

Report
to
THE PRESIDENT
by
EMERGENCY BOARD NO. 195

Appointed by Executive Order 12373, dated July 21, 1982,
pursuant to Section 10 of the Railway Labor Act, as amended

To investigate the dispute between the United Transportation
Union and certain railroads represented by the National
Carriers' Conference Committee of the National Railway Labor
Conference.

(National Mediation Board Case No. A-10873)

Washington, D. C.
August 20, 1982

LETTER OF TRANSMITTAL

Washington, D. C.
August 20, 1982

The President
The White House
Washington, D. C.

Dear Mr. President,

On July 21, 1982, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12373, you created an Emergency Board to investigate the dispute between the United Transportation Union and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference.

Following its investigation of the issues in dispute, including both formal hearings on the record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute.

The Board now has the honor to submit its Report to you, in accordance with the provisions of the Railway Labor Act, and its Recommendations as to an appropriate resolution of the dispute by the parties.

The Board acknowledges the assistance of David M. Cohen and Roland Watkins of the National Mediation Board's staff, who rendered valuable aid to the Board during the proceedings and in preparation of this Report.

Respectfully,


Arnold R. Weber, Chairman


Jacob Seidenberg, Member


Daniel Quinn Mills, Member

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 195 was created by President Reagan on July 21, 1982, by Executive Order No. 12373, pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. §160. The President had been notified by the National Mediation Board (NMB) that, in the judgment of the Board, a threatened strike by the United Transportation Union (UTU) against certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) threatened substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service.

The President appointed Dr. Arnold R. Weber, President of the University of Colorado, as Chairman of the Board. Dr. Jacob Seidenberg, an arbitrator with substantial experience in the railroad industry; and Dr. Daniel Quinn Mills, Professor at the Harvard University Graduate School of Business Administration, were appointed as members of the Board.

II. PARTIES TO THE DISPUTE

A. THE ORGANIZATION

The United Transportation Union (UTU) represents approximately 100,000 firemen, conductors, and brakemen on railroads in the United States. Some 86,000 of these operating employees are employed by the carriers who are parties to this dispute. The UTU was formed by the merger of Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, on January 1, 1969.

B. THE CARRIERS

The National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) represents the major railroads in collective bargaining with the various labor organizations which represent rail industry employees. A complete list of the carriers involved in this dispute is attached to the Executive Order creating the Emergency Board, which is appended to this Report.

The railroads involved in this dispute operate approximately ninety percent of rail track miles in the United States, and include every major railroad except ConRail. Only Rhode Island, among the contiguous states, is not served directly by these railroads.

Freight hauling by American railroads now exceeds 900 billion revenue ton miles on Class I carriers, up substantially in recent years. Rail transportation accounts for almost 38 percent of ton miles, exceeding by a significant margin trucking, water, pipeline, or air transport. Although the railroads have increased dramatically their business, competition from other modes of transportation has reduced the overall share of the market going to the railroads. While the total tonnage shipped has increased, the size of the nation's rail system has declined. Over the last decade, trackage has declined by 30,000 miles, and there has been a loss of over 100,000 railroad jobs.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting in Chicago, Illinois, on July 20, 1982. On July 26-27, 1982, the Board conducted on-the-record ex parte hearings with the NRLC in Reston, Virginia. Similar hearings were held with the UTU on July 30, 1982. The hearings focused on a formal presentation of the parties' positions and their justifications for them, and resulted in 642 pages of transcripts and 27 exhibits.

Transcripts and exhibits of the formal ex parte hearings were exchanged in Washington, D.C., on July 30, 1982, and the parties were given time to review them and to prepare responses for subsequent on-the-record rebuttal sessions with the Board.

On August 6, 1982, the Board commenced such sessions jointly with the NRLC and UTU. On August 10, 1982, informal discussions between the parties were held in Chicago, Illinois. These efforts continued through August 12, 1982. They were recessed in order to give the parties additional time to consider the various issues in dispute. Final discussions were conducted in Washington, D. C. on August 16, 1982.

IV. HISTORY OF THE DISPUTE

On or about February 2, 1981, the United Transportation Union, the Organization, in accordance with Section 6 of the Railway Labor Act, served on the members of the NRLC notices of demands to amend numerous provisions of their collective bargaining agreements. At the same time, the NRLC served its Section 6 Notices requesting a substantial number of changes in the collective bargaining agreements. On February 12, 1982, the UTU served additional Section 6 Notices which the Carriers contend cover subjects for national handling. These Notices are presently the subject of litigation in the United States District Court for the District of Columbia.

After several months of negotiations during which the parties were unable to reach any agreement, the NRLC, on November 25, 1981, applied to the National Mediation Board (NMB) for mediation services in relation to the Section 6 Notices served by the respective parties. This application was docketed as NMB Case No. A-10873. Mediation was then undertaken under the auspices of Staff Mediation Director E.B. Meredith and NMB Chairman Robert O. Harris. Mediation sessions were held in Washington, D.C. through the end of May 1982.

