Road-BRCUSC Agreement of January 1, 1970. Long Island provides for payment at double time rates on Sunday under certain conditions not shown to be relevant herein. Aside from the lack of any precedent for the Brotherhood's proposal, the Board believes the question of establishing premium

rates for weekend work might better be raised at a time when such work is a reality rather than merely a possible development in the future. It recommends that the Brotherhood withdraw this proposal.

APPRENTICE PROGRAM

The bargaining unit contains 122 journeymen and 20 apprentices out of a total of approximately 200 men. Presently, the Carman apprentice program covers a period of 3 years. It consists of four steps—the first for 6 months, the second for 6 months, the third for one year and the fourth for one year. An apprentice is given on-the-job training by a journeyman. In addition, he is required to attend classes, at night, for three hours on each of two separate evenings a week. On these nights, he gets a meal allowance and is paid at straight time. After one year, if management deems him qualified, it may assign him to fill a journeyman vacancy.

The Brotherhood believes the evening classes are an unnecessary inconvenience and should be eliminated. It suggests on-the-job training for four days a week, with classroom work scheduled on the fifth. It sees no reason to have an apprentice working 46 hours a week without overtime pay. When an apprentice works with a journeyman, he is, in effect, receiving the same instruction as he presently gets in the classroom. Therefore, claims the Brotherhood, the journeyman-instructor should get \$9.00 an hour during these periods, which is the same pay given to a classroom instructor.

The Carrier points out that most repairs are handled during the daylight shift, Monday through Friday. After one year, qualified apprentices presently may be assigned to cover the back turns and weekends, as well as temporary vacancies of journeymen. If the Brotherhood requests were granted, the available pool of qualified apprentices for such assignments would be considerably diminished by the daylight classroom limitation. The cost increase would also be considerable. During the course of mediation, it was suggested that the operation of the apprentice program was a matter which would readily lend itself to arbitration. PATH has indicated this suggestion is acceptable.

The Board concurs with the suggestion to arbitrate. This would enable the Brotherhood to have its views concerning the apprentice program given all appropriate consideration.

PROMOTIONS

At issue here is a system-wide rule of the Carrier under which absenteeism has been made a factor in determining eligibility for promotion. Under the Carrier's rule, an employee who incurs six

frequencies of unexcused absence, within a span of one year before a promotion, is ineligible for such promotion. The Brotherhood does not seek elimination of the rule but proposes that the six-frequency standard be raised to nine frequencies.

There is no real evidence in the record to show that the present rule has had any significant adverse effect upon the employee's promotional opportunities. It is clear from the evidence that this rather curious rule was adopted by the Carrier in an effort to curtail absenteeism, particularly absences of employees taking sick leave, which is considered to be a "frequency" for purposes of the rule. To explain the problem of excessive sick leave, it is necessary to explain the Carmen's sickness benefit plan. Under the plan, an employee receives no benefits for illnesses of five days or less but receives benefits retroactively from the first day of any illness lasting six days or more. The Carrier claims that employees who are sick for three or four days regularly extend their sick leave to six days and hence qualify for benefits for the entire period of their "illness." The result has been a high incidence of absenteeism stemming from sick leave. Employee sick leave absences averaged 20 days per man in 1972. Excluding those with long-term illnesses, the average was 15 days per man.

Given the foregoing problem, the Board does not believe it appropriate to recommend the six-frequency rule be relaxed. Its conclusion in this regard is strengthened by the lack of any substantial evidence to show that the present rule has significantly limited employee promotional opportunities. The Brotherhood cites but one example in which the rule is alleged to have barred a promotion unfairly; the Carrier alludes to two other cases without providing specific facts as to the surrounding circumstances.

If, as the Brotherhood claims, the rule operated unfairly in the instance it mentions, the solution is not to abandon the six-frequency rule but to introduce greater flexibility into the administration of the rule. The Board believes the parties can work this out between themselves. It recommends that the Brotherhood withdraw its nine-frequency proposal.

