

Report
TO
THE PRESIDENT
BY
Emergency Board
No. 190

**APPOINTED BY EXECUTIVE ORDER 12132, DATED
MAY 8, 1979, 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 employees represented by the American Train Dispatchers Association (AFL-CIO).

(National Mediation Board Case No. A-10223)

WASHINGTON, D.C.

May 30, 1979

TRANSMITTAL LETTER

WASHINGTON, D.C.,
May 30, 1979

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On May 8, 1979, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12132, you created an Emergency Board to investigate a dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the American Train Dispatchers Association.

Following its investigation of the issues in dispute, the Board developed recommendations which were accepted as the basis for a settlement of those issues which separated the parties from agreement.

The Board now has the honor to inform you of a settlement of all issues out of which this dispute arose and to submit its report concerning the recommendations which led to the settlement.

Respectfully submitted,

JAMES J. REYNOLDS, *Chairman.*
IDA KLAUS, *Member*
NICHOLAS H. ZUMAS, *Member*

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I. HISTORY OF THE DISPUTE

The Carriers before this Board include over 95% of the Nation's Class I railroads. The American Train Dispatchers Association (ATDA) represents approximately 2,800 employees who are primarily responsible for scheduling and controlling the movement of trains, maintaining pertinent data of such train movements, ment, the ATDA increases were applied on the basis of a 200 if a particular railroad car is overheating.

The dispute which culminated in the appointment of this Board had its origins in the notices served by the American Train Dispatchers Association on February 15, 1977 and July 1, 1977 pursuant to Section 6 of the Railway Labor Act, outlining desired changes in their collective bargaining agreements. The February 15 notices covered desired changes in health and welfare benefits and were supplemented by an additional notice served on August 15, 1977. The July 1 notice covered proposed changes in wages, cost-of-living, vacations and rules governing working conditions.

Bargaining on the issues raised in the notices began on July 7, 1977 with the proposal that common issues, such as wages, cost-of-living and health and welfare be handled on a joint basis with all unions, while non-common issues would be addressed independently by each union and the industry.

On September 16, 1977, an initial conference between the Carriers and ATDA was held in which the Organization explained their proposals outlined in the July 1, 1977 notice. Further negotiations in December 1977 and January and February 1978 failed to produce a settlement and on April 25, 1978, the Organization invoked the services of the National Mediation Board (NMB) to mediate the dispute.

Negotiations on the common issues on a joint basis moved slowly due to the large number of carriers and organizations involved. However, the process was expedited in January 1978 when it was agreed to handle the negotiations with a reduced bargaining committee. On July 7, 1978, a settlement was reached with three major unions regarding the common issues which set the pattern for the industry.

Following the pattern settlement the ATDA indicated that while such a settlement on the common issues might be acceptable, a number of non-common issues still remained to be settled before

any agreement could be concluded. On September 11, 1978, formal mediation began and continued until an impasse was reached whereupon the National Mediation Board made a proffer of arbitration on March 12, 1979. In a further attempt to settle the dispute the parties met in Chicago on March 21 and 22. While these negotiations failed to produce a settlement, they narrowed the focus of the dispute to four primary issues concerning meal periods, travel time and expenses, vacations, and the development of an acceptable moratorium provision. A number of other issues were tentatively resolved conditioned upon complete agreement on the four primary issues. Among these other issues was that of the conversion of the daily pay into an hourly rate for the payment of holiday pay to dispatchers. On April 9, 1979, the NMB notified the parties that arbitration had been rejected, and notified the President that in its judgment the dispute threatened substantially to interrupt interstate commerce to such a degree as to deprive sections of the country of essential transportation services. On May 8, 1979, pursuant to Section 10 of the Railway Labor Act, the President created Emergency Board No. 190 by Executive Order 12132.

II. CREATION OF THE EMERGENCY BOARD

President Carter appointed the following members of the Board: James J. Reynolds, former Under Secretary of Labor and retired President of the American Institute of Merchant Shipping, Washington, D.C., chairman; Ida Klaus, former Director of Labor Relations for the New York City Board of Education, present member of the New York State Public Employment Relations Board and Labor Arbitrator, New York, New York, member; Nicholas H. Zumas, Attorney and Labor Arbitrator, Washington, D.C., member.

