PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Conductor W. A. Ditloff, et al., Greenwood Lake Division, for one extra day at conductor's rate of pay for performing brakeman's work on assignment 502, etc., December 2, 1946 and subsequent dates service was performed."

EMPLOYEES' STATEMENT OF FACTS: Program effective October 6, 1946 on the Greenwood Lake Division of the Erie Railroad listed 16 passenger assignments. On two assignments, no rear brakeman or head brakeman were assigned. On seven assignments, only one brakeman was assigned, which made eleven brakemen short on 16 assignments.

By taking all the trains operating on the Greenwood Lake Division, the assignments for the brakemen were put together so that mileage was extended to the remaining brakemen, which was a reduction of crew personnel and required conductors to perform brakemen's work.

There is only one brakeman assigned to train 502 and it is necessary for the conductor to assist in inspecting the air, throwing switches and other duties that are required before train leaves the terminal. On arrival at Jersey City on train 502, on account of the short turn around, before going out on Extra Jersey City to Forest Hill, which consists of four coaches and one car loaded with express, conductor is required to assist the brakeman in transferring the markers, flagging equipment and other tools that are required. On arrival at Forest Hill, train pulls up westbound main track. Brakeman throws switch, entire train is backed in the siding, car of express is cut off and hand brake is applied on express car. While the brakeman is performing these duties, the conductor is affording flag protection as train 503, a passenger train, is close behind them. The work performed by the conductor is work that the rear brakeman handled when two brakemen were assigned.

POSITION OF EMPLOYEES: The organization contends that prior to the rearrangement of runs October 6, 1946, there had been changes made in connection with crews and mileage run, but taken as a whole, there was one conductor and two brakemen assigned to each passenger assignment. The number of assignments and mileage run subsequent to October 6, 1946, was the same as prior to October 6, 1946, but the management eliminated eleven brakemen, thereby increasing the mileage to the remaining brakemen. Also requiring the conductors to perform brakemen's duties.
It is the contention of the organization that it is not within the rights of the management to violate schedule rules in placing in effect changes mentioned in statement of facts.

The changes mentioned in the statement of facts resulted in the loss of positions to eleven brakemen and the consequent displacement of a similar number as a result of the reduction of the crew personnel.

The duties of the brakemen who were removed are still there to be performed exactly the same as they have been for approximately forty (40) years past. A brief recital of the duties of the removed brakemen are as follows: Place the engine on the train, couple same, and where car inspectors are not maintained, which includes all terminals except Jersey City, required to couple all necessary hose such as brake line, steam and whistle connections, release hand brakes, inspect and test brake equipment, adjust ventilators and steam valves. In addition to the duties enumerated, at all terminals except Jersey City, required to turn engine on turntable or wye and throw all switches in making this movement. Since October 1946, when only one brakeman was assigned to many of these assignments, it has become necessary for the conductor to perform many of the duties formerly performed by the brakemen when two brakemen were assigned.

The second paragraph of General Rule 1, Rates of Pay and Rules for Trainmen and Yardmen effective October 1, 1931 reading as follows, "The term ‘Trainmen’ as used herein applies to ticket collectors, flagmen, train baggagemen and brakemen" and does not include a conductor.

**BASIS OF CLAIM AND SCHEDULE REFERENCE:** General Rules 4(a) and 6(a), Agreement between Erie Railroad Company and Road Conductors, represented by B. of R. T., rules effective November 1, 1944.

Second Paragraph of General Rule 1, Rates of Pay and Rules for Trainmen and Yardmen effective October 1, 1931.

"4 (a) In passenger service Conductors’ time will commence at the time they are required to report for duty, and shall continue until the time they are relieved from duty.

6 (a) Reductions in crews or increases in mileage in passenger service from assignments in effect January 1, 1919, shall not be made for the purpose of offsetting these increases in wages, but nothing in this order is understood to prevent adjustment of runs in short turn-around and suburban service that are paid under minimum rules for the purpose of avoiding payment of excess mileage or overtime that would accrue under these rules, without reducing the number of crews. Such runs may be rearranged, extended or have mileage changed by addition of new train service; separate pools or assignments may be segregated or divided, provided that crews are not taken off or reduced in number. Added mileage up to mileage equaling the mileage rate divided into the guaranteed daily rate does not change, take from or add to the minimum day’s pay, and this added mileage is not to be construed as ‘increase in mileage’ within the meaning of this article.”

**OTHER REFERENCE:** Rules 99 and 100, Rules of the Operating Department, Erie Railroad Company.

"99. When a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman’s signals a sufficient distance to insure full protection, placing two torpedoes, and when necessary, in addition, displaying lighted fusees. When recalled and safety to the train will permit, he may return.

When the conditions require, he will leave the torpedoes and a lighted fusee.
The front of the train must be protected in the same way when necessary by the trainman or fireman.

When a train is moving under circumstances in which it may be overtaken by another train, the flagman must take such action as may be necessary to insure full protection. By night, or by day when the view is obscured, lighted fusees must be thrown off at proper intervals.

When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used. Conductors and enginemans are responsible for the protection of their trains.

100. When the flagmen goes back to protect the rear of the train and is left behind, another trainman must take his place on the train."

Also the following rulings and decisions of various Boards:

1. Supplemental No. 12 to General Order No. 27.

2. Decisions numbers 2329, 2330, 2331, 2332, 2333, of the United States Labor Board, which will be found in Volume No. 5 issued April 9, 1924.

3. Decisions of the National Railroad Adjustment Board, Board One, Awards 143, 163, 708, 2521, 5196, 8441 and 8814.

It is our firm belief that the circumstances fully justify the claim made in this case and it is sincerely hoped that the board will sustain the claim.

CARRIER'S STATEMENT OF FACTS: In suburban passenger service in accord with the Agreement Rules positions of trainmen are readvertised at (1) change of timetable, or if there is no change of timetable then each year in the months of April and September, or (2) when the initial point of a train is changed, or (3) a part of a run taken away or added or (4) leaving or arriving time changed to exceed fifty-nine minutes and are then assigned on application in accordance with seniority. Trainmen's assignments consist of one or more short turnaround trips and while some trainmen are assigned to make all of their trips with the same conductor, others work with two or more conductors during their one assignment. All assignments are specific as to trips, trains and territory to be covered and are bid in by trainmen with a full knowledge of the work to be performed. The number of trainmen assigned to a suburban train to assist a conductor is dependent upon many factors such as passenger cars handled in a train, number of passengers, train stops to load or unload passengers, and other work to be done. No crew consist rule has ever been negotiated into any agreement or into any understanding with the conductors and trainmen prescribing a fixed number of trainmen necessary or required to be on each train operated. Some such trains have a conductor and one trainman and others as high as conductor and four trainmen. At the time of these claims there was at least one trainman to help the conductor on each of the trains involved.

These claims for additional day's pay by employees assigned to these suburban trains are based upon the theory First, that these suburban trains cannot be operated with a train crew of less than one conductor and two trainmen, and that when such trains are not so manned with a conductor and two trainmen, the conductor and/or trainman on that train should be paid an additional day's pay, and Second, that trainmen must be assigned to work with only one conductor during the entire day or programmed assignment regardless of the needs of the service and if trainmen work with more than one conductor, he should be paid an additional day's pay. No claims are progressed by any individual for time lost alleging that he
was deprived of seniority rights to work and all claims are made for an additional day's pay by the individuals who under the rules applied for the assignments and who worked such assignments only in accordance with the assignment and were fully paid.

Although the programming, advertising and assigning of trainmen to trains in suburban passenger train service has, for over 50 years, been handled in this same way, no claim or complaint was ever made until about the time of reduction of passenger train service by order of the Director of the Office of Defense Transportation due to the coal strike.

On November 18, 1946, O.D.T. Director J. M. Johnson ordered effective November 24, 1946, a reduction of 25 per cent of the total coal-burning passenger service locomotive mileage operated on November 1, 1946, which caused cancellation of passenger trains and required rearranging, re-advertising and reassigning of the passenger assignments. On December 3, 1946, Director J. M. Johnson issued another order for a further reduction effective December 8, 1946, to 50 per cent of the total coal-burning passenger service locomotive mileage operated on November 1, 1946. This December 3, 1946 order was not made effective because the miners resumed work and Director Johnson issued an order on December 7, 1946 cancelling previous orders. Passenger train service was then restored December 10, 1946, and assignments were re-established the same as they were prior to November 24, 1946, when the 25 per cent reduction went into effect. Copies of these O.D.T. orders are attached as Carrier's Exhibit No. 1.

