International Brotherhood of Electrical Workers®

Manual for

HANDLING CLAIMS AND GRIEVANCES IN THE RAILROAD INDUSTRY

Updated July 2009

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Guide for the Local Committee Chairman

FOREWORD

Introduction by International President Edwin D. Hill

FOREWORD

A chain, as you know, is only as strong as its weakest link. And that goes for unions too. As a Local Chairman or General Chairman, you are one of the most important links in a union. You are the link between the workers, between the workers and management, and between your Local and other levels of the Organization. As such, you must be a strong link in order that the chain stays strong. For it is with this strength, and only through this strength, that we are able to continue to give our members the representation they justly deserve. With this in mind, we are providing you with this Grievance and Discipline Training Manual for IBEW Railroad Local Chairmen.

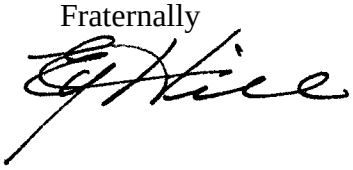
While you may think that handling grievances and discipline is the same from industry to industry, it is actually a bit different in the Railroad industry. This is because Rail Workers are covered under the Railway Labor Act, and not the National Labor Relations Act, each providing its own resolution dispute procedures. This manual will guide you through the steps of progressing grievances and handling discipline under the Railway Labor Act and your respective agreements for the railroads on which your members work.

The job you've taken on is not an easy one and is not to be taken lightly, for you are the ones who assure that the agreements are enforced, and you are the ones who protect our members on a daily basis. Hopefully this manual will be helpful in your everyday encounters with your fellow workers and management.

Now back to the link in the chain premise for a moment. When the union is successful in winning claims, grievances, and discipline cases it is because of the hard work of many, from the Local Union representative, to the General Chairman, to the International Representative. But none of the work is more important to winning a case than the work of laying the foundation for the case, the ground-laying work done by *one of the most important links in the chain, the* **Local Chairman***!*

Best wishes on this journey!

Fraternally



Edwin D. Hill
International President

SECTION 2

Guide for the Local Committee Chairman

A FEW GOOD WORDS OF ADVICE

Some Do’s and Don’ts of the Trade

LOCAL COMMITTEE CHAIRMAN

You're Mr. Union now. You have a special relationship to all the workers on your property whose battles you'll fight, whose causes you'll sponsor.

When the workers and research studies bear this out, thinks of the local union, they relate it to you. You are their voice, their contact, the person who gets things done. The opinion they have of their local is the opinion they have you. If you rate high with them the local rates high, the IBEW rates high, unionism rates high.

It's up to you to measure up. You were appointed to act as their representative. They see you on the job every day. They talk with their co-workers. They know if you're good. They know if you're bad. Don't let them down.

1. Be knowledgeable, but don't act like a know it all.
2. Be intelligent, but don't be a snob.
3. Be aggressive, but don't carry a chip on your shoulder
4. Be well-informed, but be ready to admit it when something comes up that you don't have the answer to. The important thing is to know where to go to get the answer, get it and inform the members.
5. Be fair minded and consistent – what's right for one is right for all.

Let management know that you're all of those things. But don't tell them. Show them. They will find out fast that it's a waste to try to intimidate or push you around.

Yes, you're Mr. Union now … and you have the strength of the union behind you. Use it. Don't abuse it.

When labor and management first sat down to hammer out working agreements, they dealt only with bread and butter issues – wages, hours, working conditions. But labor soon found out that signing on the dotted line wasn't enough. Unionists learned, the hard way, that contracts need enforcing.

So the Local Committee system evolved. At first a Chairman was mainly a policeman, there to preserve the law and order spelled out in the Agreements at the local level.

And for that he sometimes has to be judge and prosecutor, too.

The Agreement is your bible. Read it. Study it. Learn what's in it. Become as familiar with it as you are with your own name.

When an Agreement is signed, it is literally nothing more than a piece of paper. It is up to you, the Chairman, to give it life, give it meaning. It is up to you to translate words into deeds. You're the person who sees to it that every worker in your department receives every penny, every break, every benefit the Agreements provide is theirs.

A Local Chairman should always listen to a member who thinks he has a grievance. If the member does not have a legitimate grievance, then the Local Chairman should fully explain to the member why, in his opinion, the grievance is not a proper one.

THINGS TO DO and THINGS NOT TO DO

1. Investigate and obtain the facts.
2. Don't bypass the foreman.
3. Stick to the facts.
4. Control your emotions, especially your temper.
5. Don't be talking when you ought to be listening carefully to what others say.
6. Take notes and present them to the General Chairman if a claim has to be appealed to that office.
7. Don't bluff or threaten.
8. Don't allow yourself to be sidetracked or stalled.
9. Don't horsetrade.
10. Don't argue with the Claimant in front of management.
11. Keep the Claimant up-to-minute on the progress of his claim or grievance.
12. In cases where the Claimant has been furloughed, suspended or dismissed you should advise them to notify your office and the Carrier of any changes in their address and telephone number.
13. Handle every case equally.
14. Be objective.
15. Learn how to say no, especially to members.
16. Know when to be a judge and when to be a prosecutor; you're a judge when a worker places a complaint before you and you then have to decide if it's valid or not; you're a prosecutor presenting the union's case after that.
17. Don't short circuit the claim and/or grievance procedure.

SECTION 3

Guide for the Local Committee Chairman

Questions Relevant to the Local Union and Railroad Contract

The following six (6) pages contain certain questions that you should know the answers to in order to properly police and enforce the contract you and your members are working under. Not only should you, the Local Chairman, know the answers to these questions, you should also ensure that your Assistants and Shop Stewards know this vital information. You may use this information to better educate your members.

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet A)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. Is there a steward's clause in the contract?

2. Are there restrictions on bargaining unit work being performed by nonbargaining unit personnel? Under what circumstances, if any, can nonbargaining unit personnel work?

3. What is the scope of the agreement? Who is included in the bargaining unit? Who is excluded?

4. What is the probationary period before one becomes a permanent employee?

5. What type(s) of seniority applies to promotion, layoff, transfer, vacation scheduling, etc.?

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet B)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. How many days does an employee have in which to initiate a grievance?

_____

_____

_____

_____

2. What are the steps in the grievance procedure?

_____

_____

_____

_____

3. Is seniority retained, or does it accrue, during layoff or leave of absence?

_____

_____

_____

_____

4. Do employees have bumping rights in the event of a layoff? What are the requirements?

_____

_____

_____

_____

5. Does the agreement provide superseniority for stewards and/or union officers?

_____

_____

_____

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet C)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. What recall rights do employees have?

2. Are there restrictions on the distribution of overtime? Do employees have a right to refuse overtime?

3. What procedure is followed when a holiday falls on a Saturday or Sunday or during vacation?

4. How is vacation scheduled? Is there a restriction on the number of days that can be taken at one time?

5. Are there provisions in the contract for paid time off for (1) sickness, (2) jury duty, (3) voting time, (4) death in family, or (5) other reasons?

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet D)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. **Are there provisions pertaining to safety and health? Are workers who report unsafe working conditions or who refuse to work because of unsafe practices protected by the terms of the agreement?**

2. **Does the union have the right to honor the picket lines of other unions?**

3. **Is advance notice required before a layoff and/or discharge? How much?**

4. **Is there a provision for dues checkoff? If so, what are the requirements?**

5. **For what reasons can a leave of absence be taken?**

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet E)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. **What form of union security does the contract call for? If "union shop," how many days before the employee must join the union?**

2. **Does the contract provide for layoff and/or termination benefits?**

3. **Does the contract include special pay provisions for (1) hazardous work, (2) travel, (3) tools and equipment, (4) meals, or (5) other reasons?**

4. **Does the contract provide for any special benefits, such as (1) a Christmas bonus, (2) profit-sharing, (3) an attendance bonus, (4) employee discount, or (5) other special benefits?**

5. **Does the agreement provide for an apprenticeship and/or training program or other educational programs?**

QUESTIONS RELEVANT TO THE LOCAL UNION/COMPANY CONTRACT

(Worksheet F)

NOTE: It is not necessary to write in the answers to the questions listed below. Instead, in the blanks following each question, cite the relevant IBEW contract article and section number.

1. **What type of wage progression is called for in the agreement: (1) automatic, (2) merit, or (3) combination?**

2. **Do the parties to the contract have the right to strike or lock out? Under what circumstances?**

3. **Is a minimum amount of time necessary before shifts can be established? Do employees have a preference of shift assignments?**

4. **List the health and welfare provisions included in the contract.**

5. **Is there a job evaluation system? Explain briefly.**

Guide for the Local Committee Chairman

Guide for Handling Claims and Grievances

This section provides advice for gathering information, developing the claim, writing the claim, and progressing the claim. Included in this section are:

a. Introduction

b. The Who, What, Where, Why When and How for Grievance/Claim Filing

c. Suggested Aids in the Progressing of Grievances and Claims

d. IBEW Grievance Form (IBEW Form 49), Facts Collection Sheet, and Power of Attorney.

e. Sample Grievance/Claim

f. Sample Claim and Letters for Progressing Claim to Various Levels Following Initial Denial

g. Summation

SECTION 4 (a)

Introduction

Guide for

Handling Claims and Grievances

Before writing and filing a claim or grievance, you must first ascertain if a claim or grievance is warranted. In order to do this, you must initially obtain necessary relevant information pertinent to the claim or grievance at hand. These facts are known as the **"WHO, WHAT, WHERE, WHY, WHEN, AND HOW"** of grievance handling, and the information you need is listed on the page titled as such. You should gather and save this information on an IBEW Grievance Form (IBEW Form No. 49 available from the IO), and on the "Facts Collection Sheet", samples of which are included in this manual. Your best sources for this information are your Sisters and Brothers on whose behalf you are filing the grievance. Ask them pertinent and probing questions, and concentrate on the information that will be vital to explaining your claim and supporting your position. You should also discuss the situation with any witnesses the grievants identify. Be certain to write this information down so that it is readily available when you go to author the claim. Once the information is gathered, then go to the layout we have provided for you and fill in the blanks.

You have in front of you a "Sample Grievance" with the basic layout for a claim or grievance (Dispute: Claim of Employees, Employees Statement of Facts, Position of Employees). The format is highlighted in blue. And even though grievances are filed over many different issues, such as overtime, contracting out, discipline, etc., the basic format should always remain the same. In order to file a proper claim, it is recommended that you use this format. As a note, the format you have in front of you with which you will initiate the claim is basically the same format required by the National Railroad Adjustment Board when we finally file our cases with the Board for final disposition, or when your General Chairman files a case with a Public Law Board or Special Board of Adjustment. This format, and the information you enter in it, will follow this case from the beginning to the end. This format makes it simple for the person you file the grievance with to fully understand what you are talking about (not that they will agree with you) and what remedy you are seeking. It also makes it easier for your General Chairman to understand and add information to the grievance.

Yes, it's really that simple. Just follow our suggested procedure, and once you do it a few times it will become almost automatic to you. Some important things to remember when filing grievances:

- Try to be brief and to the point while at the same time being as thorough as possible. Be certain that what you have written is complete and accurate, and if you have supporting written evidence to substantiate your claim, if possible make it part of the original claim and file. The way a claim is initially presented can mean the difference between winning the case or losing it on appeal.

- Avoid being redundant and repeating yourself.

- When quoting rules that have been violated, don't try to cover your claim or grievance with every rule in the book. Try to pick only the rules that specifically apply to your grievance.

- Many grievances and claims are lost because they were not filed timely, were filed to the wrong person, were vague, did not list specific Claimants, or were not appealed timely. Unfortunately, in these cases the claims are dismissed as procedurally defective and merits of the cases are never even considered. To avoid this you should:

  - Name the Claimant or Claimants, or a specific group of employees who can easily identified.

  - Again, don't be vague, but be as specific as possible.

  - Be timely with the claim. Most agreements provide for filing of a claim within 60 of the violation by the Carrier. However, the time limits may vary depending on the railroad, and they may also be shorter when filing a grievance appealing discipline. Be sure to check your individual agreements for the time limits. Under the rules of the National Railroad Adjustment Board, time limits are recorded as the "postmark" on the envelope the claim was mailed in. You should either hand-deliver the claim to the appropriate management person and have it signed for, or mail the claim certified mail so that the Carrier will have to sign for it and you have a receipt for mailing it. But to avoid time limit disputes, file the claim as soon as possible following the agreement violation.

  - Make certain who the proper Carrier representatives are with whom to initially file claims and grievances, and also whom to file the appeals with.

A word of caution. Once you have fully investigated a claim or grievance, if the information you gathered does not indicate that the Railroad has violated the agreement or that a worker has been aggrieved, then don't be afraid to tell the person who wanted the claim filed that he/she does not have a legitimate claim or grievance. This usually works out much better than leading the person or persons on that they do have a good claim and then having to inform them at a later date that their claim lacks merit. Of course, when you do tell someone that you have decided not to file a claim on their behalf, you should also inform them that they have a right to file a claim on their own behalf, and you should assist them to the point of advising them of the proper procedure.

One last word of advice. Try to establish working relationships with the people you have to deal with in the grievance handling process. Get to know these people and how they operate., and let them get to know you a bit. No, you don't have to be friends with your adversaries. But establishing some kind of working relationship with them seems to help many matters get settled before they reach the formal grievance-filing stage.

Remember, we are here to help you. If you need assistance in writing a claim or grievance, you may contact your General Chairmen, or you may contact the office of the IBEW Railroad Department.

SECTION 4 (b)

The Who, What, Where, Why, When and How for Grievance/Claim Filing

The Who, What, Where, Why, When, and How for Grievance Filing

Dispute: Claim of Employees:

1. **WHERE** the rule violation occurred. **WHEN** the rule violation occurred. **WHO** – Which railroad, and the management person involved, violated the agreement. **WHAT** agreement was violated (at this point usually use "the controlling agreement). **WHO** – If someone from another craft was assigned to do the work of an IBEW member, or an IBEW member was improperly called for overtime, name the person or persons involved. **HOW** – What improper action did the Carrier take. **WHO** is the IBEW member entitled to the claim, including the person's work location and position (if this is a claim for pay, state that he/she was available and willing to work).

2. **WHO** the claim is for, who you want compensated. **HOW** you want the dispute resolved, **WHAT** remedy you want, i.e. straight time pay or overtime pay, decision overturned, returned to service, etc. If you are seeking to have a disciplined employee "made whole" you should state "**returned to service with seniority rights unimpaired and made whole for any and all losses incurred including, but not limited to: straight time pay, overtime pay, vacation benefits, health and welfare benefits, Railroad Retirement benefits, and any other benefits he would have earned during the time held out of service**. **WHY** this person should be compensated.

Employees' Statement of Facts:

Under this section, state exactly what transpired. Stick to the facts as you know them, do not argue your position here. Again list **WHERE** the violation occurred, **WHEN** it occurred, **WHO** the management person was responsible for the violation, **WHO** the person was that performed the work, and **WHAT** the responsible management person ordered done.

You should then state exactly **WHAT** work the person did that was in violation of the agreement and **WHEN** the violation took place (date/dates and approximate times).

Position of Employees:

This is where you argue your case. First reiterate the **WHO**, **WHAT**, and **HOW** listed in paragraph 1 of the "Claim: Dispute of Employees." Then state and quote in pertinent part **WHAT** rule or rules were violated. When discussing work that you are claiming belongs to the IBEW, after quoting the applicable rules, you should state that the work is "work that contractually belongs to, and has traditionally and historically been performed by, Electricians." Finish by stating one last time **HOW** the rule or rules were violated, **WHY** the Carrier's actions were in violation of the agreement.

SECTION 4 (C)

Suggested Aids in the Progressing of Grievances and Claims

SUGGESTED AIDS IN THE PROGRESSING OF GRIEVANCES OR CLAIMS

The following was prepared to assist you in obtaining the information needed to successfully progress a claim or grievance. It must be understood that each claim or grievance is a potential Board Case, and from the start should be prepared as such.

There are five things that should be considered in preparing a claim or grievance: **WHO**, **WHY**, **WHERE**, **WHAT** and **WHEN**.

WHO: is involved? Name, headquarters and position.

WHY: is it a grievance or claim? What rule has been violated?

WHEN: did it happen? What date and time of day did the grievance or claim take place or begin?

WHERE: did it happen. Name of town, shop or repair track.

WHAT: is the grievance or claim and what are you asking for? Tell what kind of adjustment you need to correct the condition. BE SPECIFIC!

BACKGROUND FOR INITIAL HANDLING

Far too many grievances and claims are denied because they are decided on the basis of how they were handled and not on the basis of their merits. To insure any chance of success in the handling of claims or grievances, the following steps should be used and are outlined for your guidance:

1. Proper Development of the Claim.
2. Proper Development of Employes' Facts.
3. Proper Development of Employes' Position.

When a claim is presented to the Local Chairman, he should investigate it thoroughly and collect all the evidence to support the claim. He should never name just one rule, but should say that "the Agreement, and particularly Rule ___, has been violated". This leaves the way open for the General Chairman to cite other rules later.

The difference between winning and losing an appeal in a claim or grievance may depend on the completeness and accuracy of what is written and supported on the first presentation of the claim or grievance. It must always be remembered that the case may have to be appealed by the General Chairman and he knows only what is told to and provided to him.

In handling of a claim, additional particulars should be placed in the file, depending on the nature of the claim. Several items are listed below to show what is helpful:

Rate of pay of the Claimant.

Assigned rest days - assigned daily working hours.

Seniority dates when seniority is involved.

When ambiguity in a Rule is involved, state how the Rule has been applied.

The Local Chairman must keep in mind at all times the 60 day limit that was agreed to in the 1954 National Agreement. The Local Chairman must present the claim within 60 days and, if the claim is denied, it must be appealed within 60 days. When a claim is turned over to the General Chairman, the same 60 day time limit for appeal applies to him. In forwarding copy of the original claim and the denial to the General Chairman, all pertinent information should be given in a letter of transmittal which would enable him to have a complete understanding of the claim and reasons thereof. This should be done immediately upon receipt of denial.

DEVELOPING THE CLAIM

In the development of a claim, the Local Chairman should include the following steps:

1. In the first part, state that the agreement has been violated - explain fully how and why it was violated - be sure to include the dates - when, and location - where the violation occurred.

2. In the second part, state the remedy sought for such violation, the Claimant's name, the dates claimed, and if it is a continuing claim until corrected, be sure to so state in the claim.

The names of all Claimants and the amount due each should be included in the claim as we are only excused from furnishing this data when it is not ascertainable. The claim must be dated and, if it is a monetary claim, state if the amount is straight time or overtime, and each claim should be submitted separately.

Many claims have been denied because:

1. The time limits and proper appeal procedure have not been followed.
2. The claim has been vague.
3. The Claimant(s) was not named.
4. The substance of the claim is changed.

For the foregoing reasons, the actual merits of the claim never enters the picture. They were decided and lost because the claim was not properly developed.

PROOF OF ALLEGED VIOLATION

The next step is proper development of the facts and proof of your facts when necessary. They must be the truth. If the Carrier disagrees on the facts you must prove them and use that proof with the Carrier. If a conflict on the facts still exists when the case is before a Referee and, unless you have the proof and have used it with the Carrier, the Referee will deny your claim. If you cannot produce documentary proof of your facts, write the Carrier requesting a joint check of the facts, making your request part of the record in your case. If there is a joint check, use witnesses wherever necessary. If the Carrier refuses, the record should so state, and you should then contend that the Carrier has something to hide by their refusal. Cases have been won on that basis. However, you must make this contention in handling the case with the Carrier on the property.

In developing the claim, you must always cite the rules of the agreement that were violated. It is not enough to just state that the agreement was violated. Quote the exact rule, establish the facts with proof - setting forth how and why the agreement was violated. This simplifies convincing a Referee to sustain the claim.

Because the Organization is generally the originator of the grievance or claim, the burden of proof is on us. All assertions must be proven, even if the Carrier does not challenge the assertion. Carriers who withhold challenging our assertions until the case is before the Board, make it too late for us to produce the necessary proof so we must prove our case on the property.

OTHER CRAFTS PERFORMING WORK

In a claim for our work performed by other crafts, secure a written statement from whoever performed the work, stating the work performed, where it was performed, the date it was performed, and the time it took to perform it. If this cannot be secured from the other craft, then secure such a written statement from someone else who observed the work being performed. Without such a written statement, your assertions will be denied by the Carrier and, undoubtedly, denied by a Referee. Such written statements or records should be secured as soon as possible after the violation occurs.

Under the time limit rule, we have 60 days to make the original claim and all possible written evidence should be secured first, so that the original claim will be complete and proper. All too often a rushed, incomplete and piecemeal job on securing evidence only results in withdrawn claims - or - the claim is left to die under the time limits. In many instances the claims have merit but the original claim was incomplete or missing altogether. We know when there is a violation, but this is not enough. We must handle each case before someone doesn't know that a violation occurred until we prove it. Therefore, our claim must be complete, with enough evidence to prove our case.

Furthermore, many claims result in only partial success because the entire remedy we seek is not fully spelled out.

TIME LIMITS - EMPLOYES

Make certain that your claim is within the time limits. Failure to observe the time limits will only result in barring your claim. The decision would be based on your violation of the time limits. The merits of your claim would not be considered. On the other hand, the Carrier must also comply with the time limits. If the Carrier does not comply with the time limits, you can expect the claim to be allowed without the merits of the claim being considered.

You must file your claim within 60 days of the occurrence to the first officer of the Carrier designated to receive claims. In discipline cases, file within 60 days to the officer of the Carrier assessing the discipline, or as your particular agreement may provide.

Each officer of the Carrier who declines your claim should be advised, in writing, that you reject his decision and that you are appealing that decision to the next highest officer. This must be done in each step of your appeal.

Each appeal to each successive officer of the Carrier must be made, in writing, within 60 days from date of Carrier denial.

We have nine (9) months from the date the highest designated officer of the Carrier denies a claim to make proper submission to the Adjustment Board. Therefore, it is essential that upon receipt of denial by the highest designated officer, that the General Chairman prepare his submission and send two copies of the proposed submission, together with two copies of all correspondence exchanged on the property, to the office of the Vice President at least three (3) months prior to the deadline date for filing it with the appropriate Board for adjudication.

Any deviation in the foregoing steps may result in an objection by the Carrier and our claim could be barred.

TIME LIMITS - CARRIER

In the event that a Carrier official does not observe the time limit in denying your claim, you must be careful in your next step of appeal. You must appeal by first insisting that your claim should be allowed due to the Carrier's time limit violation. Then follow this with your complete case. By appealing on both counts, if your claim is not allowed by the Carrier's time limit violation, it can still be decided on its original merits. Cases have been lost because the merits were ignored as soon as there was an alleged Carrier time limit violation. The time limit violation was not sustained, and the facts of the claim were not considered because they were not presented in every step of the appeal. Also, in the appeal procedure, make certain the Carrier gives you the reasons for the denial. If a Carrier official denies your claim without furnishing sufficient reasons for the denial, we must raise an objection in our next step with the appeal. Cases can be won by improper handling by the Carrier, if we include it in our correspondence exchanged on the property.

SUGGESTIONS FOR FILING INITIAL GRIEVANCES OR CLAIMS UNDER THE CONTROLLING SHOPCRAFT AGREEMENT

When you first become aware of a possible violation of the Agreement, you should develop the five "W's". We are going to develop and progress a claim from the beginning up to the presenting of it to our International Vice President's office.

The Local Chairman was informed that a Carman overhauled a generator. As a result of this information, they investigated and found that the five "W's" were as follows:

WHO: Electrician Harold O. Gray, (Railroad identification number) Headquartered at Chicago, Illinois.

WHY: Rules 2 and 5 (b) were violated

WHEN: July 1, 1976 from 9:00 a.m. to 5:00 p.m.

WHERE: Chicago Coach Yards, Chicago, Illinois

WHAT: Carman H. Green overhauled a generator on car "Point Ridge". Due to this violation, Electrician Gary should be paid 8 hours at the overtime rate of pay.

With this information, a written claim has to be prepared in keeping with the time limits established in your Agreements. Due to the fact that most Carriers are covered by the August 21, 1954 Agreement, we will progress this claim in keeping with that Agreement; which means that the claim should be filed as soon as possible, but has to be filed within 60 days from July 1, 1976.

Attached is a sample claim based on the five "W's" shown above.

You should have proof that the claim was received by the Officer it is sent to. On this sample claim we showed it being sent Certified Mail, Return Receipt Requested.

IBEW Grievance Form (IBEW Form 49), Facts Collection Sheet, and Power of Attorney

While the use of these forms is not mandatory, we recommend that you make use of these ready-made tools to help you prepare and progress claims and grievances.

As with any dispute, there may be times when your members, for various reasons, try to deny that they wanted a claim or grievance filed on their behalf, or simply change their minds about pursuing a claim or grievance. For this reason, we strongly urge you, when initiating a claim or grievance, to have the members involved in the claim or grievance sign both the IBEW Grievance Form and the Power of Attorney. For legal purposes, the Power of Attorney must be signed by the members prior to the case bring progressed to the National Railroad Adjustment Board for final adjudication. Additionally, by signing the Power of Attorney, the member gives the Local Chairman or the General Chairman handling the dispute the authority to settle the claim or grievance as he/she deems best. Accordingly, it is best to have this document signed when initiating the claim or grievance.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Grievance Form and Record of Proceedings

L. U. _____ Co. _____ Grievance No. _____

DATE _____ TIME _____ A.M./P.M.

NAME _____ EMPLOYEE I.D. NO. _____ DEPT. _____

STATE GRIEVANCE: _____

SETTLEMENT REQUESTED: _____

SIGNED _____ SIGNED _____
AGGRIEVED EMPLOYEE UNION REPRESENTATIVE

COMPANY'S REPLY TO GRIEVANCE: _____

SIGNED _____
COMPANY REPRESENTATIVE DATE

IS DECISION SATISFACTORY? YES _____ NO _____ HAS CASE BEEN APPEALED? YES _____ NO _____

SIGNED _____
UNION REPRESENTATIVE DATE

ION'S REPLY: _____

SIGNED _____
UNION REPRESENTATIVE DATE

COMPANY'S REPLY: _____

SIGNED _____
COMPANY REPRESENTATIVE DATE

IS DECISION SATISFACTORY? YES _____ NO _____ HAS CASE BEEN APPEALED? YES _____ NO _____

SIGNED _____
UNION REPRESENTATIVE DATE

UNION'S REPLY: _____

SIGNED _____
UNION REPRESENTATIVE DATE

COMPANY'S REPLY: _____

SIGNED _____
COMPANY REPRESENTATIVE DATE

IS DECISION SATISFACTORY? YES _____ NO _____ SIGNED _____
UNION REPRESENTATIVE DATE

E APPEALED BY: UNION _____ DATE _____

COMPANY _____

(IF SPACE IN ANY STEP IS INADEQUATE, ATTACH SEPARATE SHEETS)

FACTS COLLECTION SHEET
(For IBEW use only)

Grievant: _____ (Name) _____ (Job Title) _____ (Wage Rate)

_____ (Employee No.) _____ (Shift) _____ (Section) _____ (Location) _____ (Seniority Date)

Supervisor: _____ (Name) _____ (Title) _____ (Hours Of Duty)

WHO is involved? (witnesses, management, personnel, grievant)

WHEN did the problem(s) occur? (Is more than one specific time involved?)

WHERE did the problem(s) occur? (More than one location?)

WHAT happened? (Facts behind different viewpoints! Background information! Differing positions?)

WHY is this a grievance? There must be a violation of something (contract, law, past practice, safety, etc.).

HOW to remedy? What is the specific and/or general remedy demanded?

POWER OF ATTORNEY

_____, 20___

TO WHOM IT MAY CONCERN:

The undersigned hereby authorizes System Council No. ____and/or Local Union No. _____ of the International Brotherhood of Electrical Workers, AFL-CIO, or any person or persons, Committee or Organization designated by it, in conformity with its Constitution and Bylaws, to act in my, or our, behalf as my, or our, representative in handling of the following grievance, claim, complaint, or dispute:

I, or we, hereby empower such representative to present, settle, adjust, or compromise the said grievance, claim, complaint, or dispute, either in conference or by other means and procedures, including those provided by the Railway Labor Act, as amended, and waive all rights to notice provided by statute or otherwise.

I, or we, hereby ratify and confirm any action or actions hereafter taken by System Council No. ____ or Local Union No. ____ of the International Brotherhood of Electrical Workers, AFL-CIO, in connection with the handling of such grievance, claim, complaint, or dispute.

SIGNED:

_____

_____

_____

_____

_____

Sample Grievance/Claim

Sample Grievance- Non-Discipline Cases

(Recommended Format to Be Used When Filing a Claim or Grievance)

Mr. Ray Cobb, Manager
Amtrak Chicago Coach Yard
4321 East 16th St., Room 1004
Chicago, IL

Dear Mr. Cobb:

I, the Local Chairman of IBEW Local 794, am filing a claim in accordance with Rule 24 of the September 1975 Agreement between Amtrak and the IBEW as follows:

DISPUTE: CLAIM OF EMPLOYEES:

1. That at the Amtrak Chicago Coach Yard on April 1, 2003, Amtrak violated pertinent rules of the applicable controlling agreement, particularly but not limited to Rules 1 and 5(b), when Supervisor T. Gallagher assigned Machinist G. Francisco to repair the HVAC Logic Cards on Amfleet Coach 1800000000, instead of calling Electrician M. Wolly to perform said work. M. Wolly was available and willing to work on that day.

2. That Electrician M. Wolly be compensated for eight (8) hours pay at the overtime rate by reason of Machinist G. Francisco performing Electricians' work was in violation of said agreement.

EMPLOYEES' STATEMENT OF FACTS:

At the Amtrak Chicago Coach Yard, Chicago, IL, on April 1, 2003, Amtrak Supervisor T. Gallagher assigned Machinist G. Francisco to repair the HVAC Logic Cards on Amfleet Coach 1800000000. Machinist G. Francisco removed, repaired, and replaced the Logic Cards, which took him from approximately 8:00am to 4:00pm, a total of eight (8) hours. Electrician M. Wolly was off on Relief Day, available, willing, and able come in on that day to perform said work, but the Carrier neglected to call him.

POSITION OF EMPLOYEES:

That Amtrak violated the pertinent rules of the applicable controlling agreement when one of their representatives, Supervisor T. Gallagher, assigned and allowed Machinist G. Francisco to do repair work on the HVAC Logic Cards on Amfleet Coach 1800000000. This work is covered under Rule 1 of the controlling agreement which reads in pertinent part:

"....Electricians work shall also include wiring, testing, and repairing all Logic Cards and circuits pertaining to any and all electrical/electronic equipment on Amtrak engines and coaches."

The foregoing portion of Rule 1 clearly states that all work done on "Logic Cards" is work that contractually belongs to the Electrical craft. Furthermore, this work has traditionally and historically been performed by Electricians at the Carrier's Chicago Coach Yard.

In further support of our position, your attention is directed to Rule 5(b) of the agreement, which reads:

"When work of the Electrical Craft needs to be performed and there is not a sufficient number of Electricians on duty to perform such work, the Carrier shall call Electricians in on overtime to perform said work."

It is quite clear from the foregoing that Amtrak assigning Machinist G. Francisco to perform said work on the Logic Cards was in direct violation of the controlling agreement, depriving Electrician M. Wolly of compensation that he was contractually entitled to receive. Accordingly, we request you honor the claim as presented.

An early reply to this claim will be appreciated.

Sincerely,

John R. Smithe, Local Chairman
IBEW Local 794

Sample Grievance/Claim and Progression Letters

** Please Note: Agreement language pertaining to the progression of claims and grievances may vary slightly from railroad to railroad. Two examples are: a) Some provide for time limits less than 60 days for appealing decisions, and b) Not all agreements require specific rejection letters be sent to Railroad management employees following their denials. Additionally, progression procedures and time limits may also be different on the same railroad with respect to grievances filed relative to discipline cases.

Please carefully review the language of the applicable agreements of your particular railroad.

***All cases being progressed to the National Railroad Adjustment Board, including claims, grievances, and discipline cases, must be progressed through the IBEW Railroad Department. These cases **must** be received by the Railroad Department no later than two (2) months prior to the deadline date that they are due at the NRAB.

SAMPLE CLAIM

CERTIFIED MAIL NO. 00000
RETURN RECEIPT REQUESTED

July 5, 1976

1234 West Chicago Road
Chicago, IL 60673

Mr. T. H. Brown, Foreman
X-Y-Z Railroad Company
Chicago Coach Yards
Chicago, IL 60000

Dear Mr. Brown:

We the IBEW Committee of Local Union No. 000, are submitting a claim in accord with Rule No. 52 of the Agreement between the X-Y-Z Railroad Company and the International Brotherhood of Electrical Workers as follows:

Dispute: Claim of Employes:

1. That at the Chicago Coach Yards on July 1, 1976 the X-Y-Z Railroad Company violated the controlling agreement, as amended, and particularly Rule ___ has been violated when Assistant Foreman J. H. White assigned Carman H. Green to overhaul the generator on car "Point Ridge" instead of calling electrician ~~H. O. Gray, who was available for work that day.~~
2. That Electrician H. O. Gray be compensated for eight (8) hours at the overtime rate by reason of Carman H. Green's assignment to perform Electricians' work was in violation of said rules on July 1, 1976.

Employes' Statement of Facts:

At the Chicago Coach Yards, Chicago, Illinois on July 1, 1976, Assistant Foreman J. H. White furnished Carman H. Green with the necessary equipment and instructed him to overhaul the generator on car "Point Ridge".

Carman H. Green overhauled the generator on car "Point Ridge" which took him from 9:00 a.m. until 5:00 p.m. on July 1, 1976.

Position of Employes:

That the X-Y-Z Railroad Company violated the pertinent rules of the controlling agreement when one of their representatives assigned Carman H. Green to overhaul the generator on car "Point Ridge" which, obviously, is work covered in Rule 5(b), reading in part:

> "Electricians' work shall include electric wiring, testing, dismantling, assembling, maintaining, rebuilding, repairing, inspecting, removing and applying generators."

Mr. T. H. Brown July 5, 1976

The foregoing quoted portion of Rule 5(b) clearly states that the complete maintenance of generators is work belonging exclusively to the Electricians' craft. However, in the instant case, the X-Y-Z Railroad Company arbitrarily assigned this work to another craft.

In further support of our position, your attention is directed to Rule 2, Paragraph 1, which reads:

> "Assignment of Work. None but journeymen or apprentices employed as such shall perform work outlined in Rule #5 of this Agreement."

In assigning Carman H. Green to overhaul the generator when an Electrician was available, we feel that you deprived him of compensation which he was contractually entitled to receive.

An early reply to this claim would be appreciated.

Respectfully submitted:

Local Chairman /s/ J. Donovan

Committeeman /s/ M. Smith

Committeeman /s/ G. Shirmer

cc: Harold O. Gray

INSTRUCTIONS ON DENIAL LETTER

The attached is a sample denial of our claim by Foreman Brown. As you can see, he alleges that there is no record that the work was done as per our claim to him.

This means that we have to prove that the work was done and that a record was made. We contacted Carman Green and asked him to give us a statement to the effect that he did do the work before we appealed Foreman Brown's denial.

This should be done with any statement the Carrier makes in their denial letters.

FOREMAN BROWN'S DECISION TO SAMPLE CLAIM

July 30, 1976

Mr. J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

Dear Mr. Donovan:

This is in reply to your claim dated July 5, 1976 charging violation of Rules 2 and 5(b) when, as you allege, Carman Green overhauled a generator on car "Point Ridge" on July 1, 1976.

We dot not have any record of Carman Green working on car "Point Ridge" on July 1, 1976. Therefore, your claim is disallowed.

Very truly yours,

/s/ T. H. Brown
Foreman

cc: M. Smith
G. Shirmer

This is a sample letter from Carman Green proving that the reason Foreman Brown gave for denying the claim was not true.

This letter should be submitted with the letter appeal to the second officer designated to handle these disputes for the Carrier.

SAMPLE LETTER FROM CARMAN GREEN

July 31, 1976

Mr. J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

Dear Mr. Donovan:

This is in reference to Foreman Brown's letter dated July 30, 1976 stating that his records do not show that I overhauled the generator on car "Point Ridge" on July 1, 1976.

This I cannot understand as Assistant Foreman J. H. White did assign and furnish me with the necessary tools to dismantle and replace a bearing, then rebuild the generator on car "Point Ridge" on July 1, 1976. I did this work and it was necessary for me to get a new bearing from the storeroom which was charged to the car "Point Ridge". I also turned in my work report for that day charging my time doing this work from 9:00 a.m. to 5:00 p.m.

Very truly yours,

/s/ H. Green
Carman

INSTRUCTIONS ON REJECTION LETTER

In keeping with the Agreement, each officer has to be notified, in writing, that his decision is rejected as soon as possible within 60 days from the date of denial or the claim is barred.

We did not send this letter Certified Mail due to the fact that we enclosed a copy with the appeal letter which is sent Certified Mail.

SAMPLE REJECTION LETTER TO FOREMAN BROWN'S DENIAL

August 1, 1976

Mr. T. H. Brown, Foreman
X-Y-Z Railroad Company
Coach Yards
Chicago, Illinois 60000

Dear Mr. Brown:

This is to acknowledge receipt of your letter dated July 30, 1976 disallowing our claim dated July 5, 1976 in behalf of Electrician H. O. Gray in the amount of eight (8) hours pay at the overtime rate of pay.

This is to advise that we are rejecting your decision and appealing it in keeping with the agreement.

Very truly yours,

/s/ J. Donovan
Chairman, IBEW Local No. 000
1234 West Chicago Road
Chicago, Illinois 60673

cc: M. Smith
G. Shirmer
A. W. White
H. O. Gray

INSTRUCTIONS ON APPEAL LETTER

The appeal letter should be sent to the next highest designated officer of the Carrier as soon as possible. Again, it has to be done within 60 days from the date of the denial letter. Again, we should have proof that the officer received it and, in the sample letter attached, we sent it Certified Mail, Return Receipt Requested.

We enclosed copies of the following with the appeal letter: copy of initial claim; copy of Foreman Brown's denial; copy of the rejection letter to Foreman Brown; copy of Carman Green's letter.

This saves repeating these letters in your appeal letter.

We also proved in our letter that Foreman Brown's reason for denying the claim was not a fact. This we should do in all steps of handling a case. That is, whenever an officer states something that isn't true, we should prove that it isn't true with facts in our next appeal.

SAMPLE APPEAL
TO FOREMAN BROWN'S DENIAL

CERTIFIED MAIL NO. 00000
RETURN RECEIPT REQUESTED

August 1, 1976

Mr. A. W. Black, Superintendent
X-Y-Z Railroad Company
Chicago, Illinois 60000

Dear Mr. Black:

In keeping with Rule No. 52, we are appealing the decision of Foreman T. H. Brown, a copy attached, dated July 30, 1976 denying our claim dated July 5, 1976, a copy of which is attached. We are also enclosing a copy of our letter dated August 1, 1976 to Foreman Brown rejecting his denial.