The Board convened in Washington, D.C. on May 14, 1979, for a procedural meeting with representatives of the parties. Ex-parte hearings were held in Washington on May 15, 1979, with the American Train Dispatchers Association, representing the employees, and on May 16, 1979, with the National Railway Labor Conference, representing the Carriers. Transcripts and exhibits submitted to the Board were exchanged by the parties on May 17, 1979. After a brief recess to provide time for a careful review of the materials exchanged, the Board held informal ex-parte discussions with the NRLC on May 22, 1979, and with the ATDA on May 23, 1979. These discussions provided the Board

with the views and reactions of the parties to what had been presented by the other side. Following these sessions the Board perceived the value of entering into intensive mediation, which both parties had encouraged.

Intense mediation efforts throughout the balance of the week of May 21 while slightly narrowing areas of difference left very important issues unresolved. The Board concluded that in light of the unproductive history of negotiation and mediation both prior and subsequent to its appointment the only remaining course of potential usefulness in attaining a complete agreement was to make recommendations to the parties and urge their acceptance as the basis of settling all remaining issues.

Accordingly, during the long Memorial Day weekend of further intense bargaining the Board presented the parties its recommendations which were accepted as the basis of agreement of the unresolved issues. The recommendations and the agreements which resulted follow.

III. THE MEAL PERIOD ISSUE

By its original Section 6 Notice relating to HOURS OF SERVICE—WORK DAY, ATDA sought to have a 30 minute uninterrupted meal period between the fourth and sixth hours of a trick; and if not granted, the payment to the dispatcher of an additional one hour's pay at the straight time rate.

The Carriers rejected the meal period proposal contending that it was nothing more than an attempt to seek an additional pay rule. The Carriers contended that the nature of a dispatcher's work was such that it did not lend itself to interruptions of any kind, and contended further that the issues of compensation for an uninterrupted meal period was resolved by the parties in the settlement of a Section 6 Notice served by the ATDA in 1943.

The record before the Board shows that on June 15, 1943, the ATDA served a Section 6 Notice requesting, *inter alia*, compensation when a dispatcher was not able to take an uninterrupted meal period. That Section 6 Notice was settled by the parties by an Agreement that converted the cents per hour increases provided other organizations into a monthly increase by multiplying the hourly increases by 240 hours rather than by the 208.6 hours actually worked per month by a dispatcher. That agreement expressly provided that the increases "also include compensation paid as the equivalent or in lieu of claims for meal period and overtime for transfer time as requested in notice served by . . ."

Subsequent agreements between 1944 and 1949 followed the same formula with hourly increases being converted into a monthly increase. By virtue of the 1949 Five Day Work Week agreement, the ATDA increases were applied on the basis of a 200 hour month even though 174 hours were actually worked. Two-fifths (or 10.8 hours) of the extra 26 hours of compensation had been attributed to the inability to take an uninterrupted meal period. In dollar terms the compensation attributable to the meal period is presently \$52.48 a month (\$2.41 per day) and with each successive wage increase and cost-of-living adjustment this figure will increase to \$78.18 a month (\$3.60 per day) during the life of the agreement.

Having determined that dispatchers were already being compensated for their inability to take an uninterrupted meal, but recognizing further that there might be problem areas at dispatching offices where dispatchers might not have a reasonable opportunity to eat, Carriers proposed to ATDA that the parties agree to the establishment of a procedure under the May 27, 1937 National Agreement, as revised, whereby meal problems would be handled at the local level with further expedited handling at the national level when necessary.

The ATDA categorically rejected Carriers' proposal.

During the hearings before this Board, it became apparent that the real problem arose in those instances where a dispatcher, through no fault of his own, was not able to eat at all during the course of his tour of duty.

After considerable discussion of the problem, the Board requested the ATDA to recede from its demand for an uninterrupted meal period. The ATDA agreed to do so, particularly in light of the overwhelming evidence that its members were already being compensated (by agreement) in lieu of an uninterrupted meal period. The Board also requested Carriers to reconsider its proposal in light of the problem, and to consider instead a national rule that recognized that a dispatcher was entitled to an opportunity to eat during his tour of duty, and failure to have such opportunity would result in the payment of an arbitrary. Carriers agreed to do so.

