

Report
TO
THE PRESIDENT
BY
Emergency Board
No. 185

**APPOINTED BY EXECUTIVE ORDER 11783, DATED MAY 21,
1974, PURSUANT TO SECTION 10 OF THE RAILWAY
LABOR ACT, AS AMENDED**

**To investigate a dispute between certain carriers represented by the
National Railway Labor Conference and certain of their em-
ployees represented by the Sheet Metal Workers' International
Association (AFL-CIO)**

(National Mediation Board Case No. A-9484)

**WASHINGTON, D.C.
July 2, 1974**

LETTER OF TRANSMITTAL

Washington, D. C.
July 2, 1974

The President
The White House
Washington, D. C.

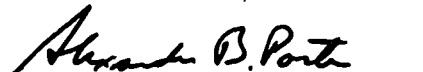
Dear Mr. President:

The Emergency Board created by your Executive Order No. 11783 of May 21, 1974, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate the dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Sheet Metal Workers' International Association (AFL-CIO), has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,


Charles M. Kehmus, Chairman


Clare E. McDermott, Member


Alexander E. Porter, Member

I. HISTORY OF THE DISPUTE

The Carriers before this Board include almost all of the Class I railroads of the United States and account for more than 95 percent of the nation's total railroad mileage. The Sheet Metal Workers' International Association represents approximately 5,300 shopcraft workers who are employed in the maintenance and repair of the locomotives, cars, and other equipment used by the Carriers in rail transportation.

In February 1973, the Sheet Metal Workers served Section 6 notices on the various railroads requesting certain changes in their collective bargaining agreements pertaining to wages, fringe benefits, and work rules. Most of the other railroad labor organizations had served similar notices in January 1973. In accordance with an understanding reached by the parties, the National Railway Labor Conference met with a joint union negotiating committee composed of seven presidents of major union organizations, who had been selected by the Railway Labor Executives Association and the Congress of Railway Unions. The Sheet Metal Workers' International Association refused to authorize any member of the joint union negotiating committee to represent it, however. The parties to these meetings agreed to proceed with negotiations on all wage and work rule issues, as well as a number of special problems relating to the Railroad Retirement Act, with each union reserving the right to revert to the normal procedures of the Railway Labor Act should joint negotiations fail. On March 8, 1973, the parties to the Joint Negotiating Committee reached agreement on a Memorandum of Understanding covering all issues. The Sheet Metal Workers, when advised of the settlement terms, notified the National Railway Labor Conference that it was not in the best interests of the Sheet Metal Workers to accept the terms of the agreement.

Subsequently, on November 2, 1973, the National Railway Labor Conference informed the Sheet Metal Workers that counter-proposals would be served. Thereafter, the parties jointly invoked the mediatory services of the National Mediation Board. The Board docketed the case, and mediation commenced on March 12, 1974. Continued efforts by the Board substantially

narrowed the issues in dispute but did not result in complete agreement. On April 30, 1974, the Board proffered arbitration. The National Railway Labor Conference agreed to the proffer but the Sheet Metal Workers declined. On May 1, 1974, the National Mediation Board notified the parties that it was terminating its services, thus permitting the parties to resort to self-help on June 1, 1974. On May 21, 1974, the President created Emergency Board No. 185 to investigate and report on the dispute, thereby requiring the parties to maintain the status quo.

II. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 185 was created by Executive Order 11783, issued on May 21, 1974, pursuant to Section 10 of the Railway Labor Act, as amended. The President appointed the following members of the Board: Charles M. Rehms, Co-Director of the Institute of Labor and Industrial Relations, the University of Michigan — Wayne State University, Ann Arbor, Michigan, Chairman; Clare B. McDermott, Arbitrator, Pittsburgh, Pennsylvania, Member; and Alexander B. Porter, Arbitrator, Washington, D. C., Member. These same individuals had been the members of Emergency Board No. 181, appointed to issue a report and recommendations on a dispute between these same parties in 1972.