Individual claims with facts as progressed to Chief Operating Officer are as follows:

"B. of R. T. Case No. 1180-47

JOINT STATEMENT OF FACTS:

In connection with claim of Conductor G. F. Bogert for one day at passenger Conductor's rate in addition to compensation already allowed on various dates beginning December 2nd, 1946. (On train 321 on certain dates during period December 2nd to 9th inclusive, and on train 315 on certain dates starting December 10th, 1946.)

Assignment: (Weekdays) 114—Paterson to Jersey City. (Dec. 2nd to 9th, incl.) Deadhead or Extra—Jersey City to Suffern.
166—Suffern to Jersey City.
321—Jersey City to Paterson.

Allowance Received: 1 day 2 hours 14 minutes.

Assignment: (Weekdays) 114—Paterson to Jersey City. (Starting Dec. 10, 1946) 157—Jersey City to Suffern.
166—Suffern to Jersey City.
315—Jersey City to Waldwick. Deadhead—Waldwick to Paterson.

Allowance Received: 1 day 1 hour 32 minutes.

Allowance Claimed: 1 day at passenger Conductor's rates in addition to allowance already received.

Facts: Conductor G. F. Bogert was assigned as Conductor on train 321 December 2nd to 9th and as Conductor on train 315 beginning December
10th, 1946. The train crew on both these trains consisted of Con-ductor and one Brakeman.

(signed) T. J. Sanok
Trainmaster
Jersey City, N. J.
February 18th, 1947.”

(B. of R. T. Case No. 1182-47

JOINT STATEMENT OF FACTS:

In connection with claim of Brakeman C. A. Kean for one day at passenger rates in addition to allowance received on assignment 510-581, on Saturdays, January 11th, 18th, 25th, and February 1st, 1947.

Assignment: (Saturdays) 510—Midvale to Jersey City.
581—Jersey City to Midvale.

Allowance Received: 1 day at passenger rate.

Allowance Claimed: 1 day at passenger rate in addition.

Facts: Train 581 (Saturday only train) is manned by train crew consisting of conductor and one brakeman.

(signed) T. J. Sanok
Trainmaster
Jersey City, N. J.”

(B. of R. T. Case No. 1183-47

JOINT STATEMENT OF FACTS:

In connection with claim of Brakeman C. M. Kean for one day at passenger rates in addition to allowance received for his weekday and Saturday assignment beginning December 9th, 1946.

Assignment: (Weekdays) 510—Midvale to Jersey City.
507—Jersey City to Midvale.
Deadhead—Midvale to Jersey City.
527—Jersey City to Midvale.

Allowance Received: 1 day 2 hours 20 minutes.

Assignment: (Saturdays) 514—Midvale to Jersey City.
507—Jersey City to Midvale.
Deadhead—Midvale to Jersey City.
513—Jersey City to Midvale.

Allowance Received: 1 day at passenger rates.

Allowance Claimed: 1 day at passenger rate in addition.

Facts: Brakeman C. M. Kean is regularly assigned to work on the various trains shown above on weekdays and Saturdays having secured this assignment by selecting same on advertisements of November 25th, 1946 and December 10th, 1946. The trains he works are a part of the
assignment of two different conductors. The conductors' assignments are shown below for weekdays and Saturdays, and the trains of each of these assignments that Brakeman C. M. Kean works are underscored.

<table>
<thead>
<tr>
<th>Weekdays</th>
<th>Saturdays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conductor No. 2</td>
<td>510-509-Deadhead or Extra-527</td>
</tr>
</tbody>
</table>

(signed) T. J. Sanok  
Trainmaster

(signed) G. F. Bogert  
Local Chairman, Lodge 765, B.R.T.

Jersey City, N. J.  
February 13th, 1947.”

“B. of R. T. Case No. 1222-47

STATEMENT OF FACTS:

Claim of Greenwood Lake Division Trainman W. R. Lockwood, et al., for one extra day at passenger brakeman's rate of pay, December 2, 1946 and all subsequent dates.

Miles

Assignment: (Weekdays)  
502—Midvale to Jersey City.... 31.3  
Extra—Jersey City to Forest Hill  8.5  
403—Forest Hill to West Orange  4.0  
406—West Orange to Jersey City 12.5  
517—Jersey City to Midvale.... 31.3

Allowance Received:  
1 day 3 hours 32 minutes overtime at passenger rates.

Allowance Claimed:  
1 day at passenger rates in addition.

Facts:  
Train 502, and Extra are operated with Conductor and one Trainman. Trainman Lockwood worked with Conductor Ditloff on Trains 502, Extra, 403 and 406 and with Conductor Bessinger on Train 517.”

“B. of R. T. Case No. 1223-47

STATEMENT OF FACTS:

Claim of Greenwood Lake Division Conductor W. A. Ditloff, et al., for one extra day at conductor's rate of pay for performing brakeman's work December 2, 1946 and subsequent dates.

Miles

Assignment: (Weekdays)  
502—Midvale to Jersey City.... 31.3  
Extra—Jersey City to Forest Hill  8.5  
403—Forest Hill to West Orange  4.0  
406—West Orange to Jersey City 12.5  
509—Jersey City to Midvale.... 31.3

Allowance Received:  
1 day at passenger rates.

Allowance Claimed:  
1 day at passenger rate in addition.

Facts:  
Trains 502 and Extra are operated with conductor and one trainman.”
STATEMENT OF FACTS:

Claim of Greenwood Lake Division Trainman W. E. Taylor, et al., for an additional day at passenger rate of pay December 16, 1946, and all subsequent dates.

Miles

Assignment: (Weekdays)  
506—Midvale to Forest Hill .... 22.8
403—Forest Hill to West Orange 4.0
406—West Orange to Jersey City 12.5
523—Jersey City to Midvale .... 31.3

Allowance Received:  
1 day 3 hours 10 minutes overtime at passenger rate.

Allowance Claimed:  
1 day at passenger rate in addition.

Facts:  
Works with Conductor Bessinger on Train 506, Conductor Ditloff on Trains 403 and 406 and Conductor Wester on Train 523.”

“B. of R. T. Case No. 1230-47

STATEMENT OF FACTS:

Claim of New York Division Trainman H. P. Wolfe for an additional day at passenger rate December 19, 1946, and all subsequent dates.

Miles

Assignment: (Weekdays)  
300—Paterson to Jersey City
   (via Newark) ........ 19.6
Extra—Jersey City to Waldwick 23.3
308—Waldwick to Jersey City
   (via Newark) ........ 27.2
Deadhead or extra Jersey City
   to Paterson ........ 15.7
130—Paterson to Jersey City ... 15.7
317—Jersey City to Paterson

Allowance Received:  
1 day 3 hours 5 minutes overtime at
   (via Newark) ........ 19.6

Allowance Claimed:  
1 day at passenger rate in addition.
   passenger rates.

Facts:  
Train 300 Paterson to Jersey City,
Extra Jersey City to Waldwick, 308
Waldwick to Paterson and 317 Jersey City to Waldwick are operated
with conductor and one trainman.”

“B. of R. T. Case No. 1231-47

STATEMENT OF FACTS:

Claim of Greenwood Lake Division Trainman H. W. Reynolds, et al., for one extra day at passenger rate of pay December 2, 1946, and all subsequent dates.

Miles

Assignment: (Weekdays)  
510—Midvale to Jersey City .... 31.3
507—Jersey City to Midvale .... 31.3
Deadhead Midvale to Jersey City 31.3
529—Jersey City to Midvale .... 31.3
Allowance Received: 1 day 2 hours 56 minutes overtime at passenger rate.
Allowance Claimed: 1 day at passenger rate in addition.
Facts: Works with Conductor Fredericks on Train 510, Conductor Ditloff on Train 507 and Conductor Smith on Train 529."

"B. of R. T. Case No. 1232-47

STATEMENT OF FACTS:

Claim of Greenwood Lake Division Trainman G. L. Springer, et al., for an extra day at passenger rate of pay October 1, 1946 and all subsequent dates.

Miles
Assignment: (Weekdays) 508—Midvale to Jersey City.... 31.3
495—Jersey City to Great Notch 16.5
520—Great Notch to Jersey City 16.5
527—Jersey City to Midvale.... 31.3
Allowance Received: 1 day 2 hours 53 minutes at passenger rate.
Allowance Claimed: 1 day at passenger rate in addition.
Facts: Worked with Conductor Wester on Trains 508, 495 and 520 and with Conductor Bessinger on Train 527."

"B. of R. T. Case No. 1233-47

STATEMENT OF FACTS:

Claim of Greenwood Lake Division Trainman R. J. Bund, et al., December 26, 1946, and subsequent dates.