On June 29, 1982, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The NRLC accepted the proffer but the Organization declined. Subsequently, the NMB, on June 29, 1982, notified the parties that it was terminating its mediation services.

On July 16, 1982, the Organization informed the NMB that its members would engage in a strike commencing on July 30, 1982, on the following railroads:

Atchison Topeka & Santa Fe Railway Company
Burlington Northern Railroad Company
Chessie System Railroads (Chesapeake & Ohio - Baltimore & Ohio)
The Family Lines Rail System
Illinois Central Gulf Railroad
Missouri Pacific Railroad Company
Norfolk Southern (Norfolk & Western - Southern Railway)
Southern Pacific Transportation Company
Union Pacific Railroad

In response to this action, the Carriers informed the Organization and the NMB that operations would cease on the non-struck railroads on July 30.

The National Mediation Board, pursuant to Section 10 of the Railway Labor Act, informed the President that in its judgment this dispute threatened substantially to interrupt interstate commerce so as to deprive a section of the country of essential transportation service.

V. REPORT AND RECOMMENDATIONS

A. WAGES AND COST-OF-LIVING ALLOWANCES

The NRLC has already reached agreement with eleven other labor organizations in national handling with respect to wage increases and a cost-of-living allowance (COLA). These agreements are retroactive to April 1, 1981, and extend to June 30, 1984. The NRLC offered the same pattern agreement to the UTU.

The pattern established with the other organizations provides:

1. Wage Increases

April 1, 1981	2%
October 1, 1981	3%
July 1, 1982	3%
July 1, 1983	3%

2. COLA

Adjustments every July 1 and January 1 through January 1, 1984, of 1 cent per hour for each .3 point change in the Bureau of Labor Statistics CPI-W during the six-month periods ending in March and September, respectively. Adjustments are limited to 4% every six months and 8% per year.

3. Roll In

No roll-in until December 31, 1983, at which time the entire COLA in effect on January 1, 1983 will be rolled-in. On June 30, 1984, one-half of the outstanding COLA will be rolled in.

The UTU notes that the pattern settlement appears to be deficient in several aspects, making the 1981-82 pattern less favorable to employees than the 1978 pattern. First, there is a different schedule for COLA payments than in 1978; second, there is a different roll-in arrangement for COLA payments. Also, the pattern settlement continues the inclusion of a cap on the COLA, as was the case in the 1978 agreement.

The Board notes that there is an interplay between the COLA provisions, including the cap, and the level of general increases, which protects the carriers from uncontrolled pay increases during the term of this agreement, while providing reasonable economic gains for employees. On balance, the Board concludes that the pattern settlement provides an adequate basis for the wage and benefit adjustments for the UTU.

Therefore, it is recommended that the pattern settlement be accepted by the parties, and that other requests for increases in wage-related benefits be withdrawn.

B. HOLDDOWNS

The Carriers urge that the general wage increases and cost-of-living increases not be applied to overmiles, arbitraries, and special allowances. This proposal is linked to another Carrier request for the establishment of a Study Commission to focus on these elements of compensation. (The Study Commission is discussed in greater detail in a subsequent section of this Report).

The basic unit of pay for freight and yard employees is either a basic day of eight hours or 100 miles run. As a practical matter, yard employees do not exceed the 100 miles, and therefore are effectively hourly employees. All of these employees receive the basic day's pay even if their assignments are completed in less than eight hours.

Overmiles are miles over 100 in a day, for which employees receive additional compensation. Until 1964, overmiles were compensated at a rate of 1/100 of the basic day's pay. From 1964 to July 1, 1968, the overmile rate was frozen as a consequence of the "White House Agreement", whereby special adjustments were made in the base pay of yard employees. Subsequent wage increases, including COLA, have been applied to overmiles. According to the Carriers, overmiles now constitute more than one-fourth of the total compensation for through freight service, and 13% of annual earnings for all operating employees.

Arbitraries and special allowances are payments for performing tasks which are paid in addition to the basic daily rate and overmiles. These arbitraries and special allowances constitute approximately seven percent of total earnings of operating employees.

Arbitraries and special allowances may be expressed in dollar amounts, hours, or miles. They may be fixed, such as the \$4.00 per day arbitrary for operating without a fireman, or they may be subject to general wage and COLA increases, such as those expressed in time or miles. Examples of the arbitraries designated by the Carriers for the holddown include those paid for initial and final terminal delay, coupling air hoses, lonesome pay, and changing engines.

The Organization opposes any attempt to freeze overmiles, arbitraries and special allowances, either during the period of a study or thereafter. The Organization's proposals would apply all wage and COLA increases to these payments, as well as providing additional increases for some arbitraries.