The Board convened in *ex parte* hearing with Carrier representatives on May 24, 1974, at the office of the National Railway Labor Conference, and on May 25 with Association representatives at the office of the Sheet Metal Workers' International Association, both in Washington, D. C. Transcripts of these *ex parte* hearings and exhibits submitted during them were exchanged between the parties on May 29. Joint public hearings for rebuttal purposes were held in Washington, D. C. on June 17, 1974.

During both its *ex parte* and joint hearings the Board received the full and constructive cooperation of both parties. The members of this Board again commend the parties for their willingness to work with the Board to create a procedure which allowed us to complete our work within a

minimum amount of time and yet permitted them to develop fully their positions on those issues on which they believe the Board's recommendations would be of value.

III. ECONOMIC ISSUES

The "Pattern" of Wage Settlements With Other Unions

The Carriers have reached a wage settlement with all of the other major railroad unions and have offered the same terms to the Association. The settlement, providing for a short-term, 18-month agreement, is in two parts:

- (1) Assumption by the Carriers of employee Railroad Retirement System taxes above the Social Security level, beginning October 1, 1973. This represents a saving to most employees – i.e., additional take-home income – of \$42.75 per month for the last quarter of 1973 and \$52.25 per month on and after January 1, 1974; and
- (2) A four percent wage increase, effective January 1, 1974.

In effect, the Carriers contend the tax pickup is the equivalent of slightly more than a five percent increase in income; and since the employees had previously paid retirement taxes out of their own taxable wages, the additional income is tax-free, thus raising the real benefit even higher.

While all of the other major railroad unions accepted the Carriers' view of the tax pickup as a form of wage increase in real terms, the Association did not. The employees represented by the Association have, however, received the benefit of the tax pickup which Congress accepted and enacted into law, P.L. 93-69, signed by the President on July 10, 1973.

As in so many Emergency Board proceedings over the past two decades, the "pattern" principle has occupied a central place in the parties' arguments in this proceeding. In many respects, the arguments presented follow traditional "pattern" argument lines. The Carriers remind the Board that they must deal with 16 major railroad unions (plus another 15 smaller unions holding representation rights on some railroads): that this multi-union structure inevitably breeds rivalry among the

various unions, each seeking to outdo the others in obtaining greater benefits for its members; that, in the past, with separate contract termination dates for many of the union contracts, there was a constant jockeying for position by individual unions, each fearful of being the first to sign an agreement, lest others by holding back succeed in using the agreement signed by the lead union as a platform for obtaining superior benefits rather than as a pattern to be followed; but that Emergency Boards, with rare exceptions growing out of special circumstances not applicable here, have repeatedly opposed such jockeying efforts and applied the pattern principle, recognizing that to do otherwise would hopelessly compromise future collective bargaining in the industry.

For its part, the Association has countered the Carriers' contentions with equally classical arguments as to why the "pattern" principle should be rejected. Essentially, its position is that the Carriers' arguments concerning the hazards of multi-union bargaining are beside the point. The Railway Labor Act grants to each of the railroad unions a right to submit its Section 6 notices, and each union is entitled to have its notices negotiated on the merits. According to the Association, to permit the Carriers to negotiate agreements with some or virtually all of the railroad unions and then to "cram (such agreements) down the throats" of one or more unions who have not participated in the negotiations and who do not believe such agreements to be in the interests of their members is to deprive the non-consenting unions of their right to participate in free collective bargaining.