Miles
Assignment: (Weekdays) 514—Midvale to Jersey City.... 31.3
511—Jersey City to Great Notch 16.5
Extra—Great Notch to Forest Hill ................. 8.0
405—Forest Hill to West Orange 4.0
410—West Orange to Forest Hill 4.0
407—Forest Hill to West Orange 4.0
496—West Orange to Forest Hill 4.0
Extra—Forest Hill to Jersey City 8.5
533—Jersey City to Midvale.... 31.3
Allowance Received: 1 day 3 hours 10 minutes overtime at passenger rate.
Allowance Claimed: 1 day at passenger rate in addition.
Facts: Worked on Trains 514 and 511 with Conductor Shew and Trains Extra 405, 410, 407, 496, Extra and 533 with Conductor Nicoll."

"B. of R. T. Case No. 1251-47

JOINT STATEMENT OF FACTS:

In connection with claim of New York Division Brakeman H. A. Abrams for 1 day at passenger rate in addition to compensation already allowed on various dates beginning December 9th, 1946.
Assignment: (Weekdays)  
Train 506, Midvale to Jersey City.
Train 483, Jersey City to West Orange.
Train 408, West Orange to Jersey City.
Train 517, Jersey City to Midvale.

Allowance Received:  
Compensation for regular assignment.
allowance already received.

Allowance Claimed:  
1 day at passenger rate in addition to

Facts:  
Train 506 is manned by conductor and
2 brakemen from Midvale to Forest
Hill. Rear brakeman leaves train 506 at Forest Hill in accordance
with his assignment, leaving Brakeman Abrams as the only brakeman
with conductor on train 506 Forest Hill to Jersey City. Trains
483 and 408 between Jersey City and West Orange are also manned
conductor and 1 brakeman.

(signed) T. J. Sanok  
Trainmaster

Jersey City, N. J.
April 18th, 1947.

(signed) C. N. Beams  
Local Chairman

It will be observed that all of these claims are made by either a con-
ductor or a trainman for a day’s pay in addition to compensation received
for covering their regular assignment because all trains operated were not
manned with two trainmen or because trainmen worked with two or more
conductors during their assignments.

POSITION OF CARRIER: The Erie Railroad Company operates exten-
sive commuter service to and from the New York metropolitan area and
runs over 180 such trains each weekday and less on Saturdays, Sundays or
Holidays; about one-fourth of these trains are handled with a motor car.
Commuter trains operate within an area of less than 35 miles and trains
consist of from 1 to 11 cars each depending on needs of service and pas-
sengers carried. Very few of these trains carry baggage or mail.

The suburban commuting population is constantly shifting and using
various new modes of transportation which results in decreasing or increasing
the number of cars in the trains operated to meet the demands of traffic.
The continually expanding use of the automobile and buses, the opening of
under river tubes and the George Washington Bridge and the construction
and use of many superhighways between New Jersey and New York all have
resulted in loss of many commuters because of their preference for these
new modes of transportation. The results throughout the years 1921 to now
is demonstrated by the count of passengers handled on New York Division
and Side Lines by years, except during the war years 1943 and 1944 when
such records were not maintained. This actual count is as follows:

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1921</td>
<td>16,431,942</td>
<td>5,472,401</td>
<td>4,210,134</td>
<td>5,695,967</td>
</tr>
<tr>
<td>1922</td>
<td>16,117,463</td>
<td>5,369,500</td>
<td>4,125,425</td>
<td>5,669,666</td>
</tr>
<tr>
<td>1923</td>
<td>16,756,739</td>
<td>5,441,795</td>
<td>4,146,211</td>
<td>5,916,716</td>
</tr>
<tr>
<td>1924</td>
<td>16,698,142</td>
<td>5,411,895</td>
<td>4,182,796</td>
<td>6,039,205</td>
</tr>
<tr>
<td>1925</td>
<td>16,857,047</td>
<td>5,451,749</td>
<td>4,261,700</td>
<td>6,184,622</td>
</tr>
<tr>
<td>1926</td>
<td>16,346,485</td>
<td>5,420,485</td>
<td>4,228,006</td>
<td>6,089,937</td>
</tr>
<tr>
<td>1927</td>
<td>16,278,014</td>
<td>5,397,648</td>
<td>4,154,215</td>
<td>6,085,782</td>
</tr>
<tr>
<td>1928</td>
<td>15,821,194</td>
<td>5,208,821</td>
<td>4,008,201</td>
<td>6,205,728</td>
</tr>
<tr>
<td>1929</td>
<td>16,101,960</td>
<td>5,180,024</td>
<td>3,933,235</td>
<td>6,245,536</td>
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<tr>
<td>1930</td>
<td>15,676,082</td>
<td>4,830,380</td>
<td>3,840,507</td>
<td>6,064,362</td>
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<tr>
<td>1931</td>
<td>14,317,879</td>
<td>4,267,168</td>
<td>3,495,624</td>
<td>5,624,147</td>
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<tr>
<td>1932</td>
<td>13,042,118</td>
<td>4,366,352</td>
<td>2,865,436</td>
<td>5,016,923</td>
</tr>
<tr>
<td>1933</td>
<td>11,104,862</td>
<td>3,483,012</td>
<td>1,680,587</td>
<td>3,659,296</td>
</tr>
</tbody>
</table>
Accordingly, due to the large decrease in the number of passengers, the number of trains operated, cars in the trains, and personnel on the trains have been correspondingly adjusted through the years to meet the traffic needs.

There is no rule now nor was there ever any rule with the employes to prescribe the number of trainmen required for each suburban commuter train. The number of trainmen assigned to a suburban commuter train is dependent upon many factors as some trains run from origin to destination without a stop, some make only one or two stops; some make five or six stops; and some trains stop at every station; some trains pick up no passengers en route; some pick up only a few passengers and others pick up many; some are empty equipment trains or handle carloads of express and mail. Some trains have only one car and others have more, up to a maximum of 11.

Each train is in charge of a conductor. The number of trainmen assigned to assist the conductor is dependent not upon any rule of any agreement with the employes, but is a question for management, to be determined in the light of the consist of the train, the number of passengers at origin, the number to be picked up en route, the station stops made, whether or not it handles mail or baggage, the convenience and requirements of the passengers, as well as operating efficiency and economy.

It has been a customary practice for many years for this Railroad Company to operate many suburban and other passenger trains with one conductor and one trainman. The trainman performs such duties as assigned to him by the conductor.

Specific instances of such operations in the suburban zone are as follows:

**Eastward (Motor Car)**

<table>
<thead>
<tr>
<th>Train</th>
<th>Cars</th>
<th>Conductor</th>
<th>Trainman</th>
</tr>
</thead>
<tbody>
<tr>
<td>300</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>404</td>
<td>2</td>
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<tr>
<td>408</td>
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<td>410</td>
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<tr>
<td>496</td>
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<tr>
<td>500</td>
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</tr>
<tr>
<td>518</td>
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</tr>
<tr>
<td>1106</td>
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<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
### Eastward (Steam)

<table>
<thead>
<tr>
<th>Train</th>
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<th>Conductor</th>
<th>Trainman</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>502</td>
<td>2</td>
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</tr>
<tr>
<td>504</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>536</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

### Westward (Motor Car)

<table>
<thead>
<tr>
<th>Train</th>
<th>Cars</th>
<th>Conductor</th>
<th>Trainman</th>
</tr>
</thead>
<tbody>
<tr>
<td>321</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>401</td>
<td>2</td>
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### Westward (Steam)

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Up to now no protest has ever been made by the Employees in the suburban service against such operations.

Reductions in the number of trainmen in a train crew have been made many times in the past depending on the needs of the service without protest or claims. Some of these changes are as follows:

"1924 New York Division—Pine Island, Crawford and New City Branches, passenger train consist of crews reduced from conductor and one trainman to conductor only on motor car.

1925 Marion Division—Passenger Trains 226, 227, 228 and 229, consist of crews reduced from conductor and two trainmen to conductor and one trainman.

1928 Mahoning Division—Franklin Branch passenger Trains 211, 215, 216 and 218 consist of crews reduced from conductor and two trainmen to conductor only on motor car.

1929 Greenwood Lake Div.—Passenger trains 431, 433, 505, 516, 517, 528 and 530 consist of crews reduced from conductor and trainmen to conductor only on motor car.

1929 Allegany Division—Dunkirk Branch passenger trains consist of crew reduced from conductor and two trainmen to conductor and one trainman.

1930 Mahoning Division—Passenger trains 15 and 16 consist of crew reduced from conductor and two trainmen to conductor and one trainman."
1930 Kent Division—Passenger trains 15 and 16 consist of crews reduced from conductor and two trainmen to conductor and one trainman.

1930 Rochester Division—Passenger trains 462, 471, 467 and 468 consist of crews reduced from conductor and two trainmen to conductor and one trainman."