TEMPORARY VACANCIES

Section 18 of the present Agreement provides that temporary vacancies may be filled "by any one of the following means, or any combination thereof: (a) overtime, (b) a qualified apprentice, (c) an apprentice in training, (d) an employee whose job bulletin specifies that he perform vacation and absentee relief, (e) shifting any employee from his regular bulletined job to the vacant job . . . (f) for vacancies

(other than vacations) which do not extend beyond six days, an employee whose job bulletin includes 'trouble crew' or 'for assignment'." The Brotherhood, in a matter now pending before the National Railroad Adjustment Board, contends this language requires that temporary vacancies be first covered by overtime. It claims this was the intent of the language when it was originally negotiated into the 1965 Agreement. The Brotherhood now seeks contract language which would compel the Carrier to cover temporary vacancies in the following order: 18-(d), 18-(a), 18-(b), 18-(c), 18-(e) and then 18-(f). The Brotherhood objects to the use of apprentices at whatever step, instead of qualified journeymen to fill vacancies in violation of the intent of the section.

The Carrier claims that under the language of the present Agreement it has properly filled temporary vacancies without regard to the order in which the options appear in Section 18. It does not propose any change in the existing language.

To the extent that the Brotherhood relies on the present language of Section 18 to support its position, this Board defers to the National Railroad Adjustment Board. To the extent that the Brotherhood inconsistently requests a contract provision designating overtime as the preferential method of filling temporary vacancies, the Board is not persuaded that such an approach is sound. The Board suggests the Brotherhood withdraw this request.

EXCUSED TIME

The current excused time provision derives from the Port Authority-adopted policy referred to in further detail in the discussion of the Medical Benefits proposal. The Brotherhood seeks to substitute 2 days of personal leave to all employees for the 2 days of paid leave currently provided in cases of absence due to illness of spouse when a preschool or disabled child needs care. The Brotherhood asserts this provision is inequitable in that it benefits only those employees with young children.

The Brotherhood also points out that other carriers provide more than 2 days of personal leave. The Carrier says it will agree to the Carmen's proposal, provided all other personal leave in the current policy is eliminated.

The policy at PATH provides for specific absences for which excused paid time is given, such as bereavement, the wedding of an employee, paternity leave, and others. This policy is applicable to Signalmen, Electricians, and all other employees of PATH.

The Long Island Rail Road contract provides for 3 personal leave days per year, but only if the employee has banked sick leave from

which the personal leave may be drawn. The other provision in the Long Island Rail Road contract for jury duty and for time to attend the funeral of a member of an employee's family is less beneficial than like coverage in the Excused Absences policy at PATH. The Transit Authority has only bereavement and jury duty leave.

The Board notes that PATH's Excused Absence policy is directed to specific triggering events. The Long Island Rail Road policy is directed toward a limited personal usage of sick leave. The Board finds no rationale for carving out one item of the PATH policy and converting it to the personal leave concept. Nor, on the basis of comparability, does the Board find the proposed change warranted.

The Board recommends that the Brotherhood withdraw this proposal.

INSURANCE

Under the parties' present insurance plan all employees receive insurance coverage equal to 200 percent of their annual wage. This is far more than any of the other comparable carriers and is the same as all other PATH employees. Under the circumstances, the Board recommends no improvement in current insurance benefits. It recommends the Brotherhood withdraw this proposal.

OTHER PROPOSALS

The Brotherhood and the Carrier have agreed on certain proposals: that all meal allowances shall be payable within seven days; that Carmen shall receive a 30 minute paid lunch period in lieu of the present 20 minute one; that any retroactive wage increase shall be paid within 60 days of the parties' ultimate agreement; that PATH will pay 12 hours pay to an employee it calls in as a witness on his rest day off; that the Insurance Continuation Program for each retired employee shall be increased by 50 percent from \$2,000 to \$3,000; and that an employee who misses a turn of overtime shall be paid the amount he would have earned had he not been missed. The parties can, without the assistance of the Board, effectuate these agreements.

In addition, the parties submitted certain other proposals on which agreement has not been reached. The Brotherhood proposed that six sets of uniforms be issued, at PATH's expense, to all those Carmen who do not already get them. It further proposed that in the event the final negotiated retroactive wage increase is not paid within 60 days, it bear interest at the rate of 10 percent until paid in full. Still further, the Brotherhood sought a job security provision to insure against furlough all employees on the payroll as of February 14, 1972. PATH proposed that only one member of the Brotherhood instead of the present three be present to represent employees at hearings and ap-

peals. These proposals have been briefly examined by the Board. It has concluded that they ought to be returned to the parties for mutual negotiation and settlement by them.