In addition to these traditional "pattern" considerations, however, there are significant new factors in the present case which set it apart from prior Emergency Board proceedings and which lend a new dimension to the pattern argument. For the first time in the history of railroad bargaining, the Carriers and all of the major railroad unions, except the Sheet Metal Workers, engaged during the 1973-74 round of negotiations in coordinated bargaining through a Joint Negotiating Committee. The Joint Negotiating Committee, it should be noted, was created in response to a financial crisis confronting the Railroad Retirement Account. For reasons which need not be gone into here, the latter fund was threatened with insolvency within the next twenty years under the financing and

benefit arrangements in effect in 1970. A Presidential Commission on Railroad Retirement, established to study the problem, reported its findings to the President and the Congress on June 30, 1972. The Congress thereupon directed the Carriers and the railroad unions to review the matter and submit their joint recommendations to Congress by March 1, 1973. As noted at the outset of this report, seven union members were selected by the Railway Labor Executives Association and the Congress of Railway Unions to serve on the Joint Negotiating Committee. Among all the unions involved, the Sheet Metal Workers, alone, refused to authorize any member of the Joint Negotiating Committee to represent it.

Early in the deliberations of the Joint Negotiating Committee, the Union members proposed that, among other things, the Carriers assume the employees' share of the retirement tax over and above the level of their contribution to Social Security. Because of the magnitude of the costs involved in meeting this proposal, the Carriers suggested and the union members agreed that their negotiations should be expanded to include the parties' respective wage and work rule proposals for the 1973 round together with their respective railroad retirement proposals toward the end of arriving at a package agreement covering all outstanding issues. The end result of the ensuing negotiations was the pattern agreement set forth above. The settlement thus reached embraces the approximately 99 percent of all railroad employees who are represented by the unions who are parties to it. The agreement was reached on March 8, 1973, more than three months before the scheduled expiration date of the national contracts.

Nor is the foregoing unified bargaining the only historical "first" in the present round of negotiations. For the first time, also, all of the union contracts had common termination dates; and negotiations concerning the railroad retirement system and the national health and welfare contract are now conducted simultaneously with negotiations concerning wages and other benefits, instead of separately as in the past. These developments portend an end to the ceaseless rounds of bargaining with individual unions or groups of unions which have characterized the industry for so many years.

If the Association were permitted to obtain a wage settlement exceeding the pattern established by the other fifteen unions, the hopeful trend toward joint negotiations begun in 1973 would be fatally undermined, the Carriers contend. For this reason, also, the Carriers ask that the pattern principle be followed by this Board as by so many prior Emergency Boards.

As noted earlier, the members of the present Board served also on Emergency Board No. 181. We expressed our view of the pattern principle in Emergency Board No. 181's Report to the President. We there said:

"The Board has concluded that where a pattern is clearly established and ascertainable, as here, and where the union involved cannot clearly demonstrate an inequity or a rational and convincing basis for a changed wage structure, the pattern should be followed . . . the Association has not convinced the Board by a preponderance of substantial evidence that a wholly new basis for setting the wages of its members is appropriate."

The Board here reaffirms the principles enunciated in the quoted excerpt. Further, it finds that the considerations favoring the application of the pattern principle are greatly strengthened because of the unified bargaining which produced the "pattern" on which the Carriers rely. Before concluding that the pattern should be followed here, however, consideration must first be given to the Association's cost-of-living argument. Ultimately, the Board's decision must turn upon the manner in which it reconciles the conflicting claims of the Carriers' strong case for the application of the pattern with the Association's firm arguments for an escalator clause to protect its members against the rising cost-of-living.

Cost-of-Living Wage Adjustments

In their Section 6 notice to the Carriers, dated February 7, 1973, the Sheet Metal Workers proposed that their wage rates should be subject to a cost-of-living adjustment effective October 1, 1973, and each three months thereafter. The amount proposed was one cent for each three-tenths of a point change in the BLS Consumers' Price Index above the base index figure of June 1973, except that the formula should not operate to reduce wage levels below the negotiated base rate. The same proposal

had been made earlier in 1973 by the other five shopcraft organizations and was later withdrawn by them as a part of their Agreement of May 10, 1973.

The Association takes the position before this Board that its proposal for cost-of-living adjustments is the single most important issue separating the parties. It emphasizes this issue because of the impact that unprecedented inflation has had on the purchasing power of sheet metal mechanics in the railroad industry. It contends that without protection against the ravages of inflation any settlement its members made would, in terms of purchasing power, be likely in a short time to leave them worse off than they were under their previous agreement.