We are also attaching as Carrier's Exhibits 2, 3 and 4 signed statements of G. L. Morgan, C. G. Shafer and S. J. Snyder who have worked as passenger conductors for many years in connection with number of trainmen assigned to passenger trains and showing it has been the practice to operate passenger trains with conductor and one trainman or if work was light on a motor car with only a conductor.

To demonstrate that these employes recognized they had no rule prescribing the consist of a train crew and did from time to time propose such a rule, we cite some of the rules which have been proposed by the Trainmen.

In negotiations which resulted in the Agreement of October 1, 1931, the Trainmen proposed the following rule:

"5F. When conductor on a Motor Car requires assistance in the handling of mail, baggage, express or other duties ordinarily assigned to trainmen a qualified trainman will be placed thereon."

The Carrier declined the proposed rule because the Trainmen could not offer any reason for their proposal. The Agreement was finally consummated without the rule.

This rule 5F was proposed at the time because the Trainmen had in 1929 requested that a flagman be assigned with a conductor on a motor car in handling Buffalo Division Trains 473 and 474. This request was denied by the management in 1930 as there was no reason why a trainman was needed to assist the conductor and there was no rule to require the assigning of a trainman.

On July 24, 1945, the Trainmen proposed the following crew consist rule:

"Crews employed in all classes of road service shall consist of not less than one (1) engineer, one (1) fireman (Helper), one (1) conductor and at least two (2) brakemen, with not less than three (3) brakemen in local, mine-run work, wreck and construction service, except on light engines and in helper service an engineer, fireman and conductor shall be used."

This proposal was denied and subsequently it was handled on a National basis and with a Presidential Emergency Board appointed March 8, 1946. This Board did not favor such a rule and declined to recommend it.

On June 20, 1947, the Trainmen again proposed the same rule. It was again denied and again it was handled on a National basis. During National negotiations in November, 1947, between the Representatives of the Conductors and Trainmen and the Carriers, the Representatives of the Conductors and Trainmen withdrew their proposal for a crew consist rule.

The claim of the Trainmen in the present case is really a demand for the First Division to grant a crew consist rule which the Trainmen have not obtained in negotiations either on this property or Nationally. (See Awards Nos. 6585, 7059 and 12208.)

The agreement, effective October 1, 1931, prescribes rules and rates of pay for trainmen on trains propelled by steam or other motive power. Under
General Rule 1 it states, "The term 'trainmen' as used herein applies to ticket collectors, flagmen, train baggagemen and brakemen." The rate of pay is determined by the character of the work which a trainman is assigned or directed to perform by the conductor in charge of the train.

There is no rule in the agreement which prescribes the exclusive duties of a trainman, a trainman promoted to conductor or a trainman assigned as ticket collector, baggageman, flagman or brakeman. In other words, no matter what duties a trainman is assigned to do he is still a trainman under the agreement, with the right to exercise seniority in the event of a reduction in force or changes in operation.

Rules of the Operating Department state as to the duties of passenger conductors and trainmen:

**Passenger Conductors**

"843. He is responsible for the movement, safety, and proper care of his train, and for the vigilance and conduct of the men employed thereon, and must report any misconduct or neglect of duty."

**Passenger Trainmen**

"845. The Passenger Trainman reports to and receives his instructions from the Trainmaster. He must obey the orders of Station Masters and Yard Masters. While on duty he is under the direction of the conductor."

"848. He must immediately go back to protect the train, where the rules require it, without waiting for signal or instructions to do so. When more than one Trainman is used on a train the rear Trainman must perform this duty, and the front Trainman must in like manner protect the front of the train."

While the Operating rules do define some of the duties of trainmen when assigned, it will be noted that trainmen are always to assist conductors in their work and perform the work required of them by the conductor.

There is no rule in the agreement requiring that conductors and trainmen will always work as a crew unit.

Rule 4(a) of agreement, effective October 1, 1931, does provide:

"In passenger service trainmen's time will commence at the time they are required to report for duty, and shall continue until the time they are relieved from duty."

In the absence of a rule providing for conductor and trainmen to work as a unit, trainmen are paid for the actual time they work, and it is not necessary that they perform the entire day's service with one conductor. It is not unusual for road trainmen to work with two or three conductors within a day's assignment.

The employees in discussing these claims on the property contended that there was a violation of Rule 6(a) of Conductors' agreement effective November 1, 1944, and Trainmen's Agreement effective October 1, 1931. Rule 6(a) provides:

"Reductions in crews or increases in mileage in passenger service from assignments in effect January 1, 1919, shall not be made for the purpose of offsetting these increases in wages, but nothing in this order is understood to prevent adjustment of runs in short turn-around and suburban service that are paid under
minimum rules for the purpose of avoiding payment of excess mileage or overtime that would accrue under these rules, without reducing the number of crews. Such runs may be rearranged, extended or have mileage changed by addition of new train service; separate pools or assignments may be segregated or divided, provided that crews are not taken off or reduced in number. Added mileage up to mileage equaling the mileage rate divided into the guaranteed daily rate does not change, take from or add to the minimum day's pay, and this added mileage is not to be construed as 'increase in mileage' within the meaning of this article."

In the application of this rule reference to crews refers to the number of crew assignments and not to the number of employees in a crew. It will be noted that the language of this rule refers to:

"Such runs may be re-arranged, extended or have mileage change by addition of new train service; separate pools or assignments may be segregated or divided, provided that crews are not taken off or reduced in number."

That the past application of this rule is correct and that it is not applicable to reduction in crew personnel is supported by First Division Awards Nos. 4557 and 8102, covering claims on the Chicago, Saint Paul, Minneapolis and Omaha Railway for time lost when number of trainmen on passenger crews were reduced wherein the employees based their claim on the identical rule cited in this case. The Division denied the claims and in their Award No. 4557 stated:

"The dispute in this docket is a negotiable matter, therefore, this Division is without authority to decide the issue involved in this case."

There have been many reductions in crew personnel on passenger trains due to falling off of passenger traffic since January 1, 1919, and at no time has it been held that Carrier was restricted in making such reductions in a crew consist because of Rule 6(a).

In 1929 a motor car was substituted for steam engine on trains 473 and 474 Attica to Buffalo and return and crew, engineer, fireman, conductor and two trainmen, reduced to one motorman (engineer) and one conductor. Employes contended a flagman should be used on the train and that Rule 6(a) was being violated. The claim was handled by General Chairman with Assistant Vice President and denied on December 22, 1930, with the following reply:

"Trains 473 and 474 between Buffalo, N. Y. and Attica, N. Y., a distance of 31 miles each way are operated by Motor Car. No Baggage or U. S. Mail are handled on these trains. There is no good reason why a Brakeman in addition to a Motorman (Engineer) and Conductor should be assigned to these trains. Request cannot be granted."

This denial was accepted by General Chairman without appeal and case was closed. The General Chairman recognized Rule 6(a) did not support the claim, and that a new rule was necessary to require assignment of trainman on a motor car. Consequently, when revision of the agreement came up in 1931, such a rule was proposed, however, during negotiations it was withdrawn as previously explained.

On September 29, 1938, former General Chairman J. J. Madden appealed the following claim of reduction of crew personnel in the suburban territory:

"Protest from New York Division and Side Lines against abolishing positions of baggagemen and requiring Trainmen to
perform the Baggage service's work without payment of additional compensation, and claim made for Baggage service's rate of pay for men required to perform such service."

No contention was made that Rule 6(a) was being violated by such reduction. The claim was progressed to the First Division and covered by Award No. 8073. The First Division without assistance of a referee stated:

"It is held that claim made subject of dispute herein shall be adjusted in keeping with the Findings made in First Division Awards 8051, 8052 and 8053."

Awards Nos. 8051, 8052 and 8053 covered the request of trainmen for baggagemen's monthly guarantee rate in lieu of brakeman's guarantee. The Division held that trainmen should be paid brakemen's guarantee rate and in addition the difference between the baggagemen's and brakemen's rate on dates he handled baggage, also the differences when required to also handle mail and/or express.