After prolonged mediatory efforts by the Board, the parties accepted the Board's recommendations both as to the concept and the amount of the arbitrary. The result was the following rule:

It is recognized that a dispatcher is entitled to the opportunity to eat during his tour of duty. If a dispatcher is not able to eat,

through no fault of his own, between the beginning of the third hour and the end of the sixth hour of his tour of duty, he will receive \$1.50 in addition to all other compensation. The amount of this extra payment is not subject to increase because of future wage adjustments or cost-of-living allowances. An employee who is not able to eat during the prescribed period shall notify the designated carrier official at the end of his duty tour. If the prescribed payment is not allowed, claims may be progressed under the normal grievance procedure.

Note: It is understood that this rule does not provide an employee an "uninterrupted" opportunity to eat.

This Article shall become effective July 1, 1979.

The rule makes it clear that an uninterrupted opportunity to eat is not contemplated nor is any particular number of minutes specified or the time span from starting to eat and ending. There also is no requirement that there be an opportunity to leave the desk or other work location. However, if the dispatcher could have eaten during the first two hours or last two hours of his shift and chose not to do so, but was not able to eat during the middle four hours, he is entitled to the extra payment. If he decides not to eat for his own reasons, but could have eaten during the four hour span, he is not entitled to payment. The rule does not use the term "meal" in order to avoid disagreements over what constitutes a "meal." The test in all cases is whether the dispatcher ate or not, and, if not, whether he was prevented from doing so by causes outside his control.

IV. TRAVEL TIME AND EXPENSE ISSUE

The proposals submitted by ATDA sought the inclusion of a rule in the parties' National Agreement covering payment for time spent and for travel, meal and lodging expenses incurred by dispatchers required to travel to another location away from their assigned headquarters in three types of situations:

- (1) For travel distance in excess of 20 miles to perform service as a dispatcher;
- (2) For attendance at a hearing or investigation as a principal charged with a violation subject to discipline;
- (3) For attendance at study classes and at certain examinations.

A fourth proposal concerned travel conditions for extra dispatchers in connection with service as dispatchers.

It became clear from the *ex parte* hearings that the basic area of ATDA dissatisfaction was that dispatchers who are required by a Carrier to travel from assigned headquarters to attend disciplinary investigations as principals must personally assume their travel and related expenses if the charge is sustained and discipline is assessed against them.

The ATDA contended that it was unfair to impose these added financial burdens on the dispatchers for attendance at investigation sites fixed by the Carrier for its convenience and that of other employees.

The Carriers regarded this issue, as it did the other travel proposals, as essentially local in character to be appropriately handled on an individual property basis. It offered, nevertheless, as to all but one aspect of the ATDA proposals, a special and novel version of the peaceful procedures of the Railway Labor Act whereby after a period of negotiation the proposal would be subject to neutral recommendations and thereafter, upon the expiration of the term of the basic National Agreement, to self-help recourse.

The ATDA rejected the offer, regarding it as an unjustified deferral of final resolution of the issue holding no certain promise of an eventual favorable outcome for them.

The ATDA *ex parte* record showed that the basic complaints concerned travel hardships and their attendant out-of-pocket expenses for those found guilty of disciplinary offenses in instances where dispatchers were required to travel relatively long distances to attend the investigation.

Viewed in this perspective, the fundamental issue appeared to the Board to be susceptible of acceptable resolution. The Board, therefore, concentrated its mediation efforts on the resolution of this particular problem.

The important questions as to what constituted a long distance for this purpose and as to the measure of payment at the local property were also considered on the basis of the experience data offered by the parties.

Accordingly, the Board recommended, and the parties accepted, the following resolution of the travel and expense proposals submitted by ATDA:

The parties recognize that train dispatchers are on occasion required to travel long distances to attend investigations which

result in the assessment of discipline against them for events occurring during their tours of duty. Such travel can involve long distances brought about by consolidation of dispatching offices over the years. While appropriate to hold such investigations at dispatchers headquarters when practicable, it is recognized that many are not because of limitations as to locations of investigations in the schedule agreements of other employees or other employees' convenience. In recognition of this situation, the parties are agreed that train dispatchers required to travel 125 miles or more from their headquarters to attend investigations which result in discipline against them for events occurring during their tours of duty will be reimbursed for meals and lodging, and furnished transportation, or a mileage allowance in lieu thereof if the employee is authorized to use his personal automobile, to the same extent that such payments are available under local rules to employees who are called as witnesses.