Foreman Brown, as you can see, denied our claim stating that he has no record of Carman Green overhauling the generator on car "Point Ridge". Due to this, we went to Carman Green who gave us a statement that he was instructed by Assistant Foreman J. H. White and he did, in keeping with these instructions, work on the generator on car "Point Ridge" on July 1, 1976 from 9:00 a.m. to 5:00 p.m. A copy of this statement is also enclosed for your records.

This is proof that the violation did occur. We request that you pay the claim as submitted.

Respectfully,

/s/ J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

Enclosures

cc: M. Smith
G. Shirmer

INSTRUCTIONS ON APPEAL DENIAL

As you can see from this sample denial, the Carrier changed their reason for denying it.

The reason now is that all Electricians on duty at the time the violation occurred were fully occupied. We will deal with it in our sample appeal of this denial.

This should also be followed in all cases being progressed.

SAMPLE OF SUPERINTENDENT BLACK'S DENIAL

August 15, 1976

Mr. J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

Dear Mr. Donovan:

This is in reply to your letter dated August 1, 1976 appealing Foreman Brown's denial of the claim filed with him on July 5, 1976.

Our records indicate that all Electricians on duty July 1, 1976 were fully occupied and this is the reason we used Carman Green.

Therefore, your appeal is denied.

Very truly yours,

/s/ A. W. Black
Superintendent
X-Y-Z Railroad Company
Chicago, Illinois 60000

INSTRUCTIONS ON APPEAL DENIAL REJECTION LETTER

Again, this letter should be sent as soon as possible, and it has to be done within 60 days from the date of the denial or the claim will be barred.

We did send this letter Certified Mail, Return Receipt requested due to the fact that this would be the last ime the Committee handled the case. In this case, the General Chairman would progress the case from this point on.

SAMPLE REJECTION LETTER
TO SUPERINTENDENT BLACK'S DENIAL

CERTIFIED MAIL NO. 00000
RETURN RECEIPT REQUESTED

August 17, 1976

Mr. A. W. Black, Superintendent
X-Y-Z Railroad Company
Chicago, Illinois 60000

Dear Mr. Black:

This is to acknowledge receipt of your letter dated August 15, 1976 denying our appeal of August 1, 1976.

This is to advise that we are rejecting your decision and appealing the claim in keeping with the current agreement.

Respectfully,

/s/ J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

cc: M. Smith
G. Shirmer
H. O. Gray

INSTRUCTIONS ON TRANSMITTAL OF THE CASE TO THE GENERAL CHAIRMAN

As you can see, the sample letter lists a copy of all correspondence up to date being enclosed. This has to be given to the General Chairman as he needs it to progress the claim.

You should also furnish the General Chairman with any other information you have regarding the claim as the more he knows about the case, the better equipped he will be to handle it.

This should be done as soon as possible since the General Chairman also has to make his appeal to the next highest Carrier officer within 60 days from the date of the denial letter.

If you do not receive an acknowledgement of this from the General Chairman, you should trace it since it could be lost in the mail.

SAMPLE LETTER OF TRANSMITTAL TO GENERAL CHAIRMAN

August 17, 1976

Mr. E. J. Doe, General Chairman
System Council No. 00, IBEW
405 Eastside Avenue
New York, New York 12345

Dear Brother Doe:

Enclosed you will find a case that we were unable to settle with the Carrier representatives at this point. We would appreciate your handling the dispute to a conclusion.

Enclosed is the following:

1. Claim filed with Foreman Brown July 5, 1976
2. Foreman Brown's denial of July 30, 1976
3. Notice of rejection to Foreman Brown of August 1, 1976
4. Letter from Carman Green of July 31, 1976
5. Appeal to Superintendent Black of August 1, 1976
6. Superintendent Black's denial of August 15, 1976
7. Notice of rejection to Superintendent Black of August 17, 1976

Fraternally yours,

/s/ J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

cc: M. Smith
G. Shirmer

INSTRUCTIONS ON ACKNOWLEDGEMENT LETTER

he General Chairman should acknowledge receipt of the case as soon as ossible to the Local Chairman so that he knows it has been received.

SAMPLE
ACKNOWLEDGEMENT LETTER

August 20, 1976

Mr. J. Donovan, Chairman
IBEW Local Union No. 000
1234 West Chicago Road
Chicago, Illinois 60673

Dear Brother Donovan:

This is to acknowledge your letter dated August 17, 1976 enclosing the seven items of correspondence involving the claim charging a violation of Rules 2 and 5(b) when the Carrier assigned Carman Green to overhaul the generator on car "Point Ridge" on July 1, 1976.

This is to advise that we will progress this claim and keep you informed as to the handling given.

Fraternally yours,

/s/ E. J. Doe, General Chairman
System Council No. 00, IBEW
405 Eastside Avenue
New York, New York 12345

cc: M. Smith
G. Shirmer
H. O. Gray

GUIDE FOR GENERAL CHAIRMEN

Due to the fact that a Carman was assigned the work involved in the sample claim, you should get a statement from the Carmen's General Chairman, if possible, to the effect that they do not claim the work involved in the claim.

SAMPLE LETTER TO OTHER CRAFTS' GENERAL CHAIRMAN

August 20, 1976

Mr. J. H. David, General Chairman
Joint Protective Board
X-Y-Z Railroad Company
146 Diversey Street
New York, New York 12345

Dear Brother David:

This is in reference to a claim we are progressing whereby the Carrier assigned a Carman to perform work covered by the Electrical Workers' Special Rules. The claim reads, in part:

> "That at the Chicago Coach Yards on July 1, 1976 the X-Y-Z Railroad Company violated the controlling agreement when Assistant Foreman J. H. White assigned Carman H. Green to overhaul the generator on car "Point Ridge" instead of calling Electrician H. O. Gray who was available for work that day."

As you know, the Electrical Workers' Special Rule 5(b) reads, in part:

> "Electricians' work shall include electric wiring, testing, dismantling, assembling, maintaining, rebuilding, repairing, inspecting, removing and applying generators..."

Therefore, we would appreciate your giving us a letter to the effect that your Organization is not claiming this work.

Fraternally yours,

/s/ E. J. Doe
General Chairman
System Council No. 00
405 Eastside Avenue
New York, New York 12345

GUIDE FOR GENERAL CHAIRMEN

Due to the fact that a Carman was assigned the work involved in the sample claim, you should get a statement from the Carmen's General Chairman, if possible, to the effect that they do not claim the work involved in the claim.

SAMPLE LETTER TO OTHER CRAFTS' GENERAL CHAIRMAN

August 20, 1976

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Joint Protective Board
X-Y-Z Railroad Company
146 Diversey Street
New York, New York 12345

Dear Brother David:

This is in reference to a claim we are progressing whereby the Carrier assigned a Carman to perform work covered by the Electrical Workers' Special Rules. The claim reads, in part:

> "That at the Chicago Coach Yards on July 1, 1976 the X-Y-Z Railroad Company violated the controlling agreement when Assistant Foreman J. H. White assigned Carman H. Green to overhaul the generator on car "Point Ridge" instead of calling Electrician H. O. Gray who was available for work that day."

As you know, the Electrical Workers' Special Rule 5(b) reads, in part:

> "Electricians' work shall include electric wiring, testing, dismantling, assembling, maintaining, rebuilding, repairing, inspecting, removing and applying generators..."

Therefore, we would appreciate your giving us a letter to the effect that your Organization is not claiming this work.

Fraternally yours,

/s/ E. J. Doe
General Chairman
System Council No. 00
405 Eastside Avenue
New York, New York 12345

INSTRUCTIONS ON APPEAL TO HIGHEST DESIGNATED OFFICER

It is suggested that copies of all correspondence with Carrier officers up to date be attached to the letter of appeal. This saves putting same in the body of the letter itself.

This appeal, the same as any other appeal, should be done as soon as possible as it has to be done within 60 days from the date of the last denial letter. And, as the sample letter of appeal shows, we pointed out that there were two different reasons given for denying the claim and that Foreman Brown's reason was proven in error. Then, in the sample appeal, we pointed out that the second reason given by Superintendent Black is also insufficient to justify his denial of the claim.

We also enclosed a copy of the Carmen's General Chairman's letter which points out that the work is work belonging to the Electrical Workers' craft.

We also requested that a conference be held on the dispute in keeping with the Railway Labor Act. If we adopt this suggestion, it should expedite the progressing of the case.

You should cover all the points in the case at this time.

SAMPLE APPEAL
TO HIGHEST DESIGNATED OFFICER

CERTIFIED MAIL NO. 00000
RETURN RECEIPT REQUESTED

September 1, 1976

Mr. T. H. Jones
Manager, Labor Relations
X-Y-Z Railroad Company
7654 Yonkers Street
New York, New York 12345

Dear Mr. Jones:

This is to advise that we are appealing the decision of Superintendent Black's denial dated August 15, 1976. A copy of the handling of this dispute is attached, consisting of the following:

1. Claim filed with Foreman Brown July 5, 1976
2. Foreman Brown's denial of July 30, 1976
3. Notice of rejection to Foreman Brown of August 1, 1976
4. Letter from Carman Green of July 31, 1976
5. Appeal to Superintendent Black of August 1, 1976
6. Superintendent Black's denial of August 15, 1976
7. Notice of rejection to Superintendent Black of August 17, 1976

Foreman Brown denied the claim alleging that the records did not show that Carman Green performed the work of overhauling the generator on July 1, 1976. In our appeal, we submitted a statement from Carman Green proving

Superintendent Black, in his denial of our appeal, conceded that Carman Green did perform the work of overhauling the generator on July 1, 1976. But he denied the claim stating that all the Electricians on duty were fully occupied. This, we submit, is not an acceptable reason to violate the agreement. Electrician H. O. Gray was off duty and available to perform the work, if called. He was not called. Therefore, the claim should be sustained as submitted.

Due to the fact that a Carman was assigned the work involved in this dispute, we secured a statement from Carmen General Chairman J. H. David which reads, in part as follows, and copy of which is enclosed herewith:

> "The Carmen's Organization does not claim the work of overhauling generators. This work, in keeping with the Agreement, is reserved to the Electrical Workers craft in keeping with Rules 2 and 5 of the current agreement. Therefore, the Carrier, in our opinion, violated the agreement when on July 1, 1976 they assigned Carman Green to perform this work."

In keeping with the Railway Labor Act, as amended, we request that a conference be held on this dispute before you render your decision. Please advise as to the time, date and place this conference will be held.

Respectfully submitted,

/s/ E. J. Doe
General Chairman
System Council No. 00
405 Eastside Avenue
New York, New York 12345

Enclosure
cc: M. Smith
G. Shirmer

INSTRUCTIONS ON REPLY TO HIGHEST DESIGNATED OFFICER'S DENIAL

In many cases, the Carriers make statements in this letter that have not been presented before. It is very important to check this denial very carefully and as soon as possible reply to it and answer all statements in it and, if necessary, get proof that the statements are not true and include that proof in your reply.

In a lot of the cases, the General Chairmen do not answer the allegations in the highest officer's denial and the Referee accepts these statements as true simply because we did not answer them, whereby our case is denied.

As in this sample denial, the Carrier used a third reason for denying the claim. If you do not answer and deny the third reason, this would be accepted by the Referee as true and he could use it to deny the claim.

SAMPLE OF HIGHEST DESIGNATED OFFICER'S DENIAL

September 30, 1976

Mr. E. J. Doe, General Chairman
System Council No. 00, IBEW
405 Eastside Avenue
New York, New York 12345

Dear Mr. Doe:

This is to confirm our conference held September 15, 1976 as per your request in your letter dated September 1, 1976 appealing the decision of Superintendent Black dated August 15, 1976; involving the claim for Electrician H. O. Gray in the amount of eight hours pay at the overtime rate because Carman H. Green was assigned to overhaul a generator on car "Point Ridge" on July 1, 1976.

You were informed at the conference that it has been a practice to assign any employe available to work when the employes of the craft whose work it belongs to are fully occupied. Therefore, your appeal is denied.

Very truly yours,

/s/ T. H. Jones
Manager, Labor Relations
X-Y-Z Railroad Company
7654 Yonkers Street
New York, New York 12345

INSTRUCTIONS ON REPLY TO HIGHEST OFFICER'S DENIAL

It is very important to check the highest officer's decision and make a reply to all unchallenged statements as we have done in our sample letter in this case.

SAMPLE REPLY TO HIGHEST OFFICER'S DENIAL

CERTIFIED MAIL NO. 00000
RETURN RECEIPT REQUESTED

October 5, 1976

Mr. T. H. Jones
Manager, Labor Relations
X-Y-Z Railroad Company
7654 Yonkers Street
New York, New York 12345

Dear Mr. Jones:

This is in reply to your letter of September 30, 1976 confirming our conference held September 15, 1976 and denying our appeal in the claim of Electrician H. O. Gray in the amount of eight (8) hours pay at the overtime rate account Carman H. Green overhauling the generator on car "Point Ridge" on July 1, 1976. In your letter you stated the following:

> "You were informed at the conference that it has been a practice to assign any employe available to work when the employes of the craft whose work it belongs to are fully occupied. Therefore, your appeal is denied."

As you know, we informed you that we knew of no such practice and, if such a practice does exist, it is in violation of the agreement. There being no exception in the agreement to permit the crossing of craft lines such as has been done in this case, the claim should have been sustained in keeping with the precedents set forth in Second Division Awards over the years such as in Nos. 273, 1125, 1359, 1530, 1688, 2146, 2802, 5225, 6270, 6370, 6544, 7083 and 7200.

Therefore, the claim should have been sustained.

Respectfully submitted,

/s/ E. J. Doe, General Chairman
System Council No. 00, IBEW
405 Eastside Avenue
New York, New York 12345

Summation

We hope we have succeeded in providing you with the necessary tools and information to properly handle a claim or grievance. You should now be able to competently determine whether or not a claim or grievance is warranted, gather the necessary information to file a claim or grievance, formulate and write it, properly file it, progress it through to the final step on the property that is required for local handling, and then progress it to your General Chairman for final disposition.

Remember, you are the first link in the chain of a successful claim or grievance, and a successful outcome is usually dependent on the work you have done! Your General Chairmen and the IBEW Railroad Department are here to assist you. Do not hesitate to contact us for assistance if you have any questions or concerns. Good luck.

Guide for the Local Committee Chairman

Guide for Handling Discipline Cases and Investigations

This section provides guidance in the handling of discipline cases and investigations. The useful information includes tips on gathering information relevant to the discipline case, preparing a defense for the investigation, defending the charged member at the investigation, and, in the case of an adverse decision by the Hearing Officer, appealing the decision of guilt and the discipline assessed. Included in this section are:

a. Introduction

b. Helpful Tips

c. The Nature of Disciplinary Hearings

d. Sample Discipline Charges.

e. Sample Investigation Transcript

f. Handling Disciplinary Grievances

g. Summation

SECTION 5 (a)

Introduction

Introduction

The proper handling of an investigation is one of the most important functions performed by a local chairman. The reason being is not so much the outcome of the hearing, but how the facts are presented so that those who will later read the transcript will be in a position to develop the strongest case possible.

The following is the transcript of an actual investigation in which the local chairman did a good job representing his man because he was prepared.

The local chairman had investigated the incident, interviewed the witnesses and prepared them for the investigation and organized his presentation before he set foot in the investigation.

At the investigation, he made sure his witnesses were present and that he was accompanied by a committeeman who was able to assist him.

Before you start reading the transcript, you should be made aware of the "facts." On the night in question, Mr. Foreman was assigning work and he had an argument with Mr. Charged, an electrician, which resulted with Mr. Charged going home.

Read the transcript and when you are done, decide whose position you agree with and why.

Helpful Tips

DISCIPLINE CASES

In discipline cases - when a member is charged - you should insist on the following:

1. **A PRECISE CHARGE.** The charge should be clear so that you know what to defend against. If the charge is not precise, be sure to get your objection in the record of the hearing. If it is precise, it will stop the Carrier from wandering into other fields for testimony.

2. **A FAIR HEARING.** A fair hearing is when the Carrier gives a precise charge, gives the charged employe the right to representative and witnesses, allowing examination by representatives and accused of anyone present at the hearing. If the official conducting the hearing also acts as witness against the accused, have your protest included in the transcript along with your reasons for the protest. Such protests are worthless at a later date. They should be included in the transcript. If the official who was a witness against the accused is the same official who disciplines the employe, be sure to protest this in your appeal procedure.

3. The Carrier has the responsibility of guaranteeing that there is a verbatim record of what transpired at the hearing and a copy of that record is furnished in accord with the rule of your agreement.

4. You should request there only be one witness at a time be present during the investigation and one officer conducting the investigation.

5. Written testimony obtained prior to the hearing should not be permitted to be read into the transcript but, rather, the accused and his representative should have the right to cross-examine any witness and/or testimony given at the investigation.

6. It is the duty of the Carrier, as well as the employe, to bring out the entire truth concerning the alleged violation. The holding of the investigation is not for the purpose of proving the correctness of the charges but for the purpose of developing all facts material to the charges, not only against, but favorable to the employe.

7. The right to cross-examine all witnesses is fundamental. The accused or his representative must be permitted to do this directly and should not have to address their questions through the hearing officer. If the hearing officer denies this right of direct interrogation and thereby inhibits or prevents proper cross-examination by the employe or his representative, the Board is likely to reverse any discipline that results from the hearing.

8. The employe has the right to be present through the entire hearing, as well as his representative, to hear all evidence offered against him and to participate in the conduct of the hearing. The employe can waive the right to be present by failing to attend.

9. If, before the hearing, the hearing officer has made remarks to others indicating that he has already pre-judged the case, the employe should, at the outset of the hearing, call for an adjournment until an impartial hearing officer can be appointed.

Prior to the hearing, the accused and his representative should properly plan the defense. Everything necessary to defend against the charge should be secured. Witnesses, records, doctor's statements, if necessary, should all be available so they can be made part of the hearing transcript. Careful planning and preparation before the hearing are vastly more important than anything introduced after the hearing. If more time is needed before the hearing, make such request in writing. If more time is denied, be sure to protest so that it will be made part of the hearing record. Late evidence is never considered by a Referee and cases are decided by the contents of the hearing transcript. Never put a plea for leniency in writing. You can do it verbally but, if it is written in the record, the Referee will invariably rule against us.

Upon completion of the investigation, the accused and his representative will undoubtedly be asked if the investigation was conducted fairly and impartially. If it was not, so state. If you are not sure, state that you will make that determination after reviewing the transcript.

If all concerned will follow the procedures outlined herein, we would be in a better position to expect greater success through the grievance procedure rules.

SECTION 5 (c)

The Nature of Disciplinary Hearings

NATURE OF DISCIPLINARY PROCEEDINGS

The theory of discipline of an employe by his or her employer derives from a need for safe, efficient and orderly operation of the industrial plant. The right to discipline is inherent in the owners or managers of the industrial enterprise. Except as restricted by law or contract, the employer may discipline or discharge with or without cause.

The Railway Labor Act does not, per se, restrict the powers of a carrier to discipline or discharge an employe. In Thomas v. New York, Chicago and St. Louis (185 F.2d 614) U. S. Court of Appeals for the Sixth Circuit, the Court said:

> "The Railway Labor Act does not abrogate the employer's right to hire or discharge employees. The statute creates no right of continued employment. No statute or rule of law required the railroad to give the appellant an oral hearing, nor made it wrongful to demand a written statement. Appellant was not a union member and hence cannot rely upon any union contract as to duration or tenure of employment."

It is the collective bargaining agreement that restricts the employer in its otherwise unfettered right to discipline an employe. The agreement not only restricts the employer's right to discipline, but also contractually creates vested rights and privileges in the individual employe. The obligations assumed by the employer and the rights vested in the employe are legally enforceable. These rights include, among other things, a fair and impartial hearing. Inherent to such hearing is the requirement that the employe be accorded due process. Due process means that the agreement pro-

visions have been followed, that standards of fairness - as set forth in applicable laws, court decisions and industrial jurisprudence - have been met.

The procedures originating in the contract are purely civil in nature. In actual practice, however, the proceedings may often resemble criminal courts. Words and phrases, common to the criminal courts, are frequently used by the parties and referees. The atmosphere of the criminal courts may persist because the charged employe is accused of violating a law, i.e., a company law. The laws of the company are the rules and regulations, issued by the company, regulating conduct of its employes. Unlike the right of a sovereign to punish for violation of laws, the company has no power to deprive an employe of his/her liberty, or to levy a fine. It does, however, have the power to destroy an employe's present economic security, and severely restrict and hinder future employment.

A disciplinary proceeding begins with the charge. The charge, like an information or indictment in criminal cases, is merely an allegation that the named employe has violated a company rule or regulation. It is not evidence of guilt. It is the means whereby the company invokes the procedures provided for in the agreement.

The agreement provides for a fair and impartial hearing. The hearing is an administrative or quasi-judicial proceeding whereby it may lawfully be determined whether the accused employe is guilty of the offense charged.

The company has the burden of proving the charge by competent,

material and relevant evidence adduced at the hearing. The substantial evidence rule applies. The Supreme Court, in Consolidated Edison v. NLRB (305 U.S. 197) has defined substantial evidence:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

It is a custom and practice, peculiar to the railroad industry, that company officials are appointed as hearing officers. This fact, of and within itself, does not render the hearing unfair. It does, however, cast the burden upon the company to insure a fair and impartial hearing. In Barrett v. Manufacturers Railway Co. (254 F. Supp. 376), the Court said.

> "Minute consideration of bits and pieces of evidence indicating that plaintiff utilized less than the expected vigilance to protect his own rights and placed the Railway Company in something of a quandary by reason of his confusing conduct, cannot be allowed to overshadow the central factor that the Railway Company runs these hearings and owes the accused employee a contractual duty to see that he received a fair and impartial hearing."

The right of an accused employe to representation is based upon the collectively bargained agreement. It was argued in Broady v. Illinois Central (191 F.2d 73) that the Railway Labor Act allowed the employe a choice of representation. The Court of Appeals for the Seventh Circuit said:

> "We can find no provision of the Railway Labor Act which gives to employees the right to a representative of their own choice at an investigation by company officials of a charge that the employee

> has violated company rules. In the case at bar appellee's right to representation comes from the agreement of appellant and Dining Car Employees Union, Local 351."

In Butler v. Thompson (192 F. 2d 831), the Eighth Circuit Court of Appeals cited the Broady case and held that the rights of the employe were governed by the provisions of the collective bargaining agreement.

Our agreements provide for representation at all stages of the proceedings if the employe so requests. The choice of representative is limited, however, as specified by the agreements. The representative, when so chosen, is duly authorized to speak for and on behalf of the accused employe.

The right to be represented in disciplinary hearings and proceedings does not stem from Railway Labor Act provisions.

Part I

PREPARATION FOR HEARING

It cannot be too strongly emphasized that adequate preparation for a hearing is a necessity. The nature of the charge should control the amount of time needed for preparation. If witnesses are needed they must be contacted and arrangements made for their attendance. Often copies of records must be obtained. The charged employe must cooperate with his or her representative. The representative should utilize expertise in suggesting appropriate defense to the charge and assist in obtaining any information necessary to present an adequate defense.

An adequate defense is not necessarily limited to the question as to whether the employe did or did not commit the act alleged in the charge. If the act or failure to act occurred, as alleged, then the question arises - does this constitute proper grounds for discipline? Generally, an employe may engage in any proper and lawful activity. An effort to restrain an employe in the proper exercise of such rights would usually be outside the purview of disciplinary proceedings. Secondly, the act or failure to act, as alleged, may be subject to mitigating circumstances. This would include, among other things, the failure of an employe to report for duty at the designated time due to circumstances beyond the employe's control.

Postponement of Hearing

The company, usually without prior notice to the employe, fixes the hearing date. If the date set is inconvenient for the representative or the employe, or does not permit adequate time in which to prepare for the hearing, a postponement should be requested. Such postponement should, if at all possible, be by letter, or orally, and confirmed by letter. Copy of such request should be retained and made a part of the file on the case, also carriers answer.

As a matter of courtesy, to avoid inconvenience to officers and witnesses, it is usually appropriate to request such continuance prior to the hearing date. At times, however, the necessity of request for continuance will not be known until the date set for hearing. In such cases, do not hesitate to request continuance, irrespective

of inconvenience to officers or witnesses.

Timely Hearing

Most agreements require a hearing within a fixed number of days after an employe has been suspended from service, from the date of filing charge, or from the date the company has knowledge of the matter to be investigated. If the hearing date set by the company does not provide for a hearing within the time limit set forth in the agreement, upon proper objection, the charge should be dismissed. The objection should be entered on the record at the hearing at the first appropriate opportunity.

Time Limit for Preferring Charges

If the charge is not timely filed, it is not likely that the hearing can be timely held. When the agreement provides that charges shall be filed within a specified time period, there must be a literal compliance. Unless the agreement provides otherwise, the time begins to run against the company from the date it has knowledge of the occurrence. If the agreement does not provide a time limit for filing charges, the charge must be filed within a reasonable time. What is a reasonable time must be determined from all the circumstances in a particular case. In Awards 14504 and 14505, Third Division, it was held:

> "Rule 6-A-1 does not prescribe a time within which the trial must be held. In the absence of such a prescription it is a principle of contract construction that it must be held within a reasonable time. Prima facie, over eight years is not reasonable."

Objection to late filing of charge should be entered on the record at the hearing at the first opportunity.

Charge Must Be Definite and Certain

The fact that an employe has knowledge of an occurrence or incident is immaterial to a determination of whether a valid charge has been served. A definite and certain charge is a contractual obligation duly entered into by the company. Whether the agreement requires a "precise charge," an "exact charge," or simply "a charge," it still must be definite and certain. In the first two, the company has contractually agreed that it will present a precise, or an exact, charge. In the latter, if the agreement requires that a charge be served and that the employe is entitled to a fair and impartial hearing, it is implied that the charge must be certain.

The necessity of a proper charge is not just a technicality. It is as necessary in a disciplinary proceeding as an indictment or information in a criminal proceeding. The charge need not include the legal niceties of an indictment, but must fully and fairly inform the employe of alleged dereliction of duty as an employe.

The employe may not be subjected to a hearing on a general or vague allegation. If the charge is a general or vague allegation then a protest should be entered into the record at the first opportunity.

The employe is entitled to prepare his or her defense to a

particular charge and none other. The evidence at the hearing should be restricted to that which is competent, relevant and material in the particular case. The employe may not be found guilty of an offense other than that specifically charged.

A charge may be indefinite for failure to specify a date, time or place. A charge may be indefinite for failure to name another person, if this is necessary to an understanding of the charge. The employe is not required to utilize personal knowledge of an occurrence to fill in the blanks of an indefinite charge. Assumably, officers of the company will have made an investigation prior to serving notice of the charge. If so, such officers are in a position to specify exactly what it is that the employe did or failed to do. The failure on the part of company officers to make a proper investigation, before filing a disciplinary charge against an employe, is an act of irresponsibility. Such failure must not be allowed to prejudice the rights of the charged employe.

From the very beginning, all Divisions of the National Railroad Adjustment Board have held that a definite charge is fundamental to a fair and impartial hearing. In Third Division Award 562, decided in 1938, it was held:

> "A fundamental incident of a fair impartial hearing is that the accused shall be advised definitely as to what he is charged with."

The courts have stated the same principle. In Allen v. IATSE (338 F.2d 309), U. S. Court of Appeals for the Sixth Circuit said:

"Fair play entitles an accused to rely on the written charge made against him in preparing his defense, limits the trial to proof in support of that charge, and bars his being found guilty of an offense with which he is not charged."

In the Matter of John Ruffalo, Jr. (390 U.S. 544) the Petitioner, a lawyer, was charged with certain alleged unethical practices. During the hearing before the Bar Committee, he testified that one Orlando had been employed as an investigator. Thereupon, the Committee filed an additional charge based on such employment of Orlando. The Supreme Court said:

"In the present case petitioner had no notice that his employment of Orlando would be considered a disbarment offense until after both he and Orlando had testified at length on all the material facts pertaining to this phase of the case.

"These are adversary proceedings of a quasi-criminal nature . . . The charge must be known before the proceedings commence. They become a trap when, after they are under way, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.

"How the charge would have been met had it been originally included in those leveled against petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows.

"This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process."

In First Division Award 21343, Referee Don E. Hamilton, (BLF&E v. AT&SF) it was stated:

"The claimant came to the first investigation to defend himself against the charge which had been preferred. While testifying concerning that charge he made certain

statements which the Carrier concluded should result in an additional charge.

"We question the propriety of the action of the Carrier in preferring the subsequent charge. We would refer the Carrier to a recent decision of the United States Supreme Court, in the matter of John Ruffalo, Jr. decided April 8, 1968."

If the charge is not sufficiently definite and certain, in accordance with the foregoing, a Motion to Dismiss should be prepared prior to the hearing. The Motion should state in a clear and concise manner why the charge is not definite and certain. The Motion should be presented at the hearing on the record at the earliest opportunity.

Written Notice of Hearing

Notice of hearing must be in writing. The notice should include the date, time and place of hearing. The place of hearing, unless otherwise agreed to, should be the usual location for such hearings and the date and time should be conventional days and times for holding such hearings.

Necessity of Notice of Hearing

A condition precedent to a valid hearing requires that the accused employe shall have been seasonably notified as to the date, time and place. If agreement provisions do not provide otherwise, the notice may be served upon the accused employe in person, by telegram, or by mail. The burden is upon the company to prove that such notice was actually received by the employe. Whenever a hearing has been postponed, for whatever reason, the accused employe must again be notified

of the date, time and place of hearing.

Timely Notice of Hearing

The employer has the burden of seasonably notifying a charged employe of the hearing date. Unless otherwise specified in the agreement, the charge must be served upon the charged employe at a reasonable time, under all the circumstances, prior to the hearing.

An objection for failure to serve timely notice of hearing should be made at the hearing on the record at the first opportunity.

Sufficiency of Service of Notice

An employe may not thwart disciplinary procedures by refusing to accept, or willfully failing to respond to, a properly tendered notice. Unless otherwise prescribed by agreement, it is immaterial whether the notice is personally served by a representative of the company, by United States mail, or by Western Union telegram. The company may rely on last known home address of the employe for the purpose of serving such notice. If the employe, due to circumstances beyond his or her control, is absent from home at the time such service is attempted, failure to respond is excusable.

Waiver of Procedural Defects

Waiver is defined as the voluntary relinquishment of a known right. The application of the doctrine is not necessarily dependent on whether there is actual knowledge, but it may be presumed that a

person knew or should have known of the existence of such right. The Divisions of the National Railroad Adjustment Board have often applied the doctrine of waiver in discipline cases. The theory has been applied where an objection is interposed, subsequent to a hearing, relative to an alleged procedural defect. Many awards have held that failure to make objections during the hearing constitutes a waiver of such procedural defects. It is, therefore, important that objections be made at the proper time.

An objection may be made at any time after a hearing has been formally convened, and should most definitely be made before the hearing has been closed.

All objections, whatever the basis, should be entered on the hearing record.

Witnesses

Pre-hearing investigation by a representative of a charged employe begins with the charged employe. The basic facts are within the individual's pecular knowledge. Whether other witnesses, documentary evidence, etc., are needed to present an adequate defense will depend upon the circumstances.

If others are to be called as witnesses, it is good practice to interview each witness prior to the hearing. It is seldom advisable to put a witness on the stand without prior first-hand knowledge as to the exact nature of the person's testimony.

Attendance of witnesses, who are employes of the company, may

be secured by: (1) mutual agreement with the witness to be present at the appointed time; (2) requesting the company to arrange for the presence of the witness. In the latter case, such request will invariably result in company representatives questioning the employe as to his or her knowledge of the matter.

Securing attendance of non-employe witnesses may cause problems. If the witness is unwilling to appear at the hearing, then request a signed written statement from the person. If the witness refuses to attend in person, or to give a signed statement, and the person's testimony is essential to an adequate defense of the charged employe, then set forth the facts in a letter to the Carrier, requesting its aid in securing the testimony of the witness. The letter should contain: (1) a statement setting forth your efforts to obtain the presence of, or a written statement from, the non-employe; (2) a full statement of your understanding as to what the witness would testify if present at the hearing.

The letter should be presented to the hearing officer. It may be presented in connection with Motion for Continuance to permit further efforts to secure testimony of the witness. Or it may be presented as a suggestion that the company stipulate that the witness would give testimony as set forth in your letter. Should the hearing officer or other company officer agree, then it may be stipulated that the witness, if present, would so testify. If so agreed, the stipulation should be entered in the hearing record as a part of the evidence submitted on behalf of the charged employe.

Documents and Data

If statements or reports from the personal physician of the charged employe are needed, a request should be made to the doctor by the charged employe. The doctor should be made aware of the purpose of the report, in order that it may show appropriate information from the doctor's files and records, together with personal recollection.

Medical reports from carrier physicians are in a different category. It is likely that any such reports are already in the hands of company officers. If needed to prepare the defense of charged employe, a request in writing should be made to the appropriate officer for copies of such reports. If copies are not furnished prior to the hearing, request the hearing officer to furnish such reports. If he refuses, introduce your written request into the record with a clear statement as to why such reports are necessary to present adequate defense for the charged employe. In addition, make such showing as may be available that the reports are in the hands of carrier officers.

If other company records are needed, make a similar request for copies. If such copies are not furnished prior to the hearing, request the hearing officer to produce the copy or copies. If he refuses, state on the record, if you know, what such records would show and the relevance to the defense of the charged employe.

Copies of court proceedings, official records, etc. may be obtained from the proper offices upon request. If records of transactions by the charged employe with individuals or other private

parties are needed, the charged employe should be able to secure necessary copies.

Representative of Employe

A representative, duly chosen by a charged employe in accordance with agreement provisions, has complete protection in all lawful activities connected with such representation. No carrier officer may legitimately interfere in any manner with representative's preparation for hearing, or in the conduct of the defense of the accused employe at the hearing.

The point was well stated by Referee Alex Elson in Third Division Award 5367. Carrier had assessed discipline against representative of an employe on charges arising out of such representation. In setting aside the discipline, the Board held:

> "Counsel for an employe in an investigation of charges which may result in discipline or other serious penalty must have considerable latitude in representing the employe. He should be permitted to express himself freely, to make his contentions vigorously, and to do everything in his power to assist the employe. If the action by the Carrier is sustained, no official representative of the employe also occupying a position of the Carrier could know how far he could go in being an advocate. At all times he would be fearful that something he might say would transgress the Carrier's standards of propriety and result in discipline to himself. There would be varying degrees of inhibition depending upon the representative, the result of which might be to deprive the employe of adequate representation, and certainly to limit his right to counsel. Furthermore, the Board recognizes that the right to counsel at hearing under Rule 22 may in fact be more important than representation in the

grievance machinery. Adequate development of the facts during the hearing may result in dismissal of the charge or mitigation of the penalty. Once discipline is imposed, there is little this Board can do under the principles which govern it. The right to counsel under Rule 22 is a valuable right. The action of the Carrier if permitted to stand, would reduce the value of the right to the extent that an employe might as a practical matter be compelled to forego representation by a fellow employe and look elsewhere for counsel.

"We believe that the attempt of the Carrier to discipline Moore would impair the right to counsel given to the employe under Rule 22. For this reason, we believe the claim should be allowed in full."

In Third Division Award 12320, Referee Yagoda said:

"...In Award 5367 the Board protected the claimant from having his activity in the role of a union representative used as judgment against him as an employe, even though his conduct may have been 'seriously objectionable' at an investigation of charges against a fellow employe whom he was representing."

First Division Award 21181, Referee Murray M. Rohman, involved charge by the union that carrier sought to intimidate the employe representative by subjecting him to an unusual rules examination. It was held:

"Both under the Railway Labor Act and the effective Agreement between the parties, Organization representatives are accorded certain immunities. These are rights and not merely privileges which may be rescinded by the Carrier at its option. Absent conduct by such representative which is deemed offensive, contumacious or contemptuous by reasonable standards, a representative is duty bound to employ his best efforts in defense of an accused. There is nothing in the record which reveals a portrayal of such opprobrious behavior.

"Furthermore, in the instant claim, the investiga-

tion was held on September 17, 1957 and on October 14, 1957 the President dispatched a letter denoting his concern with the Claimant's 'attempt to interpret the rules.' Although the Carrier's Superintendent was in attendance at the hearing, almost a month elapsed before the Claimant's alleged lack of knowledge was discovered. If the Claimant displayed an insufficient knowledge of the rules at the investigation, it should have been quite obvious to the Superintendent at that time. Thus, we can only conclude that the scheduled review of the rules was an infringement upon those protected rights accorded an Organization's representative while perform Organization duties."

In Third Division Award 11014, Referee Ables said:

"It is well settled that a Carrier may not discipline an employe for actions taken as an officer of a labor organization representing the employes of his craft."

It has been held, however, that a union officer is not engaged in protected activity if he induces another employe to violate company rules. This question was involved in Third Division Award 11911, Referee William H. Coburn. The opinion, in part, stated:

"The distinguishing feature of this case is that Claimant was at all times acting in a dual capacity. He was figuratively in the dilemma of a man with two heads - neither of which can be severed without mortal consequences to the other. Under the constitution of his Organization, Claimant had to be an employe in order to serve as its employe representative, and the employe-employer relationship, perforce, had to be co-existent with his service as District Chairman. If the employe status was removed, Claimant's authority to act as District Chairman was terminated.

"Occupying this dual status as he did, Claimant as an employe was chargeable with knowledge of the Carrier's operating rules and subject to their application. It follows that Claimant was also chargeable with the

knowledge that he was inducing a fellow employe to commit an act which both knew or ought to have known was a clear violation of those rules. They acted in concert in the commission of the violation and thereby knowingly subjected themselves to a charge of rules violation which, if established, could only result in an assessment of discipline against both.

"Claimant in his dual status could not avoid the consequences of hiw knowledge of the rules as an employe and his inducement of a breach thereof merely by invoking his alter ego as an employe representative. As the Fifth Circuit Court of Appeals said in BRT v. Central of Georgia (305 F.2d 605):

> 'On the one hand, status as bargaining representative does not insulate Byington as am employe from lawful disciplinary action. Cf. NLRB v. Birmingham Publishing Co., 1958, 5 Cir., 262 F.2d 2, 9. On the other hand, the Railroad may not use the disciplinary proceeding as a guise for thwarting, or frustrating, or undermining the effectiveness of the Brotherhood, or Byington as its agent, in their statutory responsibilities as bargaining representatives.'

"Assuming, arguendo, Claimant could escape Carrier discipline by merely invoking his status as employe representative, would he then be free knowingly to induce other employes to engage in conduct prohibited by company rules? We think not.