In support of their claim the employees have also referred to First Division Awards Nos. 8814 and 8441. Award 8814 covered "Protest and time claims for all conductors and trainmen, Greenwood Lake Division, who were affected by the rearrangement of passenger assignments effective January 18, 1942." Due to abolishing of a few passenger trains on the Greenwood Lake Division, passenger crews were reduced from 17 to 14 and the employees contended there was not sufficient reduction in mileage to take off three crews. There was no contention in Employees' submission to the First Division that consist of crew was involved or that reduction of the personnel in a crew was a violation of Rule 6(a). In fact, prior to January 18, 1942, and subsequent to that date Greenwood Lake Trains 401, 407, 409, 410, 412, 413, 456, 496, 498, 503, 536, 537 and 539 were operated with a conductor and one trainman as six trainmen during their assignments worked with two or more conductors and no claim was made that such crew consist or assignment of trainmen with more than one conductor was a violation of Rule 6(a). The employees whole contention was that the number of crews whether they consisted of conductor and one trainman or conductor and two or more trainmen were reduced from 17 to 14. The First Division sustained the protest and denied the monetary claim with the Findings:

"The rearranged passenger service as shown by the record shows that 464.2 miles per week were taken off and that sixteen assigned crews and one extra crew were used in this service, while the added service was 451.5 miles per week and only fourteen crews were used in this added service, thus constructive miles were absorbed by the change. Crews can be reduced only in proportion to the reduction in the train service. This change violated Rule 6(a).

The monetary claim is so indefinite that it is not understandable and therefore should not be allowed."

Award No. 8441 covered claim progressed by Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brotherhood of Railroad Trainmen on the Central Railroad Company of New Jersey account removal of head trainmen (baggagemen) on certain runs and requiring conductors, flagmen and firemen to perform baggagemen's duties. The employees contended this was an infringement on the seniority rights of head trainmen (baggagemen) on this property and was an aftermath of Award No. 5196 on the same property. The claim was sustained with the Findings:

"Award No. 5196 is clear and explicit to the effect that where baggage work remains to be done it may not be performed by other than baggagemen. The holding is unequivocal that the dis-
placed baggagemen's seniority was invaded by some of these very claims. It therefore follows that they are entitled to a minimum day whenever they performed baggage work contrary to the holding in Award No. 5196."

There is no contention in the present case that baggagemen have been removed from assignments or that claimants performed baggagemen's work. In fact in Award No. 8073 made by the First Division covering protest of Erie employees account baggagemen removed from various assignments the First Division held that trainmen who performed baggagemen's duties should be paid the difference in rate in addition to their brakemen's guarantee and not an additional day.

In handling these claims on the property the employees have claimed that on the Greenwood Lake Division at issuance of new program effective October 6, 1946, the management assigned 16 passenger conductors, two assignments no head or rear trainmen, seven assignments only one trainman, thereby eliminating eleven trainmen. This is not a fact; there were 16 crews after October 6, 1946, the same as there were prior to the change. All trains, motor car or steam, were operated with at least one conductor and one trainman and eleven trainmen were not eliminated. Prior to October 6, 1946, there were 24 trainmen's assignments with conductor or as swing men and after the change of time table there were 21 trainmen's assignments with conductor or as swing men. When assignments were advertised, the trainmen exercised their seniority and took positions in accordance with their seniority.

The employees have also alleged the conductor has performed trainman duties by occasionally throwing a switch, flagging, giving signals or other incidental duties. The First Division has denied similar claims that this was exclusively duties of trainmen in Awards Nos. 1519, 1949, 2285, 4012, 5293, 5320 and 12208. It is a matter of common knowledge that a conductor, consistently with the agreement, may be required by direction or circumstance to perform flagging duties, handle switches, give hand signals, or perform other related duties and we call attention to the Referee's Findings in Award 5293 in which he stated:

"The evidence does not show need for a trainman, the conductor being able to perform all trainmen's duties."

The First Division has consistently held that in the absence of a consist rule in the contract specifying the number of trainmen to be used, the Division is without authority to determine the number. (See Awards Nos. 47, 886, 4155, 4556, 4557, 5293, 5320, 5533, 5534, 5804, 5886, 5887, 5888, 6450, 8102, 8522, and 11819.)

In Award No. 886 there was a protest against the discontinuance of a brakeman on certain mixed trains. The protest was lost and the case dismissed, the Findings reading:

"There is no rule cited or agreed to understanding in evidence as to the number of trainmen that should be used in the operation of a bona fide mixed train; therefore, under such circumstances this Division is without authority to decide the issue involved."

Ten other cases involving the same issue and same parties were dismissed at the same time with identical findings (Awards Nos. 887, 888, 889, 890, 891, 892, 893, 894, 938 and 939).

Award No. 5804 covered protest and time claims account reducing personnel in suburban passenger service on Chicago and Northwestern Railway and contention made that Conductors were performing trainmen's duties. Claim denied.
Award No. 5886 covered time claim of trainmen account passenger train operated with conductor and one trainman and contention made that others were performing trainmen's duties. Claim denied with Findings in part:

"To sustain these claims would, in effect, be to prescribe a rule as to crew consist which is not authorized by the agreement."

Award No. 6450 covered time claims of trainmen because the Delaware, Lackawanna and Western Railroad reduced the number of trainmen on suburban passenger trains in Jersey City area and distributed the work to other employees. Claim denied.

Award No. 5320 covered time claim of trainmen account carrier operating train with engineer, fireman and conductor. Claim denied with the Findings:

"The evidence shows that the work was light and that the conductor can easily perform all duties required in handling this train. A need for a brakeman is therefore not shown. No crew consist rule is involved and it is not within the powers of this Division to determine the number of men to be used in train crews. We find no basis for the claim."

Award No. 11819 covered claim on the Baltimore and Ohio Railroad by conductor for an additional day and by trainmen for time lost account Trains 58 and 59 operated with conductor and baggageman. Contention was made conductor was performing trainmen's duties. Claim denied with the Findings reading:

"The gist of the grievance asserted in this case is contained in the request of Employees 'that brakeman-flagman be assigned to this run'.

No effective consist rule is involved in the claim, and of course this Division has no jurisdiction to write a consist rule. Consist of crew, except where regulated by law, is a managerial function; and becomes a proper subject for negotiation in such cases as Employees do not agree with the decisions of management thereon.

Evidence shows the trains in question operate on a branch line where passenger traffic is extremely light, not over twenty passengers per day. The few specific instances cited in which the conductor did flagging are not sufficient to show a calculated design upon the part of Carrier to deprive brakemen-flagmen of class of work to which they are entitled."

There is, necessarily, a certain amount of intermingling and overlapping of work by conductors and trainmen in train service operation. Trainmen are under supervision and direction of conductor to assist him. In the absence of a crew consist rule, it is necessarily a managerial prerogative to determine the number of trainmen to be assigned to assist the conductor in train operation. It is generally governed by the amount of work that is to be performed by a crew.

In the past the employees have recognized it was a managerial prerogative to determine the number of trainmen to be assigned to assist the conductor. Where there has been an increase in the work to be performed on a train and the conductor has not been able with trainmen assigned to take care of all of the work, the conductor has discussed the matter with the trainmaster and if the work to be performed required, additional trainman has been assigned to the train. Likewise, when the work to be per-
formed deceased, the conductor has cooperated and the number of train-
men have been reduced.

The employees have also recognized that trainmen are on a train to
assist the conductor and perform duties delegated to them by the conductor.
In a few cases where some trainman has not complied with instructions and
orders of the conductor, the trainman has been disciplined and accepted
the discipline.

The employes are also contending a trainman is entitled to two day’s
pay for working with more than one conductor. In all of the time that
suburban trains have operated, swing men have been assigned to work with
more than one conductor. There is no rule or understanding that would
confine the service of trainman with one conductor. This same contention
was submitted to the First Division by Erie Trainmen in Docket No. 16116
and denied by the First Division in Award No. 8155. New York Division
Trainman J. J. Menzie was assigned to work with three different conductors
and claim was made that he should be paid additional compensation as
extra service. (Also see Awards Nos. 2768, 4900, 7359 and 8452.) In the
case covered by Award No. 8452 protest and time claims were made account
suburban passenger trainmen were assigned to work with more than one
crew during assigned day’s work. Claim was denied with the Findings;
“No rule of the agreement supports the claims.” Likewise, there is no rule
in the Erie agreement to support such a claim.

There are no merits to these claims for additional day’s pay and they
should be denied for the following reasons:

1. General Rule 1 of Trainmen’s Agreement provides “The
term ‘trainmen’ as used herein applies to ticket collectors, flagmen,
train baggagemen and brakemen” and they have seniority in that
class under the agreement.

2. There is no crew consist rule in the Trainmen’s Agree-
ment.

3. The trainmen in negotiations have proposed that such a
rule be agreed to but these proposals have been declined by the
Railroad and an agreement concluded without such rule. (See
Awards Nos. 6585, 7059 and 12208.)

4. The First Division has consistently held that in the absence
of a crew consist rule that they were without jurisdiction to pre-
scribe a rule defining the number of trainmen required to be as-
signed to a train. (See Award No. 5320 and others cited above.)

5. A trainman was assigned and used to cover each suburban
passenger train involved in these claims. This trainman was as-
signed to assist the conductor and work under his supervision and
direction.

