REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD NO. 208

Appointed by Executive Order 12531, dated August 30, 1985, pursuant to Section 10 of the Railway Labor Act, as amended.

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

(National Mediation Board Case No. A-11471)

Washington, D.C.
September 25, 1985

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September 25, 1985

The President
The White House
Washington, D.C.

Dear Mr. President,

On August 30, 1985, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12531, you created an Emergency Board to investigate the dispute between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the United Transportation Union.

The Board now has the honor to submit its Report and Recommendations to you concerning an appropriate resolution of the dispute between the parties.

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

Respectfully,

Harold M. Weston, Chairman

Richard R. Kasher, Member

Robert E. Peterson, Member

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 208 (the Board) was created by Executive Order 12531, issued August 30, 1985, pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. §160). The Board was to investigate and report its findings and recommendations regarding unadjusted disputes between most of the Nation's railroads represented by the National Railway Labor Conference and certain of their employees represented by the United Transportation Union. Copy of the Executive Order is attached as Appendix "A".

The President appointed Harold M. Weston, of Hastings-on-Hudson, New York, as Chairman of the Board. Richard R. Kasher, of Bryn Mawr, Pennsylvania, and Robert E. Peterson, of Briarcliff Manor, New York, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. The Labor Organization

The United Transportation Union (UTU) represents approximately 68,000 railroad employees, or about 27% of the total number of represented employees on the Nation's railroads. It is a labor organization which was formed by the merger of four national operating unions on January 1, 1969, and principally represents employees engaged in the operation of railroad equipment related to the movement of trains, i.e., conductors, brakemen, switchmen, locomotive firemen, hostlers, hostler helpers and, on some railroads, locomotive engineers. The UTU also represents dining car stewards and, on some railroads, yardmasters.

B. The Carriers

The railroad companies, i.e., most of the Nation's Class I line haul rail carriers and terminal railroads, are those named in the attachment to Appendix "A" (Carriers). They are represented in this dispute through powers of attorney provided to the National Railway Labor Conference (NRLC) and its negotiating committee known as the National Carriers' Conference Committee (NCCC).

III. ACTIVITIES OF THE EMERGENCY BOARD

The parties to the dispute were asked by mailgram dated September 4, 1985, to meet and did thereafter meet with the Emergency Board in Washington, D.C. on September 6, 1985, to discuss procedural matters.

Although the Board initially determined that formal hearings would begin September 9, 1985, it granted a UTU request for a hearing postponement to September 17, 1985. During the interim, the Board met informally with the parties to establish further procedural ground rules. The Board also expressed a desire that the parties submit statements in advance of the formal hearings so that the Board could become familiar with the issues in dispute. The Board received these statements on September 10, 1985.

At hearings on September 17, 1985, the parties were given full opportunity to present contentions, oral testimony and documentary evidence. The Carriers presented testimony through Charles I. Hopkins, Jr., Chairman of both the NRLC and the NCCC; John R. Roberts, Research Director for the NRLC; and, Richard E. Briggs, Executive Vice President for the Association of American Railroads. The UTU presented testimony through Fred A. Hardin, International President; Robert R. Bryant, Assistant President; Howard G. Kenyon, Vice President; and James M. Hicks, Vice President. Both parties were represented by Counsel, David P. Lee, Esq., for the Carriers; and Robert L. Hart, Esq., for the UTU.

The Carriers presented their position on the issues in a consolidated manner. The UTU offered its argument and evidence in two parts: Part I being titled the "Fireman Issue"; and, Part II, "Other Issues."

Following the hearings, the Board held informal meetings with representatives of the parties to clarify further and narrow the areas of dispute.

IV. HISTORY OF THE DISPUTE

There is both a long term and a more recent history to the dispute.

The short term history concerns those events evolving from the current round of contract negotiations and creation of this Emergency Board.

The long term history relates to past decades of review and study given to railroad industry wage and work rules systems, and, particularly, the question of a continued need for a locomotive fireman on trains, and the manner in which these issues were addressed by the parties in their June 22, 1985 National Agreement.

A. The Short Term Dispute

On January 3, 1984, the UTU, in accordance with Section 6 of the Railway Labor Act, served notice on the individual railroads of their demands for changes in the provisions of numerous exist-

ing collective bargaining agreements. A second notice dealing with changes in health benefits was served by the UTU on January 23, 1984. The railroads served their notices on the UTU for contract changes on or about January 12, 1984. It was thereafter determined that these separate notices be handled nationally on a concurrent basis by the UTU and the Carriers.

The first formal national meeting occurred on April 9, 1984. After several months of negotiations, and believing that an impasse had been reached with respect to direct negotiations with the UTU, the Carriers, on August 27, 1984, applied to the National Mediation Board (NMB) for its mediatory services. The Carriers' application was docketed by the NMB to be Case No. A-11471.