"The Act's proscriptions against Carrier interference with, or coercion and intimidation of, duly authorized bargaining representatives may not be expanded to provide immunity to such representatives where, as here, it is established that an employe representative knowingly induces a fellow employe to commit an act violative of company rules. Such conduct does not fall within the orbit of those protected statutory responsibilities of bargaining representatives under the Railway Labor Act."

The court case referred to in Award 11911 involved petition by the

Brotherhood of Railroad Trainmen for an injunction. In the complaint, it was alleged that the real purpose of the disciplinary proceedings instituted by the railroad was to thwart the General Chairman's (and the Brotherhood's) effectiveness as the collective bargaining agent for the Trainmen. The Court said:

> "If this is really the objective of the Railroad's plan, it is obviously a violation of the Railway Labor Act. As such, the Courts are open to grant appropriate injuctive relief. And, of course, once such motivation is established as a fact, the public interest, if nothing else, would make injunctive relief appropriate if not compelled."

The role of the local union officer, as representative of an accused employe, is often difficult. When difficulties arise, a conference with the General Chairman may be indicated. In any event, carrier officers should not be permitted, directly or indirectly, to interfere with adequate representation of the charged employe.

Hearing Officer

The hearing officer has a peculiar role in the disciplinary proceeding. First, he is an officer of the company; secondly, he will usually have in his possession, prior to the hearing, reports and other documentation involving the case; thirdly, he may be the officer who filed the charge against the employe. Notwithstanding, he is obligated, as a matter of law and by contract, to hold a fair and impartial hearing. It is this status and position of the hearing officer that gave birth to the saying: "The railroad runs these proceedings." This statement is usually followed by another: "Therefore it has the legal and con-

tractual obligation to see to it that the accused employe receives a fair and impartial hearing."

The parties and their representatives in a disciplinary hearing are obligated to behave in a decorous and courteous fashion. This, of course, includes the hearing officer. Therefore, the courteous, well-manned attitude of the hearing officer has no relevance as to whether he is capable of presiding, or will preside, in a fair and impartial manner. In First Division Award 21046, Referee Carroll R. Daugherty, it was stated:

> "At this late date there is little excuse for the managerial personnel of a carrier to ignore the principle that in a discipline case carrier is essentially, and must conduct itself like, a trial court. Among several things this means that the carrier official who conducts an investigation of a charge made by a carrier against an employe (1) should not normally have been involved in the occurrences leading up to the leveling of the charge and (2) should comport himself at the investigation, in his questioning of all witnesses (managerial as well as employee), in a truly objective and aloof manner, just as would an outside judge."

The hearing is for the purpose of developing all relevant facts. The hearing officer is charged with the duty of developing all of the available facts, favorable or unfavorable, to the employe. Withholding of information favorable to the employe would constitute reversible error.

In Second Division Award 2923, Referee James P. Kiernan, it was stated:

> "The officer conducting the investigation is charged

with the responsibility of developing all the facts and the circumstances surrounding them. The judicial officer must make his decision based on all the relevant evidence, and any extenuating circumstances. Otherwise, the investigation would be a mockery and likely a miscarriage of justice would result."

In Second Division Award 7119, Referee Dana E. Fischer, it was held:

"We have reviewed the conflicting awards cited by the parties on the question of multiplicity of roles by Carrier officers in discipline cases. We continue to adhere to our earlier general opinions that Carrier combines such functions in one individual at its peril; that some minor overlapping of roles, while not to be encouraged, is not prima facie evidence without more of prejudicial procedural imperfections; that the greater the merging of roles the more compelling the influence of pre-judgment or prejudice and, that each such case must turn on its own merits. In the instant case we find that H. W. Sanders did not actually testify against Claimant in the hearing but that is literally the only function he did not fulfill in this matter. He activated the investigation, preferred the charges, held the hearing, reviewed the record, assessed the discipline, and denied the appeal. In so doing he fulfilled roles of investigator, prosecutor, trial judge and appellate judge. The disinterested development of evidence, the unbiased review thereof and the objective assessment of appropriate penalty inherent in concepts of fair and impartial discipline cannot be accomplished with such egregious overlapping of functions. This was not a mere technicality but a substantial denial of Claimant's rights. We are left with no alternative but to sustain the claim. See Awards 4536, 6329, 6439, 6795 and 7032."

In Fourth Division Award 2158, Referee Jacob Seidenberg said:

"The presiding officer cannot have an adversary role at an investigation hearing. He is obligated to seek out all the facts surrounding the incident in question, those which favor as well as those which militate against the Claimant."

In the same award, the question was presented as to disqualification of the hearing officer because he attended a meeting of carrier

witness. The Referee said:

> "He is a trier of fact and an ascertainer of the truth. Consequently, for him to attend a preliminary meeting at which all the Carrier witnesses are present and the case under consideration is discussed is violative of Rule 13. It matters not that the presiding officer, himself, did not participate in such discussion. His mere presence there is incompatible with the role of a hearing officer seeking to find all the material facts of the incident in question."

The hearing officer may not indicate prejudgment of the guilt of the accused employe. The hearing is not just a formality in order to comply with agreement provisions but a proceeding to determine truth. In Fourth Division Award 1175, Referee R. W. Nahstoll, it was held:

> "Our examination of the transcript of the hearing has satisfied us that the investigation was conducted, not as a reasonably objective inquiry or pursuit of truth, but, as a formality required by the Agreement before announcement of a preconceived judgment. As such, it was unfair and the judgment resulting therefrom was arbitrary and unjust."

In Fourth Division Award 1951, Referee Harold M. Weston, it was held:

> "This means, among other things, that the hearing officer will conduct proceedings in an impartial manner and betray no predisposition against the accused employe and render no judgment as to guilt until the hearing has been completed and the evidence analyzed. The record in the present case shows that this elementary principle was ignored by Carrier's hearing officer."

In First Division Award 20335, Referee Harold W. Davey, it was held:

> "The record also indicates that the hearing officer on the property, although conducting the proceedings

in a courteous fashion, had prejudged the matter, thus precluding a fair and impartial hearing."

In Second Division Award 5223, Referee Harold M. Weston, it was held:

"Before any hearing had been held, Brault notified the Union, by letter of May 19, 1964, that 'I considered Mr. Orrick's offense of sufficient magnitude to remove him from service.' Since he had already arrived at that decision, Brault was not in a position, either as matter of appearance or substance, to conduct the hearing of July 8, 1964, in the necessary impartial manner."

If, prior to a hearing, a representative has reasonable grounds to believe that a designated hearing officer is disqualified to sit in that particular case, a motion may be filed requesting the hearing officer to excuse himself. Such motion should contain a brief statement of facts setting forth the reasons why the hearing officer should disqualify himself. The motion should be filed with the hearing officer and made a part of the record at the beginning of the hearing. If denied, objection should be saved, i.e., immediately object to the ruling and continue the objection at each level of appeal thereafter. While a motion of this type may be unusual, it is fully justified when the facts so indicate.

Part II

THE HEARING

Commencement of Proceedings

The hearing should be convened by the hearing officer at the time

designated in the notice of hearing, or at the hour agreed upon by the hearing officer and the representative of the charged employe. Efficient and orderly conduct of the hearing requires that all persons who are to participate, as witnesses or otherwise, will be present at the appointed time. The representative, before indicating readiness to proceed, will be sure that the charged employe and all witnesses are present.

If the charged employe does not appear at the appointed time, representative should request the hearing officer to recess or postpone the hearing. The representative should not speculate as to the reason for the failure of the charged employe to appear. He should not make any unfavorable statements as to why the employe is not present. It suffices, for the moment, that the employe is not present and this alone is sufficient grounds for a recess of the hearing to a definite time or postponement to an indefinite date.

If the representative is personally aware of legitimate reasons for the non-appearance of charged employe, such as illness, he may so state as basis for his motion to continue the case. Should the hearing officer refuse to recess or postpone the hearing, the representative should enter an objection, for the record, and then withdraw from the hearing room. The representative should not attempt to represent an absent employe.

If a witness fails to appear at the appointed time, the representative may request recess or postponement of the hearing, as may seem proper. If the missing witness is a company employe, request the

hearing officer to make the witness available to testify at the hearing. If the hearing officer refuses, request a postponement of the hearing, in order that steps may be taken to secure the presence of the witness. If this request is refused, make an objection to further proceedings on the ground that charged employe is being deprived of a witness necessary to his defense. If the witness is an outsider, request a recess or postponement of the hearing on such grounds as may seem appropriate under the circumstances. If the request is refused, make an objection stating the grounds for the request for recess or postponement.

Preliminary Questions to Charged Employe

Normally, the accused employe will first be queried as to whether he or she received notice of the charge. The accused employe may acknowledge receipt of the notice, and if relevant, the method of delivery, place of receipt, time and date. If asked whether the charge was served in accordance with the provisions of the applicable agreement, the answer should be: I do not know.

An employe is bound by the provisions of the collective bargaining agreement covering employment. An employe is not, however, obligated to know what the provisions are - nor to know the proper interpretation of same - and may, therefore, with complete frankness say that he or she does not know whether the charge was served at the time and in the manner required by the agreement provisions.

After the charge has been read into the record, the hearing officer may inquire of the charged employe as to whether he understands the

charge. This is an improper question and the employe is not obligated to respond directly. The written charge must stand or fall on the basis of what is stated therein. If there are objections to the charge as to time or the contents, then the employe may refer the question to the representative. If there will be no objections to the charge, the employe may reply that he has discussed the charge with his representative. Because it is an improper question, the representative may object to the question itself. It is not necessary that the charged employe make a statement as to whether he does or does not understand the charge.

The hearing officer may inquire of the charged employe as to whether he is ready to proceed. Since the representative is in the better position to know what objections, if any, to the proceedings are to be made, he should answer the question.

The hearing officer may inquire of the charged employe whether he is guilty or not guilty of the charge. Except under unusual circumstances, and only after full discussion with his representative, the charged employe's answer should be Not Guilty.

The hearing officer should ask the charged employe as to whether he has a representative present, and if so, who.

In these preliminary questions to the charged employe, there should be no questions or answers concerning the merits of the case. For the hearing officer to have jurisdiction to hear the case, it must be established that a written charge has been made by a duly

authorized officer of the company; that the employe present is the person named therein; and that the written charge was served on the accused employe.

Entering Appearances

All persons in the hearing room at the commencement of the proceedings should be identified. Company officers should give their names and titles. Union representatives should give their names, addresses and union office. Witness should be identified as such and designated as railroad witnesses or witnesses for the charged employe. The designated representative of the charged employe should, in addition, state that he will represent the named employe. If there is anyone present who is unknown to the representative, the hearing officer may be requested to clarify the reason for his or her attendance.

Record of Proceedings

From the convening of the hearing until it is concluded, a true and correct record of the proceedings should be made. The company is obligated to furnish the necessary stenographic services to permit such record. If, in the opinion of the representative, at any time during the hearing there is a failure - in whole or in part - to record faithfully all of the proceedings, objection should be made and the hearing officer requested to correct the deficiency. The hearing officer is under a legal as well as moral obligation to see that a true record is made.

There are some agreements that provide that the employees have the right to take their own tape recording of the hearing, if there is any doubt as to whether or not an an accurate transcript will be furnished by the carrier. This right should be exercised. If the hearing official refuses to allow it, an immediate protest should be entered into the record.

Objections

Prior to any testimony on the merits, representative of charged employe should make and enter into the record objections, if any, to the proceedings. Presentation of objections will be facilitated if written notes are prepared beforehand. This will aid in presenting a concise explication of the reasons for the objection or objections. It is preferable to present each objection separately. The hearing officer should rule on each objection. If he does not rule on, or overrules, an objection, representative may enter an objection to such failure, or ruling, and proceed under protest.

Charged Employe as Witness

In every discipline case a decision must ultimately be made as to whether the charged employe will testify in his or her own behalf. In most cases it will be to the charged employe's advantage to do so. The decision, however, to testify or not to testify rests solely with the charged employe. The rationale is exemplified in a recent Supreme Court decision. In speaking of the privilege against compulsory self-incrimination, the Court said in Kastigar v. United States (1972):

"The privilege reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory, and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. The Court has been zealous to safeguard the values which underlie the privilege."

The representative should discuss the point with the charged employe prior to the hearing. The nature of the charge or charges, gravity of the alleged offense, the probability of a finding of guilty, the past record of the charged employe, length of service, and other factors, including quantum of discipline upon a finding of guilt may be relevant. The charged employe should be cautioned however that if he or she does not testify, the carrier's burden of proof will be met by a prima facie showing of guilt.

It has been held that the employe may not testify under protest and then claim an objection. Third Division Award 13613, Don Hamilton (1965) states:

"The Carrier called the Claimant to testify, and his representative argued that he should not be required to testify until all of the evidence had been presented against the Claimant in the case. The Carrier denied the objection and instructed the Claimant to testify. Vanderbeek did testify, and he affirmatively denied each and every material allegation to which Carrier's previous witness had testified. We hold that when Claimant proceeded to give testimony, he waived his objection to the right of the Carrier to force him to testify."

Third Division Award 16632, Bill Heskett, (1968) (BRAC v. AT&SF)

involved an instance where the Claimant refused to testify.

There, Claimant was charged with mishandling U. S. Mail. The hearing was set more than 20 days after Carrier had knowledge of the occurrence. Timely objection was made that the hearing was not held within the time-limit fixed by the Rules. Carrier, nonetheless, continued with the hearing and called Claimant as its first witness. After routine questions, he was asked: "Will you state in your own words what you know about this case?" Claimant refused to answer. The next day, he was charged with insubordination because of his refusal to answer the question. This hearing was timely held; Claimant was again called as witness and refused to answer a similar question. Immediately after the close of the hearing he was discharged, but later reinstated. It was held:

> "Whether Carrier's action was based on the charge and evidence or summarily on the Claimant's conduct at the second hearing need not be decided. What is dispositive of the claim on its merits is that the hearing from which the charge grew was, because of the time-limit, void ab initio. It is impossible for this Board to ascertain how Claimant could 'withhold information' or be 'insubordinate' and thereby violate Rules 19 and 20 at an investigation where Claimant was on his own time and where the Carrier had no legal rights to ask questions or, for that matter, to hold same."

Claim was sustained and Claimant allowed 171 work days' lost pay, plus interest.

Statements or Reports Given by Charged Employe

Any statement or report voluntarily given by an employe to his

employer relative to a work-related occurrence is normally admissible against the employe in a disciplinary proceeding. The charged employe may controvert the accuracy of any such statement or report; he may contend that it was coerced or obtained under duress. Such evidence may be oral or in writing. The charged employe may also call other witnesses, if any, to challenge the voluntariness or accuracy.

Sesquestration of Witnesses

Upon request of representative of charged employe or representative of the railroad, the hearing officer may, in his discretion, exclude all witnesses, except as called, from the hearing room. The ruling, if granted, does not apply to the charged employe or his representative. Usually the rule on the witnesses is requested when it may reasonably be anticipated that there will be conflict in the testimony of the witness, and that prejudice will likely result if prospective witnesses are permitted to hear testimony of other witnesses. The Adjustment Board has consistently held that the granting of such request is within the sound discretion of the hearing officer. (See Appendix 2.01.)

Cross-Examination of Witnesses

A witness is examined first by the party calling the witness. This is direct examination of the witness. After direct examination has been completed, the witness may then be questioned by the opposing party. This is cross-examination of the witness. The right to cross-examine is fundamental to a fair hearing. In Third Division Award 3288, Robert G. Simmons, (1946) it was stated:

"For two centuries in America it has been recognized that the right of testing the truth of any statement by cross-examination is a vital feature of any investigation devoted to truth development. No safeguard for testing the value of human statements is comparable to that furnished by cross-examination and no statement should be used as testimony until it has been subjected to that test or the test waived. It is a device for the discovery of all the truth. A witness on direct examination may disclose but a part of the necessary facts. The opposing party has the right to probe for the remainder. Qualifying, illuminating and often discrediting answers are secured by this process."

In Third Division Award 9517 (1960), Frank Elkouri held:

"The importance of cross-examination in the search for truth was clearly stated in Award 3288. In the present case the only evidence against the accused employe is the statement of a complaining passenger. His statement was not made available to the employe prior to the hearing; nor was there any waiver of the test of cross-examination."

After direct examination of a witness, cross-examination should follow before the witness is excused. It has been held that denial of the right to cross-examine at this time constitutes prejudicial error.

Cross-Examination Not to be Unduly Restricted

Cross-examination of Carrier witnesses is a fundamental right and may not be unduly restricted. The examination is not necessarily confined to matters brought out on direct examination. The witness may have testified as to a specific incident or occurrence. This does not preclude questions relative to events preceding or following the incident. The charged employe must be allowed to pursue his theory of defense. His right to do so is not dependent upon the validity of

such theory or whether, if pursued, it will be successful. In Third Division Award 18963 it was held:

> "In this instance Carrier's hearing officer did not know whether or not testimony concerning matters existing prior to April 30, 1969 would be relevant to the issues until first they were developed at the hearing, and that is reason enough for such testimony to be admissible. It may be in this instance that such testimony would not have had any material effect on the outcome of the hearing; but in the interests of fair play, Carrier's hearing officer should have permitted Claimant and/or his representative to have developed testimony and introduced exhibits concerning events surrounding the date in question and which may have been relevant to the actions taken by Claimant on the date in issue, April 30, 1969."

A witness, on direct examination or in pre-hearing statements, may have indicated ill-will, bias, etc., toward the charged employe. If so, the witness may be examined concerning such matters. The basis for such questions is to test the credibility of the witness. The range of such questions is broad, so long as they are confined to the relevant points.

Because of an inordinate interest in the outcome of a hearing, a witness may feel impelled to falsify some or all of his testimony. Should it appear, under the circumstances, that a witness against the charged employe does have such interest, an effort should be made through the medium of cross-examination to develop the full facts.

The representative bears the burden of determining the nature and extent of cross-examination of witnesses. Whether a particular witness will be subjected to rigorous cross-examination must be

decided on the basis of his direct testimony, testimony of other witnesses, lack of candor, etc. In some instances, cross-examination may not be indicated. In such cases, the representative should exercise self-restraint in cross-examination.

Right to Confront Witnesses

The elementary right of an accused employe to confront witnesses against him is not a cliche. It is a viable basic right. Except under unusual circumstances, the right is available to an accused employe in every case.

In third Division Award 862, the Board held that a Pullman conductor was not accorded a fair and impartial trial, because he was not afforded an opportunity to confront his accuser. The Board remanded the dispute with directions to hold a new hearing on the charge of misconduct. The Carrier again refused to produce an outside witness for examination.

On the second appeal to the Board, in Award 1482, it was held that the employe had not been accorded due process, and this time reinstatement was ordered with back pay. The Carrier refused to comply with the award and suit was filed in Federal court. The District Court refused to grant Carrier's motion to dismiss, and held that the Pullman Company would be required to produce the witness for cross-examination. Order of Sleeping Car Conductors v. Pullman Co. (47 F.Supp.599) The case was finally tried on the merits in the district court. The witness testified and the court, in an unreported opinion, found the

discipline to be justified.

The right to confront and cross-examine witnesses is also shown in the following awards:

Third Division Award No. 12812:

> "He must have the opportunity of cross-examining the witnesses presented against him who have testified orally.
>
> "It is essential to a fair and impartial hearing that where accusing witnesses are called by the Carrier the accused (Claimant) shall be present at the examination of those accusing witnesses and be afforded the right of cross-examination."

Likewise, Second Division Award No. 6675:

> "was Claimant afforded a fair hearing?
>
> "any reference to the criminal trial and to prohibit cross-examination of Carrier witnesses on important elements of testimony which may have been in conflict with their earlier criminal trial testimony. A company disciplinary hearing must be far more flexible than a criminal trial and the hearing officer should lean over backwards to include all pertinent information and evidence; to do less would be to remove all vestige of investigative equity and deprive employes of due process. The importance of the right to cross-examine witnesses in disciplinary investigations has been the subject of a number of our Awards and is particularly well stated in Award 5336 and Third Division Awards 3288 and 12812."

Second Division Award No. 6931:

> "questions on cross-examination probing his knowledge of the program were highly pertinent and should not have been barred by the Hearing Officer on the ground that Jolly is not the person under charge.

"Similarly, when Claimant Feller attempted to question Mr. Foster regarding his recollection as to who replaced Mr. Feller on a certain day, the Hearing Officer intervened, stating that 'Mr. Foster's memory is not under charge'. It of course was material error to prevent the cross-examiner from testing Mr. Foster's ability to recollect."

Second Division Award No. 6728:

"At the hearing, claimant's representative attempted to question Foreman Fozzard, the principal Carrier witness, relative to the latter's attitude toward claimant and any ill-will that he may have against claimant. However, the hearing officer conducting the investigation denied claimant's representative the right to develop this line of questioning. Claimant contends that as a result he was deprived of a fair and impartial hearing.

"This Board is mindful of Carrier's right to hold and conduct disciplinary hearings in such a manner as to develop the pertinent facts as expeditiously as possible. Yet in doing so the employee must be given latitude to present his defense in a manner which enables him to refute the evidence produced against him. To deprive him of this right is to deprive him of the due process requirement of a fair and impartial hearing."

Statements, whether notarized or not, are generally unreliable. An ex parte statement of any witness will generally relate only that which is favorable to his viewpoint. Matters are often set forth as factual which, in truth, are only conclusions. The full truth can be developed only in the crucible of cross-examination.

The accused employe must be afforded an opportunity to hear the accusing words from the lips of the accuser. It does not suffice, except by express waiver, that the charged employe has a competent representative present for the examination and cross-examination.

A witness may be present and acknowledge and verify the truth of a previously written statement, but if the charged employe in oral testimony denies the charge, then the written statement has little probative value. In such case, the charged employe has been denied the right to cross-examine, and his oral testimony has not been refuted by testimony of equal quality.

Uncorroborated Letters

An uncorroborated and otherwise unidentified letter is ordinarily not admissible in evidence. If admitted by the hearing officer over objection of representative of the charged employe, it is entitled to little weight as evidence. In such case the charged employe is not only denied the right to examine witness, but there is no certainty that the alleged letter is a valid document.

Hearsay

Generally, hearsay evidence is inadmissible and the rule applies to both oral testimony and writings. The fundamental objection to admission of hearsay evidence is based upon the fact that it is not subject to safeguards of cross-examination. The veracity of a witness offering hearsay evidence is immaterial. Whether such witness will or will not truthfully relate what he was told is not the point. The basic fact remains that the witness does not know, and cannot know, whether the facts related by the absent witness are true.

Whether the alleged statement of the absent witness was orally

related, or orally related and then reduced to writing, is immaterial. Either way it is still hearsay. A decision of the Court of Appeals for the Seventh Circuit in Edwards v. St. Louis-San Francisco, (361 F.2d 946) illustrates the point:

> "The facts of this case are as follows: On September 25, 1960, the appellant, who was then - as he had been for some forty years - employed by the St. Louis-San Francisco Railway Company as a conductor in passenger service, was taken off his run and charged with failure to remit a five dollar cash fare which appellant allegedly had collected from a passenger on or about August 28, 1960. The railroad was informed of the alleged incident in the morning of August 28, 1960, when the train's porter, J. D. McPherson, called V. J. Deckard, the railroad's Superintendent of Terminals in Kansas City. McPherson informed Deckard that with him was a woman who wanted to make a report. The woman then told Deckard that, while a passenger, she had given the Conductor five dollars for a cash fare, but that she had been given no receipt for it. Deckard reported this to Special Agent Adams and asked him to investigate. Adams then prepared a statement from notes which he took at a conference with the woman, and the statement was signed by her. None of the three agents of the railroad actually saw the alleged incident take place.
>
> "The railroad, during the course of the hearing called four witnesses: an officer of the railroad's accounting department, who testified that appellant had not remitted any cash fares which would have been collected on August 28, 1960, and the aforementioned train porter, terminal superintendent, and special agent, each of whom testified only as to the version of the incident that had been related to them by the complaining passenger. The testimony of the latter three witnesses was, of course, hearsay; and the railroad did not produce the passenger, appellant's accuser."

The Court of Appeals was extremely critical of the railroad's acceptance of such hearsay evidence as a basis for discharge of the employe.

> "What is particularly offensive is that the Carrier not only elected to accept the charge of its hitherto unknown customer and reject the denial of its long-standing employe, but that it imposed the harshest of all available sanctions under circumstances which made it extremely difficult, if not impossible, for the accused to test the credibility of his accuser. Indeed, it is hard to imagine a situation in which a carrier could act with greater distrust of a veteran employe or greater disdain for the conventional notions of fair play and still meet its obligations under grievance procedures prescribed by a collective bargaining agreement."

The foregoing case involved First Division Award 20063. There, the Referee accepted the hearsay evidence as sufficient to support the Carrier's decision. However, better reasoned awards are to the contrary. These cases recognize an elementary principle that the charged employe is entitled to confront his accuser and that he is entitled to cross-examine the witness.

Furthermore, it is basic to the judicial process inherent in administrative proceedings that the hearing officer has the sole prerogative to judge the credibility of all the witnesses. This is impossible, if the hearing officer does not see or hear the primary witness. If hearsay evidence is accepted, the hearing officer is not judging the credibility of the primary witness, but that of the witness giving the hearsay testimony. Thus, the admission of such evidence is contrary to the fundamental principles designed to insure a fair and impartial hearing.

Conclusion of Testimony

At the conclusion of testimony the hearing officer will usually ask the charged employe whether the hearing has been fair and impartial. The charged employe should respond: I do not know, or I must wait

until I have a chance to read the transcript of the hearing to determine that.

If there is a question as to whether the hearing has been held in accordance with agreement provisions, the answer should be: I do not know. The charged employe is not obligated to express a conclusion, or an opinion, as to the validity or invalidity of the proceeding. If, however, the hearing was clearly not fair and impartial and it has been so stated during the hearing then the employee should not hesitate to say that it was unfair and give the reason why.

The hearing officer will usually ask the representative similar questions. The representative is under no obligation to make a response. However as a practical matter, it would be well to make an appropriate answer. If objections have been made during the hearing, the answer should be that the hearing has not been fair and impartial because of the failure of the hearing officer to sustain the objection or objections. If no objections have been noted during the hearing, the representative should not express an opinion as to the fairness of the hearing. He should merely respond that the hearing record will speak for itself as to whether the hearing has been fair and in accord with the agreement provisions, or he can say that he must wait until he reads the transcript of the hearing to determine that.

If deemed appropriate, the representative may also indicate that such questions to the charged employe and his representative are improper. The questions are improper because there is no legal or equitable basis for such queries. The purpose of such questions is

to obtain admissions against interest, or a waiver of objections previously noted, or to create an estoppel against later assertion of errors in the proceedings.

Basically, such questions are unfair. As an officer of the company, the hearing officer seeks to embarrass the charged employe and take advantage of the employment relationship to secure an answer favorable to the company. Should the hearing officer react in a hostile manner toward the charged employe, or be critical of his representative, an objection should be noted to the questions and the attitude of the hearing officer.

In all cases at the close of the hearing, whether the employees have taken their own tape recording of the hearing or not, the hearings office should be advised that the employee and/or his representative will expect the carrier to furnish them a transcript of the hearing.

SECTION 5 (d)

Sample Discipline Charges

East St. Louis, Illinois
April 6, 1976

CAPTION OF INVESTIGATION

April 2, 1976

"CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Charged

Dear Sir:

Arrange to report to The Alton & Southern Railway Company General office building 1000 South 22nd Street, East St. Louis, Illinois at 9:00 a.m., Tuesday, April 6, 1976 for formal investigation to develop the facts and place your responsibility, if any, in connection with your alleged refusal to perform your electrician duties assigned you at approximately 11:15 p.m. April 1, 1976 by the foreman.

If you desire representative or witnesses, you must arrange therefor in accordance with applicable schedule agreements.

Very truly yours,

cc: Mr. General Chairman
Mr. Local Chairman
Mr. Foreman - Carrier Witness
Personal File

PRESENT AT INVESTIGATION:

Mr. Charged
Mr. Local Chairman
Mr. Committeeman
Mr. Employee Witness 1
Mr. Employee Witness 2
Mr. Employee Witness 3
Mr. Employee Witness 4
Mr. Foreman

Mr. Carrier Witness 1
Mr. Mechanical Superintendent, Carrier Witness 2
Mr. Interrogating Officer
Mrs. Stenographer

SECTION 5 (e)

Sample Investigation Transcript

Mr. Charged, please state your full name, years of service, and occupation at the time of incident under investigation.

A Charged, 6 years end of January, electrician

Q Have you received proper notice to report for this investigation?

A No

Q Please state for the record why you allege you have not received proper notice.

A I just received a hand carried letter.

Q Was this notice presented to you by Mechanical Superintendent, Carrier Witness 2 and Assistant Mechanical Superintendent?

A Yes

Q Did Mr. Carrier Witness 2 request that you receipt for this notice when he presented it to you?

A Yes, he did.

Q Did you refuse to receipt for this notice when Carrier Witness 2 presented it to you?

A No, I refused to certify that the letter was correct.

Q Did you refuse to sign the letter for Mr. Carrier Witness 2?

A I refused to sign it due to the fact that it was not true.

Q Mr. Charged, do you mean by that statement that you refused to sign for the letter notifying you to report for formal investigation because you did not agree with the charges outlined in the letter notifying you to report?

A He had no forms with him to indicate that all I was doing was receiving the letter.

Q Mr. Charged, I will repeat my question and will you please answer the question.

Mr. Local Chairman objects:

Mr. Interrogating officer, Mr. Charged gave you an answer why he did not sign for the letter and it seems that you are trying to put words in his mouth and get the answer that you want. Mr. Charged plainly stated that he refused to sign the letter, his reason was that the letter was not true - what happened on April 1, 1976; therefore, Mr. Charged gave you an adequate answer to your question.

Mr. Interrogating Officer:

Mr. Local Chairman, your objection has been entered into the record and will receive appropriate consideration.

The local chairman correctly objected to the Interrogating Officers leading questions which could have resulted in Mr. Charged saying something detrimental to his case.

Mr. Charged, would you please answer my question.

A No

Q Mr. Charged, do you have a representative present who is permitted by the agreement, and if so, please state his name and occupation.

A Mr. Local Chairman, and Mr. Committeeman

Q Do you have any witnesses present?

A Yes

Q Please state their names and occupations.

A Mr. Employee Witness 1, Electrician
Mr. Employee Witness 2,
Mr. Employee Witness 3
Mr. Employee Witness 4.

Q Are you now ready to proceed with this investigation?

A Yes, under protest.

Q Would you please state for the record what your protest is.

A That the charges are not correct.

Q Mr. Charged, you will note that the caption letter states "with your alleged refusal," and the purpose of the investigation is to develop the facts and place your responsibility, if any.

Mr. Carrier Witness 1 is called as witness.

Mr. Interrogating Officer questions Carrier Witness 1:

Mr. Local Chairman makes protest:

Mr. Interrogating Officer, on April 2, 1976, you have Mr. Charged accusing him of refusing him to perform his duty at approximately 11:15 p.m. April 1, 1976. The way I read this letter you have the man charged because on the same date April 2, 1976 you have another letter put out effective this date you are hereby held out of service pending a formal investigation for your alleged refusal to perform your electrician duties assigned you by your foreman at approximately 11:15 p.m. April 1, 1976." The way I read this letter you have found this man guilty before the investigation. Rule 19 of our Agreement with the carrier, Par. E, reads in part: "no employee shall be disciplined without a fair hearing by the Carrier." Also, in part, it says that there will be a 72 hr. notice prior to the hear such employees and president of the federation number 2 be apprised

of the precise charges against him so they will have the opportunity to secure necessary witnesses. I received my letter "Certified Mail - Return Receipt Requested" approx. 3:30 p.m. April 5, 1976. Also, reading this letter, it is signed Very truly yours, Mr. Carrier Official. The way I understand, Mr. Carrier Official has been off of work several months with a heart attack. So if somebody else is signing Mr. Carrier Official's name, to be correct, somebody should put their initial by his name. So at this time, I protest this investigation in its entirety and it should be stricken from the records at this time.

Mr. Interrogating Officer:

Mr. Local Chairman, your statement and protest has been entered into the record of this investigation and will receive appropriate consideration. It should be noted for your information that Mr. Carrier Official is presently and has been for a number of years assigned to The Alton & Southern Railway as Superintendent.

Here again the local chairman correctly protests. Whether or not the man and his representative were properly notified will not be decided at the investigation, but rather later or perhaps by the referee. By entering the objection, this will allow future consideration of the issue at hand. If in fact the local chairman would not have had enough time to prepare, he should have obtained a postponement.

I would now like to read into the record of this investigation a letter of April 2, 1976 referred to by Mr. Local Chairman:

"Certified Mail - Return Receipt Requested"

Mr. Charged
220 S. State Street
Chicago, Illinois 60604

Dear Sir:

Effective this date, you are hereby held out of service pending formal investigation for your alleged refusal to perform your electrician duties assigned you by your foreman at approximately 11:15 p.m. April 1, 1976.

Very truly yours,
Carrier Official

cc: Mr. General Chairman
Mr. Local Chairman
Personal Record

Mr. Foreman, please state your name, occupation and length of service.

A Mr. Foreman, Electrical Foreman, 6 years

Mr. Interrogating Officer: Your request is granted, Mr. Local Chairman, please Proceed.

Mr. Local Chairman: I want the record to show that this investigation is continui over my protest of the investigation.

Mr. Interrogating Officer: Mr. Local Chairman, the records will so indicate.

Mr. Foreman, were you on duty as electrician foreman at the time and date mentioned in the caption of this investigation?

A Yes, sir.

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A After I received my turnover from the foreman on the preceeding shift, he stated the engines on tracks 30 and 32 were needed as soon as possible and had to be inspected first.

Q Please advise for the record what work Mr. Charged was instructed to perform on these two tracks.

A I told Mr. Charged to inspect the engines which includes conducting a load test.

Q Is that type of work, work that is normally assigned to an electrician?

A Yes, sir.

Q Are electricians on The Alton & Southern permitted to tell the foreman what engines they will work, or does the foreman instruct the electricians what engines they will work?

A The foreman does that.

Q Does seniority have anything to do with what engines an electrician will work?

A No, sir.

Q What were your assigned hours on April 1,1976?

A 11 p.m. to 7 a.m.

Q What was Mr. Charged's assigned hours on April 1, 1976?

A 11 p.m. to 7 a.m.

Q Was Mr. Charged, on April 1, working directly under your supervision?

A Yes, sir.

Q Did Mr. Charged, on April 1, refuse to perform the duties as instructed by you?

A Mr. Charged did not verbally refuse such work.

Q Did Mr. Charged perform the work as instructed by you?

A No, sir.

Q Did Mr. Charged instead advise you that he was going home sick?

A Yes, sir.

Q Please state for the record what was discussed in this heated argument between you and Mr. Charged.

A The heated argument was mostly about the seniority of the men on third trick.

Q Did you write a letter reporting this incident to your superior?

A Yes, sir.

Q Would you please read this letter into the record of this investigation.

A " April 1, 1976 11:00 p.m.

When I received my turnover from Mr. Jones, I was informed that there were engines on Tracks 130 and 132. They were the oldest engines in the yard at that time. I therefore called upon Mr. Charged to work on these engines. He hesitated a moment, and then told me that younger men were present and that he shouldn't have to do the work. I told him to go to work or go home. Mr. Charged left for home at 11:20 p.m.

Mr. Foreman

Questions Mr. Local Chairman?

Mr. Local Chairman questions Mr. Foreman:

Q Mr. Foreman, am I correct by you saying Mr. Charged told you he was going home sick?

A Yes, sir.

Q Am I correct that a statement you just read into the transcript that you told this man to go home?

A During Mr. Charged's and my argument, the questions you asked me could have been brung up.

Q You just read in the transcript a letter you wrote that you say you did this. Am I correct?

A I gave Mr. Charged his option to work or to go home.

Q Mr. Foreman, how long have you been a foreman?

A Approx. 2 1/2 months

Q Prior to that you were an electrician?

A Yes, sir.

Q For how long, sir?

A Approx. 6 years.

Q Are you familiar with the electrician's Agreement with the Carrier?

A No, sir. I am not.

Q You made a statement earlier there was no seniority involved with the electricians. Am I correct?

A There is no seniority involved in the job that I gave to Mr. Charged. Anyone on the third shift can do the work that I gave him.

Q How do you come about this statement that there is no seniority among the electricians?

A The jobs that Mr. Charged and the other electricians on the third trick hold enables them to do the work.

Q Mr. Foreman, let me read you a Rule 12 of the controlling agreement and the electricians which reads in part:

"The Foreman in charge shall have the authorization to assign a mechanic and a helper to such jobs; senior men to receive preferance."

To your opinion, would you say that this man has seniority, then?

A Mr. Charged's job consisted of inspecting engines. That is no designated job.

Q Now you are saying Mr. Charged's designated job is to inspect engines. Am I correct by saying that?

A No, sir. I did not say that. I stated that Mr. Charged's job consists of inspecting engines and that job is not a designated job.

Q Why do you make a statement to the fact that that is not a designated job?

A There are only a few designated jobs on the third trick.

Q Mr. Foreman, you are confusing me. Earlier you made a statement, Mr. Foreman, that there wan't no designated job in the train yards. Am I correct by saying this?

A I said Mr. Charged's job was not designated.

Q Mr. Foreman, the night in question, how come you signed Mr. Charged to inspect the engines instead of letting him rebuild motors inside which he has always done in the past?

Mr. Interrogating Officer:

I object to your question Mr. Local Chairman. Let the record show that it has not been ascertained in this investigation what Mr. Charged or Mr. Foreman have always done in the past as stated by Mr. Local Chairman. Mr. Local Chairman, would you please continue your questions.

Mr. Local Chairman makes objections:

Reference to letter of April 2, 1976, Certified Mail - Return Receipt Requested to Mr. Charged. It says there will be formal investigation April 6, 1976 to develop the facts and place responsibility if any. So at this time, Mr. Interrogating Officer, would not let us develop the facts in this case by not letting company witness answer my question.

Mr. Interrogating Officer:

Mr. Local Chairman, your objection has been entered into the record and will receive appropriate consideration. You are at liberty to ask any witness in this investigation any pertinent questions to develop the facts as outlined in the caption.

Mr. Local Chairman:

That is all the questions that I have at this time; I would like to reserve the right to questions him later if need be.

Mr. Committeeman questions Mr. Foreman:

Q Mr. Foreman, was Mr. Charged sent home from his duties?

A No, he wasn't; I have him the option to either work or go home.

Q Mr. Foreman, was you and Mr. Charged arguing heavy or heated or whatever you stated?

A Yes, sir. I would say it was a heated argument.

Q Did your tempers flare?

A I would say so.

Q Were you carrying a pistol?

Mr. Interrogating Officer:

I object to that question; it has no definite bearing on the question or charges in the caption.

Mr. Committeeman: I still want an answer to my question. Were you carrying a pistol while on duty?

