

**SUPPLEMENTAL REPORT**

**TO**

**THE PRESIDENT**

**BY**

**EMERGENCY BOARD**

**NO. 187**

**RECONVENED NOVEMBER 19, 1975**

To interpret a recommendation resulting from its investigation of a dispute between certain carriers represented by the National Railway Labor Conference, and certain of their employees represented by the Railway Employees' Department (AFL-CIO).

WASHINGTON, D. C.

November 26, 1975

LETTER OF TRANSMITTAL


Washington, D. C.  
November 26, 1975

The President  
The White House  
Washington, D. C.

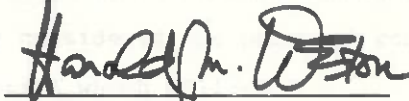
Dear Mr. President:

On November 19, 1975, you approved a request by the National Mediation Board to reconvene Emergency Board No. 187 for the purpose of interpreting one of its recommendations regarding a dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Railway Employees' Department (AFL-CIO) composed of the following labor organizations: International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Electrical Workers and the International Brotherhood of Firemen and Oilers. The Board has the honor herewith to submit its report respecting its interpretation.

Respectfully submitted,

  
Charles M. Rehnus  
Chairman

  
Dana E. Eischen  
Member

  
Harold M. Weston  
Member

#### BACKGROUND

On October 10, 1975, Emergency Board 187 submitted its Report to the President. A part of that Report included a section dealing with the RED's request relating to Article II of the Agreement of September 25, 1964 which restricted the Carriers' right to subcontract work.

In their negotiations subsequent to receipt of the Board's Report, the parties differed as to the meaning and intent of the Board's recommendation that Article II, Section 1 of the 1964 Agreement be revised to include an opening statement that "subcontracting of work, including unit exchange, will be done only when genuinely unavoidable."

On November 15, 1975, the parties agreed to a suggestion by Federal mediators that this Board be requested to interpret this recommendation. On November 19, 1975, President Ford approved the recommendation of the National Mediation Board to reconvene the Emergency Board to interpret its recommendation.

The parties submitted written statements to the Board in support of their respective positions as to the appropriate meaning and intent of this part of the Board's recommendation regarding Article II, Section 1. These statements were received by the members of the Board by November 22, 1975. The Board met in executive session in Ann Arbor, Michigan on November 24, 1975 and jointly considered the parties' contentions and formulated the Interpretation which follows.

INTERPRETATION OF SUBCONTRACTING RECOMMENDATION

Both parties have agreed in mediation sessions following our Report that the phrase "genuinely unavoidable" should be included at the outset of Article II, Section 1 as recommended by the Board. The parties' difference is encapsulated in the connecting words they propose to include between "genuinely unavoidable" and the five criteria that follow which specify when subcontracting is permitted.

The RED proposes that the language read as follows:

Subcontracting of work, including unit exchange, will be done only when genuinely unavoidable and then only [when] (1) managerial skills .... component parts. (Underlining added)

The effect of this proposed connecting phrase, as the Organizations freely concede, would be to make the concept of genuine unavoidability a new and sixth criterion that, in addition to at least one of the other criteria mentioned in Section 1, must be satisfied before a carrier can validly subcontract. In short, such a provision would require a carrier to prove that the justifying condition--e.g., lack of manpower or equipment--was genuinely unavoidable.

The Carriers propose that the amended clause read as follows:

Subcontracting of work, including unit exchange, will be done only when genuinely unavoidable because (1) managerial skills .... component parts. (Underlining added)

The Carriers contend that this contractual language would be reflective of the meaning and intent of the May 10, 1973 letter of agreement from which the Board derived its recommendation.

The Board believes that the recommendation in our original Report is clear. We recommended that the parties include in the express language of their Agreement their "mutual understanding" regarding subcontracting set forth in a letter of May 10, 1973 from the Chairman of the National Railway Labor Conference to the Chairman of the Five Cooperating Shop Craft Organizations and approved by the latter. In that letter, the parties established a Standing Committee to consider the interpretation and application of Article II of their 1964 Agreement. The letter continued:

We are in accord that the Standing Committee should have as its basic objective the encouragement of an application of the subcontracting Article in terms of its manifest intent that the railroad work described by that Article will normally be performed by railroad employees, and that performance by others is to be restricted to situations where contracting is genuinely unavoidable under the standards set forth in the subcontracting Article.

Our recommendation was not based solely on what we believed to be the purpose of this letter of agreement. We were persuaded by the evidence presented to us that there was some need to make explicit and to strengthen the requirement on a carrier to meet one of the five criteria before a subcontract could be undertaken. But we did not intend "genuine unavailability"

to be a criterion used to restrict the utilization by a carrier of the five enumerated criteria when one of these is proven to exist.