The Board has determined that implementation of the Carriers' holddown proposal would have a significant impact on the magnitude of the pay increase which the pattern settlement would provide to employees represented by UTU. As noted above, overmiles and arbitraries constitute about twenty percent of the pay of operating employees. Thus, failure to apply the pay increases in the pattern settlement to these components of pay would reduce by a comparable amount the pay increases received by operating employees under the new agreement.

While there have been isolated instances of holddowns in the post-World War II period, the preponderant practice of the parties, including all major agreements in the last decade, is clear: Pattern increases have been applied to overmiles and to designated arbitraries and special allowances.

For what reasons do the carriers propose a holddown? First, they view overmiles, arbitraries and special allowances as gross distortions of the wage structure which should be eliminated. Because of the importance of this issue to the overall wage structure, we recommend that this matter be studied in depth by the proposed Study Commission.

Second, the carriers seek to use the holddown as leverage in their negotiations with the Organizations concerning overmiles and arbitraries. By denying the application of the wage and COLA increases to overmiles, arbitraries and special allowances, the Carriers hope to create a powerful negative incentive to induce the Organization to consider actively the revision of these pay practices.

We are not prepared to take this step. The Carriers seek the holddown for tactical purposes which would be improper for the Board to advance or endorse. In addition, the proposal for a holddown would be applied on a uniform basis without regard to the merit of any particular pay practice, and without the guidance of the Study Commission that the Carriers press so vigorously. Thus, we recommend that the parties continue their established practice of applying the pattern settlement increases to overmiles, arbitraries and special allowances.

The Board is aware that certain arbitraries and special allowances on certain Carriers' properties do not provide for increases when there are general wage adjustments or COLA increases. The practice of the parties with respect to the application of these elements of arbitraries and special allowances should continue unchanged.

C. THE STUDY COMMISSION

The issue that commanded the most extended discussion by the Carriers is their proposal for the establishment of a "Joint Productivity Commission with finality." The Carriers urge that the Commission be tripartite in nature and be a mechanism for intensive review and negotiation of basic pay concepts and work rules. These include the basis of pay, the whole range of arbitrables, interchange service, and the road-yard division of work. The Carriers also contemplate that the Commission would deal with protection of employees and additional benefits, such as supplemental sickness and disability pay.

The proposal for the establishment of a Study Commission (as we refer to it), does not break new ground. As both parties testified, such a device occupies a venerable position in the history of railroad labor relations. The new element would be the introduction of "finality" into the Commission's determinations. That is, where the Carriers and the Organization fail to resolve their differences, the issues in dispute would be settled by final and binding arbitration.

The Carriers' argument for linking the Study Commission to binding arbitration is based on three elements. First, they assert that the record is clear that without "finality", the most searching review of pay provisions and work rules is unlikely to result in contract changes which are required in the new technological and market environment. And if the changes are forthcoming, the process is excruciatingly slow so that serious economic harm will be inflicted on the industry in the interim. In particular, the Carriers cite experience with the Presidential Railroad Commission (PRC) in 1960-62, and the Standing Committees set up on the recommendation of Emergency Board No. 178. According to the Carriers, most of the recommendations of the PRC have not been implemented and the Standing Committees have not had a perceptible impact on the web of work rules and pay practices in the railroad industry. They further assert that this glacial pace of change can no longer be accepted in the face of heightened competition engendered by deregulation.

Second, the Carriers state that existing pay practices are broadly obsolete and give rise to severe inefficiencies in the utilization of manpower and equipment. Also, the current system of relating pay to mileage and the arbitrables leads to an irrational relationship between actual work performed by the operating employees and the distribution of individual earnings. In other words, the stakes involved in a revision of pay practices and work rules are sufficiently large to justify resort to final, binding arbitration in resolving interest disputes.

Third, the Carriers argue that the threatened imposition of binding arbitration will create incentives for the parties to reach agreement on a voluntary basis so that, in most cases, the final step will not be utilized. They note experience with the resolution of disputes involving interdivisional runs and pooled cabooses to support the notion that the primary effect of building "finality" into a system of dispute resolution is to induce the parties to avoid its imposition rather than to create a framework for widespread compulsion. In other words, the threat of final and binding arbitration will advance, rather than retard, voluntary agreement.

The Organization counters these assertions with traditional arguments against undermining free collective bargaining, embellished by recognition of the special history of labor relations in the railroad industry. It states that most of the arbitraries were negotiated voluntarily by the Carriers and were put into effect as the quid pro quo for settling existing disputes. For example, the air hose coupling arbitrary was introduced to resolve work jurisdiction disputes between carmen and trainmen. Similarly, lonesome pay for the locomotive engineer was adopted when the fireman was removed from most freight and yard service.