Mediation was undertaken by NMB Chairman Walter C. Wallace and NMB Staff Mediation Director E. B. Meredith. They met with the parties on October 23, 1984 and thereafter on a number of other days throughout the intervening period to June 22, 1985. On this latter date (June 22, 1985) the Carriers and the UTU reached a comprehensive Agreement in settlement of all issues raised by their respective notices.

The June 22, 1985 Agreement was placed before the UTU membership for ratification. This procedure requires 21 days under the UTU Constitution and it is a procedure which accords a veto power to each individual craft regarding the ratification of a national agreement.

The UTU general committees of adjustment representing brakemen, conductors, switchmen, engineers, dining car stewards and yardmasters all voted in favor of ratification of the Agreement. The firemen's general committees of adjustment, by the narrow margin of 46 to 43, voted <u>not</u> to ratify the Agreement.

As a result of the Agreement not being fully ratified, UTU International President Hardin designated a new negotiating committee, drawn from UTU officers with expertise in firemen matters, to meet with the Carriers. This UTU committee met with the Carriers on August 12, 13, and 14, 1985, but were unable to negotiate adjustment of their differences in such conferences.

On the afternoon of August 14, 1985, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the parties the opportunity to submit their controversy to arbitration. The Carriers accepted the proffer of arbitration; the UTU declined. Accordingly, on August 20, 1985, the NMB notified the parties that it was terminating its mediatory efforts.

On this same date, August 20, 1985, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President that, in its judgment, the dispute between the parties threatened substantially to interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order 12531 on August 30, 1985, to create this Board to investigate and report concerning this dispute.

B. The Long Term Dispute and the June 22, 1985 Agreement

There are few, if any, collective bargaining agreements that match in complexity the labor agreements which govern the rates of pay, rules, and working conditions of railroad employees. These agreements reflect certain historic embellishments that have many times been described by Emergency Boards and Study Commissions as being in need of substantial change.

One of the most involved studies of railroad rules was conducted by a Presidential Railroad Commission (PRC) established by President Eisenhower in November 1960.

The PRC was established to investigate, consider, and mediate basic rules disputes then dividing the Nation's railroads and certain of their employees (conductors, brakemen, switchmen, locomotive firemen, hostlers, hostler helpers and locomotive engineers) represented by the operating-craft labor organizations.

The PRC spent more than 13 months studying these complex rules. A total of 96 days was devoted by the PRC to hearings; over 15,000 pages of oral testimony were recorded; and, over 300 exhibits were received in evidence. In addition, special studies were made for the PRC by its staff and by outside experts. The PRC stated: "[T]he inquiry made by this Commission has been the most comprehensive ever undertaken in the United States concerning the working rules and pay structure of operating employees of the American railroads."

The PRC recommended sweeping changes in many of these complex rules. In fact, very few changes were made by the parties in the rules following release of the PRC Report on February 28, 1962.

More recently, as the result of a recommendation by Emergency Board No. 195, the same parties here in dispute, in a National Agreement dated October 15, 1982, provided for the establishment of a joint Study Commission to review and make recommendations regarding a list of significant operating-craft work rules.

The Study Commission first met on December 10, 1982, and thereafter on a number of occasions throughout the year 1983. On December 8, 1983, the Study Commission issued a 186-page Report with its recommendations.

While recommendations of the Study Commission were not to be considered final and binding, the National Agreement of October 15, 1982 provided: "[T]he parties affirm their good faith intentions to give full consideration to such recommendations as a means of resolving such matters."

In keeping with this commitment of good faith, and after 50 bargaining sessions related to their new notices, the parties agreed to incorporate, to a certain extent, changes in a number of those same rules which had been the subject of long study by both the PRC and the Study Commission. These extensive rules changes, including disposition of the fireman issue by arbitration and attrition, are embodied in the National Agreement of June 22, 1985. A summary of the provisions of that Agreement is attached as Appendix "B".

V. THE ISSUES IN DISPUTE

A. The Fireman Issue

The critical issue before this Board is the "Fireman Issue." After all, it is the signal reason that the June 22, 1985 National Agreement failed ratification. The Agreement of June 22, 1985 provided that the question of elimination of firemen would be submitted to arbitration, if negotiation on the subject met without success. It is also the issue which was given special attention by the UTU and the Carriers in presentations to this Board.

Undoubtedly one of the longest, most studied, and volatile labor disputes in the railroad industry, the fireman issue, had its genesis over five decades ago when some railroads began programs to phase out steam locomotives and the primary job functions of the locomotive fireman. At that time, the early 1930's, a number of railroads started to use diesel locomotives in what was termed "streamlined passenger service." Although several railroads routinely assigned firemen to these trains, a number of other railroads followed suit only after extensive negotiations and a threatened strike over the issue. Prior to that time, or during the 1920's, some railroads had placed diesel locomotives in yard service without assigning firemen and as early as 1910 some railroads had begun the use of electric locomotives without firemen.