In our Report we specifically rejected the Organizations' proposal to revise criterion (2) by requiring carriers to maintain a reserve pool of skilled mechanics to handle such shopcraft work as may arise from time to time. We also rejected a proposal by the Organizations to amend criterion (3) to obligate carriers to preserve existing machinery and equipment on the property. It is patent that the Organizations are now seeking by modification of the preliminary language of Article II, Section 1 to obtain by indirection the substance of proposals which we specifically considered and expressly rejected.

As we made clear in our Report, we do believe that some tightening of the language of Article II, Section 1 is appropriate. We are in genuine sympathy with the Organizations' general position that if a carrier has the skilled manpower and equipment available on the property then it should undertake to do the work with its own employees. Pursuant to this, we proposed that criterion (1) be amended to provide that a carrier may not subcontract solely on the basis that an insufficient number of supervisory personnel were available. We proposed that criterion (5), concerning greater costs, be modified to include the assurance that no regularly assigned employee will

be furloughed if covered work is subcontracted because of excessive costs. Additionally, we recommended expansion of Article II rights to shopcraft employees who had been excluded from them. Finally, and most importantly, we recommended that the phrase "genuinely unavoidable" be inserted to emphasize that shopcraft work must be performed by the carrier's employees in all but those exceptional instances where it is established by competent evidence that one of the five criteria is applicable. As thus revised, we believe that the language of Article II would be sufficiently strengthened to protect employees and yet not impose undue additional costs upon the carriers. Such was the meaning and intent of our original recommendation. We reaffirm it here.

In accordance with the foregoing, we recommend that the parties adopt the following rule to replace the opening paragraph and Section 1 of Article II of their 1964 National Agreement:

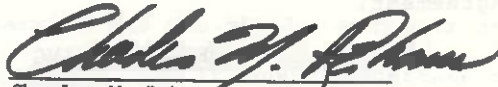
ARTICLE II - SUBCONTRACTING

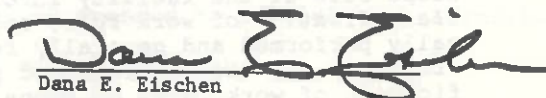
The work set forth in the classification of work rules of the crafts parties to the Agreement or, in the scope rule at the facility involved if there is no classification of work rule, and all other work historically performed and generally recognized as work of the crafts at the facility involved pursuant to such classification of work rules or scope rules where applicable, will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II.

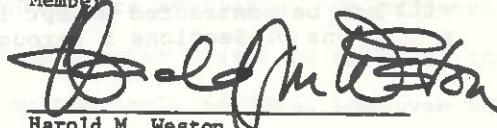
Section 1 - Applicable Criteria -

Subcontracting of work, including unit exchange, will be done only when genuinely unavoidable because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.

Respectfully submitted,

  
Charles M. Rehms  
Chairman

  
Dana E. Eischen  
Member

  
Harold M. Weston  
Member



NATIONAL MEDIATION BOARD  
WASHINGTON, D. C. 20572

OFFICE OF THE CHAIRMAN

November 17, 1975

The President

The White House.

Dear Mr. President:

Your attention is invited to the Report To The President by Emergency Board No. 187 made to you on October 10, 1975 in the dispute between the Carriers, represented by the National Railway Labor Conference and certain of their employees represented by the Railway Employees' Department (AFL-CIO) composed of the following labor organizations: International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Electrical Workers and the International Brotherhood of Firemen and Oilers.

Based upon its investigation of the issues of this dispute the Emergency Board has submitted specific recommendations for consideration by the parties as a basis for settlement. The parties have reported to the Emergency Board that there is disagreement over the meaning and intent of the following recommendation contained in the last paragraph of page 20 of the Emergency Board Report which reads as follows:

"To dispel any ambiguity that may still remain regarding the parties' intent to restrict subcontracting, we also recommend that Section 1 of Article II be revised to include an opening statement that "subcontracting of work, including unit exchange, will be done only when genuinely unavoidable." In 1973, the parties agreed that genuine unavoidability was the controlling concept underlying Article II. We believe that the express language of their agreement should state this mutual understanding."

The Railway Employees' Department accepts the above recommendation and contends that its intent is clear and unambiguous. The National Railway Labor Conference does not agree with the RED interpretation of this recommendation.

The President  
November 17, 1975

Since the disagreement existing at this time involves the meaning and intent of an Emergency Board recommendation concerning the paramount issue of subcontracting--a question on which only the Emergency Board is qualified to speak--the National Mediation Board respectfully recommends that the Emergency Board be reconvened as soon as possible to interpret said recommendation

Respectfully,

*David H. Stowe*  
David H. Stowe  
Chairman

APPROVED:

*Herold R. Ford*  
November 19, 1975

The White House