A Yes, sir.

Q Mr. Foreman, you stated earlier that it was a heated argument, tempers flared you also stated you were carrying a pistol. During this argument where you stated you were mad would there have been any possibility of doing any bodily harm to the employee?

Mr. Interrogating Officer:

I object to that question. I have no knowledge or recollection of Mr. Foreman saying that he was mad.

Would you care to rephrase that question?

A I will leave it as it stands for now.

Mr. Interrogating Officer:

Do you desire Mr. Foreman to answer that last question?

A No.

Gentlemen, are there further questions of Mr. Foreman at this time?

Even though this question was never answered, it is important to get the fact that the hot-headed foreman carries a gun since the referee will undoubtedly ask himself would I want to deal with a gun toting hothead or would I choose to go home.

Mr. Charged questions Mr. Foreman:

Q On April 1, 1976, did I, at any time, prior to 11:15, ask you if there was anything to be done. If so, what was your answer?

A I do not recall Mr. Charged asking such questions.

Q Was there anyone else assigned any duties at the same time that you say that you assigned this 130 and 132 to me?

A No, sir.

Q At what time, did you assign Mr. Employee Witness 1 to perform his duties?

A Shortly after our discussion.

Q Could you give a time. 2 min, 5, 15.

A 11:25

Q Was Mr. Employee Witness 1 in the room when you alleged we had this discussion?

A Mr. Employee Witness 1 had just come in before the discussion.

Q Was there anybody else present?

A Mr. Employee Witness 2, Mr. Employee Witness 3, Mr. Employee Witness 1 and I believe Mr. O'Donnell walked in.

Q After I left, did you call anyone and state to them that you had sent me home?

A I called the Trainmaster and told him I had some trouble and he asked what it was. I acknowledge the situation at hand.

Q What did you tell him exactly?

Q I want to know exactly what he told the trainmaster on the phone.

A I don't recall exactly what I said on the phone.

Q At the time you called the trainmaster, was there anyone in the office besides you?

A Mr. Employee Witness 2

Q Is he the only one?

A Yes

That is all the questions I have now. I would like to ask questions later.

This line of questinning establishes for the record

the presence of the Employee Witness.

Mr. Interrogating Officer to Mr. Foreman:

Q Is there anything further you wish to state?

A No, sir.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes.

Mr. Charges is called as witness.
Mr. Interrogating Officer questions Mr. Charged:

Q Mr. Charged, were you on duty at the time and date mentioned in the caption of this investigation?

A Yes.

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A I came on duty at 11:00, and between 11 and 11:15 I asked Mr. Foreman if there was anything to be done? I received no response. At approx. 11:15 as he was walking by me toward the door he told me to take care of the engines in 30 and 32 I asked if it was inbound or outbound. At this time he was opening the door to go out and I asked him to wait a minute. He went out the door, turned around and came back in and started to tell me, or did tell me, that he was getting tired of being chewed out in the morning because of the third shift; that he had had enough bull and all this time his voice was getting louder and louder. He said he wasn't going to take anymore and he was going to pull my timeslip and send me home. Raved on some more about it, turned around and walked out the door. I got up and left. At this time, as upset as he seemed to be to me, I didn't want to argue with him because he packed a gun and I did not know what kind of reaction he might have. I, therefore, took him at his word and did what he said and went home.

Once again those who will later read the transcript of the hearing are reminded that Mr. Charged was not dealing with a reasonable person but rather a gun toting hot-headed foreman.

Q Mr. Charged, On April 1, 1976, were you assigned as electrician the hours of 11 p.m. to 7 a.m. to work under the supervision of Mr. Foreman?

A Yes

Q Did he instruct you to work the engines in tracks 130 and 132?

A Yes

Q Did you work those engines as instructed by Mr. Foreman?

A No, because he later changed his orders.

Q Why did you ask Mr. Foreman to wait a minute as he was walking out the door after giving you your working orders?

A I don't remember if it was to ask him for a ride or ask him did he want one track or the other first.

Q Was working on the engines on tracks 130 and 132 your duties as an electrician?

A It is an electrician's duties - yes.

Q As an electrician, are you required to comply with instructions issued to you by the foreman?

A Depends on what they are.

Q Are you required to comply with the Foreman's instructions in connection with your performance of your duties as an electrician?

A Yes

Q Did you, on the night of April 1, comply with these instructions?

A Yes

Q Did you work the engines in track 130 and track 132?

A Track 130 and 132 were not the second orders that he gave me.

Q What were the second orders Mr. Foreman gave you?

A That he was pulling my timeslip and for me to go home.

Q Why was it necessary for Mr. Foreman to give you second orders; why had you not complied with his first orders?

A The second order followed seconds after the first orders. I had not had time to even get out of my chair.

Q Did you have time to call Mr. Foreman back into the room as he was walking out the door after giving you your first orders?

A When he gave me the first orders, he was already opening the door.

Q Why did you call Mr. Foreman back into the room?

A To the best of my knowledge, the reasons that I stated previously.

Q When Mr. Foreman instructed you to work Track 130 and Track 132 did you promptly start to comply with these instructions?

A I had not had time to comply before he flew off the handle and went to raving.

Q At the time you state he flew off the handle and went to raving was after you had called him back into the room. Is that correct?

A I did not call him back in the room. I just asked him to wait a minute at the time he was stepping thru the door and he immediately returned.

Q At what time did you ask him to wait a minute as he was stepping thru the door?

A Within seconds after he gave me the order to work the engines on 130 and 132.

Q At what time did Mr. Foreman give you the instructions to do the work?

A At approx. 11:15, give or take a few minutes.

Q What service had you performed between the hours of 11:00 p.m. and 11:15 p.m.?

A I had picked up a radio that was assigned to me, put a new battery in it, and tested it to see if I thought it was working. After doing this I asked Mr. Foreman if there was anything to do and received no response. As a matter of fact, I asked him twice; received no response either time.

Q Why was it necessary for Mr. Foreman to have to clarify his instructions to you to take care of the Engines in track 130 and track 132?

A I had already asked him to clarify what he wanted done to the two tracks.

Q Mr. Charged, there must have been some reason why you asked Mr. Foreman to wait a minute as he was going out the door. Was there not?

A I previously stated that it was either to ask him for a ride or which track he wanted first which Mr. Foreman previously stated that one track left before the other.

Q Mr. Charged, did you not also previously state that you did not remember why you called him back.

A I Said that to the best of my knowledge that is what I believe I was going to ask him.

Q Mr. Charged, what did Mr. Foreman say that he had been getting chewed out in the morning for?

A You will have to ask Mr. Foreman.

Questions Mr. Local Chairman?
Mr. Local Chairman questions Mr. Charged:

Q Mr. Charged, you were sitting here and heard Mr. Foreman make a statement that he gave you track 132 and track 130 to work and he also stated that you refused to work it. At any time, did you refuse to do this work?

A The answer to the first part of the question is - yes, that's what I heard Mr. Foreman state. The second part of the questions is - no, I did not refuse. He did not give me a chance to say anything.

Q Mr. Charged, as in the past, you work one track at a time?

A Yes

Q Did any time, Mr. Charged, did Mr. Foreman state what track he wanted first?

A No

Q Mr. Charged, do you believe there is a little grudge against you with the foreman?

Mr. Interrogating Officer:

I object to this question; we are not here for beliefs, but to develop the facts. Mr. Local Chairman, if you believe that this question will assist in developing the facts you are at liberty to continue this line of questinning.

Mr. Local Chairman:

Mr. Interrogating Officer, I think this will develop the fact in this investigation. May I have the answer Mr. Charged?

A I believe the answer to be - yes. Due to the fact that he has made the statement on several occasions that there is several of us on midnight shift that he would like to get rid of and I am one of them.

This is a good question since it places in the record that Mr. Charged recollects that he did not refuse to perform the work. His opinion was that the foreman was out to get him. As you will see, these statements will be substantiated later in the hearing.

Mr. Interrogating Officer to Mr. Charged:

Q. Mr. Charged, if you had an employee working under your supervision who did not promptly and cheerfully comply with his instructions, would you not also like to get rid of him?

Mr. Local Chairman objects:

I think that is a leading question.

Mr. Interrogating Officer:

Your objection has been entered into the record and will receive appropriate consideration.

This is a good objection for it emphasizes that the Interrogating Officer was trying to put words in the mouth of the witness.

Gentlemen, are there further questions of Mr. Charged?

Mr. Committeeman questions Mr. Charged:

Q Mr. Charged, why did Mr. Foreman wait until 11:15 to start giving orders?

A This is a frequent practice of his; sometimes he waits as long as 12:30 before he gives any orders to the 11:00 people.

Q Mr. Charged, is it a common practice for the third trick electricians to find out what has to be done and go ahead and do it without his supervision?

A Sometimes this has to be done due to the fact that he will not answer his radio or he just fails to give it to you. Usually whenever you contact the yardmaster to find out what is going on is when you know for sure that there is work to be performed. I believe that Mr. Foreman previously stated that it was his duty and responsibility to assign work.

Q Mr. Charged, at the start of your shift had Mr. Foreman got a proper turnover from the foreman he is relieving?

A Most of the time; I have no knowledge to this fact.

Q Mr. Charged, on said tracks 130 and 132, not knowing which track he wanted first, did he clarify if it was an inbound or outbound?

A At the time he gave me the orders he did not.

Q Mr. Charged, did he attempt to clarify?

A Prior to me asking him - he didn't either.

Q Mr. Charged, he really didn't tell you what had to be done to the tracks but just where the tracks were to be worked. Is that correct?

A Yes

Are there further questions of Mr. Charged?

Both say "no."

This line of questioning is good for it places in the record some doubt as to the competency of the foreman and hence Mr. Charged's need for clarification.

Mr. Interrogating Officer to Mr. Charged:

Q When Mr. Foreman, on April 1, 1976 assigned you to duties of working the engines in tracks 130 and 132, did you perform those duties?

A He did not give me the chance to do so.

Q What prevented you from performing the duties, Mr. Charged?

A The second orders that he issued to me.

Q Did you hear Mr. Foreman testify that he gave you the option to either perform the work as instructed on the tracks or to go home?

A I heard him state this.

Q Did you, at any time, advise Mr. Foreman that you would perform the work?

A I never had the chance to state yes or no.

Q Mr. Charged, is there anything further that you wish to state?

A Not at this time.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A I believe so.

Mr. Interrogating Officer calls Mr. Mechanical Superintendent, Carrier Witness 2

Mr. Interrogating Officer questions Mr. Mechanical Superintendent:

Q Mr. Mechanical Superintendent, were you on duty as Mech. Supt. at the time and date mentioned in the caption of this investigation?

A Yes, sir. I was.

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A On the morning after the incident, which happened on April 1, 1976 at approx. 11:15 p.m., I received a note from Mr. Foreman and in this letter it stated that when he assigned Mr. Charged duties shortly after 11:00 p.m. on April 1, Mr. Charged who is assigned as an electrician did not want to work the assignment Mr. Foreman gave him. Mr. Foreman's letter says there were outbound engines in track 132 and track 130 and these were the engines that he assigned to Mr. Charged. His letter says that "I told him to go to work tracks or go home".. which Mr. Charged checked out at 11:20 p.m. Mr. Charged's job is an electrician assigned on the 11:00 p.m. to 7:00 a.m. assignment, there is not specified track that each electrician is assigned to, they are positioned

as the foreman sees them on whatever tracks he needs them. Seniority does not prevail as to which track an electrician will work whereas from Mr. Foreman's letter it was plain to me that the man refused to work the job assigned him.

Questions Mr. Local Chairman?

Mr. Local Chairman questions Mr. Mechanical Superintendent:

Q Mr. Mechanical Superintendent, you made a statement earlier that Mr. Charged refused to perform his duties. Is that correct?

A This is correct.

Q In that letter that you read from that was received from Mr. Foreman did not state that he refused to do his work. Am I correct?

A I am sure the man refused to fulfill the assignment given to him by Mr. Foreman or he would not have gone home. Had the man had a grievance the proper manner to handle this is to fulfill the job assigned him and handle the grievance with his local committee at a later date. Anytime a man is assigned a job and questions the assignment and goes home, he is refusing to perform the duties assigned to him by the supervisor.

Q Mr. Mechanical Superintendent, does it say in that letter that Mr. Foreman sent you that his man refused to do the work?

A Mr. Foreman's letter says "he hesitated a moment and then told me that younger men were present and he shouldn't have to work the tracks. I told him to go work the tracks or go home." I am sure the assignment he was assigned was an electrician's duties.

Q Mr. Mechanical Superintendent, you are avoiding the question - I asked you if it said in this letter that this man refused to do the work?

A It most certainly does. The man did not do the work he was assigned to do when he was told to and he went home.

Q Mr. Mechanical Superintendent, you were sitting in the investigation when the caption of the letter was read. Am I correct?

A Yes, sir.

Q Caption of the letter reads "Mr. Charged refused to perform his work." Am I correct by saying that?

A Caption of the investigations says, "with your alleged refusal to perform your electrician's duties assigned to you."

Q Again, Mr. Mech. Supt., I will ask you the question - does it say in this letter that Mr. Foreman sent you that he refused to perform the work?

A The letter says he hesitated, but the man did refuse. He was assigned the duties and did not perform these duties. Another man had to work the assignment.

For the reader, I want to show Mr. Mech. Supt., Witness for the Carrier, does not want to answer my question in the correct manner. So at this time

Mr. Interrogating Officer:

Mr. Local Chairman, the record will so indicate. Your questions, Mr. Mech. Supt.'s answers and your statements which will receive appropriate consideration.

Q On the night in question, the information you received is hearsay. Am I correct by saying that?

A You can call what I have hearsay or anything you want to call it, Mr. Local Chairman. When a man is assigned duties that come under his craft and goes home without performing them he is failing to perform his duties that are assigned to him. This case speaks for itself when the man was instructed to work track 130 and track 132, he did not work them but checked out and went home.

Q On the night in question, were you there to hear Mr. Foreman instruct Mr. Charged to do this work?

A No, sir. I was not.

Q Then I would be correct by saying the information you have received is strictly hearsay.

A There are more points to it than that Mr. Local Chairman. The man reported for work at 11 p.m. but did not work any assignment; he checked out and went home. I am sure you will have to admit something is wrong.

Q Mr. Mech. Supt., the question I ask you was this was hearsay that you received. Am I correct by saying that?

A Yes, sir. You are correct that all the information in this letter is hearsay. The time records are not hearsay; it indicates that Mr. Charged reported for work at 11 p.m. and checked out at 11:20 p.m. failing to perform the duties assigned to him by Mr. Foreman.

Mr. Local Chairman: I have no more questions at this time.

Mr. Charged questions Mr. Mechanical Superintendent:

Q The letter that you received from Mr. Foreman, was it dated and if so, what was the date?

A Yes, sir. It was - dated April 1, 1976 - 11:00 P.M.

Q Mr. Mech. Supt., how do you account for the letter being posted at 11:00 p.m. when the incident didn't happen until 11:15?

A I didn't write the letter and don't know why Mr. Foreman put 11:00 p.m. as he stated in the last line of this letter that Mr. Charged left for home at 11:20 p.m.

Q Mr. Mech. Supt., it is a fact that the letter is dated and posted before the alleged incident occurred?

A Yes, it shows 11:00 p.m.

Q Mr. Mech. Supt., do you know for a fact that my going home was or was not in compliance with the foreman's orders?

A The only thing I know of your going home is what the foreman said; you did not desire to work the assignment that he gave you, so his letter states that he told you that you could either go home or work the assignment. I was not present.

Q Mr. Mech. Supt., you do not know for a fact if the letter is true or false that you received from Mr. Foreman.

A No, sir. I do not know for a fact what took place between you and the foreman; I do know it is a fact that you reported for work but did not work any assignment.

Q Mr. Mech. Supt., How do you know this to be a fact?

A Because you checked out and went home.

Q Is there records that have my signature indicating such?

A The timekeeper's roll show that you did not perform services on one of your assigned days which was April 1, 1976.

Q Mr. Mech. Supt., does the timekeeper's books or roll indicate what each electrician performs during the shift?

A Only the hours and minutes.

Gentlemen, are there further questions of Mr. Mechanical Superintendent?

Not at this time.

Mr. Interrogating Officer to Mr. Mech. Supt.:

Q. Is there anything further that you wish to state?

A No, sir.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes, sir.

The testimony of the Mechanical Superintendent could be potentially damaging since it could substantiate the foreman's position in the mind of those who will examine the transcript. Consequently, it should, if possible, be challenged which it was establishing that the Mechanical [illegible] was merely

speculating.

Also the Mechanical Superintendent was hostile and evasive which was emphasized for the record by the Local Chairman's comment, "For the reader, I want to show Mr. Mechanical Superintendent, Witness for the Carrier, does not want to answer my question in the correct manner. So at this time, we will continue on with questioning."

Recess for lunch 11:59 a.m. and will reconvene at 1:00 p.m.

Mr. Employee Witness 3 is called as witness.
Mr. Interrogating Officer questions Employee Witness 3:

Q Mr. Employee Witness 3, were you on duty at the time and date mentioned in the caption of this investigation?

A Yes

Q Please state your hours of assignment on that date.

A 11:00 to 7:00

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A A little past 11:00 p.m. on the night in question, Mr. Foreman told Employee Witness 1 something to do and he walked past Mr. Charged and gave him something to do. He was still walking toward the door and Mr. Charged asked him to hold it and he asked him again to hold it. When Mr. Foreman turned around and came back thru the door and started yelling. He told Mr. Charged that he didn't have to take any of his shit and that he was going to pull his timeslip and send him home. Shortly after that I heard Mr. Foreman on the phone; I don't know who he was talking to but he told someone that he just had to send a man home. During the conversation on the phone, I left.

Q Mr. Employee Witness 3, did the foreman instruct Mr. Charged to work tracks 130 and 132 in the train yard?

A I really don't know for sure what he gave Mr. Charged; he spoke to him as he was walking toward the door away from me, never really stopping when he told him what to do.

Q Mr. Employee Witness 3, do you by your own admission, state that you did not hear all instructions issued by Mr. Foreman to Mr. Charged?

A The exact tracks he gave him to work on, I am not sure of.

Q Are you sure of the balance of conversation between the foreman and Mr. Charged?

A There was really no conversation. As far as Mr. Charged was concerned. He

merely asked the man to wait a minute and Mr. Foreman came back and blew up.

Q Did Mr. Charged advise Mr. Foreman that there was younger men present?

A No

Q Did Mr. Charged ask Mr. Foreman as he was going out the door to wait a minute?

A Yes, sir.

Q When Mr. Foreman came back in, was there a conversation between Mr. Foreman and Mr. Charged in connection with Mr. Foreman being chewed out by someone?

A No, Mr. Foreman immediately returned and started chewing out Mr. Charged.

Q Mr. Employee Witness 3, please state for the record what words were said that you refer to concerning Mr. Foreman chewing out Mr. Charged.

A I can't tell you everything that the foreman said; he told Mr. Charged that he don't have to take any of his shit and that he was pulling his timeslip and sending him home.

Q Mr. Employee Witness 3, did Mr. Charged, at any time, offer or make an effort to go out into the train yard and perform the duties assigned him by Mr. Foreman.

A Mr. Foreman didn't have him a chance to say anything.

Q Mr. Employee Witness 3, if Mr. Charged had no opportunity to say anything, what was preventing him from advising his immediate supervisor that he was ready to perform his duties and proceed to perform them?

A Mr. Foreman sent him home.

Q Did Mr. Foreman send Mr. Charged home because he would not perform his duties as instructed?

A He only said, "I'm pulling your timeslip and sending you home."

Q Mr. Employee Witness 3, did he not, prior to that statement, instruct Mr. Charged to work track 132 and track 130 in the train yard?

A He gave him some tracks but I am not sure what tracks.

Q Did Mr. Charged after receiving these tracks proceed to the train yards and start working them?

A Mr. Foreman was walking past Mr. Charged when he told him about these tracks. Mr. Charged asked him to wait a minute.

Q Did Mr. Charged also at this time ask the foreman if there were not men junior in seniority to him on duty?

A I didn't hear that - no.

Q Mr. Employee Witness 3, are you quite sure that you heard all the conversation between Mr. Foreman and Mr. Charged?

A As I have already said, all I heard Mr. Charged say was "wait a minute" when Mr. Foreman came back yelling in a very loud voice. There was really no conversation as far as the accused was concerned.

Q What did Mr. Foreman instruct Employee Witness 1 to do?

A He gave him some tracks to work also.

Q What tracks did Mr. Foreman give Employee Witness 1 to work?

A I honestly don't know for sure.

Q Did Mr. Foreman give Mr. Charged tracks to work?

A He gave him something to do; yes, sir.

Q Was this something to do, tracks to work?

A I believe so, yes.

Q What tracks did Mr. Foreman give Mr. Charged to work?

Mr. Local Chairman objects:

You have asked this man this question several times what tracks he gave Mr. Charged to work and he has answered it several different times. He has given you a sufficient answer before.

Mr. Interrogating Officer:

Mr. Local Chairman, your objection has been entered into the record and will receive appropriate consideration.

Mr. Interrogating Officer:

Mr. Employee Witness 3, will you please answer my question.

A I don't recall the exact tracks.

During the questioning by the Interrogating Officer, the witness performed well. The Interrogating Officer attempted to challenge the credibility of the witness. The witness countered by stating and restating the facts as he knew them honestly admitting he couldn't answer all questions which adds to his credibility. Also, the Local Chairman correctly stopped the

Questions Mr. Local Chairman?

Mr. Local Chairman questions Mr. Employee Witness 3:

Q Mr. Employee Witness 3, on the night in question, did you hear Mr. Charged refuse to perform his work?

A No

Q Am I correct by saying in a statement you made earlier Mr. Foreman walked by Mr. Charged proceeding to the door and told Mr. Charged to perform some work and Mr. Charged asked Mr. Foreman to wait a minute and he turned around and told him that he was not going to take anymore of his shit that he was pulling his timeslip and sending him home?

A Yes, sir.

Q About what time was this, approximately?

A Shortly after 11:00.

Q Mr. Employee.Witness 3, when was it, approx., Mr. Foreman got on the telephone and called somebody and told them that he had to send a man home?

A Right after he sent the man home.

Q Mr. Employee Witness 3, who else was in there with you when this happened?

A Employee Witness 2

Q Did Mr. Foreman get violent and come undone when Mr. Charged asked him to wait a minute?

A Very much so.

Q Is Mr. Foreman known to get violent like this?

A This is the worst I have ever seen him, but I have seen him lose his temper before.

Q Mr. Employee Witness 3, what is your procedure when you come to work at night. Could you tell me in your words?

A I get my tools together, go to the engine department office, ask Mr. Foreman what he has for me to do.

Q The night in question, Mr. Employee Witness 3, did you hear Mr. Charged ask Mr. Foreman what he had to do?

A I believe he did it in the very beginning of the shift - ask him if he had anything to do.

Q Mr. Employee Witness 3, is it a practice that the foreman gives you more than one assignment to do, you ask him which one he wants first?

A Yes

Q The night in question, did Mr. Charged have the time or opportunity to ask Mr. Foreman what he wanted done first?

A No, sir.

Mr. Committeeman questions Mr. Employee Witness 3:

Q Do you believe Mr. Foreman was in the right state of mind when he pulled Mr. Charged's timeslip and told him to go home?

A No, I don't.

Q Do you believe that if Mr. Charged would have had the opportunity to get a clarification on his duties that night that there would have been more trouble from the supervisor?

A No.

Q Was Mr. Foreman carrying a pistol?

A Yes, sir.

Q Am I correct in saying that he had it on his person?

A Yes, sir.

Mr. Charged questions Mr. Employee Witness 3:

Q Have you ever heard Mr. Foreman state that there were certain people on the third shift that he would like to get rid of?

A Yes, I have.

Q Would you state these people, please.

A Just as you have said it - certain people.

Q To the best of your knowledge, am I one of them?

A I believe he was referring to you.

Q Mr. Employee Witness 3, to the best of your knowledge, is it the Foreman's duty and responsibility to issue orders to the men on his shift as to what to do?

A Yes

Q Have you ever heard him on the radio, or in person, bawl someone out for not knowing that there was work to be performed when he had not assigned it?

A Yes

Q Mr. Employee Witness 3, is it Mr. Foreman's practice to assign work promptly at 11:00 or has he been known to wait as much as 30 min. or an hour before he assigns it?

A He has been known to wait until after we'd been there for a while to line you out.

Q In accordance with Mr. Foreman's practice at 11:15 is not exceptionable to assign work?

A It is not unusual.

Q Mr. Employee Witness 3, do you recall Mr. Foreman saying anything about being chewed out because of third trick? And that he was tired of it?

A Yes

Mr. Interrogating Officer to Mr. Employee Witness 3:

Q Mr. Employee Witness 3, did Mr. Charged ask Mr. Foreman to hold it when Mr. Foreman walked past him or did he ask him to wait a minute?

A I believe he said both; I am not - he made two statements - hold it and wait a minute.

Q When Mr. Charged asked Mr. Foreman at the beginning of the shift if he had anything to do, did Mr. Foreman assign him duties at that time?

A Not at that time, no.

Q What was Mr. Foreman's answer to Mr. Charged?

A I don't believe he answered.

Mr. Local Chairman questions Mr. Employee Witness 3:

Q Mr. Employee Witness 3, on the night in question, did Mr. Charged raise his voice to Mr. Foreman?

A The only thing Mr. Charged said was to hold it as he was walking out the door.

Q Am I correct by saying that Mr. Charged did not argue with Mr. Foreman?

A Yes, sir.

Mr. Interrogating Officer to Mr. Employee Witness 3:

Q Mr. Employee Witness 3, did Mr. Foreman give Mr. Charged a direct order to go home or did he instruct him to perform his duties or else he would pull his timeslip and send him home?

Mr. Local Chairman objects: That is a compound question, break the questions down, please.

Mr. Local Chairman your objection has been entered into the record and will receive appropriate consideration.

Mr. Interrogating Officer: Mr. Local Chairman, your opinion of what can be answered in one answer can be decided by persons who have reasons to review this transcript.

Q Mr. Employee Witness 3, did you understand my question?

A Not completely - no.

Q Mr. Employee Witness 3, did Mr. Foreman give Mr. Charged a direct order to go home?

A Yes

Q Did Mr. Foreman instruct Mr. Charged to perform his duties or else he would pull his timeslip and send him home?

A As I said before, Mr. Foreman told Mr. Charged he was pulling his timeslip and sending him home.

Q Did Mr. Foreman advise Mr. Charged why he was pulling his timeslip and sending him home?

A Not really – no.

Q Mr. Employee Witness 3, do you know why Mr. Foreman sent Mr. Charged home on the night of April 1, 1976?

A I don't know why Mr. Foreman blew up in the first place – I saw no apparent reason.

Q At what time did this incident occur that you refer to – Mr. Foreman blowing up?

A Approx. 11:15

Gentlemen, are there further questions of Mr. Employee Witness 3?

All say "no."

Mr. Interrogating Officer to Mr. Employee Witness 3:

Q Is there anything further that you wish to state?

A No

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes

The testimony of this witness substantiates Mr. Charged's statement of the facts emphasizing for the benefit of the reader of the transcript that Mr. Charged is not the only one who believes the Foreman is an incompetent, unreasonable, gun toting hot-head.

Mr. Employee Witness 2 is called as witness
Mr. Interrogating Officer questions Mr. Employee Witness 2:

Q Mr. Employee Witness 2, were you on duty as electrician at the time and date mentioned in the caption of this investigation?

A Yes, sir.

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A Mr. Foreman gave Mr. Charged a track to go out on and Mr. Employee Witness 1 a track to go out on. At this time, Mr. Charged said, "hey, hold it." Mr. Foreman commenced to yell and scream at Mr. Charged and told him that he would pull his timeslip and to go home. At that time, Mr. Charged got up and went home.

Q How far were you from Mr. Foreman when he gave Mr. Charged the tracks?

A Somewhere 5 to 6 foot.

Q Do you know or have knowledge why Mr. Charged said "hey, hold it" immediately after receiving his working instructions from Mr. Foreman?

A No, sir.

Q Exactly what did Mr. Foreman say to Mr. Charged relative to pulling his timeslip and sending him home?

A He said that he didn't want to hear about it because he was getting tired of getting his ass chewed out over you god damn guys every morning and every night.

Q Do you know what Mr. Foreman meant when he said he didn't want to hear about it?

A No, sir.

Q On the night of the incident, did you hear any conversation to the effect that younger men were present and should have been assigned to duties that the foreman had assigned to Mr. Charged?

A No, sir.

Questions Mr. Local Chairman?

Mr. Local Chairman questions Mr. Employee Witness 2:

Q Mr. Employee Witness 2, on the night in question, did you hear Mr. Charged raise his voice to Mr. Foreman?

A No

Q Mr. Employee Witness 2, on the night in question, did Mr. Foreman raise his voice and come unglued?

A Yes

Q Mr. Employee Witness 2, would I be correct by saying that the Foreman gave you two or three jobs to do, you generally question him which one he wants done first?

A Yes

Q Mr. Employee Witness 2, do you get your instructions right at 11:00 or 11:15 at night what has to be done at the roundhouse?

A No

Q By your answer, no - do you mean that it is later - sometime later than that?

A Most generally I get mine I would say around 11:30 or possibly 12:00.

fellow and high strung?

A I would say very much so.

Q Mr. Employee Witness 2, is it permissable for the foreman to wear a gun on the job to perform his duty?

A No

Q Would I be correct by saying a man that's high strung like this would be dangerous to work around by carrying a gun on him?

A I would say so.

Mr. Committeeman questions Mr. Employee Witness 2:

Q In your opinion, is Mr. Foreman a capable supervisor?

A I believe he has a lot to learn or be desired on the position, yes.

Q With the job he has, do you believe he has too much pressure trying to work a combination foreman job?

A Yes, definitely.

Q On this night April 1, after the incident between Mr. Foreman and Mr. Charged, did the foreman make a phone call?

A Yes

Q Were you close enough to the phone to hear what he said?

A Yes

Q Would you care to repeat it?

A He called and asked for Mr. Kelley and apparently Mr. Kelley wasn't there so he spoke to Mr. Chump. He told Mr. Chump that he sent a man home and he needed someone to replace him.

Q Did he say for what reason he sent the man home?

A Yes, he said that he sent a man home for sickness, but then he turned right around and stated the Mr. Charged refused to work.

Q Would you say the Mr. Foreman was upset and didn't know what he was saying?

A I believe he was very upset.

Q Did you have any trouble with him that night?

A Yes. I tried to tell him to hold it cool and he told me he didn't want to hear my shit and didn't I have work to do. I stated to him "I didn't know because he never did tell me what I had to do for the rush."

Q Is that a common occurrence?

A Yes, quite often it is very late.

Mr. Charged questions Mr. Employee Witness 2:

Q Mr. Employee Witness 2, what do you refer to when you say the rush?

A I have engines to put up on F track from 11:00 at night to 11:59. We call that rush.

Q By Mr. Foreman not giving you orders until such a late time, does this sometimes cause a reflection upon you?

A Yes, we get chewed out if the engines aren't worked and put up there for a specified crew to go out at a certain time.

Q When Mr. Foreman has a combination job, is it his duties and responsibilities to inform you as to what duties you will perform?

A Yes

Q In failing to tell you what your duties are, has Mr. Foreman sometimes asked you why you didn't find out for yourself?

A No, he never has stated that to me.

Q Has there ever been times when Mr. Foreman could not be reached by radio?

A Yes

Gentlemen are there further questions?

Mr. Local Chairman questions Mr. Employee Witness 2:

Q Mr. Employee Witness 2, on the night in question, did you hear Mr. Charged refuse to do the work that Mr. Foreman assigned him to do?

A No

Gentlemen are there further questions of Mr. Employee Witness 2?

All say "no."

Mr. Interrogating Officer to Mr. Employee Witness 2:

Q Is there anything further that you wish to state?

A No, sir.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes, sir.

The testimony of this witness substantiates the testimony

Mr. Employee Witness 4 is called as witness.
Mr. Interrogating Officer questions Mr. Employee Witness 4:

Q Mr. Employee Witness 4, were you on duty at the time and date mentioned in the caption of the investigation?

A Yes

Q What were your assigned hours?

A 11 p.m. to 7 a.m.

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A On the night in question, shortly after 11:00, Mr. Foreman gave Employee Witness 1 and Mr. Charged some tracks to work as he was walking out the door and Mr. Charged asked him to wait a minute. He walked out the door and came back in and blew up and started yelling. He told Mr. Charged that he did not have to put up with any of his shit or anybody elses and that he was tired of getting has ass chewed out in the morning because of the men. At this time Mr. Foreman said that he was pulling Mr. Charged's timeslip and to go home.

Q What track did Mr. Foreman assign Mr. Charged to work?

A I don't remember.

Q What tracks did Mr. Foreman assign Employee Witness to work?

A I don't recall.

Q How far were you from Mr. Foreman when he gave Mr. Charged his instructions concerning tracks to be worked?

A I would say 15 to 20 feet.

Q How far were you from Mr. Foreman when Mr. Charged asked him to wait a minute?

A About 25 feet.

Q How far were you from Mr. Charged when he asked Mr. Foreman to wait a minute?

A About 15 feet.

Q Is there some reason why you remember specifically what was said as the instance was progressing but do not remember the work assignments?

A Mr. Foreman is very loud and he was flying off the handle and this would be kind of hard to not hear and very unusual.

Q Did you hear Mr. Charged offer to perform his work assignment during the time of the incident?

A At the time of the incident, Mr. Foreman did not give Mr. Charged a chance to say anything.

Q Did Mr. Charged interrupt and try to say anything to the effect that he would perform his work assigned?

A I would say that he did not say anything to interrupt but I don't believe that he could have.

Q Did you overhear Mr. Charged tell Mr. Foreman that there were younger men present and he should not have to work the tracks assigned to him?

A No, sir. I never heard that.

Q Did you overhear Mr. Foreman tell Mr. Charged to either work the tracks as instructed or go home?

A No, sir. I never heard that statement either.

Q Were you present at all times from the time Mr. Charged reported for duty until he departed the company premises to go home?

A Yes, sir. I was.

Q Was it possible that Mr. Foreman could have had some conversation with Mr. Charged without your overhearing the conversation?

A To my knowledge, he could not have.

Questions Mr. Local Chairman?

Mr. Local Chairman questions Mr. Employee Witness 4:

Q Mr. Employee Witness 4, you stated your working hours are 11 p.m. to 7 a.m. Am I correct?

A Yes, sir.

Q Mr. Employee Witness 4, do you always get a turnover of what to do right at 11:00?

A No, sir.

Q Am I correct by saying that this time varies 15 to 30 to 45 min. later?

A Yes

Q On the night in question, Mr. Foreman gave Mr. Charged and Mr. Employee Witness 1 instructions what to do, did Mr. Charged refuse to do this work?

A No, sir.

Q On the night in question, did Mr. Charged get belligerent or loud to Mr. Foreman?

A No, sir.

Q On the night in question, did Mr. Foreman get belligerent and loud and shout at Mr. Charged?

A Yes, sir. He did.

Q Mr. Employee Witness 4, is it a practice when you get one or more assignments to do, to ask the foreman what he wants first?

A Yes, sir. You do.

Q Mr. Employee Witness 4, in your opinion, do you think there is a grudge between Mr. Foreman and Mr. Charged?

A Yes, sir. I do.

Q How would you come about that?

A I have heard Mr. Foreman make the statement that he was going to run Mr. Charged off third shift.

Questions gentlemen?

Mr. Committeeman questions Mr. Employee Witness 4:

Q In your opinion, is Mr. Foreman a capable supervisor?

A No, sir. In my opinion, I don't believe that the man is capable of performing his duties.

Q Would you say for what reason?

A I believe that the man should be ready to assign his tracks and his work no later than a few minutes after the starting hour of the man, the man doesn't give us our work on the perimeter some of the time and we have to call the yardmaster to find out where the train is to be worked.

Mr. Charged questions Mr. Employee Witness 4:

Q Does Mr. Foreman sometimes get belligerent on the radio?

A Yes, sir. He does.

Q Is this the first time that you have seen Mr. Foreman raise his voice or fly off the handle?

A No, it isn't the first time.

Mr. Interrogating Officer to Mr. Employee Witness 4:

Q Mr. Employee Witness 4, do you have knowledge as to why Mr. Charged asked Mr. Foreman to wait a minute after receiving his work assignment?

A No, sir. I do not know why unless it was to ask the man what track that he wanted worked first.

Q Mr. Employee Witness 4, is it the duties of an electrician to question the assignment given him by the foreman?

A Only if the duty we consider more than one track to be worked, the man would always ask what track he wanted to be worked first.

Q Did Mr. Charged ask Mr. Foreman this question the night of the incident?

A If Mr. Charged's question was this to find out which track, he did not have time to be able to ask his question.

Are there further questions of Mr. Employee Witness 4?

All say "no."

Mr. Interrogating Officer to Mr. Employee Witness 4:

Q Is there anything further you wish to state?

A No, sir.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes, sir.

Mr. Employee Witness 1 is called as witness.
Mr. Interrogating Officer questions Mr. Employee Witness 1:

Q Mr. Employee Witness 1, were you on duty at the time and date mentioned in the caption of this investigation?

A Yes

Q What were your hours of assignment on that date?

A 11 - 7

Q Please state all the facts of which you have knowledge concerning the incident under investigation.

A Shortly after 11:00 Mr. Foreman gave Mr. Charged engines to inspect and started to walk out the door. Mr. Charged asked him to wait a minute. Mr. Foreman went out the door and came back and jumped all over Mr. Charged and said he didn't have to take any bull off of him or anyone else on that shift. Said that he was going to pull his timeslip and send him home. He was very angry or upset at the time.

Q Were you in the room when this conversation transpired?

A Yes

Q How far were you from Mr. Foreman?

A Probably 10 feet.

Q How far were you from Mr. Charged?

A Probably the same distance.

Q What track or tracks did Mr. Foreman assign Mr. Charged to work on?

A I am not exactly sure, either track 132 or 133. I am not exactly sure.

Q Could you clearly hear all that transpired between Mr. Foreman and Mr. Charged on the night of the incident?

A I would say so, except that part of the time Mr. Foreman was talking loud and fast and it wasn't too clear.

Q Did you hear Mr. Charged tell Mr. Foreman at the time of the incident that there were younger present and he shouldn't have to work the tracks assigned him?

A No

Q Is it possible such a conversation transpired and you would not have heard it?

A No

Q Then you were clearly in a position to hear every word that transpired between the two employees. Is that correct?

A Except for the time that Mr. Foreman was rattling so loud and you couldn't hear what he was saying.

Q Did Mr. Charged at any time after the incident started offer to go out to the train yard to work the tracks assigned him by Mr. Foreman?

A No, because he asked him to wait a minute and that is when Mr. Foreman jumped all over him and told him that he would pull his timeslip and send him home.