In October 1936 the Brotherhood of Locomotive Firemen and Enginemen (BLF&E), a labor organization then representing the vast majority of locomotive firemen, served notice on the railroads proposing adoption of a national rule that firemen be assigned to all types of locomotives in all classes of railroad service. Thereafter, in February 1937, the BLF&E and most of the Nation's railroads reached an agreement known as the 1937 National Diesel Agreement. That Agreement provided, with certain limited exceptions, that firemen be assigned to all diesel-electric, oil-electric, gas-electric, other internal combustion, and electric locomotives used in streamlined or mainline through passenger trains and in other classes of road and yard service. The exceptions provided that firemen would neither be required on single and multiple unit electric trains used in commuter service nor on locomotives weighing under 90,000 pounds on the driving wheels, i.e., light engines used for yard switching.

In their presentation to this Board, the Carriers point out that the 1937 National Diesel Agreement was negotiated by a committee on which nine railroads were represented. Six of the nine railroads did not own diesel locomotives. The other three railroads operated electric motor-unit cars in commuter service on which they did not want to assign firemen. The Carriers also state that in 1937 there was a total of 218 diesel locomotives in service on Class I railroads, compared to 43,624 steam locomotives.

The fireman issue next came to the forefront in May of 1950. After a six-day selective strike of certain railroads by the BLF&E, in an attempt to add a second fireman to road diesels, a new National Agreement was reached on June 1, 1950. This Agreement made several adjustments to the 1937 national accord. The Agreement required the railroads to use firemen on all locomotives, with four exceptions, namely: 1) yard switchers weighing less than 90,000 pounds on drivers installed before June 1, 1950; 2) electric rail cars ("MU"-motor unit trains); 3) self-propelled rail motor cars (Budd cars) operated singly; and, 4) self-propelled machines used in maintenance of way, construction, and similar types of work.

The first concerted effort to end the mandatory use of firemen in road freight and yard operations came in 1956. The railroads proposed elimination of all agreements, rules and practices requiring firemen on non-steam power in any freight or yard service, and establishment of a rule granting management discretion regarding the assignment of firemen in such services. This proposal was not accepted by the firemen's organization, and the matter was withdrawn from bargaining.

The fireman issue again became one of a number of highly controversial bargaining disputes in what is known as "The Great Rules Movement of 1959." In addition to the fireman manning issue, other work rules at issue between the railroads and the operating labor organizations included those related to crew consist, the structure of the industry's entire compensation system, road/yard barriers to divisions of work, the assignment of employees, and employee protection and benefits.

Both the labor organizations and the railroads concluded that conventional rail bargaining procedures were unlikely to satisfactorily resolve the issues. Thus, in October 1960 the parties agreed to submit all of the issues raised by their respective bargaining proposals to the Presidential Railroad Commission.

In addressing the fireman issue, the PRC found, among other things, a Canadian Royal Commission report to be particularly significant. That report concluded that firemen were not needed on freight and yard diesel engines. Subsequent to release of that report, the firemen's organization reached agreement with the Canadian Carriers permitting operation of trains without firemen.

It was the conclusion of the PRC on February 28, 1962 that there be a termination of the National Diesel Agreement of 1950, the parties negotiate a new accord under which the railroads would be relieved from using firemen in the future on all diesel locomotives in freight and yard service, and there be a measure of financial protection for firemen depending upon their length of service.

The PRC observed: "Thousands of firemen-helpers are required to be employed who are not essential to the safety or efficiency of railroad operations."

In a summary fact sheet, the PRC suggested the fireman issue be remedied as follows:

> "Provide that no new firemen be hired in road freight or yard service; firemen's jobs in passenger service are to continue.
>
> Provide that present firemen with 10 years or more seniority be kept on with full job rights.
>
> Provide that firemen with less than 10 years seniority be separated or furloughed with 3 months to 1 year's notice, depending on length of service.

> Provide that all separated or furloughed firemen receive: monthly or lump sum dismissal pay based on length of service; a 5-year man would get monthly pay for 36 months at 60% of past pay and allowed to keep all outside pay; preferential hiring status; two years' training of a VA approved type at Carrier expense."

Negotiations following release of the PRC Report were unsuccessful. The parties were unable to resolve the fireman issue and most other issues covered by the PRC Report.

The issues investigated and recommended for change by the PRC came to be the subject of litigation that culminated in a Supreme Court ruling that the parties were free to use self-help, subject to creation of an Emergency Board. The issues were then presented to Emergency Board No. 154, established by President Kennedy in the face of a nation-wide strike of the railroad operating employees on April 3, 1963.

In its Report, Emergency Board No. 154 recommended, among other things, that a new national rule be established under which unnecessary firemen positions could be eliminated by the railroads through negotiation and, if necessary, arbitration. The Board recommended that if elimination of a fireman's job were contested the organization would have the burden of establishing that such discontinuance would unduly endanger or burden other employees.