This Article VIII shall become effective July 1, 1979, unless the General Chairman elects to preserve existing rules or practices by notifying the appropriate carrier official before such date.

In effect the rule provides that a dispatcher charged and found culpable and required to travel 125 miles or more shall be treated as a witness for travel expenses, meals and lodging under the local rule. When the local rules do not provide for travel expense, meals and lodging for a witness, ATDA may progress, pursuant to local handling, such proposal to secure such a rule within the procedures for peaceful handling of the Railway Labor Act.

V. THE VACATION ISSUE

While there were a number of provisions relating to vacations in its Section 6 Notice served in July 1977, the ATDA ultimately presented this Board with one vacation provision to be resolved, vis., a proposed revision to Note (a) to Section 2(a) of the February 2, 1965 National Agreement. The other provisions relating to vacations had been resolved by the emergence of the pattern settlement.

ATDA's purpose in revising Note (a) referenced above was to obtain the flexibility on all Carriers that its members enjoy on some Carriers in arranging vacations, and to obtain

“(r)elief from conditions existing in various train dispatchers' offices throughout the industry where the train dispatchers'

vacation entitlement is subordinated to vacations granted employees in other crafts who serve as extra train dispatchers and are relied upon by the Carriers to protect the extra work brought about by vacations of regularly assigned train dispatchers."

Carriers rejected the ATDA proposal asserting that they were opposed to any requirement that provided for unscheduled vacations combined with guarantees of relief. This, Carriers contend, would result in providing additional personnel, cancellation of vacations of non-dispatcher employees, and a requirement that non-dispatcher personnel work overtime to accommodate the flexible vacation selections of the dispatchers.

As an alternative, Carriers offered the ATDA the same terms and provisions that were agreed upon in the Non-Ops vacation rule. This rule would permit no flexibility, require that dispatchers' vacations be scheduled (thereby allowing assurance of vacation relief availability at a probable straight time rate), and the payment of time and one-half for vacations that had to be worked.

The ATDA rejected this counterproposal and the parties were at an impasse.

After protracted discussion on this issue, the Board asked the parties to reconsider their respective positions and recommended structuring of a rule that would provide advance annual planning of vacations with penalty provisions if a dispatcher had to work his pre-arranged vacation, and also permit flexibility on the part of the dispatcher to take a vacation at a time other than that which had been pre-arranged.

Consistent with the Board's recommendation, the parties ultimately agreed to apply the vacation provisions of the February 2, 1965 agreement so as to provide for advance vacation arrangements as well as flexibility with the following:

- (a) No employee or his representative, or local officers of the carrier, may refuse to cooperate in arranging advance annual vacation requirements as provided in the Notes to Section 2(a) of the February 2, 1965 agreement, as amended. Each employee who is entitled to vacation shall take same at the time provided even though the carrier may be required to pay an employee at a penalty rate. While it is intended that such vacation time will be adhered to so far as practicable, the carrier may without penalty defer such time on one occasion only during the

calendar year provided the affected employee is given advance notice of not less than ten (10) days except when emergency conditions prevent.

- (b) If an employee cannot be relieved at the arranged time and such time is not deferred as provided for above, or, if so deferred and the employee cannot be relieved at that time, he will be compensated at the rate of time and one-half for working his vacation in addition to receiving his regular rate of pay.
- (c) An employee shall have the opportunity to advance or defer his arranged vacation time or a portion thereof provided business conditions permit, an extra train dispatcher is available, and the carrier would not be required to fill a resulting vacancy at the overtime rate. If the requirements of the service cause the dispatcher to work the advanced or deferred vacation he shall do so at the straight time rate.
- (d) If a vacation is not arranged in advance and cannot be taken by an employee during that calendar year, such employee shall be compensated in lieu of vacation at the straight time rate in addition to his regular rate of pay.