The Organization also contends that the Carriers are not blameless with respect to the limited achievements of prior study commissions. That is, sharp policy differences among the Carriers, which reflect different economic and operating conditions, have thwarted the development of the consensus that is necessary to carry out fruitful negotiations with the Organization. Moreover, the administration of the basis of pay and the system of arbitraries are both complicated and varied so that effective negotiations on these issues are best carried out at the local, rather than the national, level.

In our judgment, the question of imposing "finality", or binding arbitration, on the procedures of a Study Commission has the most serious implications for the nature of collective bargaining in the railroad industry. Undoubtedly, some of the work rules and arbitraries have outlived their usefulness and are not conducive to a modern, efficient railroad system. The dual basis of pay, which relates earnings to a combination of mileage traveled and elapsed time, has remained substantially the same for sixty-five years, resisting sweeping changes in motive power, traffic control systems, and other key elements of railroad operation. And, as the Carriers assert, when adjustments in work rules and pay practices are introduced, they are generally the outcome of negotiations that extend far beyond the practical time frame of managerial requirements and most bargaining relationships. Progress on this front is likely to be seriously impeded by political considerations that play on both parties, the sheer complexity of the issues under consideration, and a multi-tiered bargaining structure that diffuses decision-making authority.

The key issue then, is whether these considerations justify a recommendation by the Board that the parties adopt, over the strong opposition of the Organization, a Study Commission approach which embraces final, binding arbitration. We do not believe that this course of action would be constructive or desirable. It may be true that binding arbitration is necessary in those situations where the parties are denied the usual forms of self-help associated with collective bargaining. Such is not the case in this industry. The Railway Labor Act imposes elaborate procedural requirements on the parties, but in the end both the Carriers and the Organizations are free to invoke a wide range of sanctions as part of the bargaining process. The substantive concerns expressed during the course of the formal hearings are themselves the product of collective bargaining. The fundamental principles of this institution should not be set aside because one of the parties finds the results to be onerous or perceives a chronic tactical disadvantage in negotiations. Binding arbitration is, of course, a widely accepted element in contract administration. It is quite another matter, however, to endorse the concept of "finality" in vital interest disputes. Indeed, a reasonable conclusion may be reached that the problems of collective bargaining in the railroad industry arise, in a large measure, because of the parties' excessive reliance on intervention by the Government and third-parties.

On weighing all of the arguments, we endorse the desirability of the broad Study Commission concept proposed by the Carriers. The testimony presented to the Board clearly demonstrated that an intensive review should be conducted by the parties of various work rules and pay practices in light of the new technological and economic circumstances of the industry. Lectures on the virtues of free collective bargaining, no matter how stern, will not change the present character of railroad collective bargaining. Accordingly, we recommend a set of guidelines that go beyond past experiences while stopping short of binding arbitration, which we believe would further weaken the bargaining process. These recommendations reflect our judgment that a more detailed structure should be specified for the Study Commission, while creating both incentives and the opportunity for resolving differences through mutual agreement.

We recommend that a Study Commission be established by the parties in accordance with the following guidelines:

1. The Study Commission should be organized on a tripartite basis. It should be composed of an equal number of Carrier and Organization representatives. The chairman should be a neutral who should be selected by mutual agreement of the parties within 45 days after the ratification of the new labor agreement. In the event that the parties fail to agree on

a selection of a neutral within 30 days, the parties shall confer with the Chairman of the National Mediation Board regarding the selection.

2. The chairman shall confer promptly with the parties to establish the agenda of the Study Commission. If the parties fail to agree on the agenda in 30 days, it shall be determined by the neutral. In any case, the agenda should be restricted to a limited number of items. Drawing on the concerns expressed by the parties in their testimony, the Board recommends that the Commission's agenda should be limited to the following issues: the basis of pay and related alternatives, initial and final terminal delay, the air hose coupling arbitrary, the exchange of engines arbitrary, road/yard restrictions, supplemental sick pay, disability pay, personal leave, and principles and procedures for stabilizing the pay structure of the operating crafts in response to earnings adjustments arising from crew consist agreements.
3. In consultation with the parties, the neutral shall establish a time table for bilateral negotiations between the Organization and Carrier representatives on the designated issues. In general, this period of bilateral negotiations should not exceed 90 days. If the parties fail to reach agreement or demonstrate evidence of substantial progress in resolving the issues within the specified time period, the neutral shall convene hearings on the matter in dispute and formulate substantive guidelines to further advance negotiations. The parties will then negotiate within these guidelines for a period not to exceed 60 days.
4. If, at the end of this second negotiating period, no agreement is reached, the neutral shall exercise the right to publish a non-binding recommendation concerning the unresolved issue or issues.
5. On or before December 1, 1983, the chairman shall issue recommendations. If, after 60 days, the parties have not been able to resolve the matters at issue, either party may serve proposals within the framework of the recommendations, and pursuant to Section 6 of the Railway Labor Act.
6. Most of the issues proposed for the agenda are equally applicable to the other organization of operating crafts. Therefore, the Board strongly recommends that active consideration be given to establishing a combined Study Commission or insuring that

there is effective coordination between the two Commissions through the appointment of the same neutral for both Commissions.