Q After Mr. Foreman jumped all over Mr. Charged as you stated, did Mr. Charged then offer or attempt to go out into the train yard and perform the work and the tracks assigned him by Mr. Foreman?

A No

Questions, Mr. Local Chairman?

Mr. Local Chairman questions Mr. Employee Witness 1:

Q Mr. Employee Witness 1, as an electrician, if the foreman assigns you more than one duty is it a practice that you ask him which one he wants done first?

A Yes, sir.

Q On the night in question, did you hear Mr. Charged refuse to perform his assigned duties?

A No, sir. He never refused at anytime to do it.

Q Mr. Employee Witness 1, did you hear Mr. Charged raise his voice to Mr. Foreman?

A No, sir.

Q Did you hear Mr. Foreman raise his voice to Mr. Charged?

A Yes, sir. I did.

Q Mr. Employee Witness 1, would you say Mr. Foreman is a nervous sort of fellc and flies off the handle?

A Yes, sir. He has done that on a couple occasions.

Q Mr. Employee Witness 1, do you think it is safe to work around a fellow like that?

A No, sir. People have talked about Mr. Foreman carrying a gun and I don't think it is.

Q Does he conceal this weapon?

A Not really - no.

Gentlemen, are there further questions of Mr. Employee Witness 1?

Mr. Committeeman questions Mr. Employee Witness 1:

Q Do you believe that Mr. Foreman is a capable foreman?

A Personally, I don't think he a foreman material.

Q If so, for what reasons?

A He flies off the handle too easily for one thing and he doesn't dispatch the work properly and on time.

Mr. Charged questions Mr. Employee Witness 1:

Q Mr. Employee Witness 1, is it unusual for Mr. Foreman to wait until 11:15 to dispatch work?

A 11:15 and later.

Q Mr. Employee Witness 1, have you ever had to call the yardmaster to find out what was to be done?

A Yes

Q Mr. Employee Witness 1, after I left, did Mr. Foreman tell two different stories as to why I went home?

A Yes, he did.

Gentlemen, are there further questions of Mr. Employee Witness 1?

Q Mr. Employee Witness 1, have you heard remarks before from Mr. Foreman that he was figuring on getting Mr. Charged off midnights?

A Not personally from Mr. Foreman but I have heard other men say that he had said that.

Q Mr. Employee Witness 1, could you tell me what caliber pistol is that he wears?

A I think it is a 357 Magnum.

As with the testimony of the previous Employee Witness the testimony of this witness substantiates the Charged Employee's recollection of the facts.

Right now, the Foreman's recollection of the facts is unsubstantiated while four people have testified as to the accuracy of the employe's recollections.

Mr. Interrogating Officer to Mr. Employee Witness 1:

Q Mr. Employee Witness 1, is there anything further that you wish to state?

A No

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes, sir.

Mr. Interrogating Officer to Mr. Charged:

Q Do you have any further statements or evidence to offer in your behalf?

Mr. Local Chairman requests to call Mr. Charged back as witness.
Mr. Local Chairman questions Mr. Charged:

Q Mr. Charged, you were sitting here when Mr. Mech. Supt. made the statement that you signed out at 11:20 p.m. on April 1, 1976, did you do this?

A No

Q So would I be correct by saying that you did not fill out your time card and sign it for 11:20 p.m.?

A This is correct.

Mr. Interrogating Officer to Mr. Charged:

Q Mr. Charged, after the conversation or incident between you and Mr. Foreman, did you at any time tell him that you would go out into the train yard and comply with his instructions to you to work tracks number 130 and number 132?

A Mr. Foreman never ever gave me a chance to say anything and as upset as he seemed to be and knowing that he carried a gun, I was not going to argue with him.

Q Mr. Charged, my question was not did you argue with Mr. Foreman; my question was, did you offer to go out into the train yards and work the two tracks as instructed?

A I was not offered the opportunity to say anything.

Q Mr. Charged, did you just simply, after the conversation with Mr. Foreman, depart from company property and go home?

A I did as per instructions.

Q Mr. Charged, did you any time prior to receiving the investigation notice, make an effort to explain your reason for your action on the night of April 1 to either the Mechanical Superintendent or the Asst. Mechanical Superintendent?

A When Mr. Mech. Supt. delivered the letters to my house telling me of the investigation and the fact that I would not be permitted to work until the outcome of the investigation. I stated at the time the facts in the letter were not true. He seemed to me not to care if they were or not. He just said goodby and left.

Q Mr. Charged, at approximately what time did Mr. Mech. Supt. deliver the letters to you at your home?

A I believe it was approximately 4:00 which would have been the 2nd, Friday.

Q Mr. Charged, had you made any effort to see Mr. Mech. Supt. and discuss this matter with them between the time that you left your assignment at 11:20 p.m. April 1 and the time that he delivered the letter to you at your home at 4:00 p.m. on April 2?

Mr. Local Chairman objects: According to the letter I don't see where this has any responsibility on the bearing of this man being sent home.

Mr. Interrogating Officer: Mr. Local Chairman, your objection has been entered into the record and will receive appropriate consideration.

Mr. Charged, would you please answer my question?

A I did not know of their intention until they appeared at my house and asked me to read the letter.

Q Mr. Charged, we will re-read the question whereby you may have an opportunity again to answer the question.

Mr. Local Chairman objects: We had this same incident earlier in the investigation. I kept asking Mr. Mech. Supt., Witness of the Carrier, and it seemed that he would not answer and you, Interrogating Officer, backed Mr. Mech. Supt. on this. So I figure this is why Mr. Committeeman and myself are here to do to see that this investigation is run in a fair and impartial manner. The man was sent home by his supervisor on the night in question and the supervisor didn't tell him to stay home or not even to report for work anymore and some 15 or 16 hrs. later as the witness has told you, Mr. Charged that Mr. Mech. Supt. delivered a letter to him stating that he was pulled out of service. It looks like to me that there is grudge against this fellow and we are on a fishing expedition. There is nothing that pertains to his alleged refusal to perform his duties on the night in question. Again, I enter a protest and I think the question is out of line.

This objection was well done for it restates that the investigation is not being conducted fairly and it interrupts the hostile questioning by the Interrogating Officer.

Mr. Interrogating Officer:

Mr. Local Chairman, all questions, all answers, all objections and all protests have been entered into the record of this investigation and will receive appropriate consideration. If you,or Mr. Charged, whom you represent, do not see fit to answer my last question, that is permissable and the record will so indicate.

Mr. Charged: My answer is the same as previously given.

Mr. Interrogating Officer to Mr. Charged:

Q Is there now anything further you wish to state?

A Yes. I think this thing is unfair and that I was judged guilty before my side was even presented. Therefore, I cannot see how it could be a fair and impartial hearing.

The contention of an unfair hearing is restated.

Q Mr. Charged, have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes

Mr. Local Chairman requests that Mr. Foreman be called again as witness.
Mr. Local Chairman questions Mr. Foreman:

Q Mr. Foreman, on the night in question, did you fill out Mr. Charged's time card and sign it for him?

A No, sir. I don't believe I did. I showed him on the force report though.

Q Why I ask this question, Mr. Foreman, Mr. Mech. Supt. stated earlier that Mr. Charged made out his timeslip at 11:20 and signed it. This is why. On the night in question, did Mr. Charged tell you he refused to perform his assigned duties you had given him?

A I answered that questions earlier. Mr. Charged did not verbally refuse to do the work.

The Local Chairman did an excellent job in obtaining the Foreman's statement that Mr. Charged did not refuse to perform the work which is the center of the charges against

Are there other questions of Mr. Foreman, gentlemen?

Mr. Committeeman questions Mr. Foreman:

Q Are you aware of the company rule against wearing firearms on company property?

A To my knowledge, I believe there was something put out on firearms but what it pertained to, I couldn't tell you.

Mr. Interrogating Officer to Mr. Foreman:

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A I believe I have, sir.

Mr. Foreman is excused from the room.

Mr. Interrogating Officer to Mr. Charged:

Q Do you have any further statements or evidence to offer in your behalf?

A Nothing except I strongly protest this whole investigation.

Q Have you been afforded the opportunity to make a full statement and to produce any evidence desired by you?

A I don't believe that my notice was in compliance with the agreement between the Union and the Carrier.

Q Mr. Charged, your statement was entered into the record and will receive appropriate consideration. Would you please answer my last question?

A Yes

Mr. Local Chairman and Mr. Committeeman, representing Mr. Charged, do you have any further statements or evidence to offer?

Mr. Local Chairman: My statement is as I brought out earlier in the investigation that I protest the investigation entirely and the investigation is carried on above my protest and it was brought out in this investigation that Mr. Charged was a marked man and the carrier was wanting to make an example of him as we had witnesses to testify in behalf of Mr. Charged's case. Also it was brought out the safety factor and the burden lies on the company to the foreman carries a gun and he is an awful nervous and high tension fellow. It looked like to me that this case could have been investigated by the supervisors before it went this far. But no, in turn, 15 hrs. later or 16, they presented Mr. Charged with a hand carried letter that he was pulled out of service. It showed to me that they were so anxious to pull this man out of service they couldn't wait for the mail to get to him. They violated the agreement and didn't give us proper notice and the agreement calls for. They didn't give us 72 hrs. notice prior to the investigation but we would like to show as representatives of Mr. Charg that we were not hard nosed about it and accepted the hand carried letter to prove our point that the Carrier as in the past has not investigated what happened on the night in question or this could have been solved without a lengthy investigation. It was also brought out in the investigation that

Mr. Mech. Supt. kindly got a little hostile and pointed his fingers at the representative making a statement in a round about way that there was going to be more of this. It seems to me that the carrier could work with the men a little closer than trying to find faults and taking one side stories and bringing in hearsay information in investigation. So at this time, I protest the investigation in its entirety.

The closing remarks are very important for in most instances it is the last chance you will have to state your case for the record. Also, it is a fine opportunity to pull all the loose ends of your case together for those who will later read the transcript.

Mr. Committeeman: I agree with Mr. Local Chairman.

Gentlemen, at this time, I would like to recall Mr. Mech. Supt. to answer allegations made against him by Mr. Local Chairman.

Mr. Interrogating Officer to Mr. Mech. Supt.:

Q Did you while giving your testimony of this investigation, point your finger at the representative and make a statement that there was going to be more of this?

A I did point my finger at the representative; I don't recall the words but it was quite obvious the so-called questions were not questions; they were statements directed to me, which I feel is not proper in investigations.

Questions of Mr. Mech. Supt., gentlemen?

Mr. Local Chairman questions Mr. Mech. Supt.:

Q Shouldn't interrogating officer decide if these questions are right or not?

A If I recall properly, the Interrogating Officer reminded you of the same fact that they were statements instead of questions which the record will show.

Mr. Interrogating Officer to Mr. Mech. Supt.:

Q Mr. Mech. Supt., is there now anything further that you wish to state?

A No, sir.

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A I have.

Mr. Local Chairman: I would like to call my witness to the stand when Mr. Mech. Supt. pointed his finger at me and made the remark that there would be more of this.

Mr. Charged is called as witness...

Mr. Local Chairman questions Mr. Charged:

Q Mr. Charged, you sat thru this investigation. Am I correct?

A Yes

Q Mr. Charged, did you hear Mr. Mech. Supt.'s testimony while he was witness?

A Yes

Q Mr. Charged, did Mr. Mech. Supt. point his finger at your representatives and tell them that there was going to be more of this?

A Mr. Mech. Supt. became rather disturbed for a minute or so and at this time is when he made the statement.

Gentlemen, are there further questions of Mr. Charged?

Both say "no."

Mr. Interrogating Officer to Mr. Charged:

Q Mr. Charged, is there now anything further that you wish to state?

A No

Q Have you had the opportunity to make a full and complete statement of the facts as you know them?

A Yes

Mr. Local Chairman, has this investigation been conducted in a fair and impartial manner? If not, why?

A No. For the reasons that I have earlier in the investigation and in my last statement, it was not conducted in a fair and impartial manner.

Q Mr. Committeeman, has this investigation been conducted in a fair and impartial manner? If not, why not?

This question "has this hearing been conducted in a fair and impartial manner" will always be asked and should always be answered negatively by you. If in fact you are unsure whether or not the hearing was conducted in an impartial manner, you should answer "I will let the record of the hearing speak for itself."

In short, when the Carrier Official asks this question, it should never be answered yes.

A I would have to agree with Mr. Local Chairman.

INVESTIGATION CLOSED 4:20 p.m. April 6, 1976

SECTION 5 (f)

Handling Disciplinary Grievances

Assessment of Discipline

There must be strict compliance with agreement provisions in the assessment of discipline. The decision must be rendered within the time limit specified; it must be definite and certain. A failure to comply with the provisions of the agreement in the rendition of a decision will usually result in a waiver or forfeiture of Carrier's right to assess discipline. If the rule requires that decision be rendered within ten days after hearing, it is mandatory that it be rendered within such time.

The general rule for the computation of time in such cases is set forth in Second Division Award 3545, as follows:

> "The general rule (in law) is that the time within which an act is to be done is to be computed by excluding the first day and including the last; that is, the day on which the act is to be done..."

The rule was applied in Third Division Award 10420, as follows:

> "In the case before this Board the Carrier's letter of disallowance was dated September 20, 1956, and the Organization's letter of appeal is dated November 19, 1956. Applying the rule adopted in (Second Division) Award 3545, the 60-day period began September 21, 1956, and expired at midnight on November 19, 1956. Thus, the Organization appealed 'within 60 days' as required by Section 1(b) and (c) of Article V of the August 21, 1954 Agreement."

It has been held that a decision is "rendered" when the letter is "dispatched" or "sent". Since time is of the essence, the method of delivery is usually not particularly important. If, however, the

method selected results in undue delay in delivery of the decision to the charged employe, this may become an issue.

The decision must be definite and certain. It must relate to the specific charges referred to in the hearing. If there was more than one charge, the decision should refer to all of the charges and make a finding on each charge. The decision should not refer to any matters not included in the charge(s), or alleged facts not included in the hearing transcript. Such an error, depending upon the weight accorded the extraneous matters, could void the discipline. An exception to this rule would be reference to alleged prior discipline as the basis for enhancement of penalty assessed.

Transcript of Hearing

The transcript of the hearing provides the factual basis for a determination as to whether the findings of the hearing officer and the assessment of discipline will be appealed. It is important that the transcript be a true and correct copy of the proceedings. If material errors are found, either errors of commission or omission, the hearing officer should be requested to make necessary corrections.

A refusal or failure by the Carrier to furnish a transcript would ordinarily preclude a finding of guilty or the assessment of discipline. Such failure would be prejudicial because it would deprive the representative and the charged employe of information absolutely necessary to perfect an appeal.

In Third Division Award 18150, John H. Dorsey, (1970) - (BRAC v.

Indpls. Union), the carrier failed to make a record of the hearing. The Rule provided: "A copy of all statements made a matter of record at the investigation or hearing will be furnished to the Local Chairman." After Claimant was discharged on October 30, 1969 Local Chairman on November 3, 1969 requested carrier to comply with the rule. It was held:

> "Carrier, by its nonfeasance - failure to make 'all statements made a matter of record at the investigation or hearing' - could not comply with the demand. As a result, it prevented Claimant from perfecting his contractual right of appeal to Carrier's initial findings of guilt as charged and assessment of the penalty: 'discharged.' Consequently, we find that Claimant was denied due process.
>
> "Because in a discipline case: (1) an indispensable element is that the charged employe be afforded due process; and (2) the Carrier has the burden of proof - neither of which factors were satisfied in this case - we will sustain the Claim.
>
> "Carrier in its Submission has argued past practice on the property as a defense - 17 years of not transcribing discipline proceedings. Evidence of past practice is material in the interpretation and application of a rule only when the rule as agreed to is ambiguous. Rule 28 is not ambiguous. The proffered defense is without merit."

It has been held, however, that a mere delay in furnishing the transcript, not prejudicial to the rights of the charged employe, does not void the proceedings.

In Third Division Award 17104, Jan Eric Cartwright, (1969) (TCU v. Joint Texas Division) it was held:

> "Agreement Rule 34(b) is clear:
>
> '(b) The employe and/or his re-

presentative, shall be furnished a copy of the transcript of the hearing and notified of the action taken within twenty (20) days from the date of completion of hearing.'

"Carrier did not furnish Claimants with a copy of the transcripts of their hearings within the 20-day time period stated in the rule. The Carrier offered no excuse for its delay. This could be fatal where one's rights are denied. However, there being no evidence or allegation by the Organization as to denial of due process or prejudice, the Board finds no merit in the Organization's contention and denies the request for exoneration of the discipline and clearing of Claimants' records though Carrier violated the Rule."

Due Process

In reviewing the transcript of hearing, and decision assessing discipline, it is well to keep in mind a question: whether the record reflects that the accused employe has been afforded due process? Due process is difficult to define. It may be stated, however, that it contemplates proceedings in accordance with the rules and principles which have been established in our system of industrial jurisprudence for the handling of discipline cases. Rights involved in due process may be unequivocally stated, but are often implied or based upon principles established by the courts.

The merits of the issues are not involved in the determination of whether due process has been accorded. A failure to comply with the rules may occur before the hearing is commenced. For example, in Third Division Award 4607, Dudley E. Whiting, (1949) (BMWE v. MKT), when the hearing opened request was made for "a more specific statement of the charges and when such request was refused, the Claimant and

his representative refused to take any part in the hearing."

It was held:

> "We think that the requirement of notification of the precise charge against an employe requires an exact specification of the action or non-action which is alleged to constitute a dereliction of duty. A charge of violation of the general rules specifying employes' duties in the performance of their work is not a precise charge.
>
> "Since an employe is, under the rule, entitled to notice of the precise charge against him prior to the hearing, such notice is a condition precedent, and he is not obligated to attend or proceed with the hearing until such condition has been met. Particularly so, as in this case, where proper objection to the charge is made at or prior to the opening of the hearing."

Due process may be denied after the hearing. Third Division Award 19357. There, the Claimant was charged under Rule 7, yet the decision found him guilty of violating Rule 6. The discipline was set aside.

The illustrations given are elementary. In the former case, the employe was denied the basic right to a specific charge; in the latter case, the employe was found guilty of an offense not included in the charge. Denial of due process, however, is not always so glaring; on the fact of the record in the Ruffalo case it seem logical to conclude, as the lower courts did, that due process was afforded the petitioner. The Supreme Court, however, pointed out that the fatal defect was amending the charges on the basis of evidence given by and on behalf of the petitioner in defending against the original charges.

Burden of Proof

In discipline cases the burden of proof is upon the Carrier. This requires the Carrier to show by a preponderance of the evidence that the employe is guilty of the particular action or failure to act, as alleged in the charge. The principle was recently stated, as follows:

> "The controlling principle here is that Carrier has the burden of proving disciplinary charged initiated by it by a preponderance of the evidence, and, if there is substantial evidence of record to support Carrier's findings of guilt and measure of discipline, this Board will not disturb Carrier's disciplinary action." (Third Division Award 19522.)

Preponderance does not refer to the number of witnesses but to a greater weight of the competent, material and relevant evidence. SUBSTANTIAL EVIDENCE has been defined:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. N.L.R.B. (305 U.S. 197.)

In determining the relative weight to be accorded testimony of a witness, the specific charge should be kept in mind. The charge or charges determine what is competent, material or relevant evidence. There is a difference between competency and credibility of a witness. A witness may be competent, but his story may be so contradictory and improbable that he may not be believed. On the other hand, a witness may be perfectly credible, but his testimony may have little or no weight because the evidence was incompetent, immaterial or irrelevant.

As illustrative that the specific charge must be proved by the

Carrier, reference is made to Third Division Award 15544, John H. Dorsey, (1967) (BRC v. Union Terminal). There Claimant was charged:

> "You are charged with using vulgar and profane language to Yardmaster E. C. Green in a threatening manner, with an open knife in your hand, at about 9:00 p.m., Monday, May 13, 1963."

The Referee quoted from the testimony of Mr. Green and then said:

> "Other witnesses called by Carrier testified that Claimant had an open knife in his hand when he approached Green but none of them testified that Claimant threatened Green. These witnesses did testify that the use of profanity was common on the job; indeed, one of Carrier's own witnesses used the words 'God damn' in his testimony.
>
> "Claimant denied that he had an open knife in his hand or that he used profanity; but, even assuming that he did we find no evidence in the record - even in Green's testimony - that Claimant acted in a threatening manner. Therefore, we find that Carrier failed to prove the precise charge. In arriving at this conclusion we have made no assessment of credibility. We have merely weighed Carrier's direct case in its best light and have found it wanting."

The major thrust of the charge was that Claimant approached the Yardmaster "in a threatening manner." The Referee stated the standard of review:

> "The burden of proving that Claimant was guilty as charged rested with Carrier. To meet the burden the transcript of the hearing must contain substantial material and relevant evidence of probative value supporting Carrier's findings."

The evidence, when examined in the most favorable light to Carrier's position, did not support Carrier's decision.

Another illustration: Third Division Award 15186, George S. Ives, (1967) (BRC v. NYC). Here, Claimant was charged with "attempted pilferage and conduct unbecoming an employe." It was undisputed that after reporting for work at 3:00 p.m., May 26, 1964, Claimant stopped his fork machine near a pile of copper ingots on Pier No. 2; that he placed three of the ingots on the seat; covered them with an old coat and ultimately proceeded to Pier No. 5. His actions were observed by a railroad patrolman but nothing was said about picking up the ingots. At the entrance to Pier No. 5 he was arrested and taken to West New York police station where he was charged with larceny of the ingots. On June 16, 1964 the presiding judge dismissed all charges on the ground that intent had not been proven inasmuch as Claimant had not left the Carrier's property with the copper ingots. Claimant's defense, in both proceedings before the municipal court and the hearing in this dispute, was that the ingots were placed on the fork machine by Claimant as a temporary seat and were still on the machine when he was arrested on the Carrier's property.

It was held:

> "'Pilferage' connotes stealing of articles in small amounts and a necessary element is the intent of the person charged with the wrongful act. Testimony of the arresting officers concerning the attitude of Claimant when he was arrested does not constitute competent evidence that Claimant intended to convert the ingots to his own personal use away from Carrier's premises.
>
> "In fact, there is no competent evidence before us in support of the charge that Claimant was guilty of attempted pilferage as opposed to conduct unbecoming an employe.
>
> "The discipline assessed by Carrier arose out of

two specific and conjunctive charges. Petitioner denies that Claimant is guilty of attempted pilferage and offers an affirmative defense in support of its position. Carrier has failed to show that Claimant intended to steal the copper ingots found on the fork lift used by Claimant in the performance of his duties on Carrier's property. Therefore, we must sustain the claim."

Larceny is defined as:

"The wrongful and fraudulent taking and carrying away by one person of the mere personal goods of another from any place, with afelonious intent to convert them to his, the taker's use, and make them his property without the consent of the owner."

Thus, in the case involved in Award 15186, there was no competent evidence that the charged party intended to deprive the true owner of his property. The testimony of the arresting officers concerning the attitude of Claimant when he was arrested did not suffice to prove "intent."

Another illustration: Third Division Award 18361, Gene T. Ritter, (1970) (T-C Division, BRAC v. B&M). Facts as stated in Opinion:

"On February 16, 1969 a caboose in the Concord, New Hampshire yard was broken into. In addition to certain other items, a two-way radio owned by the railroad was stolen. On July 18, 1969 Claimant was involved in a car accident and the police officer investigating the accident found a two-way radio in Claimant's pickup truck. Claimant admits that the radio was owned by Carrier, but insists that the same was found by him and that he put it on his pickup with the intention of returning it to the Carrier. Claimant was charged with larceny of the radio from caboose located at Concord, New Hampshire, on February 16, 1969. The investigation resulted in Claimant being discharged by Carrier."

It was held:

> "This Board finds that the record does not support the action taken by Carrier in discharging this employe. It may well be that this Claimant might have had a part in the taking of the radio in question; however, in this type case, the Carrier is required to prove that the action taken was justified; that the action taken was not arbitrary or capricious; and that the action taken was commensurate with the offense charged and proven. In this case, the corpus delicti was not proven in that the Claimant was never proved to be in the vicinity of the location of the robbery at the of the robbery. It would be mere speculation not based upon competent probative evidence to uphold Carrier in this instance and could very well have the effect of drastically penalizing an innocent party. This the Board can not and will not do."

Corpus Delicti is translated to mean: "The body of the offense."

It has been held:

> "The proof of a charge in criminal cases involves the proof of two distinct propositions: first, that the act itself was done; and second, that it was done by the person or persons charged, and by none other - in other words, proof of a corpus delicti and the identity of the person or persons."

Failure of Proof

Second Division Award 5836 involved assessment of discipline because of testimony given by the Claimant. The Claimant was subpoenaed by the Plaintiff, a fellow employe, and did testify. Although not directly cited in the Opinion, there is an allusion to the federal statute relative to an employe's giving such testimony. Title 45, United States Code Section 60, provides:

> "Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall

be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense: Provided, That nothing herein contained shall be construed to void any contract, rule, or egulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports."

The Supreme Court has said, in regard to this Section:

"One federal guidepost in this field is contained in Section 10 of the Federal Employers' Liability Act, as amended, 45 USC Sec. 60, which was enacted to encourage employees of common carriers to furnish information 'to a person in interest,' as to facts incident to the injury or death of an employee." (Re: Ruffalo, 390 U.S. 544).

Hearsay will not normally be credited as probative evidence. This is especially true where the charged employe has denied the charge. In Award 18121 the Referee characterized the testimony of carrier's sole witness as: "heresay, presumptions and opinions." He then held: "It is not material and relevant evidence of probative value.:

The mere happening of an accident is not, of and within itself, evidence of negligence. In Award 15823 the Referee said:

"The fact that a mishap took place does not in itself prove that Mr. Kerner was negligent."

In Award 18320 the Referee said:

> "Carrier's findings appear to be predicated on an assumption that because there was a derailment it must conclusively be presumed that it was caused by nonfeasance or misfeasance of one or more of the occupants of the car. Such is sophistry, not substantial evidence of negligence."

In Award 15634, the Referee said:

> "Although this Board is disposed to give Carriers broad latitude in determining the responsibility for accidents, some evidence of negligence is essential."

Carrier must assume the burden of proving that the action or inaction of the charged employe was the proximate cause of the incident or occurrence involved. Proximate cause is defined:

> "That which, in a natural and continuous sequence, unbroken by a new cause, produced an event, and without which that event would not have occurred."

Second Division Award 6356, illustrates applicability of the rule when there is an intervening or "new" cause. Second Division Award 6419 illustrates applicability of the rule when there are possibilities of intervening forces or causes. The Referee said:

> "Disregarded was the fact that the trailer came loose approximately three hundred miles from the Yard where the inspection was to have taken place and the possibilities for intervening forces or factors which might have come into play during the time the flat-car traversed the distance from claimant's station to the point where the trailer became disengaged and detrained."

Generally speaking, the testimony of a witness should be confined to matters within his personal knowledge. Opinions in proper cases however, may be given by a witness. For example, a rules examiner or other officer qualified to do so may express an opinion as to proper interpretation of Carrier rules. Such testimony must be predicated on a hypothesis derived from actual testimony of competent witness testifying to material and relevant facts. Notwithstanding the qualifications of the witness in his field, there must be a foundation for such opinion evidence. Second Division Award 5572 illustrates the application of this rule. The Referee said:

> "Thus, we must weigh the unrefuted testimony of Claimant that he had made the necessary inspection of the journal boxes on the defective car two days prior to the derailment some sixty miles distant from the point of inspection against the conjecture of Carrier's General Foreman that the burned off journal was caused by insufficient oil in the missing lubricator. Carrier's hypothesis as to the cause of the burned off journal does not constitute clear convincing evidence that Claimant was guilty of committing an offense in light of Claimant's unchallenged testimony."

In Second Division Award 5839, the Referee said:

> "Presumptive opinion evidence of Carrier's supervisory witnesses, unsupported by fact, that the center sill of the Duryea car had an old crack when inspected on March 15 by Claimant and therefore Claimant was derelict in his duties by failure to detect it, is of no evidentiary value."

A determination as to whether the transcript of a hearing reveals substantial evidence to support Carrier's decision must be made on a case-by-case basis. Even though each case may be different, we have

guidance in the decisions of the Adjustment Board in the application of principles relevant to such determination.

Preparation of Claim

The original claim filed in any case, especially discipline cases, is important. A claim, properly prepared, brings into focus the relevant issues. If the issues are thus presented and have merit the officer with whom the appeal is filed will find it difficult to disallow the claim. A new or inexperienced local officer will usually find it helpful to confer with Division or General officers before preparation of a final draft of the claim.

A claim, irrespective of the format, has three distinct parts:

Statement of Claim

Statement of Facts

Postion of Employes

A Statement of Claim is a formal allegation: (1) that the charged employe was disciplined, without just cause, in violation of agreement provisions; and (2) the claim for the remedy or relief requested. Where the basis for claim is that excessive discipline was assessed, the allegation of rule violation will be the same. It is as much a rule violation to levy excessive discipline as to fail to comply with other agreement provisions. Unless the remedy is limited to clearing of record, the relief requested should include payment of money.

Whenever it is contended that excessive discipline was levied,

leniency should not be requested. The Adjustment Board has consistently held that if leniency is requested, it is within the absolute discretion of the management as to whether it is granted or refused. The rulings of the Adjustment Board on the point are well stated in Third Division Award 6085, Dudley E. Whiting, (1953) (BRC v. SP):

> "There is a vast difference between the correction of an excessive penalty and reinstatement on a leniency basis. We can correct an excessive penalty because the imposition of such a penalty is a violation of those provisions of the agreement which are adopted to protect employes from arbitrary, capricious or discriminatory discipline by the carrier. Reinstatement on a leniency basis is a discretionary remission of appropriate penalty. We do not remit penalties on a leniency basis because we have no power or right to exercise managerial discretion."

In view of the rulings by the Board, wherein almost every claim wherein leniency was requested was denied, it is not good practice to use the words "lenient" or "leniency" in any part of the claim.

A Statement of Facts is necessary to have a predicate for presentation of reasons why the employe was improperly or unjustly assessed discipline. Normally, the Position of Employes would set forth argument as to why the stated facts constituted an agreement violation. There is usually a tendency however, to mix fact with argument. It is good workmanship to separate, insofar as practicable statements of fact from the argument presented thereon. The statement of facts should be accurate, and stated as succinctly as circumstances will permit. The argument should be set forth in a logical fashion, and without rancor.

When appropriate, the claim may include request that Carrier be

required to pay all fringe benefits, i.e. health, accident, and insurance coverage, during the period of wrongful suspension. In INTERPRETATION No. 1 to Second Division Award 4367 (Serial 57), Joseph M. McDonald, (1964) (SYS. FED. No. 76 (Machinists) v. CMSTP&P) it was held:

> "Claimant to be reinstated with his seniority rights unimpaired as of October 18, 1961, and paid for all time lost since that date, less any amount earned in other employment."

Question presented was whether Carrier was required "to make pay- for the Claimant's Health and Welfare and Life Insurance coverage that it would have made had it not unjustly dismissed him from service?"

> "We hold that the Rule contemplates a restoration to Claimant of that which he would have earned by his time at work (sic) during the period he was improperly held off the job by the Carrier. This would include Health and Welfare and Life Insurance premium payments.
>
> "We are aware of other Awards of this Division which seemingly contradict such a holding, particularly Award No. 3883. But this loss of coverage was no consequential item of damage, but a direct and proximate result of the loss of time contemplated by Rule 34(h).
>
> "The Award as made requires an affirmative answer to the question submitted for interpretation."

When appropriate, payment of interest on monies due to the Claimant may also be requested. In Third Division Award 16632, Bill Heskett, (1968) (BRAC v. AT&SF), it was held:

> "Therefore, we have judicial precedent supporting our conclusion that the Railway Labor Act does not preclude our awarding of prejudgment interest

but, on the contrary, because of its guidelines and purpose resides in us the inherent authority and power to grant same."

Claimant was allowed interest at 6 percent per annum, compounded annually on the anniversary date of claim: May 10, 1965, Court Case Raabe v. Florida East Coast, (259 F. Supp. 351) was cited.

In Third division Award 17631, Jerry L. Goodman, (1969) (TCU v. MP) the Board held,

"We further direct that Claimant be paid interest on the amount of all wages lost from January 10, 1965 until the date of his reinstatement at the rate of six percent per annum." (Award 16632 was cited.)

Filing Claim

It is mandatory that the claim be filed with the designated officer or person. Failure to do so may result in disallowance of the claim without a decision on the merits.

In Third Division Award 18008, Paul C. Dugan (1970) (BRAC v. Minnesota Transfer), Claimant was discharged. Appeal was taken from Decision of the Agent to Vice President and Generl Manager. Carrier contended that the claim should have first been appealed to Superintendent. It was held:

"We do not agree with the Organization that Mr. Zalusky was the department head designated by the Carrier in the second paragraph of the above letter to consider the claim herein. Superintendent Lamphere is the head of the operating department and 'the next higher proper officer' to Mr.

Zalusky. Said letter of December 4, 1959 does not in our opinion permit Superintendent Lamphere to be by-passed in appealing to the Vice President and General Manager.

"Having failed to follow the mandatory requirements of said Rule 17 involving 'appeals' we are compelled to dismiss this claim."

In Third Division Award 19230, Arthur W. Devine, (1972) (Joint Council DCE. Loc. 849 v. CRI&P):

"This claim must be dismissed for two reasons: First, Claimant did not comply with the appeal provision of Rule 11(f) of the applicable Agreement since the record shows that the first appeal officer was by-passed; Secondly, the Organization did not comply with Rule 11(g) of the Agreement when it did not submit this claim to this Division within the 180 day time limit following final declination of the claim on the property."

In Third Division Award 19261, Robert M. O'Brien, (1972) (BRS v. Penn Central), discipline was assessed by Division Engineer. Rule 51(d) required appeal to Regional Engineer, C&S, within 14 days. Local Chairman filed appeal with the Supervisor C&S. It was held:

"The present claim is a discipline matter and any appeal relative thereto must be pursuant to the procedure established by Rule 51(d). The Local Chairman failed to follow this duly established procedure and consequently the appeal became a nullity. And the fact that the Supervisor denied the appeal does not render it a proper one. The Carrier's action does not mitigate the Organization's error.

"This Board is always reluctant to decide claims on mere technacalities, but in the present claim we have no choice but to apply the

"the Agreement as written. We cannot ignore the clear and concise language thereof. When the Local Chairman failed to follow the appeal procedure prescribed by Rule 51(d), he forfeited his right to have this Board decide the claim, and we are left with no alternative other than to dismiss it."

It is mandatory that the claim be filed within the time limit provided for in the agreement. The time limit is not tolled when the claim is filed with the wrong officer. Time limits can be extended only by an agreement with the appropriate carrier officer. In order to avoid misunderstandings, agreements for extension of time limits should be definite and certain, particularly referring to a specific case and with specificity as to the time to which extended.

A claim should be filed with the designated officer, within the time limit, in person or by United States Mail. If the claim is handed to the officer in person or delivered to his office, a receipt should be taken, identifying the claim and showing date received by the officer. It has been consistently held by the National Railroad Adjustment Board that the burden is upon the Brotherhood to prove that the claim was filed with the proper officer and within the time limit allowed in the agreement. Merely depositing a claim letter in the regular U. S. Mail does not constitute such proof.

Fair and Impartial Consideration on Appeal

The contractual duty of a Carrier to afford fair and impartial consideration does not end with the decision assessing discipline. The agreement rules provide for appeal to the designated higher officers. These appeals are matters of contractual right, to be exercised at the

option of the Brotherhood or the individual involved. Every designated officer should intelligently review the record, together with the arguments submitted by the Brotherhood officer or individual, in order that an independent, fair, and impartial judgment may be rendered on the appeal.

The Carrier designates its officers to consider disciplinary appeals. Notwithstanding this fact, it has agreed that appeals to the managerial hierarchy will be fairly and honestly heard. It is not contemplated that such review will be perfunctory; it is not intended that a higher officer will rely solely on the judgment of a junior officer.

The Adjustment Board has heard many cases involving failure to properly handle appeals. These awards confirm the principle that it is arrant nonsense to assume that an officer who has just rendered a decision assessing discipline can fairly and impartially render judgment on an appeal; or that Carrier officials are immune from improper influence in the decision making process.

When an employe is deprived of his right to a fair and impartial consideration or hearing at any level of appeal, the agreement has been violated. The principle was stated by a federal court as follows:

> "...the Railway Company runs these hearings and owes the accused employee a contractual duty to see that he receives a fair and impartial hearing."

The more important the rights or the issues, the heavier the

Carrier's burden. In a recent Supreme Court case (Speiser v. Randall, 357 U.S. 513) the Court said:

> "To experienced lawyers it is commonplace that the outcome of a lawsuit - and hence the vindication of legal rights - depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. And the more important the rights at stake, the more important must be the procedural safeguards surrounding those rights."

In some respects the role of the representative of a charged employe resembles that of a lawyer. Some lawyers achieve fame or notoriety in the handling of cases considered as newsworthy by the commercial news media. However, practically all of the judicial and legal problems are routinely handled by the ordinary practitioner, who rarely sees his name in print. Of course, he likes to "win" his cases; he feels very badly when he "loses." His primary concern, however, is to handle all of his cases and legal questions in a professional fashion. Thus, he goes on from day to day, trying to make our legal system work better.

In the same manner, our officers seek to make our "legal system" - the adjustment of claims and grievances - work better. They too like to "win," but sometimes there is a bitter dose to swallow. There is no glamor, but lots of hard work. The goal, however, is worth the candle. To assist the employe to maintain his or her dignity; to secure full compliance with all agreement rights; to secure a "day in court" for the

charged Brother or Sister is indeed a worthy cause.

An individual claim or grievance may be lost, but each case handled in a professional manner is a gain in the effort to secure fair and impartial treatment for the employes represented by our Brotherhood. The officers striving to accomplish this goal are the leaders in this cause.

Summation

This concludes the section on the handling of discipline cases and investigations. As a word of caution on handling discipline appeals, it is important that you carefully review your agreements. Some agreements have the appeal process for discipline cases written right into their discipline rules, and the appeals process for discipline cases may differ somewhat from the appeals process for claims and grievances. In other agreements, the first step in appealing a discipline case may be to file a grievance and then follow the steps as outlined in the grievance procedure. Make certain you follow the correct rules, otherwise your discipline appeal will be invalid.

As handling discipline cases and investigations may be new to you, do not be afraid to ask for assistance when handling these cases. Lawyers just don't walk into court and start defending people, they learn by first observing other lawyers and then assisting them, until they finally have the experience to go out on their own. The same holds true for union representatives. We have found that one of the best learning experiences for handling investigations is to actually sit in on one that an experienced representative is handling. By doing this, you will personally experience the interaction between all parties involved and learn how to better defend your members. So if you are facing your first investigation, you may want to seek assistance from your General Chairman and his staff or the IBEW Railroad Department in defending the accused member. We are certain that after doing so once or twice, you will be well prepared to go out on your own.