The language recognizes the principle that advance annual vacation arrangements may be made, and emphasizes that neither party, except by accord, may refuse to cooperate in making such arrangements. A Carrier is required to allow a dispatcher to take his vacation as planned unless the dispatcher is given ten or more days advance notice that his vacation is deferred, which it may do once in a calendar year without having to incur overtime liability to him or any other employee. If the ten day notice is not given, the dispatcher cannot be denied his vacation on the grounds that to give him a vacation would require the Carrier to pay the overtime rate to a relief employee. If for other reasons the pre-planned vacation is not given, the dispatcher is to be paid time and one-half for working the vacation. The dispatcher is allowed to advance or defer his pre-planned vacation and the Carrier will grant him vacation at the time he requests provided business conditions permit, an extra train dispatcher is available to relieve him, and the railroad would not incur overtime liability to any other employee. If the dispatcher later changes his vacation and is required to work part or all of it, he will be paid at the straight-time rate. Finally, if a Carrier and its dispatchers agree not to make annual advance vacation arrangements, the prior practice remains in effect whereby a dispatcher who does not get all of his vacation

in a year is paid straight time instead of time and one-half for working the vacation.

VI. DURATION OF AGREEMENT AND MORATORIUM

The Board's recommendation on the terms of a Moratorium was motivated by the need of the nation for a period of relative tranquility in the railroad industry after nearly two years of almost constant negotiation, mediation and tension. It urged that the parties consistent with their respective responsibilities refrain from any action designed to disturb the terms of the concluded agreement until at least early 1981 and that any issues reserved for further handling be handled on a local basis within but not beyond the procedures for peacefully resolving disputes as provided in the Railway Labor Act. The Moratorium Agreement, the terms of which follow, reflects the sense of responsibility urged by the Board.

Moratorium Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices served upon the carriers listed in Exhibit A by the organization signatory hereto dated on or about July 1, 1977 (wage and rules); February 15, 1977 and August 15, 1977 (health and welfare and dental); and proposals served on April 28, 1978 by the carriers for concurrent handling therewith. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through March 31, 1981 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) Except as provided in paragraphs (c) and (d), no party to this Agreement shall serve, prior to January 1, 1981 (not to become effective before April 1, 1981), any notice or proposal for the purpose of changing the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section and any pending notices which propose such matters are hereby withdrawn.

(c) Any pending proposals relating to inequity wage adjustments are hereby withdrawn and no such proposals will be served prior to January 1, 1981 (not to become effective before April 1,

1981), *provided* that if a carrier party hereto proposes a merger or coordination or a major technological change, the organization may, in relation thereto, serve and progress proposals for changes in rates of pay on an individual position basis based upon increased duties and/or responsibilities by reason of such contemplated merger, coordination or major technological change. Pending proposals on this matter which may have been served under corresponding provisions of prior national agreements need not be withdrawn.

Note: For purposes of this Agreement a "major technological change" is one involving 5 or more employees subject to the pay provisions of the collective bargaining agreement between an individual railroad and the organization party to this Agreement.

(d) During the term of this Agreement, new proposals covering the following subject matters may be served by the organization and such proposals may be handled on a local basis within, but not beyond, the procedures for peacefully resolving disputes which are provided for in the Railway Labor Act, as amended:

Scope

Sick Leave

Bereavement Leave

Matters covered by Attachments D3, D5, D8 (b) and D9 to organization's notice of July 1, 1977.

Any pending local proposals on the above subject matters need not be withdrawn and may be progressed as above.

(e) During the terms of this Agreement, pending proposals covering subject matters not specifically dealt with in paragraphs (a), (b), (c) and (d) of this Section 2 need not be withdrawn and new proposals covering such subject matters may be served, and such pending or new proposals may be progressed within, but not beyond, the procedures for peacefully resolving disputes which are provided for in the Railway Labor Act, as amended.

(f) This Section will not bar management and committees on individual railroads from agreeing upon any subject of mutual interest.

Respectfully submitted,

JAMES J. REYNOLDS, *Chairman.*

IDA KLAUS, *Member*

NICHOLAS H. ZUMAS, *Member*

APPENDIX A
EXECUTIVE ORDER
#12132

**CREATING AN EMERGENCY BOARD TO INVESTIGATE
A DISPUTE BETWEEN THE NATIONAL RAILWAY LABOR
CONFERENCE AND CERTAIN OF ITS EMPLOYEES**

A dispute exists between the National Railway Labor Conference and certain of its employees represented by the American Train Dispatchers Association, a labor organization;

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 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 this Order.

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

THE WHITE HOUSE, May 8, 1979.

/s/ JIMMY CARTER

RECORDED
MAY 8 1979
KILBORN YARDMASTERS OF AMERICA
1411 PETERSON AVENUE
WYOMING RIDGE