The Sheet Metal Workers note that the cost of living has increased by approximately 11 percent since they last received an increase in their wage levels on April 1, 1973. They believe it not unreasonable to assume that inflation will increase by an additional five percent between the present date and the end of 1974. The Association asserts that their railroad members' current hourly wage level for mechanics of \$5.50 would have to be \$6.06 simply to give them the same real wage which they had in April of 1973. The Association notes that the number of workers covered by cost-of-living escalator clauses has increased steadily during the 1970's and has now reached a total of over five million workers. It notes further that most of the significant collective bargaining settlements in 1973 and 1974 – autos, trucking, can, aluminum and steel – all contained cost-of-living escalator clauses. In other transportation modes, recent settlements on United, American and Northwest Airlines, and on the Long Island Rail Road and the Metropolitan Transit Authority of New York City all contain escalator clauses. These facts are cited to underscore the importance of this issue to the Association and its members, and the increasing acceptance of the type of clause which it seeks.

The Carriers insist that, even assuming a ten percent cost-of-living increase in 1974, the pattern settlement of 1973 and the 42-month settlement previous to it placed railroad sheet metal workers in a favorable position in terms of real wage gains. It notes that the retirement tax pickup which it undertook in 1973, while not affecting wage levels *per se* has significantly improved employees'

take-home pay and their purchasing power. It emphasizes that the pattern settlement is short — only 18 months — and that any short-term wage lag which may occur can be corrected in the next round of negotiations that will begin in several months. Basically, the Carriers oppose a cost-of-living clause because the railroad industry does not have the pricing flexibility to keep up with frequent wage adjustments called for by cost-of-living escalator clauses. Finally, the Carriers admit that they may be compelled to reconsider their traditional objection to such clauses in the next round of negotiations. If so, however, they are unwilling to take such a major step with a single union. If at all, they are willing to do so only under circumstances which would make it possible to reach agreement on the subject with unions representing the bulk of their organized employees.

Cost-of-living escalator clauses were included in railroad collective bargaining agreements in two previous periods, 1950-53 and 1956-60. After this time all were removed from railroad agreements. The issue arose again in collective bargaining during the late 1960's, however, and was considered by several emergency boards. Emergency Board No. 178 refused to recommend a cost-of-living escalator clause because it believed the railroad Carriers, faced with relative price inflexibility, should have the benefit of firm predictability of wage costs. Emergency Board No. 181 concluded that periodic fixed wage adjustments that allow for projected increases in the cost-of-living are more appropriate than escalator clauses in the railroad industry. Given the recent and current rapid inflation of price levels in the United States such conclusions are perhaps overdue for reconsideration. Whether such reconsideration is appropriate in the current Sheet Metal Workers negotiations, or whether it should wait for the next round of negotiations in the railroad industry as a whole, is the most difficult problem this Board has had to consider.

Fundamentally, the Association's contention is that the Carrier proposal, namely, that the Sheet Metal Workers should accept the pattern settlement of a four percent wage increase effective January 1, 1974, is wholly unreasonable in the light of increases in the cost-of-living that have taken place since this agreement was made with the other railroad organizations in the late spring of 1973.