We believe that the structure and operating guidelines of the proposed Study Commission will facilitate progress by the parties in resolving many important and complex problems. The need to modify long-established work rules and practices to conform to changing conditions is overdue. As in all such experiments, success or failure will depend, in a large measure, on the good faith of the parties and their commitment to make the procedures work. We fully expect that future Emergency Boards will, as we have done, carefully weigh the experience of the Study Commission concept in developing their recommendations if subsequent disputes arise over the same set of issues that we have addressed here.

D. EXPENSES AWAY FROM HOME

Among its various proposals to adjust total compensation, the Organization seeks to enhance existing provisions concerning expenses away from home. The proposals include increasing the current meal allowance, changing the basis for calculating lodging allowances, and extending the coverage of away from home expenses to employees who are not presently entitled to such payments.

The weight of the testimony before the Board, and apparently the precedent negotiations, related to the meal allowance. An explicit meal allowance was first agreed to by the parties in 1964. An initial allowance is provided to an operating employee when held for four hours or more at a designated terminal. An additional stipend is payable after the employee is held for eight subsequent hours. When it was first instituted, the allowance was \$1.50. It has been adjusted twice, in 1972 and 1978. The allowance is presently set at \$2.75.

The Organization has pressed to raise the meal allowance to \$6.00, citing the erosion by inflation of the real value of this payment since it was instituted in 1964. The earlier adjustments arrested this decline, but the sharp rise in the meals-away-from-home component of the Consumer Price Index since the last increase in 1978 has further depressed the purchasing power of the allowance. The Carriers, on the other hand, contend that the \$2.75 is supplemented by 12 cents per hour that was incorporated in the base pay of all operating employees in the past to defray the cost of meals, whether or not the specific work situation justified such a payment. They also assert that the meal allowance for maintenance of way employees -- the other group which receives such a payment -- is not as generous as the formula applicable to the operating crafts. In recognition of the impact of inflation, however, the Carriers have offered to increase the meal allowance by 75 cents to \$3.50, under the existing rules for eligibility.

We recommend that an adjustment be made that will restore the real value of the meal allowance when it was last increased in 1978, but does not compensate for the loss of purchasing power since the allowance was instituted in 1964. In previous negotiations the parties accepted fluctuations in the real value of the payment; but, inflation has been so prodigious since 1978 as to justify a more generous increase than has been offered by the Carriers. Insufficient evidence was offered to support any modification of the other rules governing expenses away from home, and we do not recommend that changes be made in these provisions.

E. CABOOSES

The Carriers ask the Board to recommend that cabooses be eliminated in all classes of service on individual railroads, subject to nationally negotiated guidelines and procedures which would assist the parties on the local properties in determining those situations where cabooses might be eliminated. The Carriers further seek final and binding arbitration to resolve disputes concerning the application of the nationally agreed-upon guidelines.

The Carriers assert that there is no longer a general need for cabooses, since they do not serve as a dormitory for a road crew, nor is it necessary to station crew members at the rear end of the train to assist in braking the train and to fulfill the lookout function. The Carriers add that there is no need for the caboose as a storage place for tools or as an office for the conductor. The Carriers state that the conductors' paper work has virtually vanished with the introduction of computers, and a full array of tools is not necessary because train crews do not perform a significant amount of repair work enroute. A disabled car is usually set out and left for handling by other carrier forces.

The Carriers argue that virtually all freight trains operate with multiple engine units which provide safe and adequate crew accommodations as well as sufficient storage space for necessary supplies and personal items.

The Carriers assert that technological developments have eliminated the lookout functions of crew members in a caboose since detector devices, including hot box detectors, have removed the necessity for crew members to be stationed at the rear of the train. The Carriers add that the increase in traffic under Centralized Traffic Control and in block signal territory has reduced flagging requirements and handling of rear end switches. The Carriers state that on those few occasions when flagging would be necessary, the delay occasioned by having a crew member walk from the head end to the rear of the train does not warrant retention of a caboose.

The Carriers further maintain that operating a train without a caboose does not create unsafe or unreasonable working conditions. They note that the Federal Railroad Administration, which prescribes extensive safety regulations pertaining to train operations, has not issued any regulations requiring the use of a caboose. Also, the Florida East Coast Railroad has operated safely for a number of years without cabooses. More recently, the Interstate Commerce Commission staff investigating the changes that might be effected on the Milwaukee Railroad in order to achieve operating economies to ameliorate its bankrupt condition, recommended that that carrier operate without cabooses.