Remember, it is at the investigation stage that the groundwork is laid to successfully win an appeal of a disciplined member. Work hard and good luck!

SECTION 6

Guide for the Local Committee Chairman

Procedures to Follow in Physical and **Mental Disqualifications Cases**

PROCEDURE TO FOLLOW WHEN THE CARRIER REFUSES TO PERMIT AN EMPLOYE TO WORK DUE TO PHYSICAL OR MENTAL REASONS

The Adjustment Boards and the Courts have ruled that the Carriers have the right to withhold employes from service due to physical or mental conditions. They have also established a procedure to follow when the Agreement does not provide for a method of disposing of such disputes.

In cases filed with the Second Division of the National Railroad Adjustment Board, where the Carrier's physician stated that the employe was not physically able to return to work and the Employe's physician stated that he was able to return to work, the Division remanded such cases for the purpose of having a third, neutral doctor dispose of the medical issue as to whether the employe is able to return to work or not. See Awards 481, 482, 483, 722, 839, 977, 1288, 1478, 1532, 3005, 3893, 4602, 5780 and 6539.

Award 4693 was dismissed by the Second Division and reads, in part, as follows:

> "This case involves a claim of an injured employe whose claim for compensation for his injury resulted in a settlement as the result of which Claimant was paid $15,000.00. Thereafter he applied for work, claimed he was fully recovered from his injury, and supported his fitness for work by a statement from his physician. The Carrier's chief surgeon examined Claimant found that he was not physically able to perform his duties, and the Carrier refused to put him back to work. There are other medical reports in the record which are also in conflict as to Claimant's physical ability to do his job.
>
> "In view of the conflict of the evidence in the instant case it is impossible to resolve the matter since it involves medical expertise not possessed by the Board. Insofar as the facts are similar the Board has spoken at length on the subject of conflicting medical opinion as to physical fitness in Award No. 4692.
>
> AWARD
>
> "Claim dismissed in accordance with the above decision."

A claim was filed in the U.S. District Court and the Court ordered Award 4693 to be vacated and set aside. The Second Division, in keeping with this Order, rendered Award 5780 which reads, in part, as follows:

> "The instant case comes before the Second Division of the National Railroad Adjustment Board as a result of the Order and Decree of Federal District Judge Charles R. Scott who issued his final Judgment Order on August 29, 1968 in the case known to the U.S. District Court as System Federation No. 42 v. Braidwood, etal, No. 67-377-Civ-J. The Federal District Court found as follows:

'The Court concludes that there is no genuine issue as to any material fact, that no trial is required, and that pursuant to Section 3 First (q) of the Railway Labor Act and not inconsistent with the Memorandum Opinion rendered April 19, 1968, in the United States District Court, Northern District of Illinois, Eastern Division in System Federation No. 30 v. Braidwood, et al., No. 67 C 708, (a case involving substantially identical issues with respect to Award No. 4692 by the Second Division of the Board a copy of which is attached, plaintiffs are entitled to judgment setting aside Award No. 4693 and remanding the proceedings to the Second Division for further action in accordance with that Memorandum Opinion.

'IT IS THEREFORE ORDERED THAT:

'1. Award No. 4693 of the Second Division of the National Railroad Adjustment Board hereby is vacated and set aside:

'2. These proceedings are hereby remanded to the Second Division of the Board and it is directed to reopen its docket No. 4537; to hear and determine the dispute before it in that docket, which hearing may include convening a panel of neutral doctors; to decide and determine the issues raised by the claims and defenses asserted by the parties in that docket; and to render an award disposing of the claim or claims therein on their merits: ...'

"In complying with the aforementioned court order it becomes necessary that the claimant be examined by a panel of neutral doctors. Accordingly this Board rules as follows:

"1. The Carrier's and the Claimant's doctors are requested to jointly agree upon the selection of a third or neutral physician.

"2. The decision of the third doctor shall be final and binding on the parties to this dispute.

"3. Both the Carrier's and Claimant's doctors shall furnish to the neutral physician complete medical records as of December 13, 1962 and all other pertinent medical records.

"4. A detailed explanation of the duties of a Carman shall also be supplied to the neutral doctor so that he may properly evaluate the physical fitness of the Claimant as required by the duties of the job of a Carman.

"5. The medical panel composed of the Carriers, Claimants and neutral doctors shall submit their findings to this Board.

"6. The findings set forth in 5 above shall be submitted to this Board not later than thirty (30) days from the date of the instant Award.

"7. Upon receipt of the final medical determination the Board shall make its final disposition of the instant claim.

AWARD

"This claim shall be remanded in accordance with the above findings."

Therefore, when we have a case on a Carrier that does not have a Rule providing for a third doctor, we should follow the procedure outlined below:

1. When the Carrier prevents an employe from working due to physical or mental conditions, we should have the employe get a doctor's statement to the effect that he is physically or mentally able to return to work.

2. The employe's doctor's statement is to be submitted to the Carrier with a claim requesting that he should be returned to service and compensated for all time he is withheld from service.

3. If the Carrier still refuses to permit the employe to return to service then we should request, in writing, that the employe's personal physician and the Carrier's physician get together and agree on a third, neutral physician whose decision shall be binding on both parties.

4. If the Carrier refuses this request, this should be made a part of the case and progressed in the usual manner, up to the National Railroad Adjustment Board.

Of course, where we have a specific Rule regarding the procedure in progressing a dispute of this nature, we have to follow the procedure outlined in the Rule.

Guide for the Local Committee Chairman

Guide for Handling Claims for Subcontracting of Work

This section contains information relative to the Railroads subcontracting out of work. Included in this Section are:

a. Tips for Handling Claims for Subcontracting of Work

b. Synthesis of September 1964 Agreement

c. Agreement of September 1964, as modified by PEB219, with Interpretations for Shop Crafts.

SECTION 7 (a)

Tips for Handling Claims for Subcontracting of Work

SEPTEMBER 25, 1964 AGREEMENT, AS AMENDED

JANUARY 27, 1965 AGREEMENT, AS AMENDED (Southern Railway)

APPENDICES "G-1" and "G-2" (Burlington Northern Railroad)

Once again, you are reminded that all claims arising due to Carrier's violation of Articles I or II of these agreements are to be filed by the General Chairman as provided for in the Agreement.

Prior to his filing the claim the General Chairman should fully investigate the facts presented to him, not only with the Carrier's highest designated officer, but also with the Local Chairman and advise him of documents, including written statements and any other evidence he deems necessary to support the claim.

Eventhough the Railway Employes' Department no longer exists we cannot overemphasize the importance of your reviewing your files and instructions which pertain to these Agreements and if they support your claim then those arguments should be set forth in the correspondence while the claim is being handled on the property.

For your convenience and advice the following enumerated seven (7) items should be requested when you are requesting Carrier furnish you the data along with their reasons for subcontracting of our work.

1. Subcontractor's bid broken down into man hours, labor charges, shop overhead, material costs and specific work to be performed.

2. Blueprints, drawings, sketches, specifications, manufacturer's model number and any other information which will properly describe or identify the job, equipment, parts, or units involved in the particular transaction.

3. Purchase agreements containing warranties and guarantees, return exchange options or rights, reciprocal agreements with manufacturers, and other rail carriers dealing with leasing or exchange of locomotives, cars, equipment, communication and electrical equipment.

4. Carrier's purchase orders with specifications and cost of labor and materials.

5. Information relative to estimated completion date and actual date completed by Contractor.

6. True copy of invoices received from the subcontractor relative to the transaction, showing hours, labor charges and material costs.

7. List of special machinery, tools, gauges and any other technical devices needed to perform the work involved in the transaction.

SECTION 7 (b)

Synthesis of September 25, 1964 Agreement

General Chairmen Receives All Notices and Handles All Negotiations and Claims

SYNTHESIS
of
SHOP CRAFTS
September 25, 1964
Agreement

Printed September 1, 1977

SYNTHESIS

OF

AGREEMENT

DATED SEPTEMBER 25, 1964

between

CARRIERS REPRESENTED BY THE

NATIONAL RAILWAY LABOR CONFERENCE

and

EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES

and

EMPLOYEES OF SUCH CARRIERS

REPRESENTED BY THE ORGANIZATIONS COMPRISING THE

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO

as

SUPPLEMENTED AND/OR AMENDED

The following represents a synthesis in one document, for the convenience of the parties, of the current provisions of the Shop Crafts September 25, 1964 National Agreement as supplemented and/or amended in accordance with the provisions of the Memorandum of Agreement dated January 7, 1965, the Memorandum of Agreement dated May 31, 1974 and the Shop Crafts National Agreement dated December 4, 1975 (effective January 12, 1976), along with letter of understanding dated May 10, 1973 and two letters of understanding dated December 4, 1975 in connection therewith. The amendments are indicated with appropriate source identifications.

This is intended as a guide and is not to be construed as constituting a separate agreement between the parties. If any dispute arises as to the proper interpretation or application of any provision, the terms of the appropriate agreement shall govern.

- -

IT IS AGREED:

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

a. Transfer of work;

b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;

c. Contracting out of work;

d. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes; and,

g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier.

Section 4 -

The carrier shall give at least sixty (60) days (ninety (90) days in cases that will require a change of employee's residence) written notice of the abolition of jobs as a result of changes in operations for any of the reasons set forth in Section 2 hereof, by posting a notice on bulletin boards convenient to the interested employees and by sending certified mail notice to the General Chairmen of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes in operations, including an estimate of the number of employees of each class affected by the intended changes, and a full disclosure of all facts and circumstances bearing on the proposed discontinuance of positions. The date and place of a conference between representatives of the carrier and the General Chairman or his representative, at his option, to discuss the manner in which and the extent to which employees may be affected by the changes involved, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5 -

Any employee who is continued in service, but who is placed, as a result of a change in operations for any of the reasons set forth in Section 2 hereof, in a worse position with respect to compensation and rules governing working conditions, shall be accorded the benefits set forth in Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a 'displacement allowance' which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a 'displaced' employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the 'test period') and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period."

Section 6 -

Any employee who is deprived of employment as a result of a change in operations for any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7(a) through (j) of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 7 (a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

Length of Service	*Period of Payment*
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or
2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation."

"(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause."

Section 7 -

Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year & less than 2 years	3 months' pay
2 years " " 3 "	6 " "
3 " " " 5 "	9 " "
5 " " " 10 "	12 " "
10 " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination."

Section 8 -

Any employee affected by a change in operations for any of the reasons set forth in Section 2 hereof shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees of the carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section 9 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 10 of the Washington Job Protection Agreement of May, 1936 reading as follows:

"Section 10 (a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section."

Section 10 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 11 of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.
2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.
3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party. "

Section 11 -

When positions are abolished as a result of changes in the carrier's operations for any of the reasons set forth in Section 2 hereof, and all or part of the work of the abolished positions is transferred to another location or locations, the selection and assignment of forces to perform the work in question shall be provided for by agreement of the General Chairman of the craft or crafts involved and the carrier establishing provisions appropriate for application in the particular case; provided however, that under the terms of the agreement sufficient employees will be required to accept employment within their classification so as to insure a force adequate to meet the carrier's requirements. In the event of failure to reach such agreement, the dispute may be submitted by either party for settlement as hereinafter provided.

Section 12 -

Any dispute with respect to the interpretation or application of the foregoing provisions of Sections 1 through 11 of this Article (except as defined in Section 10) with respect to job protection, including disputes as to whether a change in the carrier's operations is caused by one of the reasons set forth in Section 2 hereof, or is due to causes set forth in Section 3 hereof, and disputes as to the protective benefits to which an employee or employees may be entitled, shall be handled as hereinafter provided.

(Entire ARTICLE I - EMPLOYEE PROTECTION - from September 25, 1964 Agreement)

ARTICLE II - SUBCONTRACTING

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

Section 1 - Applicable Criteria -

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

of the subcontracting will be furloughed as a result of such subcontracting. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts. As to the purchase of component parts which a carrier had been manufacturing to a significant extent, such purchases will be subject to the terms and conditions of this Article II.

Existing subcontracting rules and practices on individual properties may be retained in their entirety in lieu of this Article V by the Organizations by giving a notice to the Carriers involved at any time within 30 days after the effective date of this Agreement.

(ARTICLE II - SUBCONTRACTING - Preamble and Section 1 from ARTICLE V - Part A. of December 4, 1975 Agreement)

Section 2 - Advance Notice - Submission of Data - Conference -

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employes, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 - Request for Information When No Advance Notice Given -

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Section 4 - Machinery for Resolving Disputes -

Any dispute over the application of this rule shall be handled as hereinafter provided.

(Sections 2, 3 and 4 of ARTICLE II - SUBCONTRACTING from September 25, 1964 Agreement)

ARTICLE III - ASSIGNMENT OF WORK - USE OF SUPERVISORS -

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

If any question arises as to the amount of craft work being performed by supervisory employes, a joint check shall be made at the request of the General Chairmen of the organizations affected. Any disputes over the application of this rule shall be handled as provided hereinafter.

An incumbent supervisor who assumed his present position prior to October 15, 1962, at a point where no mechanic is employed, may be retained in his present position. However, his replacements shall be subject to the preceding paragraphs of this rule.

(Entire ARTICLE III - ASSIGNMENT OF WORK - USE OF SUPERVISORS - from September 25, 1964 Agreement)

ARTICLE IV - OUTLYING POINTS

At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft, and any dispute over the designation of the craft to perform the available work shall be handled as follows: At the request of the General Chairman of any craft the parties will undertake a joint check of the work done at the point. If the dispute is not resolved by agreement it shall be handled as hereinafter provided and pending the disposition of the dispute the carrier may proceed with or continue its designation.

Existing rules or practices on individual properties may be retained by the organizations by giving a notice to the carriers involved at any time within 90 days after the date of this agreement.

(Entire ARTICLE IV - OUTLYING POINTS - from September 25, 1964 Agreement)

ARTICLE V - COUPLING, INSPECTION AND TESTING

(a) In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen.

(b) This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a "double-over" and the first car standing in the track upon which the outbound train is made up.

(ARTICLE V - COUPLING, INSPECTION AND TESTING - Paragraphs (a) and (b) - from September 25, 1964 Agreement)

(c) If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman.

(d) If as of December 1, 1975 a railroad has a regular practice of using a carman or carmen not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform all or substantially all of the work set forth in this rule during a shift at such yard or terminal, it may not discontinue use of a carman or carmen to perform substantially all such work during that shift unless there is not sufficient work to justify employing a carman.

(e) If as of December 1, 1975 a railroad has a regular practice of using a carman not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform work set forth in this rule during a shift at such yard or terminal, and paragraph (d) hereof is inapplicable, it may not discontinue all use of a carman to perform such work during that shift unless there is not sufficient work to justify employing a carman.

(f) Any dispute as to whether or not there is sufficient work to justify employing a carman under the provisions of this Article shall be handled as follows:

> At the request of the General Chairman of Carmen the parties will undertake a joint check of the work done. If the dispute is not resolved by agreement, it shall be handled under the provisions of Section 3, Second, of the Railway Labor Act, as amended, and pending disposition of the dispute, the railroad may proceed with or continue its determination.

(g) This Article shall become effective 60 days after the effective date of this Agreement.

(Paragraphs (c), (d), (e), (f) and (g) of ARTICLE V - COUPLING, INSPECTION AND TESTING - from ARTICLE VI - of December 4, 1975 Agreement)

ARTICLE VI - RESOLUTION OF DISPUTES

Section 1 - Establishment of Shop Craft Special Board of Adjustment -

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as "Board", is hereby established for the purpose of adjusting and deciding disputes which may

arise under Article I, Employee Protection, and Article II, Subcontracting, of this agreement. The parties agree that such Board shall have exclusive authority to resolve all disputes arising under the terms of Articles I & II of this Agreement, as amended by the Agreement of December 4, 1975. Awards of the Board shall be subject to judicial review by proceedings in the United States District Court in the same manner and subject to the same provisions that apply to awards of the National Railroad Adjustment Board.

(ARTICLE VI - RESOLUTION OF DISPUTES - Section 1 from
ARTICLE VIII - of December 4, 1975 Agreement)

Section 2 - Consist of Board -

Whereas, Article VI of the September 25, 1964 Agreement provides for the resolution of disputes arising under Articles I and II of said Agreement and Section 2 of Article VI sets forth the procedure for the composition of the Board established for the purpose of resolving such disputes. Under the terms of said section the Board is to consist of two members appointed by the organizations party to the Agreement, two members appointed by the carriers party to the Agreement and a fifth member, a referee, appointed from a panel of referees; and

Whereas, in November of 1964 following an exchange of letters it was further agreed by the parties to the Agreement to modify the terms of Section 2 of Article VI by providing that instead of two members each party would appoint three members with the understanding that in any function, two of the three members thus appointed would serve; and

Whereas, during each of these transactions for composing the partisan members of the Board and thereafter up until June and July of 1973 the organizations party to the September 1964 Agreement were all members of the Railway Employes' Department, AFL-CIO; and

Whereas, on June 14 and July 1, 1973, the International Association of Machinists and Aerospace Workers and the Sheet Metal Workers International Association respectively disaffiliated from the Railway Employes' Department, AFL-CIO, as a result of which a dispute has arisen between the said disaffiliates and the other four organizations party to the Agreement concerning the appointment of the organization members of the Board and handling of cases under Article VI involving employees of the disaffiliates; and

Whereas, the organizations party to the Agreement have conferred and agreed upon a procedure for resolving said dispute which is acceptable to the carriers party to the Agreement;

NOW, THEREFORE, it is agreed that effective May 31, 1974, appointment and functioning of partisan members of the Board under Section 2 of Article VI shall be as follows:

1. Six members shall be appointed by the organizations party to the Agreement and six members shall be appointed by the carriers party to the Agreement. Two of the six persons designated to represent the organizations party to the Agreement shall be appointed by International Association of Machinists and Aerospace Workers and Sheet Metal Workers' International Association respectively and the remaining four members shall be appointed on behalf of the other four organizations party to the Agreement by the Railway Employes' Department, AFL-CIO.

2. Each of the twelve partisan members of the Board so appointed shall have the right to sit in all proceedings of the Board. The organizations and the

carriers party to the Agreement further agree, however, that in the handling of dispute cases before the Board a smaller panel of the twelve members may function and constitute a quorum for the resolution of such disputes, provided first, that at least one organization and one carrier member shall sit and function in all dispute cases before the Board; second, that regardless of the number of members sitting and functioning in dispute cases, the unit method of voting shall prevail and six votes shall be cast on behalf of the carrier and organization members respectively; third, that in any dispute involving employees represented by the International Association of Machinists and Aerospace Workers, the appointee of that organization shall sit and function as a member of the Board; fourth, that in any dispute involving employees represented by the Sheet Metal Workers International Association, the appointee of that organization shall sit and function as a member of the Board, and fifth, that in any dispute involving employees represented by an organization which is affiliated with the Railway Employes' Department, AFL-CIO, at least one of the appointees of the Department shall sit and function as a member of the Board.

(Section 2 of ARTICLE VI - RESOLUTION OF DISPUTES - from MEMORANDUM OF AGREEMENT dated May 31, 1974)

Section 3 - Appointment of Board Members -

Appointment of the members of the Board shall be made by the respective parties within thirty days from the date of the signing of this agreement.

Section 4 - Location of Board Office -

The Board shall have offices in the City of Chicago, Illinois.

Section 5 - Referees - Employee Protection and Subcontracting -

The parties agree to select a panel of six potential referees for the purpose of disposing of disputes before the Board arising under Articles I and II of this agreement. Such selections shall be made within thirty (30) days from the date of the signing of this agreement. If the parties are unable to agree upon the selection of the panel of potential referees within the 30 days specified, the National Mediation Board shall be requested to name such referees as are necessary to fill the panel within 5 days after the receipt of such request.

Section 6 - Term of Office of Referees -

The parties shall advise the National Mediation Board of the names of the potential referees selected, and the National Mediation Board shall notify those selected, and their successors, of their selection, informing them of the nature of their duties, the parties to the agreement and such information as it may deem advisable, and shall obtain their consent to serve as a panel member. Each panel member selected shall serve as a member until January 1, 1966, and until each succeeding January 1 thereafter unless written notice is served by the organizations or the carriers parties to the agreement, at least 60 days prior to January 1 in any year that he is no longer acceptable. Such notice shall be served by the moving parties upon the other parties to the agreement, the members of the Board and the National Mediation Board. If the referee in question shall then be acting as a referee in any case pending before the Board, he shall serve as a member of the Board until the completion of such case.

Section 7 - Filling Vacancies - Referees -

In the event any panel member refuses to accept such appointment, dies, or becomes disabled so as to be unable to serve, is terminated in tenure as hereinabove provided, or a vacancy occurs in panel membership for any other reason, his name shall immediately be stricken from the list of potential referees. The members of the Board shall, within thirty days after a vacancy occurs, meet and select a successor for each member as may be necessary to restore the panel to full membership. If they are unable to agree upon a successor within thirty days after such meeting, he shall be appointed by the National Mediation Board.

Section 8 - Jurisdiction of Board -

The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection, and Article II, Subcontracting.

Section 9 - Submission of Dispute -

Any dispute arising under Article I, Employee Protection, and Article II, Subcontracting, of this agreement, not settled in direct negotiations may be submitted to the Board by either party, by notice to the other party and to the Board.

(Sections 3, 4, 5, 6, 7, 8 and 9 of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Section 10 - Time Limits for Submission -

Within 60 days of the postmarked date of such notice, both parties shall send 15 copies of a written submission to their respective members of the Board. Copies of such submissions shall be exchanged at the initial meeting of the Board to consider the dispute.

(Section 10 of ARTICLE VI - RESOLUTION OF DISPUTES - from ARTICLE VIII - of December 4, 1975 Agreement)

Section 11 - Content of Submission -

Each written submission shall be limited to the material submitted by the parties to the dispute on the property and shall include:

(a) The question or questions in issue;

(b) Statement of facts;

(c) Position of employee or employees and relief requested;

(d) Position of company and relief requested.

Section 12 - Failure of Agreement - Appointment of Referee -

If the members of the Board are unable to resolve the dispute within twenty days from the postmarked date of such submission, either member of the Board may request the National Mediation Board to appoint a member of the panel of potential referees to sit with the Board. The National Mediation Board shall make the appointment within five days after receipt of such request and notify the members of the Board of such appointment promptly after it is made. Copies of both submissions shall promptly be made available to the referee.

Section 13 - Procedure at Board Meetings -

The referee selected shall preside at meetings of the Board and shall be designated for the purpose of a case as the Chairman of the Board. The Board shall hold a meeting for the purpose of deciding the dispute within 15 days after the appointment of a referee. The Board shall consider the written submission and relevant agreements, and no oral testimony or other written material will be received. A majority vote of all members of the Board shall be required for a decision of the Board. A partisan member of the Board may in the absence of his partisan colleague vote on behalf of both. Decisions shall be made within thirty days from the date of such meeting.

Section 14 - Remedy -

(a) If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of Article II, Subcontracting, which is sustained, the Board's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

(Sections 11, 12, 13 and 14(a) of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

(b) If the Board finds that the Carrier violated the advance notice requirements of Section 2 of Article II, the Board may award an amount not in excess of that produced by multiplying 10% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the Carrier who would have done the work.

The amounts awarded in accordance with this paragraph (b) shall be divided equitably among the claimants, or otherwise distributed upon an equitable basis, as determined by the Board.

(Section 14(b) of ARTICLE VI - RESOLUTION OF DISPUTES - from ARTICLE V - Part B. of December 4, 1975 Agreement)

Section 15 - Final and Binding Character -

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination.

(Section 15 of ARTICLE VI - RESOLUTION OF DISPUTES - from ARTICLE VIII - of December 4, 1975 Agreement)

Section 16 - Extension of Time Limits -

The time limits specified in this Article may be extended only by mutual agreement of the parties.

Section 17 - Records -

The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

Section 18 - Payment of Compensation -

The parties hereto will assume the compensation, travel expense and other expense of the Board members selected by them. Unless other arrangements are made, the office, stenographic and other expenses of the Board, including compensation and expenses of the neutral members thereof, shall be shared equally by the parties.

Section 19 - Disputes Referred to Adjustment Board -

Disputes arising under Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing, of this agreement, shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

(Sections 16, 17, 18 and 19 of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Under the provisions of Article VI, Section 19, disputes arising under Article III - Assignment of Work, Article IV - Outlying Points, and Article V - Coupling, Inspection and Testing, are to be handled in accordance with Section 3 of the Railway Labor Act. It is clear that with respect to such disputes subject to handling under Section 3 of the Act any claim or grievance is subject to the time limits and procedural requirements of the Time Limit on Claims Rule.

A different situation exists with respect to disputes arising under Article I - Employee Protection, and Article II - Subcontracting. Article VI provides a "Shop Craft Special Board of Adjustment" for the purpose of adjusting and deciding disputes arising out of those two Articles (Article VI, Section 1), and specifically provides (Article VI, Section 8) that the Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of those two Articles.

During our negotiations, it was understood by both parties that disputes under Articles I and II need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but could be handled directly with the highest officer in the

interest of expeditious handling. Sections 10 through 13 set up special time limits to govern the handling of submissions to the Special Board, thus providing special procedures which are intended to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion through the Shop Craft Special Board are not subject to the provisions of the standard Time Limit Rule.

However, if there should be any claims filed for wage loss on behalf of a named claimant arising out of an alleged violation of Article II - Subcontracting (See Section 14 of Article VI), such claims for wage loss should be filed promptly and within sixty days of the filing of the alleged violation of Article II - Subcontracting, with the same carrier officer as to whom such violation of Article II was directed by the General Chairman of the craft or crafts involved, or his representative. If such claim is a continuous one, it cannot begin to run prior to the date the claim is presented. If the alleged violation of Article II - Subcontracting, is then submitted to the Shop Craft Special Board of Adjustment, it will be considered that the special procedural provisions of Article VI have been complied with.

Failure to handle as set forth in the preceding paragraph shall not be considered as a precedent or waiver of the contentions of the carriers or employes as to other similar claims.

This understanding is a supplement to Article VI of the September 25, 1964 Agreement and will become effective as of this date.

(From MEMORANDUM OF UNDERSTANDING
dated January 7, 1965)

ARTICLE VII - EFFECT OF THIS AGREEMENT

This agreement is in full and final settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about October 15, 1962; and out of proposals served by the individual railroads on organization representatives of the employees involved on or about November 5, 1962, and Articles II, III and IV of proposals served by the individual railroads on organization representatives of the employees involved on or about June 17, 1963. This agreement shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by each of the organizations signatory hereto.

(Entire ARTICLE VII - EFFECT OF THIS AGREEMENT - from
September 25, 1964 Agreement)

ARTICLE VIII - EFFECTIVE DATE

The provisions of this agreement shall become effective November 1, 1964, and shall continue in effect until January 1, 1966, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(The remaining sentence of ARTICLE VIII - EFFECTIVE DATE - of the September 25, 1964 Agreement as well as the provisions of ARTICLE IX - GENERAL PROVISIONS - Section 2 - Effect of this Agreement - of the December 4, 1975 Agreement dealing with the existing moratoria, have been omitted.)

ARTICLE IX - COURT APPROVAL

This agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

SIGNED AT WASHINGTON, D. C., THIS 25TH DAY OF SEPTEMBER, 1964.

(SIGNATURES OMITTED)

SECTION 7 (c)

September 25, 1964 Agreement,
Modified by PEB 219, with Interpretations

ARTICLE VI - SUBCONTRACTING

Provisions of Article VI - Subcontracting are attached as Exhibit "A".

I. The first paragraph clearly provides that Article II, Subcontracting, as amended, is further amended to implement the report and recommendations of Presidential Emergency Board No. 219 as interpreted and clarified by Special Board 102-29.

It is to be noted that the PEB Report and recommendations, as well as, the questions and answers as interpreted and clarified by Special Board 102-29 were specifically incorporated into Article VI - Subcontracting and we should make sure when we are faced with a subcontracting issue **we should not only refer to the agreement for support**, but also to the report and recommendations, as well as, the questions and answers and use them, if possible, to further substantiate a subcontracting violation.

ARTICLE II - SUBCONTRACTING

The following improvements and/or amendments were obtained in the 11-27-91 (PEB 219) agreement.

The **maintenance and repair** of equipment which has been **historically (not necessarily exclusively) maintained and repaired** by a Carriers own employees, **no matter how purchased or made available to the Carrier, shall not** be contracted out by the Carrier **except** in the manner specified. In determining whether work falls within either of the preceding sentences, **the practices at the facility involved will govern**.

In regard to the above paragraph, PEB 219 and Special Board 102-29 Clarification and Interpretation to Carriers Request Nos. 22, 23 and 24, found on pages 40 and 41 of the Special Board (102-29) Report **which is attached hereto** as Exhibit "B", clearly interprets Carriers restrictions on **contracting out**, **novel arrangements** and **warranty arrangements**.

Section 1. - Applicable Criteria

Section 1 sets forth certain criteria under which a Carrier is contractually permitted to send work off the property. Any action taken by the Carrier in sending work off the property not covered by the criteria set forth in Section 1, including the criteria as set forth and interpreted or clarified by Special Board (102-29).

Section 2. - Advance Notice-Submission of Data-Conference

Provides for advance notice by the Carrier to the General Chairman regarding any subcontracting of work of a type currently performed by the employees, as well as, reasons and supporting data sufficient to enable the General Chairman to make a determination.

Advance notice is not required concerning minor transactions.

A minor transaction is defined **for purposes of notice** as on **item of repair** requiring **eight man hours or less to perform** (unless the parties agree on a different definition) and which **occurs at a location** where **mechanics of the affected craft, specialized equipment**, **spare units or parts** are **not available** or **cannot be made available** within a reasonable time.

Except in emergencies, the Carrier shall not consummate a binding subcontract until the expedited procedure has been implemented and the arbitrator has determined that the subcontract is permissible.

Emergencies are defined.

Section 3. - Request for Information When No Advance Notice Given

Provides procedure to be followed if the Carrier subcontracts work without the proper notice.

Also provides for procedure to be followed concerning Carriers' alleged failure to provide **notice of intent or** to provide sufficient data **in a timely manner**.

Section 4. - Establishment of Subcontracting Expedited Arbitration Panels

Provides arbitrators **shall be compensated by the parties.**

See Brief Synopsis on time limits attached as Exhibit "C".

Section 5. - Consist

Provides for **6 neutral arbitrators** to be selected **unless** the **parties agree** to a **different number**.

Section 6. - Location

Provides **Hearings** and other meetings of arbitrators from the expedited panels shall be at strategic locations.

Section 7. - Referees

Provides if parties cannot agree to 6 neutrals within 30 days **from the date the parties establish a panel** the National Mediation Board (NMB) shall be requested to furnish names of 12 arbitrators **within 5 days after the receipt** of such request.

The parties will use alternate striking of names until **6 is agreed upon to** fill the panel.

Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 8. - Filling Vacancies

Provides filling of Referee vacancies on the expedited panels by following same procedures as contained in Section 7.

Section 9. - Content of Presentations

Provides arbitrator **cannot consider any evidence not exchanged by the parties at least** 48 hours before the commencement of the hearing. Other rules governing the scope and content of the presentations shall be established by the parties and if they can't agree then such rules will be set by the arbitrator.

Section 10. - Procedure at Board Meetings

See Brief Synopsis of time limits attached as Exhibit "C", which sets forth the time procedures.

Also provides procedural rules governing the record and hearings shall be determined by agreement of the parties and by the arbitrator if the parties cannot agree.

Section 11. - Remedy

Provides in (a) that a claim for wage loss on behalf of a named claimant, which is sustained the arbitrators decision shall be for wages lost and other benefits necessary to make the employee whole.

Provides in (b) if the arbitrator finds Carrier violated the advance notice requirements of Section 2 (in non-emergency situations) he shall award an amount equal to 50% of the man hours billed by the contractor by the weighted average of the straight time hourly rates of pay of the employees of the Carrier who would have done the work, provided however, where the Carrier violated **both** the notice requirement and wrongfully contracted the work the multiplier shall be 10%.

Simply if the Carrier violates the notice requirements it is 50%.

If the Carrier violates both the notice requirements and wrongfully subcontracts the work it is 110%.

Section 12. - Final and Binding Character

Provides decisions of the Board shall be final and binding subject to judicial enforcement and review which apply to awards of the National Railroad Adjustment Board.

Also the award, if in favor of the employee, or employees **shall specify a date on or before**. which **Carrier will comply** with the award.

Both Carrier and Organization agree to apply the decision of an arbitrator in a case arising, which involves substantially similar situations and similar grievances.

Section 13. - Disputes to Other Boards

Provides disputes under Article I, Article III, Article IV and Article V **shall not be subject** to the expedited panels.

Disputes under Articles I and II are further covered under June 1, 1993 Agreement attached as Exhibit "D".

Also Civil Action No. 93-0844 - Settlement Agreement attached as Exhibit "E".

We also do not want to forget application of subcontracting on Burlington Northern Railroad, Southern Railway and Soo Line Railroad, if they do not go to national handling.

Further, we do not want to forget that the September 25, 1964 Agreement, as amended, should be construed **as a separate agreement by** and on behalf of **each Organization and its employees** signatory to the agreement.

We should not forget Side Letter No. 7 of the November 27, 1991 (PEB 219) Agreement provides Article II disputes can be taken to Public Law Board.

Also, Settlement Agreement (Civil Action No. 93-0844) was for one year (October 18, 1993 to October 18, 1994) and provided, in pertinent part, that we could take Article II cases to a Public Law Board and the NMB would compensate the Referees. As long as the NMB continues to pay the Referees we should not pursue the matter in Court. However as Mike Wolly handled the matter for us in Court, I suggest we discuss the matter with him just in case the NMB balks on paying for Referees in future cases.

EXHIBIT "A"

Article VI – SUBCONTRACTING

Article II, Subcontracting, of the September 25, 1964 National Agreement, as amended, is further amended as follows to implement the report and recommendation of Presidential Emergency Board No. 219, as interpreted and clarified by Special Board 102-29, and that report and recommendations as well as the questions and answers that interpret and clarify them are specifically incorporated herein by reference:

Article II – Subcontracting

The work set forth in the classification of work rules of the crafts parties to Imposed Agreement or, in the scope rule if there is no classification of work rule, and all other work historically performed and generally recognized as work of the crafts pursuant to such classification of work rules or scope rules where applicable, will not be contracted except in accordance with the provisions of Sections 1 through 4 of this historically (not necessarily exclusively) maintained and repaired by a carrier's own employees, no matter how purchased or made available to the carrier, shall not be contracted out by the carrier except in the manner specified. In determining whether work falls within either of the preceding sentences, the practices at the facility involved will govern.

Section 1 – Applicable Criteria

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

Section 2 – Advance Notice – Submission of Data – Conference

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the General Chairman of the craft or crafts involved notice of intent to contract out and the reasons therefore, together with supporting data sufficient to enable the General Chairman to determine whether the contract is consistent with the criteria set forth above.

Advance notice shall not be required concerning minor transactions. A minor transaction is defined for purposes of notice as an item of repair requiring eight man-hours or less to perform (unless the parties agree on a different definition) and which occurs at a location where mechanics of the affected craft, specialized equipment, spare units or parts are not available or cannot be made available within a reasonable time.

The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action.

If no agreement is reached at the conference following the notification, either party may submit a demand for an expedited arbitration within five working days of the conference. Except in emergencies, the carrier shall no t consummate a binding subcontract until the expedited procedures have been implemented and the arbitrator has determined that the subcontract is permissible, unless the parties agree otherwise. For this purpose, an "emergency" means an unforeseen combination of circumstances, or the resulting state, which calls for prompt or immediate action involving safety of the public, employees, and carriers' property or avoidance of unnecessary delay to carriers' operations.

Section 3 – Request for Information When No Advance Notice Given

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Disputes concerning a carrier's alleged failure to provide notice of intent or to provide sufficient supporting data in a timely manner in order that the General Chairman may reasonably determine whether the criteria for subcontracting have been met, also may be submitted to a member of the arbitration panel, but not necessarily on an expedited basis. In the event the parties are unable to agree on a schedule for resolving such a dispute, the arbitrator shall establish the schedule.

Section 4 – Establishment of Subcontracting Expedited Arbitration Panels

The parties shall establish expedited panels of neutral arbitrators at strategic locations throughout the United States, either by carrier or region. Each such panel shall have exclusive jurisdiction of disputes on the carrier's system or in the applicable geographical region, as the case may be, under the provisions of Article II, Subcontracting, as amended by this Imposed Agreement. The members of each of those panels shall hear cases or group of cases on a rotating basis. Arbitrators appointed to said panels shall serve for terms of two years provided they adhere to the prescribed time requirements concerning their responsibilities. These arbitrators shall be compensated for their services directly by the parties.

Section 5 – Consist

Six neutral arbitrators shall be selected for each subcontracting expedited arbitration panel, unless the parties shall agree to a different number.

Section 6 – Location

Hearing and other meetings of arbitrators from the subcontracting expedited arbitration panels shall be at strategic locations.

Section 7 – Referees

If the parties are unable to agree on the selection of all the arbitrators making up a panel within 30 days from the date the parties establish a panel of neutral arbitrators, the NMB shall be requested to supply a list of 12 arbitrators within 5 days after the receipt of such request. By alternate striking of names, the parties shall reduce the list of six arbitrators who shall constitute the panel. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 8 – Filling Vacancies

Vacancies for subcontracting expedited arbitration panels shall be filled by following the same procedures as contained in Section 7 above.

Section 9 – Content of Presentations

The arbitrator shall not consider any evidence not exchanged by the parties at least 48 hours before the commencement of the hearing. Other rules governing the scope and content of the presentations to the Panels shall be established by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 10 – Procedure at Board Meetings

Upon receipt of a demand under Section 2 of the Article, the arbitrator shall schedule a hearing within three working days and conduct a hearing within five working days thereafter. The arbitrator shall conclude the hearing not more than 48 hours after it has commenced. The arbitrator shall issue

an oral or written decision within two working days of the conclusion hearing. An oral decision shall be supplemented by a written one within two weeks of the conclusion of the hearing unless the parties waive the time requirement. Any of these time limits may be extended by mutual agreement of the parties. Procedural rules governing the record and hearings before the Panels shall be determined by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 11 – Remedy

(a) If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of this Article, which is sustained, the arbitrator's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

(b) If the arbitrator finds that the carrier violated the advance notice requirements of Section 2 [in non-emergency situations], the arbitrator shall award an amount equal to that produced by multiplying 50% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the carrier who would have done the work, provided however that where the carrier is found to have both failed to consult and wrongfully contracted out work, the multiplier shall be 10% rather than 50%. The amounts awarded in the accordance with this paragraph shall be divided equally among the claimants, or otherwise distributed upon an equitable basis, as determined by the arbitrator.