This Board would agree that, standing alone, a four percent wage increase during a period of time in which consumer price levels have inflated 11 percent is unrealistic. This was not all there was to the pattern settlement, however. As stated in the previous section of this Report, the pattern settlement also included a Carrier agreement to pick up the employees' share of contributions under the Railroad Retirement Act above the amount that employees in other industries pay into the Social Security system. Although the Sheet Metal Workers' International Association refused to accept the agreement which led to this tax pickup, the Carriers did not ask the Congress to exempt Sheet Metal Workers members from the new arrangement, and they thereby became beneficiaries of it along with and at the same time as all other railroad employees. This has meant that most railroad sheet metal mechanics' net take-home pay has been \$42.75 per month larger than it otherwise would have been since October 1, 1973. Since January 1, 1974 the pickup has meant that their take-home pay has been \$52.25 per month higher than it would otherwise have been. While these increases in net take-home pay did not result from increases in basic wage rates, they obviously increased employees' net spendable income. In total effect, the Carrier-proposed four percent general wage increase, if accepted by the Association, coupled with the retirement tax pickup which resulted in non-taxable increased income, would mean that Sheet Metal Workers members' spendable income would increase by approximately ten percent during 1973-74. This percentage increase is almost exactly equal to the general increase in the cost of living thus far during this same period. When calculated out, the four percent increase and the tax pickup, without considering any tax advantage, result in an imputed rate of \$6.03 per hour, only three cents less than the amount calculated by the Association as needed to keep its members abreast with inflation. Hence, no significant erosion of real income would take place if the Carriers' offer were to be accepted.

The Association contends that the Carriers' tax pickup on behalf of employees should not be evaluated in this fashion because non-contributory pension systems (other than Social Security

payments) are available to approximately three-quarters of organized American workers. It therefore contends that all the railroads did by the pickup was to match their fringe benefits to those available in other industries.

This Board does not disagree with the facts put forward in this regard by the Association but does with the conclusions it derives from them. First, the levels of wages and wage supplements (fringe benefits) now available to railroad employees are superior to those available to employees in almost every other major industry. In light of this, it is difficult to conclude that the 1973 agreement was "catching up" with anyone. Second, even where catch-ups do occur it is customary in collective bargaining for the union to give the employer at least a one-round "credit" for the cost of the new benefit. Finally, and as previously stated, the tax pickup did represent an increase in take-home pay rather than an improvement in fringe benefits, and hence, had the same impact on spendable income as a wage increase.

In light of these conclusions, the Board believes that the Association has not made a persuasive case that its members' purchasing power, were they to accept the pattern settlement, would in any significant manner be eroded thus far in 1974. Any minor lag that might occur during the remaining months of 1974 can be corrected in the coming round of negotiations. We therefore recommend that the Association's proposal for inclusion of a cost-of-living adjustment clause in its current agreement be withdrawn and that the Association accept the four percent pattern settlement, effective January 1, 1974.

This recommendation should not be judged to imply that the Association has not made a strong argument that its members' purchasing power might be significantly eroded if a cost-of-living escalator clause were not to be included in its coming agreement. No clear signs of abating inflation are on the horizon, and without them, cost-of-living clauses appear to be the best means of ensuring that hourly-paid workers do not bear an undue share of inflation's burdens. The complexities of negotiating such a clause are many, however, and we do not presume to advise the

parties as to the appropriate course of their future negotiations. The individuals comprising the present Board, in their role as members of Emergency Board No. 181, stated that cost-of-living clauses were inappropriate in the railroad industry. Events rather than logic have now largely persuaded us that our earlier conclusion may have to be modified. Cost-of-living wage escalation, even in the railroad industry, may be a poor idea whose time has again come.

Wage Comparability

The Association appears to rely again upon the arguments advanced before Emergency Board No. 181 for comparability between the wages paid to its members and those paid to their counterparts in the airline and over-the-road trucking industries. We use the phrase "appears" advisedly, because there was some indication on the last day of the Board's hearings that the Association was no longer emphasizing this claim, at least for the purposes of this Board's proceedings. Whatever the precise posture of the matter, it is clear that the Association is not here seeking a scheduled series of wage increases to bring its members into parity with airline and truck mechanics during the present round. Rather, the Association seeks a 16 percent wage increase and buttresses its claim for such an increase by pointing to the hourly rates currently enjoyed by the airline and truck mechanics, asking that sheet metal mechanics' rates not fall further behind.