The Carriers state that annual savings of approximately \$400,000,000 could be achieved by the elimination of cabooses. A new caboose currently costs about \$80,000, and there are over 12,000 units on American railroads. The cost of operating a caboose on the Santa Fe Railroad, for example, is 92 cents per mile. The savings that would be achieved would come from both avoidance of capital investments and from savings in operating costs such as fuel, repairs, and handling expenses.

The Carriers note that there are several states that have laws that require a caboose for rear end flagging. They assert that there is no need for such laws and they hope that the Organization will join with them in seeking repeal of such laws and regulations.

The Carriers' arguments also focus on the UTU's objection to the use of final, binding arbitration in cases involving the proposed elimination of cabooses from through freight service. They contend that the most effective way of handling this problem would be to negotiate at the local level in accordance with nationally promulgated guidelines. The parties would have recourse to final, binding arbitration in the event that disputes concerning the application of the guidelines remained unresolved. The Carriers state that ultimate recourse to the arbitration procedures is an effective guarantee that the parties will resolve their disputes through voluntary negotiations. This has been the experience of the parties in administering the Pooled Caboose Agreement. Although that Agreement provided for this means, the parties have resorted to arbitration only once in handling disputes under that Agreement.

The UTU asserts that the caboose issue is a local matter and should be handled on that level, rather than on the national level. The Organization contends that it has negotiated many local agreements relating to the use of cabooses. It adds that this subject is not suitable for national handling because the use of cabooses is dependent on such conditions as the configuration of the railroad, types of runs, weather, terrain, operating rules, and employee and public safety.

The UTU stresses that it is willing to establish a time frame and guidelines for negotiations on the local level. It asserts that such guidelines would expedite the negotiation of local agreements. The Carriers are insistent, however, on national guidelines and a procedure culminating in binding arbitration. The UTU states that the Carriers' position is unacceptable. It adds that the Carriers introduced the subject of cabooses late in the negotiations and were uncertain as to the trains on which cabooses were to be eliminated.

The Organization contends that many through freight trains are more than two miles long, and that the rear end trainmen must keep a vigilant watch for malfunctions. The caboose is designed to facilitate a lookout, especially for loose brake riggings, open doors and hot boxes. The Organization adds that knuckles (which comprise the coupling) are likely to break when long trains proceed at high speeds. Should this occur toward the rear of the train, the trainmen stationed in the head end would have to carry a 70-pound replacement knuckle to the car involved in the break. He would have to walk this distance in all kinds of weather and along track where there might be uncertain footing.

The Organization contends that not only must the crew members in the caboose keep a vigilant watch over the operation of the train, but they must also position themselves to observe signals or to pick up train orders in the event the engineer fails to execute these tasks. The Organization also states that when trains are required to take sidings, the rear end man must close and lock the entrance switch and notify the engineer by radio that the train is clear of the main track. The Organization adds that there are many times when trains have to back into a siding, and the trainman must position himself on the rear end of the caboose to protect the moving rear end and to guard against backing into cars or pedestrians.

The UTU minimizes the significance of Florida East Coast experience, cited by the Carriers, in operating without a caboose. It alleges that FEC operations are not typical of the industry.

The Organization states that, not only is the Carriers' proposal ill-founded, but it is also premature because there are existing federal, state and city laws and regulations that require train rear end protection that could not be furnished were the caboose to be removed.

While the Board finds merit in the position of both parties, we conclude that, subject to the conditions and limitations hereinafter set forth, cabooses may be eliminated in each class of service without undermining safety and operational considerations. Moreover, we do not find any justification for excluding the elimination of cabooses in through freight service from arbitration procedures where disputes arise in specific cases.

The Board believes that the elimination of cabooses should be an on-going national program. This program can be most effectively implemented by agreements negotiated on the local properties by the representatives of the Carriers and the Organization most intimately acquainted with the complexities of individual situations.

Accordingly, the Board recommends that the parties negotiate guidelines on the national level for local implementation, that will be directly responsive to, or deal with, the following matters:

- (a) safety of employees
- (b) operating safety, including train length
- (c) effect on employees' duties and responsibilities resulting from working without a caboose
- (d) availability of safe, stationary, and comfortable seating arrangements for all employees on the engine consist.
- (e) availability of adequate storage space in the engine consist for employees' gear and work equipment.

The Board recommends that each Carrier has the right to eliminate cabooses in all other-than-through freight service, subject to arbitration. The Board further recommends that each Carrier has the right to eliminate cabooses for not more than twenty-five (25%) percent of all through freight trains by the end of the agreement, subject to arbitration.

Notices for the elimination of cabooses should identify specific or similar assignments.

With regard to the elimination of cabooses in through freight service, the Board recommends that the Carrier shall not invoke final, binding arbitration provisions until the parties have resolved the caboose issue on all through freight trains regularly operating with 35 cars or less. Such cabooses so eliminated shall be counted toward the 25% maximum.