CONCLUSION

In summary, the Board recommends for the resolution of this dispute:

1. *Wages and Duration of Contract:*

The Board recommends a two-year contract, from February 14, 1972, to and including February 13, 1974. The Board recommends the following wage increases:

Effective date:	Percent of increase
February 14, 1972-----	6.6
February 14, 1973-----	7.9

It also recommends that the Brotherhood accept the Carrier proposal to eliminate the first step of the Apprentice scale.

2. *Meal Allowance:*

The Board recommends an increase in the meal allowance provision of the agreement from \$1.50 to \$2.25 effective as of February 14, 1973, under present contract language.

3. *Vacations:*

The Board recommends that the vacation provisions of the agreement be amended to provide for a five-week (25 day) vacation allowance after twenty years of service.

The Board hopes that the parties will be assisted in the resolution of their dispute by the above recommendations. In addition, the incorporation of the items upon which they have reached agreement, and the recommendations made in the body of the report either for the withdrawal of proposals or for further negotiations should furnish added guidance.

The Board believes that there will be found within the affirmative recommendations made above, and those made in the body of the report, the essential elements of an agreement. It trusts the parties will seek and reach that agreement.

The Board members appreciate the courtesy and consideration shown to us by the parties.

Respectfully submitted,

(S) ALEXANDER B. PORTER, *Chairman.*

(S) HILLARD KREIMER, *Member.*

(S) EVA ROBINS, *Member.*

WASHINGTON, D.C.

February 1, 1973.

APPENDIX A—WAGE HISTORY PATH

Date	Carman	Motor- man	Signal- man	Electri- cian	TW U- journeyman	Class I railroads passenger carman	L.I.R.R. carman	T.A. car main- tainer
1962:								
PATII take- over.....	\$2.7413	\$2.735	\$2.9918	\$2.9678	\$2.7248-\$2.8958	\$2.678 2.7408	\$2.678 2.7408	\$3.01
May.....								
1963:								
January.....								3.115
June.....								
1964:								
January.....						2.8308	2.8308	3.235
April.....					3.6125			
May.....	3.95							
October.....			3.775	3.775				
1965:								
January.....						2.9208	2.9208	3.3675
March.....							3.069	
May.....	3.7125							
July.....								3.4625
1966:								
January.....						3.0108	3.1519	3.60
May.....					3.7225			
October.....		4.125						
November.....			3.945					
December.....				3.945				
1967:								
January.....						3.1914	3.70	3.745
April.....						3.2414		
July.....								4.0075
August.....	3.875				3.85			
October.....		4.305				3.2914		
November.....							3.93	
1968:								
January.....								4.2075
February.....	3.95		4.0625	4.0625				
April.....						3.3414		
May.....					4.025			
July.....						3.5085		
August.....							4.20	
October.....						3.5585		
November.....	4.225		4.2075	4.2075				
December.....		4.52						
1969:								
January.....					4.2275	{ 3.60 3.67 }		
May.....			4.4175	4.4175				
July.....						{ 3.78 3.83 3.93 }		4.46
September.....								
October.....							4.46	
December.....		4.645						
1970:								
January.....					4.355	{ 4.13 4.17 4.24 }	4.6375	4.8175
April.....	4.525							
May.....			4.6375	4.6375				
June.....		4.85						
July.....					4.53		4.8175	
August.....						4.28		
November.....			4.685	4.73				
December.....	4.7075	5.28						
1971:								
January.....					4.94	4.38		
March.....	4.99							
April.....						4.53		
June.....			5.2275					
July.....							5.30	5.30
August.....	5.24							
October.....						4.76		
November.....				5.155				
December.....		5.58						

See footnote at end of table.

APPENDIX A—WAGE HISTORY—Continued **PATH**

Date	Carman	Motor-man	Signal-man	Electrician	TWU-journeyman	Class I railroads passenger carman	L.I.R.R. carman	T.A. car main- tainer
1972:								
January.....					5.21		(1)	5.6175
February.....	(1)					5.00		
April.....								
May.....			5.4875					
June.....		6.00						
July.....					5.60			
October.....						5.25		
November.....			5.8925	5.4375				
December.....		(1)						
1973:								
January.....					(1)			5.955
April.....						5.50		
May.....			5.9825	5.71				
November.....			(1)	6.0075				
1974:								
January.....								6.3125
February.....				(1)				
April.....								(1)

¹ Contract expires.