When it became evident the parties had reached an impasse regarding the recommendations of Emergency Board No. 154, and this impasse once again threatened to cause a nation-wide strike, President Kennedy, on August 28, 1963, signed Public Law 88-108, a joint resolution that created Arbitration Board No. 282. This was a tripartite arbitration board that was charged with making a final and binding determination on the fireman issue, said at the time to involve 30,000 jobs, and the crew consist issue which involved almost as many jobs. The legislation directed Arbitration Board No. 282 to make its Award within 90 days and provided that the Award would be effective for up to two years, unless otherwise agreed to by the parties.

Arbitration Board No. 282 released its Award on November 26, 1963. The Board concluded that the number of jobs on which a fireman might be needed for reasons of safety was small or nonexistent. However, it gave the firemen's organization the right to designate 10% of the freight and yard jobs on each seniority district as requiring firemen. The Award also provided an elabo-

rate procedure for reducing the number of firemen. Basically, firemen with two or fewer years of service were given severance pay and eliminated immediately. Firemen who had more than two years of service, but who had not worked in the past two years, were terminated without severance pay. Firemen with more than two years of service, whose earnings showed that their attachment to the industry was part-time at best, could either resign in return for severance pay or remain with the right to work only those jobs which the railroads were required to fill with firemen. Firemen who had two to ten years of service retained their pre-existing rights to work as firemen but were subject to being transferred to comparable jobs in other crafts. Upon transfer, such employees had guaranteed earnings for a period of five years and were entitled to relocation allowances, reimbursement for moving expenses and other benefits. Firemen with more than ten years of service retained their pre-existing rights to work as firemen except that they were required to work positions in engine service that the railroads were required to fill in preference to working other positions.

In extensive litigation, the organizations challenged the Award of Arbitration Board No. 282 and the constitutionality of Public Law 88-108. However, these efforts were unsuccessful.

Thereafter, in November 1965, the BLF&E served notice to have most of the firemen jobs which had been eliminated under the Award of Arbitration Board No. 282 restored as of the date on which the Award was to expire.

The Carriers point out that during the two-year period the Award was in effect, approximately 18,000 firemen were terminated subject to the aforementioned protective arrangements. The Carriers also state that if the PRC recommendations had been followed, there would be no firemen in freight and yard service today.

Upon expiration of the Award of Arbitration Board No. 282, litigation again ensued regarding the status of the Award. The BLF&E contended that the 1950 National Agreement was once more effective. The courts ultimately ruled that the railroads could no longer eliminate jobs pursuant to the Award, but that actions which had been taken thereunder would remain in effect until changed in accordance with the collective bargaining procedures of the Railway Labor Act.

On July 7, 1970, the UTU (the bargaining representative for firemen previously represented by the BLF&E) struck several railroads over the fireman issue and other work rule issues. This strike action resulted in the creation of Emergency Board No. 177 by President Nixon.

Recognizing the work of other bodies that had previously studied and considered the fireman issue, Emergency Board No. 177 found there was no need for firemen on freight and yard diesels. Emergency Board No. 177 recommended implementation of, among other matters, the following arrangements, which, in its opinion, would best serve the interests of the industry, its employees and the public:

> "1. A new dual purpose or combination classification should be established combining the present functions of firemen and brakemen on diesel road locomotives and firemen and yardmen on yard locomotives. The appropriate descriptive title for such dual purpose classification should be determined by the parties.
>
> 2. No new hires would establish firemen seniority after the date of the agreement. Present firemen should be given job protection and the firemen classification should be eliminated through the process of attrition.
>
> 3. A training program should be developed by the carriers with the active participation of UTU to qualify employees for promotion to either conductor or engineer based on the needs of the service."

On July 19, 1972 the parties entered into what has come to be known as the Manning Agreement. As the UTU points out: "This agreement established a formal training program, including, on-the-job training, designed to qualify firemen for promotions to the craft of locomotive engineer." That Agreement also provided that each carrier employ and maintain a force of firemen on each seniority district adequate to fulfill needs arising as the result of assignments and vacancies in passenger services, as hostlers and as trainees for positions as engineer. Nothing in the Manning Agreement provided for the required use of firemen on any particular freight or yard assignments.

The Manning Agreement, as amended on August 25, 1978, identified train service as preferred service for firemen as prospective engineers. As a result, many employees now have seniority in train service as well as in engine service.

In terms of the current critical nature of this issue, the Carriers state they do not intend to make any argument about why railroads do not need firemen on freight and yard assignments. They maintain that issue was settled years ago by the PRC, Emergency Board 154, Arbitration Board No. 282, Emergency Board 177 and by the 1972 Manning Agreement.