6. The number of trainmen needed on a train to assist a con-
ductor is and should always be the prerogative of management and
subject only to management’s judgment.

7. The suburban trains are operated within the State of New
Jersey and the State of New Jersey has no statute prescribing the
number of men required to operate a passenger train regardless of
the many efforts of the train service organizations to obtain such
a law.

8. No rule or practice requires that a trainman be assigned to
work his entire tour of duty with only one conductor.
9. The First Division has denied claim for extra pay of Erie employees in Award No. 8155 when employe worked with more than one conductor. (Also see Awards Nos. 2768, 4900, 7959 and 8452.)

10. Rule 6(a) pertains to reductions of crews and does not refer to or cover the number of the trainmen to be assigned to a crew. (See Awards Nos. 4557 and 8102.)

11. First Division Award No. 8841 cited by the employees does not cover present case and in fact at the time of that complaint and prior thereto trains were operated with conductor and one trainman.

12. First Division Award No. 8441 cited by the employees does not support claim in this docket as that Award covered removal of baggageman from trains on Central Railroad of New Jersey and was based upon infringement of seniority rights of baggagemen which is not involved here.

13. In case covering claim due to removal of baggagemen, on Erie trains, the protest was denied in Award No. 8073.

14. In the absence of crew consist rule and crew unit rule, the First Division should not establish such principle on the Erie Railroad.

All of the data contained herein has been discussed or is known by the Brotherhood of Railroad Trainmen.

(Exhibits not reproduced.)

REBUTTAL BY THE BROTHERHOOD OF RAILROAD TRAINMEN
ERIE SYSTEM

This rebuttal is in connection with the following claims which are being submitted jointly to the First Division by the Brotherhood of Railroad trainmen and the Erie Railroad Company:

"Claim of Conductor G. F. Bogert, et al., New York Division, for one additional day at conductor's rate of pay for performing brakemen's work on assignment Trains 114, etc., December 2, 1946 and all subsequent dates service was performed.

Claim of Brakeman W. R. Lockwood, et al., for one extra day at passenger brakeman's rate of pay, December 2, 1946 and all subsequent dates.

Claim of Conductor W. A. Ditloff, et al., Greenwood Lake Division, for one extra day at conductor's rate of pay for performing brakeman's work on assignment 502, etc., December 2, 1946 and subsequent dates service was performed."

The Carrier takes the position that these claims are based on the theory that these suburban trains cannot be operated with a train crew of less than one conductor and two trainmen, and that when such trains are not so manned with a conductor and two trainmen, the conductor and/or trainmen on that train should be paid an additional day's pay. About 60% of the Greenwood Lake Division is single track, and if Rules 99 and 100 of
the Operating Department of the Erie Railroad Company were literally complied with, all trains would be manned by a conductor and two trainmen. However, our claims are based on the fact that program effective October 6, 1946 included 16 passenger assignments. One conductor assigned to each assignment. On two assignments, no rear or head brakeman were assigned. On seven assignments, only one brakeman was assigned, which made eleven brakemen short on 16 assignments. By taking all the trains operating on the Greenwood Lake Division, the assignments were put together so that mileage was extended to the remaining brakemen. Eleven brakemen were discontinued, which was a reduction of crew personnel and required conductors to perform brakemen’s work.

Award No. 8814 rendered by the National Railroad Adjustment Board, dated Chicago, Illinois, November 30, 1943, in that claim the Carrier took the same position as they are now taking in this claim. The findings in Award No. 8814 were as follows:

“The rearranged passenger service as shown by the record shows that 464.2 miles were taken off and that 16 assigned crews and one extra crew were used in this service, while the added service was 451.5 miles per week and only 14 crews were used in this added service, thus constructive miles were absorbed by the change. Crews can be reduced only in proportion to the reduction in train service. This change violated Rule 6(a).

The monetary claim is so indefinite that this is not understandable and therefore should not be allowed.

The time claims that have been presented in this case are clear and distinct.”

The Carrier takes the position that the programming, advertising and assigning of trainmen to trains in suburban passenger train service has, for over 50 years been handled in this same way, no complaint was ever made until about the time of reduction of passenger train service by order of the Director of the Office of Defense Transportation due to coal strikes. This is not so and the following awards will deny the position the Carrier has taken:

In 1940, the Carrier put a new passenger run on the Greenwood Lake Division. This run worked five days a week, Monday to Friday, inclusive. A request was made to have this run advertised and assigned, which the Carrier refused to do. This case was presented to the National Railroad Adjustment Board, Division One, Award No. 8047, Docket No. 15510 was rendered by the Board sustaining our position. Again, in 1942 the Carrier rearranged passenger service on the Greenwood Lake Division, eliminating 3 passenger crews. Protest was made but the Carrier refused to adjust the complaint claiming Rule 6(a) did not apply. This case was also presented to the National Railroad Adjustment Board, Division One, Award No. 8814, Docket No. 16854 was rendered by the Board sustaining our position.

The orders issued by the O.D.T. director at different times, which ordered passenger train service curtailed on coal burning locomotives, has no bearing on this claim, as all the trains which were cancelled were reinstated, advertised and assigned, with the exception of assignment 486-512, 497-484-515, which entire assignment was taken off and never restored. No protest was made to have this assignment restored, as the number of trains in this assignment and mileage run, the Carrier was within their rights and Rule 6(a) was not involved.

The Carrier admits the Erie Railroad Company operates extensive commuter service to and from the New York Metropolitan area. Our
figures indicate about one-seventh of these trains are handled by a motor
car and coach or coaches, and about 40 per cent of the trains carry express
and/or mail, baggage and newspapers.

We will agree that the population is shifting, but it is shifting from the
large cities which in many cases are about filled to capacity, and locating in
the suburbs along the route served by the Erie Railroad. In the year 1948,
two new housing units have been completed, one at Upper Montclair, N. J.,
that accommodates 110 families, one at Great Notch, N. J., that accommo-
dates 96 families. These places have all been rented and there is a large
waiting list. At Cedar Grove, N. J., 118 individual houses have been com-
pleted or under construction. As fast as these places are completed they
are sold or rented. At Pompton Plains, N. J., 165 individual houses have
been completed and many more are under construction. At other points,
many homes have been built and many more are under construction. It is
fair to assume that many of these people who locate at these points will
be commuters. All the trains which handle commuters are in short turn
around service. 60 per cent of these trains stop at about every station.
30 per cent stop at about half of the stations. 10 per cent stop at about
one-third of the stations. And the least stops made by any train on the
Greenwood Lake Division is Train 464, which makes 9 stops. There has
been no decrease in the number of trains operated or mileage run, but
there has been a reduction in the crew personnel.

The Carrier states they operate over 180 trains each day with the ex-
ception of Saturday and Sunday, but on pages 9 and 10 of their sub-
mission they show only 35 trains which operate either by steam or motor
car. Number of coaches handled and trainmen assigned. These trains
operate late at night or early in the morning. The remaining 145 trains,
the Carrier has admitted have as many as 11 passenger cars on some of
their trains. Many of the passenger trains are required to pick up or set
off cars loaded with express or mail while enroute.

The Carrier states that in 1929, on the Greenwood Lake Division, pas-
senger trains 431, 433, 505, 516, 517, 528 and 530 consisted of crews re-
duced from conductor and trainmen, to conductor only on motor car. This
we must deny, as trains 505, 516, 517, 528 and 530 operated between
Jersey City and Wanaque-Midvale with a steam locomotive and was man-
ned by a conductor and two trainmen. There was a short period of time
in 1929 during the depression when a motor car was operated between
Wanaque-Midvale and Sterling Forest, but at that time no other trains
were operated in the territory, and further Rule 6(a) states in part "Re-
duction in crews or increase in mileage in passenger service from assign-
ments in effect January 1, 1919 * * * " On January 1, 1919, we had 17
passenger assignments on the Greenwood Lake Division. In 1929, when
this motor car operated for a short period of time, this was one assignment
over and above the 17 assignments that were in effect on January 1, 1919.

Carrier’s Exhibits 2, 3 and 4, signed statements of G. L. Morgan,
C. G. Shafer and S. J. Snyder; S. J. Snyder has been retired for some time
and is no longer an employe of the Erie Railroad Company; G. L. Morgan
is in the hospital in a critical condition; and C. G. Shafer was not available,
therefore none of these men could be contacted in connection with Ex-
hibits 2, 3 and 4.