Section 12 – Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination. The carrier agrees to apply the decision of an arbitrator in a case arising on the carrier's property which sustains a grievance to all substantially similar situations and the Organization agrees not to bring any grievance which is substantially similar to a grievance denied on the carrier's property by the decision of the arbitrator.

Decisions of arbitrators rendered under this Article shall be subject to judicial enforcement and review in the same manner and subject to the same provisions which apply to awards of the National Railroad Adjustment Board.

Section 13 – Disputes Referred to Other Boards

Disputes arising under Article I, Employee Protection, Article III, Assignment of Work – Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing shall not be subject to the jurisdiction of any Subcontracting Expedited Arbitration Panel.

Disputes under Article II need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but can be handled directly with the highest officer in the interest of expeditious handling. This Article sets up special time limits to govern the handling of cases before the expedited arbitration panels, thus providing special procedures which are intended

to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion through the expedited arbitration panels are not subject to the provisions of the standard Time Limit Rule.

If there should be any claims filed for wage loss on behalf on a named claimant arising out of an alleged violations of Article II - Subcontracting, such claims for wage loss should be filed promptly and within sixty days of the filing of the alleged violation of Article II – Subcontracting, with the same carrier officer as to whom such violation of Article II was directed by the General Chairman of the craft or crafts involved, or his representative. If such claim is a continuous one, it cannot begin to run prior to the date the claim is presented.

Failure to handle as set forth in the preceding paragraph shall not be considered as a precedent or waiver of the contentions of the carriers or employees as to other similar claims.

* * * *

Article VI of the September 25, 1964 Agreement, as amended, is further amended to delete (a) all references to Article II – Subcontracting, and (b) Section 14 – Remedy (and to renumber the subsequent sections accordingly).

REPORT OF THE

SPECIAL BOARD (102-29)

INTERPRETATION AND CLARIFICATION

OF

THE REPORT OF

EMERGENCY BOARD NO. 219
(EXECUTIVE ORDER NO. 12714)

Established pursuant to House Joint Resolution 222 (Public Law 102-29) to provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees.

WASHINGTON, D.C.

JUNE 11, 1991

Is it intent of PEB No. 219 that organizations be barred from serving and progressing Section 6 notices in regard to ameliorating effects of line sales, where ICC has exempted such sales from imposition of employee protection?

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to BLE Request No. 14.

C. The Shop Craft Organizations

Shop Craft Request No. 1

Does the PEB's recommendation regarding "requests ... to establish a skill differential for specific work" include the IBF&O's proposal to create a differential to be paid employees when they are assigned to perform engine hostling and heavy equipment operation work?

Clarification or Interpretation of the Special Board

The PEB intended that the IBF&O should be included in the study of skill differentials.

Shop Craft Request No. 2

Does the PEB's recommendation regarding computation of COLA adjustments beginning July 1, 1995 means that COLA allowances shall be paid to employees semi-annually, provided that the CPI-W increases at least 1.5% semi-annually (3% annually), with each .3

int increase generating a 1 cent allowance up to a cap of 2.5% semi-annually (5% annually).

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to BLE Request No. 4.

Shop Craft Request No. 3

Does the PEB's recommendation that "the parties should be guided by their corresponding practices in the last round of agreements" in implementing the cost-of-living adjustments after January 1, 1995 means that those allowances should be rolled into basic rates of pay prior to changes in those rates in the next agreement?

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to BLE Request No. 5.

Shop Craft Request No. 4

Does the definition of covered work which the PEB recommended be included in the revised subcontracting provisions of the September 25, 1964 Agreement means that EPPAs and similar arrangements are brought within the scope of the Agreement?

Clarification or Interpretation of the Special Board

The PEB intended that EPPAs and similar arrangements are within the scope of the September 25, 1964 Agreement.

Shop Craft Request No. 5

Is the PEB's recommended Enhanced Penalty for Violating the Advance Notice Requirements of the September 25, 1964 Agreement meant to Not Dilute the Existing Make-Whole Remedy for Improper Subcontracts?

Clarification or Interpretation of the Special Board

The PEB intended to increase the incentive for individual carriers to consult with the appropriate organizations prior to contracting out work and to make individual employees whole for loss of wages because of unauthorized contracting out of bargaining unit work. However, PEB intended that where the carrier both failed to consult and wrongfully contracted out work the 10 percent penalty which presently exists should continue.

Shop Craft Request No. 6

Does the PEB's recommended relaxation of existing work rules allow the carriers to assign an unlimited amount of such work across craft lines?

Clarification or Interpretation of the Special Board

The PEB intended to allow two hours of incidental work per employee per shift.

Shop Craft Request No. 7

Does the PEB's recommended expansion of the incidental work rule provisions in the other shop unions' agreements not cover the unskilled employees represented by IBF&O?

Clarification or Interpretation of the Special Board

The PEB intended that skilled IBF&O employees be included in the expansion of the incidental work rule provisions.

Shop Craft Request No. 8

Is it correct that the moratorium recommended by the PEB does not extend beyond notices or proposals which relate to subjects covered by the agreement or which were included in national handling and which will be withdrawn as a result of the agreement?

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to BLE Request No. 14.

D. Transportation Communications International Union-Carmen Division

Carmen Request

It is the request of TCU - Carmen Division that the following language be added to subparagraph (a)(1) of Section H of the recommendations: or performed in any manner on carrier property by other than carrier employees.

Does this Special Board agree that the addition of the above language would more fully set forth the intent of PEB 219, or is the language contained in PEB 219's recommendations adequate to fully cover all aspects of the TTX dispute?

Request No. 20

Does the criterion "consistent with industry practice" refer to practices that are evolving in the industry to resolve the problem of ground crew overmanning, rather than to provisions in the majority of UTU agreements, which are the cause of the overmanning problem that PEB 219 recommended be resolved?

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to UTU Request No. 3.

Request No. 21

Under PEB 219's recommendation that "the entire subject of crew consist agreements" be re-opened in local negotiations and arbitration, may carriers propose elimination of attrition and "free exercise of seniority" provisions, special allowances and productivity funds, train-length, car-count and work restrictions, and other conditions on the right to operate with reduced crews that perpetuate overmanning and increase its costs?

Clarification or Interpretation of the Special Board

The PEB did not intend that the carriers be allowed to propose elimination of special allowances and productivity funds.

Request No. 22

PEB 219 recommended that Article II of the September 25, 1964 national agreement with the shopcraft organizations be revised to provide that "(t)he maintenance and repair of equipment which has

been historically (not necessarily exclusively) maintained and repaired by a carrier's own employees, no matter how purchased or made available to the carrier, should not be contracted out except" in accordance with Article II. Does that change in the description of the carrier work that can be contracted under Article II change the definition of "contracting," itself, to include work that the carrier does not control?

Clarification or Interpretation of the Special Board

The PEB intended to curtail the contracting out of work where it could be done in house at a competitive cost to the greatest extent possible. Accordingly, while a carrier is not required to have work performed in house where it historically did not, and presently does not control that work, it was the intention of the PEB to make it impossible for the carriers to circumvent the contracting out limitation by the creation of novel arrangements such as EPPAs which have the effect of removing work historically done by bargaining unit members.

Request No. 23

Does PEB 219's reference to "equipment . . ., no matter how purchased . . ."(see Question 22 above) cover equipment purchased under warranty where the warranty period has not yet expired? 2).

Clarification or Interpretation of the Special Board

The PEB intended that only customary warranty arrangements be allowed to continue.

Request No. 24

What issue did PEB 219 mean to resolve by its reference to "equipment . . . no matter how purchased or made available to the carrier"? (see Question 22 above).

Clarification or Interpretation of the Special Board

The PEB intended to limit a carrier's right to contract out work that ordinarily would be performed on the property.

Request No. 25

Do the rules and procedures recommended by PEB 219 regarding subcontracting of mechanical work apply before the expedited arbitration panels are in place and prepared to function?

Clarification or Interpretation of the Special Board

Under Public Law 102-29 the recommendations of the PEB will become effective on July 29, 1991, unless previously modified by this Board or by the parties.

Request No. 26

Is a carrier entitled to consummate proposed contracts for mechanical work when an expedited arbitration panel fails to function due to reasons other than the fault of the carrier?

Clarification or Interpretation of the Special Board

The PEB did not intend that a carrier has authority to act unilaterally.

Request No. 27

Under the shopcraft subcontracting recommendations, may a carrier establish a single expedited arbitration panel for its entire system, or if it chooses, may it join with other nearby carriers to create regional panels?

Clarification or Interpretation of the Special Board

The PEB intended that the arbitration panels be established jointly.

Request No. 28

Under the shopcraft subcontracting recommendations, are the parties required to exchange copies of any submission provided to the arbitrator at least 24 hours prior to the hearing's convening?

Clarification or Interpretation of the Special Board

The PEB intended that the procedures for submissions and other matters involving expedited arbitration be determined by the regional arbitration panels.

Request No. 29

PEB 219 recommended that "Compensation to named claimants for wages lost should also be based on the 50% formula," referring to its additional recommendation that a sum equal to "50% of the hours billed by the contractor multiplied by the weighted average of the straight-time hourly rates of pay" of the employees who would have done the work be awarded as the penalty for violating the advance notice requirements (except in emergency situations). Taken

together, do these shopcraft subcontracting recommendations mean that such employees could receive, for lost wages and the notice penalty in the aggregate, a maximum of 100%, or a maximum of 150%, of the amount calculated under the recommended formula?

Clarification or Interpretation of the Special Board

The response to this request is the same as the response to Shopcraft No. 5.

Request No. 30

Do PEB 219's recommendations regarding starting times apply to "supporting BMWE forces," i.e., employees whose assignments is associated with that of a production crew to the extent that different starting times for such crews, on the one hand and such supporting forces, on the other, would delay the work or otherwise interfere with its orderly progress, as well as to the production crews they support?

Clarification or Interpretation of the Special Board

The PEB intended that starting times apply to supporting BMWE forces; however, "directly involved" should be given the narrowest possible construction consistent with the efficient operation of the production crew.

Request No. 31

Do PEB 219's recommendations regarding work week and rest days apply to "supporting BMWE forces," i.e., employees whose assignment is associated with that of a production crew to the extent that

SECTION 8

Guide for the Local Committee Chairman

Protective Agreements

This section contains information pertaining to Employee Protective Agreements. Included in this Section are:

a. Summary of Protective Agreements

b. New York Dock Protection Agreement

c. Amtrak Employee Protection Agreement

SECTION 8 (a)

Summary of Protective Agreements

Section 8 (a)

Summary of Protective Agreements

There are many of our representatives and members involved in mergers of two or more Carriers, and possibly others may be in the future.

Most Protective Agreements provide that matters arising from the application or interpretation of such merger agreements would be handled by the General Chairman directly with the highest officer of the Carrier so designated. Such matters are not subject to the standard Time Limit Rule or "steps of appeal" to the various Carrier officers. It should be specifically determined at the time of an alleged violation if such violation constitutes an abridgement of the "merger agreement" or the Schedule Rules Agreement.

Should there be any doubt as to under which agreement the claim should be filed, then separate claims should be filed under both agreements, and make the proper appeals under the rules agreement to protest the timeliness of the claim.

PROTECTIVE CONDITIONS

More and more our members are becoming involved in "transactions" which are covered under Employe Protective Conditions imposed by the Interstate Commerce Commission which may include, but not limited to, the following protective conditions:

Washington Job Protection Agreement dated	May 21, 1936
Oklahoma Conditions dated	May 17, 1944
Burlington Northern Conditions dated	November 1, 1944

SECTION 8 (b)

New York Dock Protective Agreements

NEW YORK DOCK CONDITIONS

Finance Docket No. 28250

APPENDIX III

Labor protective conditions to be imposed in railroad transactions purs 49 U.S.C. 11343 et seq. (formerly Sections 5(2) and 5(3) of the Inter merce Act), except for trackage rights and lease proposals which are t sidered elsewhere, are as follows:

1. Definitions.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which

such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision.-(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances.-(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances.-(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation Allowance.- A dismissed employee entitled to protection under this appendix, may at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump-sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits.- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.- Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not to exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.-(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.-(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this Section.

(c) No claim for loss shall be paid under the provisions of this Section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under Sections 1 or 2 of the Article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad

SECTION 8 (c)

Amtrak Protective Agreements

Section 8 (c)

Amtrak Protective Agreement

BOARD OF ARBITRATION

(Convened pursuant to a May 31, 1998
Arbitration Agreement with respect to the
labor protective provisions of various
Collective Bargaining Agreements)

In the matter of the Arbitration

between

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK

-and-

COALITION OF AMTRAK UNIONS

Richard Mittenthal
Chairman

Joshua M. Javits
Amtrak-Designee

Carl E. Van Horn

BACKGROUND

This interest arbitration case arose out of Section 141 of the Amtrak Reform & Accountability Act of December 1997. The parties are the National Railroad Passenger Corporation, better known as Amtrak, and a coalition of fourteen unions (Coalition) who represent some 22,000 employees in various Amtrak bargaining units. The parties disagree as to what labor protective provisions (LPPs) should be included in the various collective bargaining agreements (CBAs).

The background facts are not really in dispute. In the 1960s, perhaps earlier, railroads were abandoning passenger service and limiting their business activity to hauling freight. The commuter railroads serving major metropolitan areas continued, of course, to carry passengers. But inter-city passenger service was disappearing. In order to preserve such service, the Congress passed the Rail Passenger Service Act (RPSA) in 1970. It established Amtrak, a national railroad corporation, to provide the intercity service that private carriers were no longer willing to provide.

Section 405 of this Act required Amtrak to create "fair and equitable arrangements" to protect employees adversely affected by a discontinuance of intercity passenger service. These "arrangements", the so-called LPPs, were negotiated by the parties and certified by the Secretary of Labor in 1971 (C-1) and 1973 (C-2). There were several types of LPP. One, designated as C-1 protection, covered employees of private freight carriers who did not obtain subsequent employment with Amtrak. Another, designated as C-2 protection, covered Amtrak employees, including those who were former employees of private freight carriers. There was also "Rule 10/11" for shop craft employees which provided the same (or much the same) benefits as C-2. The present dispute concerns C-2 and "Rule 10/11" employees.

C-2 benefits mirrored the kind of LPPs in effect at many of the freight railroads. Its major characteristics can be briefly explained. To be eligible for a LPP benefit, an employee had to be adversely affected by a "transaction". That adverse effect was either "displacement" to a "worse

position" with respect to pay or work rules or "dismissal", that is, losing one's position. The "transaction" trigger for operating and non-operating crafts was a discontinuance of intercity passenger service. The "transaction" trigger for shop crafts under "Rule 10/11" was transfer of work across seniority district lines or abandonment or discontinuance of a facility or a combination of two or more facilities. Assuming a "transaction" and a "dismissal" or "displacement" of an operating employee, for example, the latter was to receive a certain sum of money for a period that could last as long as six years. The money benefit was defined with precision for each covered situation. A similar arrangement was in place for shop craft people. C-2, in short, was an attempt to reimburse an employee for all or part of the money loss he experienced on account of certain operating changes.

Amtrak has never been self-sufficient. Its operating revenues have not covered its operating costs. It has been able to continue functioning only through large federal operating and capital subsidies. Those subsidies, however, prompted Congressional criticism of Amtrak's performance. That criticism grew over the years, particularly as the government sought to address the problem of its large budget deficits. This led to two significant pieces of legislation in 1997. The first was the Taxpayer Relief Act (TRA) which, among other things, granted Amtrak 2.3 billion dollars for capital expenditures. Under the terms of the TRA, Amtrak is required to provide a portion of the TRA funds to the States which have no Amtrak service. Each non-Amtrak State (six in the first year) received 1 percent of the total TRA funds disbursed. The same formula will apply in the second year, leaving approximately 2 billion of the total 2.3 billion dollars for Amtrak's use. This grant was conditioned upon the enactment of legislation which Congress believed would enable Amtrak to change its operating methods and achieve new efficiencies and cost savings. That condition was met a short time later with the passage of the Amtrak Reform & Accountability Act (ARAA).

ARAA included a number of "Findings" as the basis for this legislation. It stated among other things:

- that "Amtrak is facing a financial crisis, with growing and substantial debt obligations severely limiting its long-term viability",

- that "all of Amtrak's stakeholders, including labor, management...must participate in efforts to reduce Amtrak's costs and increase its revenues",

- that "additional flexibility is needed to allow Amtrak to operate in a businesslike manner to manage costs and maximize revenues", and

- that "Amtrak and its employees should proceed quickly with proposals to modify [CBAs] to...realize cost savings which are necessary to reduce Federal assistance".

It also created an Amtrak Review Council (ARC) to oversee Amtrak operations and determine whether Amtrak was meeting the objectives set forth in ARAA. A failure to meet those objectives by the end of the fiscal year 2002 could prompt Congress to liquidate Amtrak. The possibility of such dire consequences is plainly contemplated by ARAA.

More to the point, Section 142 of ARAA "extinguished" any CBA provision between the parties "relating to employee protection arrangements and severance benefits...including all provisions of Appendix C-2..." This repeal of LPPs took effect June 1, 1998. Section 141 anticipated that the parties would negotiate new LPPs and that should they fail to reach agreement they would resolve their differences through either of two possible procedures. One such procedure was binding arbitration under Section 7 of the Railway Labor Act. The rulings of such an arbitration panel would be retroactive to April 1, 1998. It should be noted too that Section 141(e) provides that "nothing in this Act...shall affect the level of protection provided to freight railroad employees and mass transportation employees as it existed on [December 1, 1997]."

The parties exchanged proposals with regard to the terms of future LPPs in their CBAs. They discussed the

matter be longer but their negotiations proved fruitless. They decided to submit this dispute to binding arbitration. A three-person Board was duly constituted following the procedure set forth in Section 141. It consists of Joshua M. Javits, Amtrak-designee, Carl E. Van Horn, Coalition-designee, and Richard Mittenthal, Neutral Chairman. Hearings were held in Washington, D.C. on April 14, 15, and 16, 1999. Amtrak was represented by Harry A. Rissetto and Katherine B. Houlihan, Attorneys (Morgan Lewis & Bockius). The Coalition was represented by Mitchell Kraus, General Counsel, Transportation Communications International Union, Clinton J. Miller, III, General Counsel, United Transportation Union, Harold A. Ross, General Counsel, Brotherhood of Locomotive Engineers, Donald F. Griffin, Assistant General Counsel, Brotherhood of Maintenance of Way Employees, Christopher Tully, Assistant General Counsel, TCU, and Joel Parker, Vice President, TCU, and Chairman, Amtrak Bargaining Coalition. A transcript of the proceedings was made. The Coalition submitted a brief at the close of the hearings. Amtrak filed a post-hearing brief on July 7, 1999. The Coalition filed a reply brief on August 20, 1999. The Board met in executive session on October 2, 1999. The parties, by written agreement, extended the time for the issuance of this Award to November 1, 1999.

POSITIONS OF THE PARTIES

The Coalition urges the Board to resolve this dispute primarily, but not entirely, on the basis of the "prevailing pattern of protective benefits in the railroad industry". It emphasizes the dominant role of "patterns" in wage and rules determinations by Presidential Emergency Boards (PEBs) and by the rail industry itself. It notes, in this connection, the rationale of PEB No. 234 which rejected Amtrak's attempt to depart from the rail industry "pattern" in dealing with wages and rules in the most recent round of industry-wide negotiations. It believes that rationale is equally applicable here. It stresses that its LPP proposal, for the most part, follows the former C-2 arrangements for operating and non-operating crafts and the former "Rule 10/11" arrangements for shop crafts and would be largely

consistent with the LPPs available to all crafts within the industry.

The Coalition states that its proposal calls for certain LPP benefits to be somewhat less than had earlier been available under C-2 and "Rule 10/11". It notes, for example, that the length of protection would be reduced from a maximum of six years to a maximum of five years and that the level of protection (i.e., the amount of the benefit) for those who are displaced would remain 100 percent of an average month's earnings. For those who are dismissed, however, the allowance would be 60 percent rather than 100 percent. The separation allowance would be computed in a manner consistent with the Washington Job Protection Agreement (WJPA).

In other respects, however, the Coalition would add certain LPPs which had never been part of C-2 or "Rule 10/11". Specifically, it seeks a supplemental unemployment benefit (SUB) plan which would pay a $50 per day benefit ($250 per week) to eligible employees, those with ten years' seniority who are unemployed over 20 days in a 12-month period. It also seeks a successorship clause which would require Amtrak to condition any sale of its operations on the purchaser agreeing to continue in effect the existing CBAs including all LPPs and to recognize the Coalition unions as the bargaining representatives of their respective crafts. It asserts that Amtrak's LPP proposal, by comparison, does not meet WJPA standards which are the rail industry baseline and would leave Amtrak employees with inferior protection well below the minimum in the industry.

The Coalition estimates that the cost of its proposal, including SUB, would be somewhere between $1.1 and $1.7 million per year. It contrasts this figure with Amtrak's C-2 (presumably "Rule 10/11" as well) cost of $36 million over the last 24 years, an average of $1.5 million per year. It observes that Amtrak has built into its strategic business plan for the coming years the historical cost of between $1.0 and $1.5 million for LPP wage costs. It believes, accordingly, that its proposal would not impose an undue financial burden on Amtrak. In any event, its position is that Amtrak should reasonably be expected to bear the cost

of providing its employees the minimum LPP benefits they would be entitled to were they Class I railroad employees. And, it adds, the Coalition proposal calls for less than the prevailing LPPs enjoyed by Claim I railroad employees.

* * *

Amtrak begins its analysis of the dispute by emphasizing the terms of the ARAA. It notes that Congress eliminated the then existing LPPs in the various craft CBAs, anticipated a reduction in such benefits, and made clear that any such reduction would not affect LPPs on the freight railroads. It argues that Congress in effect rejected the notion of using freight railroad "patterns" to determine Amtrak benefits. It says that such Congressional action was a product of its wish to make Amtrak operationally self-sufficient and thus eliminate the federal government's operating subsidies to Amtrak. It says Congress underscored its wishes by creating ARC and a procedure which could well lead to the liquidation of Amtrak after fiscal year 2002.

Amtrak explains that in order to satisfy Congress' goal, it must increase revenue and control costs. It insists that the "contingent costs" of LPP make it much more difficult for Management to experiment with new routes, to reduce the number of trips on existing routes, to bid for maintenance and service business, to initiate or modify State-assisted service, or to take a variety of other initiatives. It contends that such "contingent costs" inhibit Management's ability to be nimble, to make decisions quickly without fear of incurring cost penalties from LPPs, and hence inhibit Management's ability to raise revenue. It therefore believes a more modest safety net of LPP costs is appropriate. It urges that such a cost reduction be achieved in two ways - a more limited definition of the "transactions" which trigger benefits and a lower level of benefits. It suggests that adoption of the Coalition's LPP package, even greater employee protection than existed before ARAA, would likely cause Congress to question Amtrak's capacity to deal with this significant issue.

Amtrak insists that the basic purpose of LPPs is to allow employees adversely affected by a Management change in

operations to transition to other employment, perhaps in another industry, with some form of financial aid. It claims that such a purpose can surely be achieved without need of five years of substantial compensation. It alleges that the "pattern" of LPP benefits in the railroad industry is far in excess of what exists in any other industry. And it states further that Amtrak, an unprofitable passenger railroad subject to the ARAA and dependent on federal subsidies, should not be bound by any "pattern" set by the profitable freight railroads.

Amtrak contends that its LPP proposal offers a reasonable alternative to what had previously been in effect under C-2 and "Rule 10/11" given the critical initiatives Management must now take to comply with ARAA. It asserts that the cost analysis behind the Coalition proposal is highly conjectural and is based on a number of faulty assumptions. It opposes any successorship arrangement on the ground that no precedent exists for such a clause in the railroad industry and that this is a matter for Congress, rather than this Board, to determine. It opposes the SUB plan on the ground that such a matter should be negotiated in conjunction with the contracting out provision of the RPSA which Congress (in Section 121 of the ARAA) repealed and placed in the current CBAs for future negotiation, that the granting of SUB elsewhere has been a quid pro quo for some union concession, and that SUB has been introduced in certain railroad relationships as a substitute for, not a supplement to, LPP benefits. It contends that the SUB issue should not be part of this arbitration.

DISCUSSION AND FINDINGS

This dispute concerns the level and nature of LPP benefits to be incorporated in the current CBAs. Amtrak recognizes that, notwithstanding the importance of reducing its costs, some LPP benefits are appropriate. It asks this Board to embrace a level of benefits considerably less than what had been in effect prior to Congress' elimination of the LPP clauses. It believes such restraint is necessary in order to enhance its chances of achieving the operational self-sufficiency demanded by the ARAA. The Coalition

benefits, that is, in displacement and dismissal allowances, is appropriate. But it would add to these allowances certain new LPP features, namely SUB and successorship obligations, which had never been part of the CBAs. It believes this is necessary in order to protect employees against the possibility of a failure in Amtrak's strategic business plan, against the ever-present possibility of job loss and temporary unemployment.

The coming years represent a critical period in Amtrak's existence. Given the Congressional intent behind ARAA, it would appear that Amtrak must now increase its revenues and decrease its costs if it is to avoid major reorganization or liquidation. Operating subsidies appear to have ended. The dangers are real. Everyone involved in this enterprise, employees and managers alike, has a large interest in finding a LPP package which will help Amtrak realize its goal of self-sufficiency while at the same time provide employees with a reasonable level of job protection. It is these objectives which we have kept in mind as we analyzed the record in this case.

I - ARAA

Congress, in enacting the ARAA, repealed that portion of the RPSA which had required "fair and equitable" LPPs and also extinguished the existing LPPs in any CBA between Amtrak and the various unions in the Coalition. Its purpose, as set forth in the ARAA, was to help the parties in effect "to reduce Amtrak's costs and increase its revenues" and to provide Amtrak with "additional flexibility" so as "to operate in a businesslike manner" in managing costs and maximizing revenues. It urged the parties "to modify [CBAs] to make more efficient use of manpower and to realise cost savings...". That Congress contemplated lower LPP costs for Amtrak seems perfectly clear.

However, it is also true that Congress simply directed the parties to negotiate new LPP arrangements and offered them the opportunity to arbitrate if the negotiations proved fruitless. Nothing in the statutory language states what

the outcome of such an arbitration should be. As the Coalition noted at the arbitration hearing, the ARAA "...sets no limits on what the parties may agree [to]". But the silence of Congress on this point, its unwillingness to dictate specific LPP arrangements as a substitute for collective bargaining, does not mean the purposes it expressed in the ARAA can be ignored. Those purposes are a necessary backdrop against which the Board should examine the parties' proposals. It was Congress, in establishing Amtrak through the RPSA, that required LPPs for Amtrak employees. It was Congress again, through the ARAA, that eliminated these LPPs and anticipated cost restraint in negotiating a new and more modest LPP arrangement.

To ignore the Congressional statements of purpose found in the ARAA, under these circumstances, would be to ignore the root basis for this arbitration. The need for lower cost, higher revenue, and greater flexibility is a legitimate consideration for this Board. Congressional purpose is just one of many factors in this dispute. It would be wrong to allow such purpose alone to control the outcome of this case just as it would be wrong to disregard such purpose.

II - Comparability

The Coalition alleges that the "pattern" or "prevailing practice" supports its proposed LPPs. It points to the LPP arrangements in place on the freight railroads and the commuter railroads; it points to the WJPA which was long considered a template for LPP benefits within the rail industry. It believes these are the comparables entitled to the greatest weight in this arbitration. It asserts that Amtrak's proposal falls well below any of these standards and should be rejected.

There are several difficulties with this argument. To begin with, as explained in part I above, this is not a typical interest arbitration. It was prompted largely by Congress' action in eliminating LPPs from the various CBAs in effect for Amtrak employees and in repealing the original statutory basis for the creation of such LPPs. Congress directed the parties to negotiate new LPPs in the

expectation that this would mean cost savings and greater managerial flexibility. Congress provided for a period of negotiation in which the parties could agree upon new LPPs; it provided two options if they failed to agree. One was to use the National Mediation Board procedures which might ultimately lead to a strike; the other was to submit their differences to final and binding arbitration. The parties chose the latter option.

That choice was obviously made with full knowledge of Congress' objectives. The parties can no more escape those objectives than the Board can. To allow the alleged comparables to dictate the decision in this case would ignore Congressional intent and thus ignore the charter through which this Board was brought into being.

It must be remembered too that Congress stated in Section 141(e) of the ARAA that "nothing in this Article...shall affect the level of protection provided to freight railroad employees and mass transportation employees..." This was plainly an attempt to prevent the results of this arbitration from having any impact on LPPs for the freights and commuters. If this Amtrak arbitration award cannot be a "pattern" for others, surely the LPPs of others should not be a "pattern" for Amtrak. To rule that Amtrak should be bound by what much of the industry has done would not only disregard Amtrak's unique situation but also disregard Congress' intent to distinguish and separate Amtrak from the others.

III - Cost Considerations

There is strong disagreement about the cost consequences of the parties' LPP proposals. The Coalition says its proposal includes a reduction in LPP benefits, namely, in the dismissal and displacement allowances which existed under C-2 and "Rule 10/11". It sees its proposal as responsive to Amtrak's financial ability. Amtrak, on the other hand, says its proposal involves the kind of sensible reduction in LPP benefits that will help it to achieve the goals set by Congress. It insists that the Coalition's demand would expose it to an "onerous financial burden".

The problem here is that the parties approach cost from different perspectives. The Coalition emphasizes past costs, assumes the future will be little different, and regards SUB cost, given the ten-year service eligibility requirement, as likely to be relatively small. Amtrak emphasizes future costs, assumes its greater initiatives will expose it to greater LPP liability, and believes SUB cost could in a variety of situations be substantial.

Both parties' claims are conjectural. No one can say with confidence what the actual LPP cost will be in the coming years. The answer depends on Amtrak's success or failure in growing its business through new routes and new technology and in controlling cost through better utilization of employees and equipment. The answer depends on the fate of such new business, on the nature and scope of work force disruptions caused by more aggressive decision-making by management. These are highly speculative matters. We suspect that the cost consequences of the Coalition's proposal will not be as modest as it anticipates. We suspect that the cost consequences of the Coalition's proposal will not be as large as Amtrak fears. But we do know that LPP benefits, like any other cost, are a real factor in management planning.

This cautionary view leads us to treat cost in a somewhat neutral fashion. That is, cost considerations alone cannot defeat the Coalition proposal any more than they can buttress the Amtrak proposal. We shall look elsewhere to the extent we find it appropriate to do so.

The cost issue encompasses a number of considerations, some of which are interrelated. Three factors in particular require discussion: (1) the Coalition's SUB proposal, (2) the "transaction" triggers, those changes in circumstances that bring LPP benefits into play, and (3) the level of the displacement and dismissal allowances, the length of time an employee remains eligible for such an allowance.

IV. - SUB

To begin with, Amtrak urges that the Coalition's request for a SUB plan is beyond the scope of the

arbitration. It refers to the language in Section 141(a) of the ARAA which reveals that the Congress contemplated negotiations and possible arbitration "with respect to all issues relating to employee protective arrangements and severance benefits which are applicable to employees of Amtrak..." It argues that this language refers only to those LPPs in effect at the time they were eliminated by ARAA, that no SUB plan was in effect at Amtrak prior to ARAA, that SUB was not one of the "protective arrangements...applicable to employees of Amtrak", and that this subject therefore cannot be considered by the Board. The Coalition disagrees. It emphasizes that "all issues..." concerning LPPs can properly be raised before the Board so long as they concern "protective arrangements...applicable to employees". It urges that SUB meets this test.

Section 141(a) is ambiguous. Its language could reasonably be read to support either party's argument. There is no need, however, to resolve this ambiguity. Even assuming the SUB proposal is properly before us, we do not accept it.

The cost estimates of the SUB proposal are dependent on many factors which are difficult to measure. SUB could prove to be far more expensive than the Coalition anticipates or it could prove to be far less expensive than Amtrak suggests. This is a highly speculative matter. Since Amtrak has been formed, no CBA with any of its unions has contained a SUB plan. New LPPs of this nature within the industry have ordinarily been agreed upon, or have been imposed by statute, due to structural changes that threaten substantial job loss. No such immediate threat appears to be present here. Amtrak's plans call for expansion rather than contraction. The problem on the horizon is the ARAA provision which calls for negotiations with respect to Amtrak's contracting out authority. A greater use of contractors might well result in more temporary unemployment. That in turn might well call for some form of supplemental unemployment benefit, a SUB, beyond current RUIA benefits. Given Amtrak's troubled condition and given the need for moderation, this is hardly the time for an innovation as significant as SUB. This matter is best left for the next round of bargaining which is about to begin.

Those negotiations will offer a far more reliable procedure for exploring the true costs and benefits of SUB. The Conrail SUB history is plainly distinguishable from Amtrak's circumstances.

V - "Transaction" Triggers

LPP costs are intimately related to the "transaction" triggers which define the circumstances under which employees become eligible for LPP benefits. The narrower or more restrictive the trigger, the less employees will receive and the lower the LPP costs for Amtrak. The broader or more expansive the trigger, the more employees will receive and the greater the LPP costs for Amtrak. The parties disagree as to how the triggers should be defined and what "exceptions" should be applied to the triggers. Each of these matters presents a distinct challenge and calls for a separate answer.

* * *

The C-2 "transaction" trigger was the "discontinuance of intercity rail passenger service" below tri-weekly on a route. That is, employees on a given route were entitled to LPP benefits when passenger service on that route was eliminated or was reduced to just one or two trips per week. The Coalition believes this should remain the applicable criterion. Amtrak urges at least two changes.

First, Amtrak would limit the trigger so that it applies only to passenger service in effect as of March 31, 1998.[1] This would mean that any new intercity service established after March 31, 1998, would not be covered by LPPs. Employees dismissed or displaced from such a new service would receive no LPP benefits. We do not accept Amtrak's proposed limitation. Amtrak itself recognizes that some form of LPP is appropriate for employees involved in intercity services in effect on March 31, 1998. To deny

that LPP coverage to employees merely because they are part of a service created after that date seems arbitrary. The employee need is the same in either event. If LPPs are a sensible protective device, as everyone agrees, they should be available to all employees regardless of when their service happens to have been established.

We recognize, however, that management can never be certain of the utility of new passenger services. New routes may be started in the belief that they are warranted by market conditions and are likely to be successful. Whether they actually succeed will depend on many variables. Because of the real possibility that LPP costs could well inhibit managerial initiatives, we believe Amtrak should be allowed a two-year grace period within which to test a new route with the right to withdraw from that route within this period without incurring LPP benefits. But if the route continues beyond two years, the affected employees would receive LPP benefits should management change its mind and eliminate the route or limit the route to something less than three trips per week.

Second, Amtrak would limit the intercity service trigger so that it applies only to a complete cessation of all trains on an existing route. This would mean that a reduction in such service to one or two trains per week would not trigger any LPP benefit for dismissed or displaced employees. We do not accept this proposed limitation. To begin with, the trigger for years has been anything less than three trains per week. Nothing in the record suggests that one or two trains per week is a feasible arrangement. When it has been tried, it apparently has not worked out. Amtrak recognizes that its ability to meet the Congressional goal of self-sufficiency depends on expansion rather than contraction of its intercity services. It seems highly unlikely that this kind of limited reduction in service will occur. In any event, employees have need of LPP benefits whether the reduction is from four to three trains (LPP coverage not in question), from three to one or two trains (no LPP coverage under Amtrak proposal), or from one or more trains to none (LPP coverage not in question). The distinction Amtrak proposes is not persuasive.

* * *

Several "exceptions" to a "transaction" trigger are in dispute. The parties agree that an "exception" should be provided, as was the case under C-2, for any seasonal intercity passenger service which is discontinued in 120 days or less. Amtrak proposes that this exception be limited so that it applies only to seasonal services existing as of March 31, 1998, and not to any such service introduced at a later date. For the reasons already expressed, this proposal is rejected.

Amtrak also urges, as has apparently been true in the past, that any jobs "associated with Federal, State and local governmental projects and contracts [including rail services], or private sector projects and contracts" be excluded from LPP coverage. The Coalition disagrees. This "exception" would apply, for instance, to situations in which a State agrees to underwrite Amtrak's operating losses on some route segment within its borders and later cancels or refuses to renew its contract with Amtrak. And it would apply to a situation in which a metropolitan transit agency contracts with Amtrak to perform maintenance work on its trains for a period of years and later changes its mind. Amtrak employees are dismissed or displaced when these contracts are terminated.

The proposed "exception" involves matters which were not fully explored in the parties' briefs. There are equitable considerations on both sides of this issue. And the "transaction" language in Article III(a) of C-2 can hardly be considered unambiguous. Because of these uncertainties, we direct the parties to negotiate on this Amtrak proposal in an attempt to find a satisfactory solution. If they do not reach agreement within 60 days of the date of this Award, they shall submit briefs to the Board and a final ruling on this point will follow.

In all other respects, the "exceptions" in place under C-2 and "Rule 10/11" should continue in effect under the current CBAs. The parties agree that because commuter railroad service performed by Amtrak is not "intercity... service", it is not covered by the LPPs. The LPP

"procedures" in place under C-2 and "Rule 10/11" should continue in effect under the current CBAs.

VI - Scope of LPP Benefits

The parties have very different ideas as to the scope of LPP benefits to be provided. They disagree on (1) the length of service required to be eligible for such benefits, (2) the length of protection, that is, the duration of such benefits for an eligible employee, and (3) the level of benefits, that is, the amount of money to be paid to an eligible employee. The details are set forth in the following discussion.

It should be noted that under C-2 and "Rule 10/11", there was no length of service requirement. Affected employees received benefits related to the length of their service up to a maximum of six years. And the benefit was income protection based on a monthly guarantee calculated by averaging an employee's 12 months' wages preceding his dismissal or displacement.

As to the length of service requirement, the Coalition proposes the same arrangement as in C-2 and "Rule 10/11". Amtrak, however, would require two years' service in order to be eligible for displacement and dismissal allowances. The notion that fringe benefits increase with years of service is well-accepted throughout American industry. Vacation time, retirement pay, and so on become more generous as one accumulates service. That is true as well for the length of protection for displacement and dismissal allowances. Short-service employees simply have not invested enough time on the job to be entitled to the larger benefit. The question here is whether there should be a two-year service requirement in order to be eligible for these allowances. We find that such a requirement is a sensible device which will reduce LPP cost and will make employees earn the right to these allowances through a brief period of work.