In addition to the provisions described above, the parties may negotiate the elimination of additional cabooses in through freight service without resort to final, binding arbitration.

The Board further recommends that the Carriers not be required to purchase or to place into service any new cabooses, and cabooses in the existing fleet shall not be required to undergo major overhaul. However, all cabooses that remain in use must be properly maintained and serviced.

Finally, the Board recommends that these provisions pertaining to the elimination of cabooses shall not be dispositive in the negotiation of crew consist agreements.

F. MORATORIUM

The Carriers stress that settlement of a dispute is not meaningful if it does not provide the parties with a period of stability in labor costs and labor-management relations. This principle generally has been recognized and accepted as the basis for negotiating a broad Moratorium.

The Board was asked to consider two issues with respect to the scope of the Moratorium. First, the Carriers urge the Board to recommend that its Moratorium provision deal specifically with the "leap frogging" tactics utilized by the Organization whereby the UTU advances proposals to equalize the earnings of the conductor in any class of service with those of the engineer on the same day or tour of duty, whenever the Brotherhood of Locomotive Engineers (BLE) negotiates a wage adjustment based on the consummation by UTU of a crew consist agreement. The Carriers urge that they are entitled to relief from the harassment resulting from these leap frogging tactics. The UTU states that it must be free to respond to any changes in the pay structure resulting from BLE action and Carrier agreement.

Second, the Carriers request that the Board recommend the withdrawal of the remainder of the February 12, 1982 notices. The UTU states that, while it is willing to agree to a Moratorium that will ensure stability for the period of the Contract, the Carriers are seeking a Moratorium that is more comprehensive than has been negotiated with several Non-Operating Organizations in the 1981 National Agreements.

The UTU further asserts that it is willing to include within a Moratorium those issues that are basically national in scope. Conversely, local issues should not be encompassed by the Moratorium. The Organization claims, for example, that its February 12, 1982, Section 6 Notices are local in character and should not be covered by the Moratorium. The UTU also pointed out the internal constraints of the UTU Constitution on the International President's power to control the actions of the General Chairman in progressing Notices. The Board is aware that these February 12, 1982, Notices are the subject of pending litigation in the Federal Court.

The Board finds there is merit in negotiating a broad Moratorium, and recommends that the UTU withdraw its February 12, 1982 Notices, and that the Carrier withdraw its pending litigation, as part of an overall settlement.

The Board recommends that UTU be permitted to file and progress Notices regarding the pay relationship between engineers and trainmen up to but not beyond the peaceful procedures of the Railway Labor Act, only in those cases where the BLE and a Carrier execute an agreement granting a wage adjustment to the engineer in response to the negotiation by the UTU of a crew consist agreement. Thus, the UTU may take steps to negotiate on this issue only where the Carrier has acceded to previous proposals from the BLE regarding the pay differential between engine and train personnel.

G. WITHDRAWAL OF NOTICES

During their presentations, the parties put forward various other proposals concerning changes in the Agreement. These proposals were advanced either during the formal hearings or the informal discussions between the parties and the Emergency Board. To the extent that these proposals have not been treated above, or referred to the Study Commission, the Board recommends that they be withdrawn.

* * *

Respectfully submitted,


Arnold R. Weber, Chairman


Jacob Seidenberg, Member


Daniel Quinn Mills, Member

APPENDIX

EXECUTIVE ORDER

12373

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE UNITED TRANSPORTATION UNION AND
CERTAIN RAILROADS REPRESENTED BY THE
NATIONAL CARRIERS' CONFERENCE COMMITTEE OF
THE NATIONAL RAILWAY LABOR CONFERENCE

A dispute exists between the United Transportation Union and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference designated on the list attached hereto and made a part hereof.

This dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

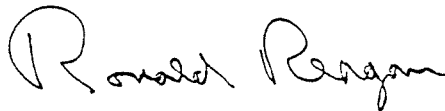
This dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. §160), it is hereby ordered as follows:

1-101. Establishment of Board. There is established, effective immediately, a board of three members to be appointed by the President to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

1-102. Report. The board shall report its finding to the President with respect to the dispute within 30 days from the date of its establishment.

1-103. Maintaining Conditions. As provided by Section 10 of the Railway Labor Act, as amended, from the date of the creation of the Emergency Board and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers or by their employees, in the conditions out of which the dispute arose.



THE WHITE HOUSE,

July 21, 1982.

RAILROADS

Akron & Barberton Belt Railroad Company
Akron, Canton and Youngstown Railroad Company
Alameda Belt Line
Alton & Southern Railway Company
Atchison, Topeka and Santa Fe Railway Company
Atlanta & Saint Andrews Bay Railway Company
Belt Railway Company of Chicago
Bessemer and Lake Erie Railroad Company
Birmingham Southern Railroad Company
Boston and Maine Corporation
Brooklyn Eastern District Terminal
Burlington Northern Railroad Company
Butte, Anaconda & Pacific Railway Company
Camas Prairie Railroad Company
Canadian National Railways -
 Great Lakes Region, Lines in the United States
 St. Lawrence Region, Lines in the United States
Canadian Pacific Limited
Central of Georgia Railroad Company
Central Vermont Railway, Inc.