On the evidence presented — and both sides did make presentations on this subject — the Board finds nothing of sufficient substance to alter the conclusion it reached on this same subject two years ago in the report of Emergency Board No. 181. Without recounting the history of the wage comparability dispute as was done in the report of Board 181, the present Board will simply reiterate and adopt as its own conclusion the ultimate conclusion which was arrived at by Board 181:

"... this Board does not find that the information and evidence submitted to it is sufficient to conclude that the wage comparability formula urged by the Association be recommended. Neither does the Board reach the conclusion that it is inappropriate. Ultimately such a decision can appropriately be made only if the railroad shopcraft unions in general, and the sheet metal workers

specifically, will agree to the kind of detailed job evaluation proposed by the Special Board. Until such time, some other basis for determining the wage rates of railroad sheet metal workers must be relied upon."

IV. NON-ECONOMIC ISSUES

The Association filed Section 6 notices seeking relief from what it viewed as improper application by some Carriers of two rules, one governing assignment of work and the other dealing with return of employees to active employment after emergency force reductions. The Association admits that both these problems are more potential than real and are therefore less significant to it in resolving the current dispute than the economic issues discussed above.

Incidental Work Rule

The Association contends, first, that the rule should be abrogated or, in the alternative, clarified. It asks (1) that the rule be clarified with respect to inspection and preventive maintenance situations; (2) that a definition of "running repair" locations is needed; and (3) that Carmen do not come under the Sheet Metal Workers' incidental work rule.

The Association contends here as it did before Emergency Board No. 181 in 1972 that the incidental work rule should be abrogated. As was true of the record made before Board 181, however, the evidence here does not justify abrogation of the rule. The Association, indeed, appears to recognize as much, for its principal arguments on this score go not to abrogation but to attempts to limit application of the rule.

Inspection. The Association alleges that the rule has been abused in inspection or preventive maintenance situations. There is a generalized statement that some quarterly, semi-annual, annual, 18-month and 24-month preventive maintenance checks are being administered by one Carrier so as not to be considered "inspection" and therefore that some sheet metal work improperly is being lost to Machinists and Electricians.

By way of illustration, the Association says that there have been 13 such disputes on the property of one carrier, the Missouri Pacific. One was settled on the property and was paid. The other 12 are pending in some stage of processing. They are on their way through the accelerated grievance procedure for handling such disputes which was created by the parties in 1972 at the recommendation of Board 181.

The Carriers say that their survey, taken shortly before these hearings began, discloses a total of only 51 claims having been filed on 60 roads responding to the inquiry and that only the 12 mentioned above were processed to the Disputes Committee stage.

Thus, the Board has merely a generalized statement of a problem, plus knowledge of the existence of only 12 ripened disputes generated on a single property. In light of the period of more than two years over which the amended incidental work rule has been in existence between the Association and the Carriers, the small number of disputes over the amended rule seems hardly sufficient to demonstrate existence of a major obstacle to its continued satisfactory operation. The 12 disputes still unresolved seem hardly of sufficient moment nor is the evidence presented to the Board regarding them adequate to require or permit a recommendation by this Board. As noted earlier, the parties in 1972 negotiated a procedure designed specifically to provide final resolution of this type of dispute. This is the appropriate forum for them now.

Running Repairs. The Association charges generally that many unnamed Carriers have redefined all kinds of maintenance facilities as "running repair" locations, with a view to maximizing the number of potential applications of the incidental work rule to the detriment of sheet metal mechanics.

No specifics were introduced on this point, however, and both parties confess inability to state a precise definition of the phrase, which apparently arose in the days of steam. Moreover, in this area, there is no evidence of any concrete dispute about this matter on any given property.

This suggests that, although a mutually satisfactory definition may be difficult to state, there is no serious practical problem on the properties as to what both men and management traditionally identify as a "running repair work assignment."

It would seem, therefore, that this argument presents no concrete issue for resolution or recommendation by this Board.