In this same regard, the Carriers direct special attention to the fact that under date of June 28, 1985 the Consolidated Rail Corporation (Conrail) negotiated a separate agreement with the UTU (which agreement was ratified) that deals with the firemen issue by providing that firemen and hostlers shall be eliminated through attrition, and trainmen shall become the sole source of supply for engine service positions, after present employees with engine service rights.

The Carriers propose that firemen on the Nation's other railroads should be eliminated just as they are by the Conrail-UTU Agreement, i.e., through a severance program, which would be voluntary if possible and involuntary if necessary; that when firemen are not needed for productive work in engine service, they could be used in train service; and, if they are not needed in train service, they should be furloughed just the same as any other train service employee for whom there is no work.

The UTU representatives for the firemen contend that with the signing of the 1972-1978 Manning Agreements the fireman issue had been settled for all time, and that no further changes should have been proposed or negotiated.

B. Hostlers and Hostler Helpers

A "hostler" is an employee who moves locomotives about mechanical department facilities (inside hostlers) and between a mechanical department facility and a train yard or other location where locomotive engineers go on or off duty (outside hostlers). Other employees who ride with the hostler to handle switches and provide other assistance are termed hostler helpers.

In the Carriers' view the hostler or hostler helper may be a mechanical department employee in some cases and a fireman in others; there is no firm rule. According to the Carriers the situation varies from railroad to railroad and even from location to location on the same railroad. They recognize that in some cases, particularly when a knowledge of operating rules and signals might be needed as is the case with some outside hostlers, it might be more desirable to use firemen. However, they further state that shop craft work rules do not allow firemen to do much productive work around the engine facility or roundhouse outside of handling locomotives. Therefore, the Carriers believe that it is generally more desirable to cover the hostling work with mechanical department employees since they can also check and service the locomotives and perform any other work in the engine facility that is within their ability.

It is the position of the UTU representatives for the firemen that: 1) agreements covering hostlers and hostler helpers, except for wages, are all individual property (local) agreements; 2) these agreements cover the peculiar circumstances involved at terminals on each individual carrier; 3) it is not realistic to consider, on a national basis, the complete elimination of local agreements; and, 4) if the Carriers should be granted the right to eliminate the positions of hostlers, the only result would be to transfer the duties to another craft not represented by the UTU.

These UTU representatives also point out that the June 22, 1985 Agreement affords no protection to employees holding positions as hostlers or hostler helpers who had voluntarily elected not to take advantage of past opportunities to establish seniority as firemen in addition to or in place of hostler seniority.

C. Exchanging Engines

The Agreement of June 22, 1985 would permit road and yard employees in ground and engine service to perform certain work in connection with their own assignments without additional compensation, including the moving, turning, spotting for fuel and supplying of locomotives, except for heavy equipment and supplies generally placed on locomotives by employees of other crafts.

The UTU representatives for the firemen contend that work related to the exchanging of engines has historically been a subject reserved to local collective bargaining. They direct attention to local agreements which grant from 15 minutes to as much as three hours additional pay for certain employees as an engine exchange allowance. They urge that this subject continue to be handled only on a local basis and not as part of the June 22, 1985 Agreement.

D. Other Issues

The Board finds reason to comment upon two issues directly related to the June 22, 1985 Agreement. Both involve money items. The first issue concerns the $565 maximum lump sum payment provided for in Article II of the June 22 1985 Agreement. It is urged by the UTU that this payment be increased to take into account the period of time that has elapsed since the lump sum was first calculated to cover the period of July 1, 1984 to July 31, 1985. The Carriers take the position that the payment should be reduced because they have not realized any benefit from the rule changes set forth in the June 22, 1985 Agreement.

The second item concerns the effective date of the initial wage adjustment since the original effective date of the Agreement, August 1, 1985, has passed. The UTU urges the effective date remain as negotiated. The Carriers maintain that the effective date be deferred because they have not had the benefit of the agreed upon work rules changes.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The Agreement of June 22, 1985 represents, in this Board's view, the achievement of the high-purposed goals of the Railway Labor Act. Without intensive third party intervention the parties reached a voluntary settlement of numerous disputes, which for decades had been the subject of studies, work stoppages and threatened promulgation of rules by railroads.

It incorporates rules changes long found by various emergency boards and study commissions to be warranted and necessary. At the same time, the Agreement retains rules which the UTU has preserved through years of intense negotiations. Most importantly, the Agreement of June 22, 1985 recognizes the need to change the "status quo" in order that the Carriers can better compete in a new environment of transportation deregulation.