THE CHESSIE SYSTEM:

Baltimore and Ohio Railroad Company
Baltimore and Ohio Chicago Terminal Railroad Company
Chesapeake and Ohio Railway Company
Chicago South Shore and South Bend Railroad
Staten Island Railroad Corporation
Western Maryland Railway Company

Chicago & Illinois Midland Railway Company
Chicago and North Western Transportation Company
Chicago and Western Indiana Railroad Company
Chicago, Milwaukee, St. Paul & Pacific Railroad,
 Lines East
Chicago Union Station Company
Chicago, West Pullman & Southern Railroad Company
Colorado and Southern Railway Company
Columbia & Cowlitz Railway Company
Davenport, Rock Island and North Western Railway Company
Denver and Rio Grande Western Railroad Company
Des Moines Union Railway Company
Detroit and Mackinac Railway Company
Detroit & Toledo Shore Line Railroad Company
Detroit, Toledo and Ironton Railroad Company
Duluth, Missabe and Iron Range Railway Company
Duluth, Winnipeg & Pacific Railway Company
Elgin, Joliet and Eastern Railway Company

THE FAMILY LINES:

Seaboard Coast Line Railroad Company
Gainesville Midland Railroad Company
Louisville and Nashville Railroad Company
Clinchfield Railroad Company
Georgia Railroad
Atlanta and West Point Railroad Company
 The Western Railway of Alabama
Atlanta Joint Terminals

Fort Worth and Denver Railway Company
Galveston, Houston and Henderson Railroad Company
Grand Trunk Western Railroad Company
Houston Belt and Terminal Railway Company
Illinois Central Gulf Railroad
Illinois Terminal Railroad Company
Indiana Harbor Belt Railroad Company

Joint Texas Division of the CRI&P-FW&D Railway
 Company
 Kansas City Southern Railway Company
 Kansas City Terminal Railway Company
 Kentucky & Indiana Terminal Railroad Company
 Lake Erie, Franklin & Clarion Railroad Company
 Lake Superior & Ishpeming Railroad Company
 Lake Superior Terminal & Transfer Railway Company
 Lake Terminal Railroad Company
 Longview, Portland & Northern Railway Company
 Los Angeles Junction Railway Company
 Louisiana & Arkansas Railway Company
 Maine Central Railroad Company
 Portland Terminal Company
 Manufacturers Railway Company
 McKeesport Connecting Railroad Company
 Meridian & Bigbee Railroad
 Minneapolis, Northfield and Southern Railway, Inc.
 Minnesota, Dakota & Western Railway Company
 Minnesota Transfer Railway Company
 Mississippi Export Railroad Company
 Missouri-Kansas-Texas Railroad Company
 Oklahoma, Kansas and Texas Railroad Company
 Missouri Pacific Railroad Company
 Monogahela Railway Company
 Montour Railroad Company
 Newburgh and South Shore Railway Company
 New Orleans Public Belt Railroad
 New York Dock Railway
 Norfolk and Portsmouth Belt Line Railroad Company
 Norfolk and Western Railway Company
 Northwestern Pacific Railroad Company
 Oakland Terminal Railway
 Ogden Union Railway and Depot Company
 Peoria and Pekin Union Railway Company
 Pittsburg & Shawmut Railroad Company
 Pittsburgh and Lake Erie Railroad
 Pittsburgh, Chartiers & Youghiogheny Railway Company
 Portland Terminal Railroad Company
 Port Terminal Railroad Association
 Richmond, Fredericksburg and Potomac Railroad Company
 Sacramento Northern Railway
 St. Louis Southwestern Railway Company
 Soo Line Railroad Company
 Southern Pacific Transportation Company-
 Western Lines
 Eastern Lines
 Southern Railway Company
 Alabama Great Southern Railroad Company
 Cincinnati, New Orleans and Texas Pacific
 Railway Company
 Georgia Southern and Florida Railway Company
 New Orleans Terminal Company
 St. Johns River Terminal Company
 East St. Louis Terminal Company
 Spokane International Railroad Company
 Terminal Railroad Association of St. Louis
 Texas Mexican Railway Company
 Toledo, Peoria & Western Railroad Company
 Toledo Terminal Railroad Company
 Union Pacific Railroad Company
 Walla Walla Valley Railway Company
 Waterloo Railroad Company
 Western Pacific Railroad Company
 Wichita Terminal Association
 Yakima Valley Transportation Company
 Youngstown & Southern Railway Company