Application of the Rule to Carmen. The Association insists that Carmen may not perform sheet metal work under the incidental work rule because they were not party to any agreements with the Sheet Metal Workers providing for any such sharing of work. It claims also that the Carmens' April 1970 agreement with the Carriers, containing a differently worded incidental work rule, cannot confer on Carmen any rights to sheet metal mechanics' work because the Sheet Metal Workers were not a party to that agreement.

The Carriers disagree and say that ever since the April 1970 agreement with the Carmen they have applied an incidental work rule to the Carmen craft in the same manner as one always had been applied to and among the other crafts. The Carriers note also that a similar issue has been raised by the Electricians, that two courts have held that issue to be a minor dispute under the Act, and that a Public Law Board held that the Carrier properly assigned Electrician work on passenger equipment to Carmen, as "incidental" to a Carmen main assignment.

Here, too, the Board has not been given any specific information which would allow it to come to an informed judgment on a possibly difficult contractual matter. Accordingly, we make no recommendation on this issue.

Emergency Force Reduction Rule

One of the Association's requests in its Section 6 notice sought revisions and amendment of the so-called emergency force reduction rule to provide that employees temporarily furloughed because of emergent conditions be restored to active service upon termination of the "emergency."

The present emergency force reduction rule is silent on the subject of the timing of recall of employees after emergencies. It reads as follows:

"A. Rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph B. below, provided that such conditions result in suspension of a Carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four (4) hours' pay at the applicable rate for his position.

B. Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees."

In the past, the Carriers were required to give five working days' advance notice of furlough. That rule applied even in cases where fire, flood, or other such emergency conditions made it difficult or impossible to give any advance notice of temporary furlough. The requirement was relaxed by the emergency force reduction rule quoted above which eliminated all notice requirements in the emergency conditions mentioned.

The Association's complaint here is that the rule is being abused, in that some Carriers have not returned employees to active service as soon as possible after the end of the emergency which caused the temporary furlough in the first place. It is claimed that, while the alleged abuses of the rule have not caused any great amount of harm as yet, there is a possibility of loss to employees. The Association says it can understand some delay in recalling employees in cases of natural disaster that might destroy facilities and equipment. It cannot understand, however, any failure to

recall furloughed employees for more than, say, 16, 24, or 48 hours after termination of a strike by other employees. Apparently, there was a case on the Union Pacific of not recalling employees until 30 or 35 days after the end of a two-week strike by other employees.

The Carriers reply that the effects of a strike do not end immediately with termination of the strike and, therefore, that there should be no obligation to recall employees sooner than they really are needed in management's best judgment. Six recent Awards of the Second Division of the National Railroad Adjustment Board are cited as support for that proposition.

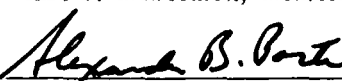
The Board believes that a rule of reason necessarily must be employed in the administration of this rule. This is to say that, while it is true that the effects of a natural disaster or a strike do not always come to an end simultaneously with passage of the storm or the end of the strike, it nevertheless seems clear that failure to return employees to work for several weeks or a month after a strike ends is so contrary to normal expectations as to put a burden of justification on a carrier to explain its position. The Board suggests that failure to do so would support an employee's time claim that the rule had been violated.

V. OTHER PROPOSALS

Although not discussed in this Report, other proposals were contained in the Sheet Metal Workers' International Association's Section 6 notice of February 7, 1973. The parties have indicated resolution of this dispute is contingent upon reaching agreement on the issues discussed before the Board, and have presented no evidence on other issues. In view of the fact that the settlement proposed in this report will be subject to change within six months, the Board recommends that the Association accept the Carriers' proposal for a moratorium. The Board is also of the opinion that the parties can reach agreement on the proposals concerning dues deduction and maintenance of craft seniority when an employee is promoted to an official or exempted position. The Board recommends that all proposals other than those discussed in this report be withdrawn and that the parties reach settlement based on the conclusions and recommendations stated in this Report.


Charles M. Reimus, Chairman


Clare E. McDermott, Member


Alexander B. Porter, Member