The parties are well aware that the trucking industry, in particular, is making constant and inexorable inroads on the market share of the Nation's rail carriers. In that situation, it is understandable that the negotiators for both the Carriers and the UTU made significant changes in established rules and working conditions in order to halt the continued deterioration of market share and loss of railroad jobs. The parties could have continued to delay effective resolution of the issues by utilizing the available "purposefully long and drawn out procedures of the Railway Labor Act" in addressing the substantial recommendations made by the Study Commission. Instead, they endeavored to bargain realistically in an effort to avoid the postponement of inevitable changes which had to be made in the context of employment rules and working conditions. They are to be commended for the diligence they showed in reaching an agreement which satisfied both sides in terms of avoiding the continued mutual detriment which would have occurred if the changes above referenced were not made.

The negotiators who had the foresight to effect changes now, which will, hopefully, improve the competitive position of the railroads, preserve jobs and continue compensation and benefits which exceed those of almost all American wage earners, are entitled to substantial credit for their collective bargaining accomplishments.

Accordingly, this Board has concluded that there should be no changes in the resolution of issues other than the Firemen/Hostler Issue and those modifications to be set forth in the Board's recommendations which follow.

It should be further recognized that the parties made substantial compromises in order to reach agreement. The Carriers, with the report of the Study Commission, could have argued that the rule changes recommended by the Study Commission should have been adopted en toto. They did not. The Agreement bears witness to the compromises made.

UTU representatives speaking on behalf of the firemen contend that the July 19, 1972 Manning and Training Agreements reaffirmed the craft status of firemen and that it was not contemplated that any further changes in the complement of these employees would be further negotiated. They also suggested there was an unwillingness to accede to any agreement which would, effectively, provide for complete elimination of the firemen craft or class and there was uncertainty about what would be the findings and award of an arbitrator if the question of the elimination of firemen were submitted to arbitration, particularly the anxiety caused due to lack of assurances regarding job and income protection.

The Board is not unmindful of the history and high emotion involved in issues concerning the "elimination" of firemen on the Nation's railroads. Nor is the Board insensitive to the organizational imperative which the former members and officers of the BLF&E have felt over the past decades. The fact that the BLF&E and UTU were able to have firemen positions retained for a period of 22 years after Arbitration Board 282 concluded that the positions were unnecessary is a tribute to their bargaining efforts.

Nevertheless, this Board is satisfied that the time is <u>now</u>, 26 years after the completion of the change from steam to diesel locomotives, to write the final chapter in the dispute regarding the performance of firemen/hostler duties.

July 19, 1972 was more than 13 years ago. Few, if any, collective bargaining agreements are written with the express intention that they will be "changed nevermore". Changing conditions, such as deregulation and increased competition, are clear justification for negotiating adjustments in existing agreements, particularly where the adverse affects of such changes are cushioned by appropriate protective arrangements.

It is this Board's conclusion that locomotive firemen should be eliminated without further delay subject to attrition and, where appropriate, other protective benefits. No safety or other

consideration calls for a different course of action. Firemen duties disappeared by 1960 and no development has occurred since that time to change that situation. Other Emergency Boards, Commissions, and boards of arbitration that considered the subject ever since 1959 have consistently reached the conclusion that there no longer existed a need for locomotive firemen work. The time has long past for further delays and deliberations regarding the elimination of firemen and we are not persuaded that it is in the interest of the employees and the railroads to refer the question to arbitration.

If a contrary conclusion were reached, the railroads would continue to be saddled with heavy unnecessary costs and their competitive position, as well as the availability of well-paying jobs, would materially suffer. The retention of firemen is not compatible with a modern efficient railroad system.

In view of the above facts and findings, this Board recommends the following:

B. Recommendations

1. The fireman/hostler issue be resolved by the elimination of firemen on an attrition basis, recognition of train service employees as the basic source of supply for new engine service employees, establishment of a voluntary reserve fireman program for employees currently working as firemen or hostlers, elimination of hostler positions where such work can be performed by mechanical forces in conjunction with their current assignments, and the establishing of train service seniority for current firemen and hostlers who presently hold no such seniority.

We recognize that the above recommendation is general in nature. However, in our view, the parties have considerable expertise in negotiating the important details of the type of arrangement recommended. Therefore, we leave that task to them.

The recommended protection should convince the affected employees that their future is assured.

2. The Board has thoroughly considered the evidence presented regarding how the work of exchanging engines should be performed. The record establishes, to our satisfaction, that the amount of work involved is minimal, and that the Agreement of June 22, 1985, which provides the Carriers with additional productivity and flexibility is justified in the context of the overall intent of the Agreement.

3. The maximum lump sum payment should remain at $565, and it should be payable on the same basis as provided in the June 22, 1985 Agreement. We recommend that the initial wage increase be made effective on the first day of the month following notification of ratification in view of the fact that both parties accepted the principle that the initial increase in wages should occur simultaneously with the implementation of the rules changes.

4. The other provisions of the June 22, 1985 Agreement, which are the product of honest, hard bargaining, should be reconfirmed as the agreement of the parties.