Program of Assignments, Greenwood Lake Division, effective Septem-
ber 24, 1939 show 16 assignments for the conductor and 32 assignments
for the trainmen. Although 6 assignments show vacant for the trainmen,
these assignments were advertised and assigned later, which proves in 1939
the trainmen were assigned and worked the same assignment as the con-
ductor:
<table>
<thead>
<tr>
<th>WEEKDAYS CONDUCTOR</th>
<th>SATURDAYS HEAD BRAKEMAN</th>
<th>SUNDAYS REAR BRAKEMAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. H. Bessinger</td>
<td>E. F. Holiday</td>
<td>Vacant</td>
</tr>
<tr>
<td>A. F. Wester</td>
<td>B. Wittnebert</td>
<td>W. A. McCurdy Note</td>
</tr>
<tr>
<td>P. L. Martin</td>
<td>W. J. Fallon</td>
<td>W. A. Ditloff</td>
</tr>
<tr>
<td>J. J. Friedich</td>
<td>W. R. Lockwood</td>
<td>J. A. Keyes</td>
</tr>
<tr>
<td>T. Romaine</td>
<td>C. A. Kean</td>
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<tr>
<td>A. Van Blarcom</td>
<td>H. F. Novick</td>
<td>Vacant</td>
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<td>S. J. Snyder</td>
<td>A. E. Lenk</td>
<td>J. McCollum</td>
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<td>F. W. Vanderhoff</td>
<td>A. J. Smith</td>
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<td>H. Udall</td>
<td>J. A. Hayes</td>
<td>J. W. Eslera Note</td>
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<tr>
<td>Exa. 537-Exa. CD</td>
<td>Vacant</td>
<td>A. W. Holley&quot;</td>
</tr>
</tbody>
</table>

At the change of timetable in 1939, there should have been 17 assignments but at this time the Carrier listed only 16 assignments and put on a passenger run which worked 5 days per week. Protest was made which the Carrier refused to grant. This protest was progressed to the National Railroad Adjustment Board, Division One, and Award No. 8047, Docket No. 15510, sustained the employees. In 1931 and 1939, we were forced in a revision of schedule by the Carrier, and in order to offset rules proposed by the Carrier, certain rule changes were requested by the B. of R. T. General Rule 1, Page 9, Rates of Pay and Rules for Trainmen and Yardmen effective October 1. 1931 states “The term ‘trainmen’ as used herein applies to ticket collectors, flagmen, train baggagemen and brakemen”, and there is no rule in the agreement which requires a conductor to perform the duties of a trainman. Awards 5196, 8047, 8441, 8814 clearly outlines that where work remains to be done, it may not be performed by others without invading their seniority rights. At the change of timetable in October 1946, on the Greenwood Lake Division, the Carrier did eliminate 11 trainmen's positions. The work is still there and is being performed by conductors and mileage was extended to the remaining trainmen.
These assignments are all in short turn-around service and very little time is allowed at the terminal before starting on the return trip. Many times, a train is due out of the terminal on the return trip before it arrives at the terminal. On arrival at the terminal, the engine or motor car must be turned, switches thrown, seats turned, flagging equipment to be transferred to the rear car, angle cocks closed on one end, opened on the other end, couple steam, air and whistle hose, test air brakes, adjust ventilators, give signals and any other work that is necessary.

The Carrier denies that effective October 6, 1946 on the Greenwood Lake Division, two assignments no head or rear trainmen assigned, seven assignments only one trainman assigned. Exhibit “A” presented to the Board in our original claim will sustain our position, that these trainmen were eliminated.

**ERIE RAILROAD COMPANY**

**REBUTTAL STATEMENT**

This is a rebuttal statement to the Employes’ submission in the claim of Conductor W. A. Ditloff, et al., Greenwood Lake Division, for one extra day at conductor’s rate of pay for allegedly performing brakeman’s work on assignment 502, etc., December 2, 1946 and subsequent dates that same service was performed.

The Carrier’s prepared submission covers all claims progressed by Conductors and Trainmen in connection with the crew consist of suburban passenger crews because the same question is involved in each of the claims and the organization has included the term “et al.” in each such claim that they are now progressing.

The Statement of Facts covering claim of Conductor W. A. Ditloff is listed as BRT Case No. 1223-47 and is cited on page 6 of Carrier’s submission.

The employes in their Statement of Facts now state:

“Program effective October 6, 1946 on the Greenwood Lake Division of the Erie Railroad listed 16 passenger assignments. On two assignments nor rear brakemen or head brakemen were assigned. On seven assignments only one brakeman was assigned, which made eleven brakemen short on 16 assignments.”

However the facts show that there were 16 crew assignments after October 6, 1946, just as there were 16 crew assignments prior to October 6, 1946. All trains, motor car or steam, were operated with at least one conductor and one trainman. A shortage of eleven brakemen on 16 assignments as alleged by these employes did not occur or exist on or after October 6, 1946. No rule in the agreement or other agreed understanding requires two brakemen to be assigned on each crew or that a brakeman must be assigned to or work with only one conductor during an entire trip or day’s work. All the assignments were properly advertised, bid in by the trainmen and assigned to trainmen in accordance with seniority and each of them fully understood the program of the assignment to be worked.

The Employes state that there was only one brakeman assigned to train 502 and extra train which extra train consisted of four empty coaches and express car and that conductor was required to assist his brakeman. They infer a brakeman was discontinued from these trains October 6, 1946 and that the conductor was thereby required to perform the work of his brakeman. This statement is not a fact because train 502 and the extra train were operated and manned with a conductor and one brakeman for same period of time prior to October 6, 1946.
The records show that the conductor and brakeman on these trains performed exactly the same work on the assignment after October 6, 1946 that they did for a long period prior to that date.

In the statement of facts the Employes assert:

"Conductor is required to assist the brakeman in transferring the markers, flagging equipment and other tools that are required."

The Conductor is not programmed or required to assist a brakeman on this assignment. A brakeman is assigned on a crew and this assignment to assist the conductor and to work under the conductors supervision and direction. When train 502 of this assignment arrives at Jersey City passenger station, it pulls in on track 9 at 5:36 A.M. on which track the extra, which is part of the assignment, has been previously made up. The trainman takes the two markers with his flagging equipment and walks with them a distance of the length of one engine and seven cars to place the markers and flagging equipment on rear of the extra, thereby consuming from 4 to 5 minutes. There are no other tools for the trainman to move. A car inspector couples the engine onto the extra and controls the air test. After a Jersey City yard crew removes equipment of train 502 from track 9, the extra then departs from Jersey City for Forest Hill at 5:45 A.M. and makes no scheduled stops between Jersey City and Forest Hill. There is absolutely no necessity to employ another brakeman to transfer two marker lanterns and the standard small flagging equipment container from one train to another, a distance of the length of one engine and seven cars and consuming at the most 5 minutes time, nor is it necessary for conductor to assist the brakeman as there is no assistance required.

Then the Employes assert while brakeman sets off express car at Forest Hill, the conductor is affording flag protection against train 503. The extra handles no passengers and makes no scheduled stops between Jersey City and Forest Hill. Train 503 leaves Jersey City at 6:03 A.M. or 18 minutes after the extra train and makes all station stops. In setting off the express car at Forest Hill, crew consumes 5 or 6 minutes throwing one switch, backing train into siding and pulling on uncoupling lever to cut off express car from rear of train. No other work is performed. If Conductor Ditloff does any flagging and does not set off the car, the amount of effort is practically nonexistent. After leaving express car at Forest Hill, Conductor Ditloff runs as train 403 with the four coaches from Forest Hill to West Orange. There is no complaint about the crew consist for the remainder of the assignment. Surely it should not be held an additional brakeman should be employed on this crew to simply back a car into a side track.

The Employes in their Position state:

"The organization contends that prior to the rearrangement of runs October 6, 1946, there had been changes made in connection with crews and mileage run, but taken as a whole, there was one conductor and two brakemen assigned to each passenger assignment."

The changes made October 6, 1946 were the ordinary changes in passenger assignments made each year when the summer timetable expires and the fall timetable takes effect. Train times are changed when daylight saving time ends; some trains handle less passengers, some trains handle more passengers, different combinations of trains are made to make up assignments, some trains are eliminated and some are added. Such changes in the train program have occurred at timetable changes as far back as anyone remembers so that changes October 6, 1946 were not new and were in line with past programs and to meet requirements.

The statement "taken as a whole, there was one conductor and two brakemen assigned to each passenger assignment" is in error. The fact is
that as far back as 1890 there were suburban trains operated with a conductor and one brakeman as illustrated and confirmed by statements of passenger conductors who worked in this service submitted as Carrier's Exhibits Nos. 1, 2 and 3, and the statement of Greenwood Lake Division passenger trains operated with conductor and one brakeman shown on page 15 of Carrier's submission. Train 502 and extra train operated with conductor and one brakeman for a long period of time prior to October 6, 1946 and no change was made in manning of these trains on October 6th that would cause Conductor Ditloff to perform any additional work on this assignment.