Respectfully submitted,

Harold M. Weston, Chairman

Richard R. Kasher, Member

Robert E. Peterson, Member

Appendix A

EXECUTIVE ORDER

12531

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.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

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 Act, as amended (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of Board. There is hereby established, effective August 30, 1985, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The board shall report its findings to the President with respect to the dispute within 30 days from the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 10 of the Act, as amended, from the date of the creation of the board and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the carriers or the employees in the conditions out of which the dispute arose.

Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,

August 30, 1985.

RAILROADS

Akron & Barberton Belt Railroad Company
Alameda Belt Line Railway
Alton & Southern Railway Company
Atchinson, Topeka and Santa Fe Railway Company
Atlanta & Saint Andrews Bay Railway Company
Bessemer and Lake Erie Railroad Company
Burlington Northern Railroad Company
Canadian National Railways--
  St. Lawrence Region, Lines in the United States
Canadian Pacific Limited
Central of Georgia Railroad Company

THE CHESSIE SYSTEM:
  Baltimore and Ohio Railroad Company
  Baltimore and Ohio Chicago Terminal Railroad Company
  Chesapeake and Ohio Railway Company
  Toledo Terminal Railroad Company

Chicago & Illinois Midland Railway Company
Chicago and North Western Transportation Company
Chicago and Western Indiana Railroad Company
Chicago South Shore and South Bend Railroad
Chicago Union Station 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
Duluth, Missabe and Iron Range Railway Company
Duluth, Winnipeg & Pacific Railway Company
Elgin, Joliet and Eastern Railway Company
Galveston, Houston and Henderson Railroad Company
Grand Trunk Western Railroad Company
Houston Belt and Terminal Railway Company
Illinois Central Gulf Railroad
Kansas City Southern Railway Company
  Louisiana & Arkansas Railway Company
Kansas City Terminal Railway Company
Lake Superior Terminal & Transfer Railway Company
Lake Terminal Railroad Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
McKeesport Connecting Railroad Company
Meridian & Bigbee Railroad
Milwaukee Road Inc., The
Minnesota, Dakota & Western Railway Company
Minnesota Transfer Railway Company
Mississippi Export Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company
Monongahela Railway Company
Montour Railroad Company
Newburgh and South Shore Railway Company
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk and Western Railway Company
Oakland Terminal Railway
Ogden Union Railway and Depot Company
Oklahoma, Kansas and Texas Railroad Company
Peoria and Pekin Union Railway 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 Company
St. Joseph Terminal Railroad Company
St. Louis Southwestern Railway Company

more

SEABOARD SYSTEM:
- Seaboard System Railroad:
  - Seaboard Coast Line Railroad (former)
  - Louisville and Nashville Railroad (former)
  - Georgia Railroad (former)
- Clinchfield Railroad
- Atlanta and West Point Railroad -
  - Western Railway of Alabama

Soo Line Railroad Company
Southern Pacific Transportation Company --
- Western Lines
- Eastern Lines

Southern Railway Company --
- Alabama Great Southern Railroad Company
- Atlantic East Carolina Railway Company
- Cincinnati, New Orleans and Texas Pacific Railway Company
- Georgia Southern and Florida Railway Company
- New Orleans Terminal Company
- St. Johns River Terminal Company

Spokane International Railroad Company
Terminal Railroad Association of St. Louis
Texas Mexican Railway Company
Union Pacific Railroad Company
Western Pacific Railroad Company
Wichita Terminal Association
Yakima Valley Transportation Company
Youngstown & Southern Railway Company

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Summary of the June 22, 1985 Agreement

1. **WAGES**

Lump Sum Payment

- **$565 to employees with 2,150 S.T. Hours (including vacations and holidays) 7/1/84 - 7/31/85; pro rata share to others. Excludes those without employment relationship on effective date of agreement unless retired or died.**

General Increases

- **1% 8/1/85; 2% 1/1/86; 1.5% 7/1/86; 2.25% 1/1/87; 1.5% 7/1/87; 2.25% 1/1/88**

2. **COLA**

- **13¢ COLA float from last agreement not rolled into base until 6/30/88**

- **Same formula and caps as preceding agreement with payments limited to amounts in excess of following:**

8/1/85	13 cents
8/1/85 + 1/1/86	38 cents
7/1/86	19 cents
7/1/86 + 1/1/87	48 cents
7/1/87	20 cents
7/1/87 + 1/1/88	51 cents

- **Roll-in all COLA 6/30/88**

Application of Increases -

- **Exclude mileage rates**

- **Exclude duplicate time allowances and arbitraries**

3. **FRINGE BENEFITS**

- **No change in vacations, holidays or other fringes except Health and Welfare as noted below**

4. **PAY RULES -**

Basis of Pay -

- **Freeze all mileage rates**

- **Increase miles in basic day in through freight and through passenger service in 4 steps to 102(153), 104(156), 106(159), 108(162)**

- Make proportionate increases in overtime divisor in through freight and through passenger service

- Freeze all duplicate time payments for present employees

- No duplicate time payments for new employees

Step Rates - New employees

- 75% with 5 year phase-in to full rates, applicable to all classes

Exchanging Engines Including Adding and Subtracting Units Making or Breaking Control Connections, etc. (Present employees) -

- Phase out over 3 year period

Final Terminal Delay (Present employees) -

Same as 1948 national rule except:

- Increase grace period from 30 minutes to 60

- Add delay to regular delay time when crew deliberately held out of yard (when could go to FTD point) after passing last siding or station. Does not apply where delay caused by operational reasons or causes beyond railroad's control

Deadheading -

- Present Employees - Actual time with minimum of 8 hours. Combine deadheading with service at carrier option

- New Employees - Actual time. Combine with service at carrier option.

5. ROAD SWITCHERS

- Right to reduce to 5 days jobs that carrier had no pre-existing right to establish or convert from 6 or 7 days.

- 48 minute arbitrary for reducing crew 1 day per week more than allowed by pre-existing agreement. 96 minutes for 2 days. Payment is to present employees only and ends after 3 years.

- System-wide rule to be arbitrated if carrier does not have one. 5-day yard rate and prevailing features of other such agreements to be the standard

6. FIREMEN

- Negotiation and arbitration, if necessary, of carriers proposal to eliminate firemen and hostlers and question of rights, if any, present employees will have. Issue to be resolved by November 1, 1985.

7. INTERDIVISIONAL SERVICE

- Common rule for UTU and BLE agreements
- Shorter time limits
- Single arbitration for establishing runs through home terminals
- Frozen overmile rates

8. MEAL ALLOWANCES

- Increase to $4.15 effective first day of month following 30 days after date of Agreement

9. LOCOMOTIVE STANDARDS

- Use runthrough locomotives that meet standards of originating road.

10. CABOOSES

- Remove cabooses from unit type and intermodal type trains without arbitration provided guidelines and conditions in caboose agreement are met
- Unit and intermodal trains not to count against the 25% through freight trains on which cabooses can be eliminated or against the 50% that can be covered by arbitration award.
- Operate cabooses in runthrough service if they meet standards of originating road.

11. ROAD, YARD, AND INCIDENTAL WORK

Road Crews -

- Get or leave train at any location and handle own switches. Transportation to be furnished when necessary.
- 2 pickups at initial terminal and 2 setouts at final terminal besides taking or leaving train

- Spot, pull, couple or uncouple cars set out or picked up, replace cars disturbed. Such setouts and pickups count toward maximum number allowed

- Switch within switching limits when no yard crew is on duty. Such switching time to be counted toward studies under 1964 agreement

- Pay allowance under 1964 agreement on roads where now payable, but freeze and confine to present employees

- No restrictions on holding onto cars while setting out or picking up cars outside of switching limits

Yard Crews -

- Bring in disabled or outlawed trains up to 25 miles

- No payment except under 1978 agreement. Payment frozen and limited to present employees

- Complete work of such crews

- Provide any customer service for distance of up to 20 miles. No road crews to be discontinued as result

Incidental Service -

- Ground service and qualified engine service employees may, without added pay, handle switches, move, turn, spot and supply cabooses and engines; inspect cars; start or shutdown locomotives; bleed cars, make walking and rear end air tests; prepare reports; use communication devices; copy train orders, clearances and messages. All in connection with own assignment

- Engine service and qualified ground service employees may, without added pay, handle switches, move, spot, turn, supply, fuel, inspect, start or shutdown locomotives; make head end air tests; prepare reports; use communication devices; copy train orders, clearances, and messages. All in connection with own assignment

12. MANNING

- President Hardin to urge General Chairmen to modify local crew consist agreements re: new business and intra plant switching.

13. COMPETITIVE BUSINESS

- Commitment to encourage modifying local agreements so as to improve competitive position of railroads

14. TERMINATION OF SENIORITY

- Terminate seniority of new employees who are furloughed 365 consecutive days unless they have 3 years of service or more

15. INTERPRETATION COMMITTEE

- Refer disputes over interpretation of agreement to national committee

16. INTERCRAFT PAY RELATIONSHIP

- End the "catch-up" proposals of UTU and BLE

17. HEALTH & WELFARE

- Hospital pre-admission and utilization review program
- Vacation pay no longer to qualify furloughed employee for benefits (Eff. 1/1/88)
- Eliminate reinsurance effective 12/31/87
- Special Committee to study and make recommendations on cost containment, cost sharing, financing, joint policy holder structure, and submitting plan to competitive bids
- Right to pursue present H&W notices after recommendations have been made without necessity to serve new notices

18. OTHER

- Savings provisions for new rules, at railroad's option
- Contract runs to 6/30/88 with 3 month advance reopener
- Broad moratorium for life of contract