The Employes in their Position state:

"The number of assignments and mileage run subsequent to October 6, 1946, was the same as prior to October 6, 1946, but the management eliminated eleven brakemen, thereby increasing the mileage to the remaining brakemen. Also requiring the conductors to perform brakeman's duties."

There is no evidence offered by Conductor Ditloff in this case in support of this statement which we assume is made by him. No unusual change was made on October 6, 1946 to eliminate brakemen's positions, increase the mileage to the remaining brakemen or to require the conductor to perform brakemen's duties. In fact train 502 and the extra on which Conductor Ditloff worked and claims an additional day was operated by a conductor and one brakeman prior to October 6th just the same as they worked after that date. There was no changes in the manning of these trains at all.

Employes state in their Positions:

"It is the contention of the organization that it is not within the rights of the management to violate schedule rules in placing in effect changes mentioned in statement of facts."

This statement is not supported in the record and the Carrier denies that there was any wholesale reduction in brakemen's positions October 6, 1946, even so, there can be no violation of schedule rules because there are no schedule rules requiring any specified number of brakemen on a train or limiting mileage which a brakeman will operate.

We have fully demonstrated in Carrier's submission that some passenger trains have one trainman and some up to four trainmen to help the conductor based on business and passenger traffic needs. This practice of manning these trains has been in effect for a long period of years in suburban territory without protest and there is now and never was a rule to limit or regulate work of conductors and their trainmen.

The Employes in their Position state:

"The duties of the brakemen who were removed are still there to be performed exactly the same as they have been for approximately forty (40) years past."

and then give a brief recital of the duties of brakemen.

Due to the continuing reduction of passengers handled, cars in trains, changes in equipment and methods of operation in the past forty years, there has been a similarly continuing reduction in the duties to be performed on these passenger trains, thus reducing in proportion the number of passenger brakemen needed to assist the conductor on such trains. On each of the suburban passenger trains in question, there was at least one brakeman to assist the conductor.

The agreement with the Employes does not outline the exclusive duties of a trainman, all such train duties are properly under the jurisdiction and
direction of the conductor in charge of the train on which the trainman is working.

The Employes in their Position state:

"Since October, 1946, when only one brakeman was assigned to many of these assignments, it has become necessary for the conductor to perform many of the duties formerly performed by the brakeman when two brakemen were assigned."

As stated before only one trainman was assigned to train 502 and the extra prior to October 6, 1946. There has been no change in the duties of conductors and brakemen from what they performed prior to October 6, 1946, and what they performed after October, 1946. As indicated in the Carrier's original submission, many trains during the years have been operated with one brakeman to assist the conductor. Certainly, the small amount of time consumed in performing the duties can be performed by the trainman assigned, especially when it is taken into consideration that the trains have only a motor car or one or two passenger cars and such duties are not constant or performed with any degree of regularity. There is, necessarily, a certain amount of intermingling and overlapping of work of conductors and trainmen in train service operation.

The First Division have denied many similar claims that such work was exclusive duties of trainmen such as in Awards Nos. 1519, 1949, 2285, 4012, 5293, 5320 and 12208.

The Employes have referred to General Rule 1 which provides that the term "trainmen" as used in agreement applies to ticket collectors, flagmen, train baggagemen and brakemen and state that it does not include a conductor. This rule is for the purpose of showing that these occupations are trainmen when used in the agreement rules. Nothing in the agreement, nor can the Employes show by practice, agreed upon exclusive duties of a trainman. Trainmen's duties are necessarily intermingled with conductor's duties whom trainmen on these suburban trains are employed to assist.

The Employes have referred to Operating Department Rules 99 and 100. These rules have not been negotiated with employes or are they part of the agreement with the employes. They cannot and should not be used for penalty pay purposes such as the claim in this docket. While they do define some of the duties to be performed, they by no means define all work done by conductors and their trainmen. Other rules prescribe that trainmen are to assist conductors with their work and that they perform such work required of them by the conductor. Rule 848 under heading "Passenger Trainmen" supplements Rule 99 and states:

"848. He must immediately go back to protect the train, where the rules require it, without waiting for signal or instructions to do so. When more than one Trainman is used on a train the rear Trainman must perform this duty, and the front Trainman must in like manner protect the front of the train."

The above quoted rule recognizes that some trains may be operated with one trainman.

The Employes has also referred to:

1. Supplement No. 12 to General Order No. 27
2. Decision numbers 2329, 2330, 2331, 2332, 2333 of the United States Labor Board which will be found in Volume No. 5 issued April 9, 1924
3. Decisions of the National Railroad Adjustment Board, No. 1, Awards 143, 163, 708, 2521, 5196, 8441 and 8814.
General Order No. 27 was issued May 25, 1918 by the Director General during Federal Control respecting wages, hours and other conditions of railroad employees. Supplement No. 12 thereto was issued on December 2, 1918 to define the duties of passenger brakemen, in order to distinguish them from other classes of employees, to apply the rates of pay stipulated in General Order No. 27, and had the effect of paying negro brakemen the white man's rate. Nothing in that Supplement can be construed as prohibiting conductors, collectors, baggage men or flagmen from performing any of the duties set out therein. In any event, General Order No. 27 and Supplement 12 were superseded by the agreement of October 1, 1931, and the operating rules of the Railroad Company promulgated after Federal Control. Consequently Supplement 12 to General Order No. 27 is without authority for the Employes.

Decisions 2329, 2330, 2331, 2332 and 2333 of the United States Labor Board covered claims of Order of Railway Conductors and Brotherhood of Railroad Trainmen against Missouri-Kansas-Texas Lines account replacement of passenger trainmen with negro porters. That is not the question involved in the present case. Dissenting opinions were made against the Decisions. The Decisions should not be used as a precedent on the present claims.

First Division Award No. 143, Trainmen vs. Atchison, Topeka and Santa Fe, covered protest of 12 baggage men because their services were discontinued on trains Nos. 3 and 4 and barbers and porters handled baggage. It was held train service employees should be used to perform the baggage work. There is no claim in the present case that baggage men were discontinued or that work was given to other than train service employees. Award should not be used as a precedent here.

First Division Award No. 163, Conductors and Trainmen vs. Oregon Short Line Railroad Co., covered claim of train baggage men for time lost account train 35 operated with baggage car without a baggage man in charge. It was held a baggage man should be used. There is no claim in the present case that baggage man was removed or claim of baggage man for time lost. Facts and circumstances are not similar and this award likewise should not be used as a precedent here.

First Division Award No. 708, Conductors and Trainmen vs. Colorado and Southern Railway Company, covered claim of Trainmen for time lost account discontinuance of brakeman on trains 81 and 82 and having baggage man perform the service. Rule 1, Note B, provided for crew consist on these trains. It was held trainman should be used where trainmen's services were required. There is no claim in present case that baggage men were performing trainmen's work or claim of trainmen for time lost. Facts and circumstances are not similar.

First Division Award No. 2521, Trainmen vs. Louisville and Nashville Railroad Company covered claim of passenger trainmen for time lost account porter used on passenger trains in lieu of trainman. It was held a brakeman should have been used in lieu of porter but that findings do not compel the use of additional personnel in a passenger train crew when, in the judgment of management, same is not required. Facts and circumstances are not comparable.

First Division Award No. 5196, Trainmen vs. Central Railroad Company of New Jersey, covered claim of baggage men for time lost account baggage men discontinued and other employees performing the service. It was held baggage men should have performed baggage service, but no attempt would be made to designate to the number of trainmen that must be used on any passenger assignment. Facts and circumstances are not similar.

First Division Awards Nos. 8441 and 8814 are fully covered in carrier's original submission on pages 15 and 16 and we explain why such awards should not be used as precedents in the present case.
You will observe Conductor W. A. Ditloff is making a claim for an additional day for service performed on Train 502 and extra train or the same trains on which Brakeman W. R. Lockwood is making a claim for an additional day at brakeman's rate, which claim is also before the First Division in another docket.

The Employes have not substantiated their claim by Conductor Ditloff, et al., for an additional day's pay at conductor's rate by rules, practice or precedents, and claim should be denied.

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

The record shows that over a period of many years it was not unusual for a trainman to work with more than one conductor within a day's assignment. No rule has been cited providing that a trainman be assigned to work his entire tour of duty with only one conductor. The evidence is that although attempts had been made through negotiations to secure a crew consistent rule, the applicable agreement clearly does not contain such a rule. In the absence of a rule this Division has no authority to determine the number of men to be used in a crew.

Rule 6 (a) does not prohibit a reduction in the personnel of a crew and the evidence is that since 1919 there have been numerous reductions in the size of crews. Settlements on this property and long established past practice require a denial of the claim.

**AWARD:** Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April, 1952.