As to length of protection, Amtrak urges a sliding scale, based on years of service, to a maximum of two years of protection. The Coalition urges a sliding scale to a maximum of five years of protection. Their differences can be seen in the following table:

Amtrak		Coalition	
YOS	Amount	YOS	Amount
		0 to 1	60 days pay
2+ to 6	3 mos. pay	1+ to 2	6 mos.
6+ to 9	6 mos.	2+ to 3	12 mos.
9+ to 12	9 mos.	3+ to 5	18 mos.
12+ to 18	12 mos.	5+ to 10	36 mos.
18+ to 24	18 mos.	10+ to 15	48 mos.
24+	24 mos.	15+	60 mos.

In resolving this issue, we have considered the fact that Amtrak has already included in its strategic business plan for the coming years a LPP benefit cost of 1 to 1.5 million dollars per year and the further fact this cost over the past 24 years has averaged 1.5 million per year. Thus, prior to this arbitration, Amtrak anticipated that its LPP costs would continue to be essentially what they have always been. We know too that C-2 and "Rule 10/11" costs in previous years were based on conditions which have, through the rulings already made, been modified in Amtrak's favor. All of this is bound to reduce its LPP benefits cost. Moreover, Amtrak's witnesses stressed that management would in all probability expand rather than contract its routes and that it had no plan for any major reduction in routes. These and other factors all point to fewer LPP "transactions" in the coming years. Finally, the long history regarding the level of LPP benefits is entitled to substantial weight as is the need for moderation. We do not believe, given the changes we have embraced, that the level of benefits required by this award is likely to be troublesome. Of course, there is a large element of conjecture in whatever we do. Accordingly, apart from certain modifications we deem appropriate, we accept the Coalition's notion of a maximum of five years' protection, a 100 percent displacement allowance and a 100 percent dismissal allowance. The level of benefits shall be as follows:

YOS	Amount
2 to 3	6 mos. pay
3+ to 5	12 mos.
5+ to 10	18 mos.

10+ to 15	24 mos.
15+ to 20	36 mos.
20+ to 25	48 mos.
25+	60 mos.

As for health benefits (medical and dental), they should continue for the length of the employee's coverage, that is, for the length of time he is entitled to LPP benefits.

VII - Separation Payment

Under C-2 and "Rule 10/11", a dismissed employee who was entitled to LPP benefits could resign and opt for a separation allowance, a lump-sum payment in lieu of a dismissal allowance. The separation pay involved a sliding scale - based on years of service - to a maximum of 12 months at 30 days per month. The Coalition asks that this arrangement be continued. Amtrak asks that separation pay be reduced to two-thirds of its proposed dismissal allowance (see Part VI of the award) based on a normal work month.

We have already provided for a reduced dismissal benefit. We are not convinced it is necessary to reduce the separation payment further except that an employee must have two years' service before he is entitled to this payment. Apart from this single change, Section 9 of the WJPA will continue to determine the size of the separation payment, the maximum still being 12 months' pay.

VIII - Relocation Benefits

Under C-2 and "Rule 10/11", a dismissed employee required to change his point of employment and move his residence was entitled to moving expenses, travel expenses, and so on. The Coalition seeks substantially the same relocation monies. Amtrak seeks to place a limit on relocation expenses, namely, $2000 for renters and $6000 for homeowners.

Here too we believe the C-2 and "Rule 10/11" should be continued. Nowhere has the Board been given any specifics as to the size of relocation expenses in the past. We shall not assume that those expenses pose any real burden for Amtrak.

be reopened. With respect to the BMWE, BRS and TCU (Clerks/Telegraphers), the provisions of this Award shall not be amendable until the date that the last collective bargaining agreement with the BMWE, BRS and TCU (Clerks/Telegraphers), respectively, may be reopened.

At the written request of either duly designated representative (J. M. Bress for Amtrak and J. M. Parker for the Coalition), any difference that arises as to the meaning or application of the provisions of this Award shall be referred back to the Board, within 180 days from the date of the Award for a final ruling.[2]

Richard Mittenthal, Chairman

Joshua M. Javits
Amtrak-Designee
Dissent in part / Concur in part

Carl E. Van Horn
Coalition-Designee

October 29, 1999

[2] Both the Amtrak-Designee and the Coalition-Designee on

and benefits under such CBAs, including the right to continue to be represented by unions of their own choosing. Amtrak insists no such clause is justified.

There appear to be no precedents for a successorship clause in the rail industry. More important, such a broad clause could well interfere with Amtrak's ability to take the initiatives so important to its future. The costs and consequences of such a clause are unknown. Given the need for Amtrak to achieve self-sufficiency within the next few years, this is not the time to impose a new successorship requirement. The Coalition's proposal is rejected.

AWARD

The Coalition's SUB and successorship proposals are rejected.

The "transaction" triggers and "exceptions" to be included in the collective bargaining agreements are set forth in Part V.

The scope of the LPP benefits to be included in the collective bargaining agreements is set forth in Parts VI, VII and VIII.

This award shall be retroactive to April 1, 1998. It is to be considered "final, binding and conclusive" as the parties themselves stipulated in their May 31, 1998 Arbitration Agreement.

With respect to unions other than the BMWE, BRS and TCU (Clerks/Telegraphers), the provisions of this Award shall not be amendable until the date on which each union's labor

SUPPLEMENTAL AWARD

BOARD OF ARBITRATION

(Convened pursuant to a May 31, 1998
Arbitration Agreement with respect to the
labor protective provisions of various
Collective Bargaining Agreements)

In the Matter of the Arbitration

between

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK

-and-

COALITION OF AMTRAK UNIONS

Richard Mittenthal
Chairman

Joshua M. Javits

BACKGROUND

On October 29, 1999, this Board of Arbitration issued an award concerning the labor protective provisions (LPPs) to be included in various collective bargaining agreements (CBAs) between Amtrak and a Coalition of fourteen unions (Coalition) which together represent some 22,000 employees in various Amtrak bargaining units.

One portion of the award, pages 14-17, dealt with "transaction" triggers, namely, the circumstances under which employees become eligible for LPP benefits. The narrower or more restrictive the trigger, the less employees will receive and the lower the LPP costs for Amtrak. The broader or more expensive the trigger, the more employees will receive and the greater the LPP costs for Amtrak. The parties disagreed as to how the triggers should be defined and what "exceptions" should be applied to the triggers. The award decided most of the points in dispute.

However, one of the "exceptions" urged by Amtrak raised the following issue:

> Amtrak also urges...that any jobs "associated with Federal, State and local government projects and contracts [including rail services], or private sector projects and contracts" be excluded from LPP coverage. The Coalition disagrees. This "exception" would apply, for instance, to situations in which a State agrees to underwrite Amtrak's operating losses on some route segment within its borders and later cancels or refuses to renew its contract with Amtrak. And it would apply to a situation in which a metropolitan transit agency contracts with Amtrak to perform maintenance work on its trains for a period of years and later changes its mind. Amtrak employees are dismissed or displaced when these contracts are terminated.

Because these matters had not been fully explored in the parties' briefs, because there were equitable

considerations on both sides of the issue, and because the "transaction" language in Article III(a) of C-2 was not unambiguous, the Board remanded this part of the dispute to the parties for further discussion "in an attempt to find a satisfactory solution".

The parties' discussions resulted in four distinct agreements. First, where Amtrak receives private funding for a particular train service (e.g., Reno Fun train, Florida train) and discontinues this service when such funding is eliminated or reduced, no LPP benefits are required. Second, where Amtrak provides special passenger trains (e.g., transport of military troops) pursuant to federal contract and discontinues the trains when the contract is cancelled, no LPP benefits are required. Third, where Amtrak contracts with shippers or USPS on an intercity route and discontinues the route in whole or part when the contract terminates, LPP benefits are required. Fourth, where Amtrak receives federal funding on an intercity route and discontinues the route when such funding ceases or is reduced, LPP benefits are required.

The parties, however, were unable to resolve all of their differences. They have returned to the Board for a ruling on three matters. They submitted briefs on September 17, 2001. The Board met on November 16, 2001, to consider the issues. We sought additional information from Amtrak which was received on December 20, 2001. Further written arguments were made by both parties in the past few months.

DISCUSSION AND FINDINGS

Shop crafts. This disagreement concerns "insourced" work for shop craft employees. Amtrak wins a contract, through competitive bidding or as sole bidder, to perform repair, maintenance, rehabilitation, or construction in its shops for a private sector company or some governmental unit. When the contract work is completed (or cancelled), Amtrak employees are dismissed or displaced. The question is whether, in such a situation, the affected employees are entitled to LPP benefits.

Our answer is "no". "Insourced" work is not part of Amtrak's core shop craft work. It is additional work that helps to provide continuity of employment for the shop crafts; it is additional income, a basis for profits, for Amtrak. When the contract ends, the "insourced" work ends. Amtrak cannot thereafter schedule work which no longer exists. To require Amtrak to give LPP benefits to shop craft people in these circumstances would impose a money burden for a condition over which Amtrak has no control whatever. This should be an "exception" to the "transaction" trigger.

Federally mandated service. This disagreement concerns the federal government requiring train service between certain cities (e.g., between St. Louis and Washington) and supporting this service with federal funds. The federal government then withdraws "its mandate on funds and Amtrak discontinues the service. Employees are displaced or dismissed. The question is whether, in such a situation, the affected employees are entitled to LPP benefits.

Our answer is "no". This train service is mandated by the federal government. Amtrak has no choice in the matter. It must establish the service requested. But when the mandate ends and Amtrak discontinues the service, it cannot reasonably be expected too provide LPP benefits for a condition it had nothing to do with. Indeed, the parties have already agreed that when Amtrak establishes special passenger trains pursuant to federal contract and discontinues the trains when the contract is cancelled, no LPP benefits are required. This situation is sufficiently similar to the case of federally mandated service to call for the very same result. The latter should also be an "exception" to the "transaction" trigger.

State-appointed train service. Amtrak was established by the Rail Passenger Service Act (RPSA) in 1970 to operate a national system of intercity passenger trains. Amtrak has, in addition to the national system, contracted with various states to provide other passenger service. There are presently 19 such state-supported trains. They represent a relatively small part of Amtrak's total operations - for instance, 18 percent of total train miles

and 9 percent (excluding state subsidies) of total train revenue. State support, subject to negotiations with Amtrak, covers a certain percentage of Amtrak's "operating loss" on a particular train service. That "operating loss" is the dollar amount by which total train and route costs exceed passenger revenue.

It should be emphasized that the freight railroads originally employed the train and engine crews on state-supported trains. Not until 1986 did these crews become Amtrak employees.[1] Hence, any LPP obligations which may have arisen between 1970 and 1986 were apparently the responsibility of a freight railroad. Thereafter, any such responsibility was Amtrak's. The Amtrak Reform & Accountability Act (ARAA) of 1997 repealed all LPP benefits effective June 1, 1998, with the parties being directed to negotiate new arrangements and if unsuccessful being offered the option to arbitrate.

The issue concerns the following scenario. A state fails to renew its contract with Amtrak for train service or puts out the contract for competitive bidding and Amtrak is not the successful bidder. In either event, Amtrak is forced to discontinue this train service and the affected employees are dismissed or displaced. The employees seek LPP benefits from Amtrak.

Amtrak contends that because the discontinuance of train service is the result of a decision made by the state rather than Amtrak, because this decision is "out of Amtrak's control", the job losses should not trigger LPP benefits. It asserts that the imposition of LPP liability in this situation will place Amtrak at a competitive disadvantage in bidding for new state contracts (or in retaining contracts) by raising its contingent costs and hence distorting its cost structure. It asserts further that any LPP liability will place Amtrak at a practical disadvantage in attempting to negotiate full cost recovery from the states.

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[1] There was one exception. The crews on the Keystone train became Amtrak employees in 1983.

The Coalition, on the other hand, contends that the existence of state funding for a train service "should not permit Amtrak to escape its pre-existing responsibilities ..." for LPP benefits. It says that because Amtrak was liable for LPPs on state trains long before the passage of the ARAA in 1997, there is no sound basis for relieving Amtrak from that liability now and that "state funding neither created nor increased Amtrak's labor protection responsibilities". It does not believe the continuation of LPPs will place Amtrak at a meaningful disadvantage in its contracting with states.

In evaluating these arguments, it must be remembered what the Board said in its original award:

> Congress, in enacting the ARAA, repealed that portion of the RPSA which had required 'fair and equitable' LPPs and also extinguished the existing LPPs in any CBA between Amtrak and the various unions in the Coalition. Its purpose, as set forth in the ARAA, was to help the parties in effect 'to reduce Amtrak's costs and increase its revenues' and to provide Amtrak with 'additional flexibility' so as 'to operate in a businesslike manner' in managing costs and maximizing revenues. It urged the parties 'to modify [CBAs] to make more efficient use of manpower and to realize cost savings...' That Congress contemplated lower LPP costs for Amtrak seems perfectly clear.
>
> ...It was Congress, in establishing Amtrak through the RPSA, that required LPPs for Amtrak employees. It was Congress again, through the ARAA, that eliminated these LPPs and anticipated cost restraint in negotiating a new and more modest LPP arrangement.
>
> To ignore the Congressional statements of purpose found in the ARAA, under these circumstances, would be to ignore the root basis for this arbitration. The need for lower cost, higher revenue, and greater flexibility is a legitimate consideration for this Board...

There is much to be said for the arguments made by both sides. It is true that LPP benefits were paid by Amtrak when it discontinued state-supported trains in 1981 and 1982 due to insufficient state support. But we note, in this connection, that it was Amtrak's decision, not the state's, to discontinue the trains. The states apparently were willing to continue support but not at a sufficiently high percentage of Amtrak's operating loss. This situation is not likely to recur. When Amtrak was asked by the Board whether there was "any likelihood of Amtrak 'canceling' or getting out of any of the [state-supported] trains...", it replied, "No...we are not likely to withdraw services..." Should this scenario occur again and the decision to discontinue a state-supported train is Amtrak's alone, then we believe Amtrak would be liable for the full LPP benefit set forth in pages 18-19 of our earlier award.

However, a different result is called for when it is the state that cancels the contract with Amtrak and ends its support. Whatever Amtrak's wishes, that particular state-supported train no longer exists. In these circumstances, given the Congressional objectives mentioned above and given Amtrak's need for lower cost, we believe the LPP benefits should be much less than what Amtrak employees on national system trains receive.[2] This distinction is also justified by the differences between these two groups of employees. Those who work on state-supported trains became Amtrak employees in 1986 or later; those who work on national system trains became Amtrak employees in 1970 or later. Those on state-supported trains are ordinarily dependent for their employment on a state's decision, not Amtrak's; those on national system trains are dependent for their employment on Amtrak's decision alone. Both groups of employees, as well as management, have much to gain from the continuation or growth of state-supported trains which serve to feed passengers into the national system and enhance Amtrak's

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[2] Amtrak concedes that if states were to subsidize some part of national system trains, LPPs would nevertheless continue to apply in full for the employees on such trains even if their train routes were discontinued.

viability. These aims are more likely to be realized through further restraints on LPP benefits.

For these reasons, the LPP benefits for employees on state-supported trains will be one-third the amount provided in the original award to employees in the national system[3], assuming of course that the discontinuance of the train is the state's decision, not Amtrak's.

We recognize that if a state train is discontinued, a question may arise as to whether Amtrak or the state is responsible for the discontinuance. Because this would be essentially a fact question, dependent on the circumstances of the particular case, we do not believe it would be appropriate to establish rules or criteria for the resolution of any such dispute.

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[3] This means that the level of benefits would be as follows:

YOS	Amount
2 to 3	2 mos. pay
3+ to 5	4 mos.
5+ to 10	6 mos.
10+ to 15	8 mos.
15+ to 20	12 mos.
20+ to 25	16 mos.
25+	20 mos.

Guide for the Local Committee Chairman

The Railway Labor Act

Title 45-United States Code, Chapter 8, Sections 151-188

Joshua M. Javits
Amtrak-Designee
Dissenting on State-supported
train service
Concurring on other matters

Carl E. Van Horn
Carl E. Van Horn
Coalition-Designee
Dissenting on Shop Crafts and
Federally mandated service
Concurring on other matters

May 10, 2002

SECTION 9 (a)

The Railway Labor Act

Section 9 (a)

The Railway Labor Act

THE RAILWAY LABOR ACT

TITLE 45 - United States Code

Chapter 8 - Sections 151-188

1996 Edition

CUT OFF AS OF 06/30/96

CHAPTER 8-RAILWAY LABOR

SUBCHAPTER I-GENERAL PROVISIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 231, 351, 354, 355, 362, 401, 404, 431, 522, 565, 591, 726, 797k, 851, 853, 1108, 1207 of this title; title 11 section 1167; title 18 section 1951; title 26 section 3231; title 29 sections 152, 182, 401, 402, 523, 630, 1002, 1415, 2108; title 42 section 2000e; title 49 section 10722; title 49 App. section 1382.

SUBCHAPTER I-GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 181, 182 of this title; title 11 section 1113.

§ 151. Definitions; short title

When used in this chapter and for the purposes of this chapter-

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code, as of December 31, 1995, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, Or other individual or body, judicial or otherwise, when in the possession of

the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steamrailroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act."

(May 20, 1926, ch. 347, § 1, 44 Stat. 577; June 7, 1934, ch. 426, 48 Stat. 926; June 21, 1934, ch. 691, § 1, 48 Stat. 1185; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 13, 1940, ch. 664, §§2, 3, 54 Stat. 785, 786; June 25, 1948, ch. 646, §32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act May 20, 1926, ch. 347, 44 Stat. 577 ' as amended, known as the Railway Labor Act, which enacted this chapter and amended sections 225 and 348 of former Title 28, Judicial Code and Judiciary. Sections 225 and 348 of former Title 28 were repealed by section 39 of act June 25, 1948, ch. 646, 62 Stat. 992, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Section 225 of former Title 28 was reenacted as sections 1291 to 1294 of Title 28. For complete classification of this Act to the Code, see this section and Tables.

CODIFICATION

In par. First, "subtitle IV of title 49" substituted for "the Interstate Commerce Act [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

Provisions of act Aug. 13, 1940, §2, similar to those comprising par. First of this section, limiting the term "employer" as applied to mining, etc., of coal, were formerly contained in section 228a of this title. Provisions of section 3 of the act, similar to those comprising par. Fifth of this section, limiting the term "employee" as applied to mining, etc., of coal, were formerly contained in sections 228a, 261, and 351 of this title, and section 1532 of former Title 26, Internal Revenue Code, 1939.

As originally enacted, par. Seventh contained references to the Supreme Court of the District of Columbia. Act June 25, 1936 substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

As originally enacted, par. Seventh contained references to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

As originally enacted, par. Seventh contained references to the "Court of Appeals of the District of Columbia". Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals of the District of Columbia".

AMENDMENTS

1940-Act Aug. 13, 1940, inserted last sentence of par. First, and second par. of par. Fifth.

1934-Act June 21, 1934, added par. Sixth and redesignated provisions formerly set out as par. Sixth as Seventh.

RESTRICTION ON ESTABLISHMENT OF NEW ANNUITIES OR PENSIONS

Pub. L. 91-215, §7, Mar. 17, 1970, 84 Stat. 72, provided that: "No carrier and no representative of employees, as defined in section 1 of the Railway Labor Act [this section], shall, before April 1, 1974, utilize any of the procedures of such Act [this chapter], to seek to make any changes in the provisions of the Railroad Retirement Act of 1937 [section 228a et seq. of this title] for supplemental annuities or to establish any new class of pensions or annuities, other than annuities payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228o of this title], to become effective prior to July 1, 1974; nor shall any such carrier or representative of employees until July 1, 1974, engage in any strike or lockout to seek to make any such changes or to establish any such new class of pensions or annuities: Provided, That nothing in this section shall inhibit any carrier or representative of employees from seeking any change with respect to benefits payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228o of this title]."

SOCIAL INSURANCE AND LABOR RELATIONS OF RAILROAD COAL-MINING EMPLOYEES; RETROACTIVE OPERATION OF ACT AUGUST 13, 1940; EFFECT ON PAYMENTS, RIGHTS, ETC.

Sections 4-7 of act Aug. 13, 1940, as amended by Reorg. Plan No. 2 of 1946, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, with regard to the operation and effect of the laws amended, provided:

"SEC. 4. (a) The laws hereby expressly amended (section 1532 of Title 26, I.R.C. 1939 [former Title 26, Internal Revenue Code of 1939] and sections 151, 215, 228a, 261, and 351 of this title), the Social Security Act, approved August 14, 1935 (section 301 et seq. of Title 42), and all amendments thereto, shall operate as if each amendment herein contained had been enacted as a part of the law it amends, at the time of the original enactment of such law.

"(b) No person (as defined in the Carriers Taxing Act of 1937 [section 261 et seq. of this title]) shall be entitled, by reason of the provisions of this Act, to a refund of, or relief from liability for, any income or excise taxes paid or accrued, pursuant to the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of former Title 26, Internal Revenue Code of 1939], prior to the date of the enactment of this Act [Aug. 13, 1940) by reason of employment in the service of any carrier by railroad subject to part I of the Interstate Commerce

Act [49 U.S.C. 10501 et seq.], but any individual who has been employed in such service of any carrier by railroad subject to part I of the Interstate Commerce Act as is excluded by the amendments made by this Act from coverage under the Carriers Taxing Act of 1937 and subchapter B of chapter 9 of the Internal Revenue Code, and who has paid income taxes under the provisions of such Act or subohapter, and any carrier by railroad subject to part I of the Interstate Commerce Act which has paid excise taxes under the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code, may, upon making proper application therefor to the Bureau of Internal Revenue [now Internal Revenue Service], have the amount of taxes so paid applied in reduction of such tax liability with respect to employment, as may, by reason of the amendments made by this Act, accrue against them under the provisions of title VIII of the Social Security Act [section 1001 et seq. of Title 42) or the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code) [section 1400 et seq. of former Title 261.

"(c) Nothing contained in this Act shall operate (1) to affect any annuity, pension, or death benefit granted under the Railroad Retirement Act of 1935 [section 215 et seq. of this title] or the Railroad Retirement Act of 1937 [section 228a et seq. of this title], prior to the date of enactment of this Act [Aug. 13, 1940], or (2) to include any of the services on the basis of which any such annuity or pension was granted, as employment within the meaning of section 210(b) of the Social Security Act -or section 209(b) of such Act, as amended (sections 410(b) and 409(b), respectively, of Title 42]. In any case in which a death benefit alone has been granted, the amount of such death benefit attributable to services, coverage of which is affected by this Act, shall be deemed to have been paid to the deceased under section 204 of the Social Security Act (section 404 of Title 42] **in** effect prior to January 1, 1940, and deductions shall be made from any insurance benefit or benefits payable under the Social Security Act, as amended [section 301 et seq. of Title 42], with respect to wages paid to an individual for such services until such deductions total the amount of such death benefit attributable to such services.

"(d) Nothing contained in this Act shall operate to affect the benefit rights of any individual under the Railroad Unemployment Insurance Act [section 351 et -eq. of this title] for any day of unemployment (as deiined in section l(k) of such Act [section 351(k) of this title]) occurring prior to the date of enactment of this Act. [Aug. 13,1940]

"SEC. 5. Any application for payment filed with the Railroad Retirement Board prior to, or within sixty days after, the enactment of this Act shall, under such regulations as the Federal Security Administrator may prescribe, be deemed to be an application filed with the Federal Security Administrator by such individual or by any person claiming any payment with respect to the wages of such individual, under any provision of section 202 of the Social Security Act, as amended (section 402 of Title 42).

"SEC. 6. Nothing contained in this Act, nor the action of Congress in adopting it, shall be taken or considered as affecting the question of what carriers, companies, or individuals, other than those in this Act specifically provided for, are included in or excluded from the provisions of the various laws to which this Act is an amendment.

"SEC. 7. (a) Notwithstanding the provisions of section 1605(b) of the Internal Revenue Code [section 1605(b) of former Title 26, Internal Revenue Code of 1939], no interest shall, during the period February 1, 1940, to the eighty-ninth day after the date of enactment of this Act [Aug. 13, 1940], inclusive, accrue by reason of delinquency in the payment of the tax imposed by section 1600 with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act.

"(b) Notwithstanding the provisions of section 1601(a)(3) of the Internal Revenue Code [section 1601(a)(3) of former Title 26, Internal Revenue Code of 1939], the credit allowable under section 1601(a) against the tax imposed by section 1600 for the calendar year 1939 shall not be disallowed or reduced by reason of the payment into a State unemployment fund after January 31, 1940, of contributions with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act [Aug. 13, 1940): Provided, That this subsection shall be applicable only if the contributions

with respect to such services are paid into the State unemployment fund before the ninetieth day after the date of enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 182 of this title.

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter-, (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

(May 20, 1926, ch. 347, §2, 44 Stat. 577; June 21, 1934, ch. 691, §2, 48 Stat. 1186.)

AMENDMENTS

1934-Act June 21, 1934, reenacted provisions comprising this section without change.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 157 of this title.

§ 152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties

without interference, influence, or coercion by either party over the designation of representatives by . the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining, freedom from interference by carrier, assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organizabion, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect

between the parties.

Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board;. secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or uoth fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said

paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorne General of the United States, all necessary proceedings for the enforcement of the provision of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union security agreements; check-off

Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted(a to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and as sessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the aeduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant tc subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of paragraph (h) of section 153 of this title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said emplovee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said

services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

(May 20, 1926, ch. 347, § 2, 44 Stat. 577; June 21, 1934, ch. 691, § 2, 48 Stat. 1186; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Jan. 10, 1951, ch. 1220, 64 Stat. 1238.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. Fifth, probably means May 20, 1926, the date of approval of act May 20, 1926, ch. 347, 44 Stat. 577.

AMENDMENTS

1951-Act Jan. 10, 1951, added par. Eleventh.

1934-Act June 21, 1934, substituted "by the carrier or carriers" for "by the carriers" in par. Second, generally amended pars. Third, Fourth, and Fifth, and added pars. Sixth to Tenth.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 157 of this title; title 29 section 2101.

§ 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and *awards;* judicial review

There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided (a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with sections 151a and 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per them allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with sections 151a and 152 of this title and which represent employees in engine, train, yard, or hostling service: *Provided, however,* That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: *Provided further, however,* That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This Division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of Day, rules, or working conditions, including -cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such

judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two

years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its Consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative

of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) of this section, with respect to a division of the Adjustment Board.

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to

establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

(May 20, 1926, ch. 347, §3, 44 Stat. 578; June 21, 1934, ch. 691, §3, 48 Stat. 1189; June 20, 1966, Pub. L. 89-456, §§l, 2, 80 Stat. 208, 209; Apr. 23, 1970, Pub. L. 91-234, §§ 1-6, 84 Stat. 199, 200.)

AMENDMENTS

1970-Par. First, (a). Pub. L. 91-234, § 1, substituted "thirty-four members, seventeen of whom shall be selected by the carriers and seventeen" for "thirty-six members, eighteen of whom shall be selected by the carriers arid eighteen".

Par. First, (b). Pub. L. 91-234, §2, provided that no carrier or system of carriers have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (c). Pub. L. 91-234, §3, inserted "Except as provided in the second paragraph of subsection (h) of this section" before "the national labor organizations", and provided that no labor organization have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (h). Pub. L. 91-234, § 4, decreased number of members on First division of Board

from ten to eight members, with an accompanying decrease of five to four as number of members of such Board elected respectively by the carriers and by the national labor organizations satisfying the enumerated requirements, and set forth provisos which limited voting by each labor organization or carrier member in any proceedings of the division or in adoption of any award.

Par. First, (k). Pub. L. 91-234, §5, inserted "except as provided in paragraph (h) of this section" after proviso.

Par. First, (n). Pub. L. 91-234, §6, inserted "eligible to vote" after "Adjustment Board".

1966--Par. First, (m). Pub. L. 89-456, §2(a), struck out except insofar as they shall contain a money award" from second sentence.

Par. First, (o). Pub. L. 89-456, §2(b), inserted provision for a division to make an order to the petitioner stating that an award favorable to the petitioner should not be made in any dispute referred to it.

Par. First, (p). Pub. L. 89-456, §2(c), (d), substituted in second sentence "conclusive on the parties" for "prima facie evidence of the facts therein stated" and inserted in last sentence reasons for setting aside orders of a division of the Adjustment Board, respectively.

Par. First, (q) to (x). Pub. L. 89-456, §2(e), added par. (q) and redesignated former pars. (q) to (w) as (r) to (x), respectively.

Par. Second. Pub. L. 89-456, §1, provided for establishment of special adjustment boards upon request of employees or carriers to resolve disputes otherwise referable to the Adjustment Board and made awards of such boards final.

1934-Act June 21, 1934, amended provisions comprising this section generally.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54 and notes of Advisory Committee under the Rule, Title 28, Appendix, Judiciary and Judicial Procedure.

Federal Rules of Civil Procedure as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

Mandamus as abolished but relief yet available by appropriate action or motion under Federal Rules of Civil Procedure, see rule 81 and Notes of Advisory Committee under the rule.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 157, 181, 182, 184, 185, 441, 588, 797c, 797h, 797m of this title.

154. National Mediation Board

First. Board of Mediation abolished; National Mediation Board established; composition; term of office; qualifications; salaries; removal

The Board of Mediation is abolished, effective thirty days from June 21, 1934, and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers or affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this chapter. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on June 21, 1934, shall be handled to conclusion by the Mediation Board.

Any member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for, no other cause.

Second. Chairman; principal office; delegation of powers; oaths; seal; report

The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. Appointment of experts and other employees; salaries of employees; expenditures

The Mediation Board may (1) subject to the provisions of the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with chapter 51 and subchapter III of chapter 53 of title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. Delegation of powers and duties

The Mediation Board is authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. Transfer of officers and employees of Board of Mediation; transfer of appropriation

All officers and employees of the Board of Mediation (except the members thereof, whose offices are abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

(May 20, 1926, ch. 347, §4, 44 Stat. 579; June 21, 1934, ch. 691, §4, 48 Stat. 1193; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Aug. 31, 1964, Pub. L. 88-542, 78 Stat. 748.)

REFERENCES IN TEXT

The civil service laws, referred to in par. Third, are set forth in Title 5, Government

Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

n par. First, provisions that prescribed the basis compensation of members of the Board were mitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 f Title 5, Government Organization and Employees.

n par. Third, "subject to the provisions of the civil service laws, appoint such experts and ssistants to act in a confidential capacity and such other officers and employees" substituted or "appoint such experts and assistants to act in a confidential capacity and, subject to the rovisions of the civil-service laws, such other officers and employees". All such ppointments are now subject to the civil service laws unless specifically excepted by such aws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the resident pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which overed most excepted positions into the classified (competitive) civil service. The Order is et out as a note under section 3301 of Title 5.

n par. Third, "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the lassification Act of 1949, as amended" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 0 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

964-Par. First. Pub. L. 88-542 inserted sentences prolliding that each member of the Board n office on Jan. 1, 1965, shall be deemed to have been appointed for a term of office which nall expire on July 1 of the year his term would have otherwise expired, and that upon the xpiration of his term of office a member shall continue to serve until his successor is ppointed and shall have qualified, and struck out provisions which related to terms of office f members first appointed.

949-Par. First. Act Oct. 15, 1949, increased basic rate f compensation for members of the oard to $15,000 per 0 year.

ar. Third. Act Oct. 28, 1949, substituted "Classification Act of 194911 for "Classification ct of 1923". 1934-Act June 21, 1934, amended section generally.

REPEALS

ct Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings ause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

SECTION REFERRED TO IN OTHER SECTIONS

his section is referred to in section 157 of this title.

155. Functions of Mediation Board

irst. Disputes within jurisdiction of Mediation Board

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly j)ut itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. Interpretation of agreement

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. Duties of Board with respect to arbitration of disputes; arbitrators; acknowledgment of agreement; notice to arbitrators; reconvening of arbitrators; filing contracts with Board; custody of records and documents

The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of

its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact, including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

(May 20, 1926, ch. 347, §5, 44 Stat. 580; June 21, 1934, ch. 691, §5, 48 Stat. 1195; June 25 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, par. Third (b) contained a reference to the "circuit court of appeals": Act June 25, 1948, as amended by act May 24, 1949 substituted "court of appeals" for "circuit court of appeals".

AMENDMENTS

1934-Act June 21, 1934, amended generally par. First and par. Second, (e) and (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 156, 157, 183 of this title.

§ 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice o an intended change in agreements affecting rates of pay, rules, or working conditions, and tl time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every cas where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either part or said Board has proffered its services, rates of pay, rules, or working conditions shall not b altered by the carrier until the controversy has been finally acted upon, as required by sectio 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

(May 20, 1926, ch. 347, §6, 44 Stat. 582; June 21, 1934, ch. 691, § 6, 48 Stat. 1197.)

AMENDMENTS

1934-Act June 21, 1934, inserted "in agreements" after "intended change" in text, struck out provision formerly contained in text concerning changes requested by more than one class, and substituted "Mediation Board" for "Board of Mediation" wherever appearing-

WAGE AND SALARY ADJUSTMENTS

Ex. Ord. No. 9299, eff. Feb. 4, 1943, 8 F.R. 1669, provided procedure with respect to wage and salary adjustments for employees subject to this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 157, 726, 741, 797g, 1346 of this title; title 11 section 1167.

§ 157. Arbitration

First. Submission of controversy to arbitration

Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference betweeri representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151156 of this title such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Manner of selecting board of arbitration

Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. Board of arbitration; organization; compensation; procedure

a) Notice of selection or failure to select arbitrators

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

b) Organization of board; procedure

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, how*ever, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) Competency of arbitrators

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Compensation and expenses

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board 0 be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under subtitle IV of title 49.

(g) Compensation of assistants to board of arbitration; expenses; quarters

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; fees

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters Submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas. , Any witness appearing before a board of arbiLration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

(May 20, 1926, ch. 347, §7, 44 Stat. 582; June 21, 1934, ch. 691, §7, 48 Stat. 1197; Oct. 15, 1970, Pub. L. 91-452, title II, §238, 84 Stat. 930.)

CODIFICATION

In par. Third (f), "subtitle IV of title 49" substituted for "the Interstate Commerce Act, as amended [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1970-Par. Third, (h). Pub. L. 91-452 struck out provisions authorizing board to invoke aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to same extent and under same conditions and penalties as provided for in the Interstate Commerce Act.

1934-Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15,1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18,

WORK RULES DISPUTE

Pub. L. 88-108, Aug. 28, 1963, 77 Stat. 132, provided:

"[SEC. 1. Settlement of disputes]. That no carrier which served the notices of November 2, 1959, and no labor organizations which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

"SEC. 2. [Arbitration board]. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof [Aug. 28, 19631 each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution [Aug. 28, 1963]. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of $100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

"SEC. 3. [Decision of board]. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

"SEC. 4. [Award]. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act [this chapter]. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

"SEC. 5. [Hearings]. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution [Aug. 28, 19631 or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution [Aug. 28, 1963]: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

"SEC. 6. [Collective bargaining for issues not arbitrated]. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

"SEC. 7. [Considerations affecting award; enforcement.]

"(a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

'(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforcible through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

'SEC. B. [Expiration date]. This joint resolution shall expire one hundred and eighty days after the date of its enactment (Aug. 28, 1963], except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

'SEC. 9. [Separability]. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby.„

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 155, 797g Of this title; title 18 section 6001.

§ 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation

The agreement to arbitrate-

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: Provided, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings

shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

(May 20, 1926, ch. 347, §8, 44 Stat. 584; June 21, 1934, ch. 691, § 7, 48 Stat. 1197; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127,.. Stat. 107.)

CODIFICATION

As originally enacted, par. (d) contained a reference to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

AMENDMENTS

1934-Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 797g of this title. , ,

§ 159. Award and judgment thereon; effect of chapter on individual employee

First. Filing of award

The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment

An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third Impeachment of award; grounds

Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. Effect of partial invalidity of award

If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that apart of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. Appeal; record

At the expiration of 10 days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said 10 days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. Finality of decision of court of appeals

The determination of said court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon

be entered by said district court.

Seventh. Judgment where petitioner's contentions are sustained

If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Duty of employee to render service without consent; right to quit

Nothing in this chapter shall be construed to require an individual employee to render labor

or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

May 20, 1926, ch. 347, §9, 44 Stat. 585; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

CODIFICATION

As originally enacted, pars. Fifth and Sixth contained references to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

159a. Special procedure for commuter service

a) Applicability of provisions

Except as provided in section 590(h) of this title, the provisions of this section shall apply to any dispute subject to this chapter between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Services Corporation) and its employees.

b) Request for establishment of emergency board

If a dispute between the parties described in subsection (a) of this section is not adjusted under the foregoing provisions of this chapter and the President does not, under section 160 of this title, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.

c) Establishment of emergency board

(1) Upon the request of a party or a Governor under subsection (b) of this section, the President shall create an emergency board to investigate and report on the dispute in accordance with section 160 of this title. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the day of the creation of such emergency board.

(2) If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a) of this section, the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

(d) Public hearing by National Mediation Board upon failure of emergency board to effectuate settlement of dispute

Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.

(e) Establishment of second emergency board

If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.

(f) Submission of final offers to second emergency board by parties

Within 30 days after creation of a board under subsection (e) of this section, the parties to the dispute shall submit to the board final offers for settlement of the dispute.

(g) Report of second emergency board

Within 30 days after the submission of final offers under subsection (f) of this section, the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.

(h) Maintenance of status quo during dispute period

From the time a request to establish a board is made under subsection (e) of this section until 60 days after such board makes its report under subsection (g) of this section, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

(i) Work stoppages by employees subsequent to carrier offer selected; eligibility of employees for benefits

If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h) of this section, the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(i) Work stoppages by employees subsequent to employees offer selected; eligibility of employer for benefits

If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h) of this section, the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

(May 20, 1926, ch. 347, § 9A, as added Aug. 13, 1981, Pub. L. 97-35, title XI, § 1157, 95 Stat. 681.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (i), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as a note under section 1101 of this title.

§ 160. Emergency board

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

(May 20, 1926, ch. 347, §10, 44 Stat. 586; June 21, 1934, ch. 691, § 7, 48 Stat. 1197.)

AMENDMENTS

1934-Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 159a of this title.

§ 161. Effect of partial invalidity of chapter

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(May 20, 1926, ch. 347, § 11, 44 Stat. 587.)

SEPARABILITY; REPEAL OF INCONSISTENT PROVISIONS

Section 8 of act June 21, 1934, provided that: "If any section, subsection, sentence, clause, or phrase of this Act [amending sections 151 to 158, 160, and 162 of this title] is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

§ 162. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, §12, 44 Stat. 587; June 21, 1934, ch. 691, §7, 48 Stat. 1197.)

AMENDMENTS

1934-Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation".

§ 163. Repeal of prior legislation; exception

Chapters 6 and 7 of this title, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this chapter are repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office on May 20, 1926, shall receive their salaries for a period of 30 days from such date, in the same manner as though this chapter had not been passed. (May 20, 1926, ch. 347, § 14,

44 Stat. 587.)

REFERENCES IN TEXT

Chapters 6 and 7 of this title, referred to in text, were in the original references to the act of July 15, 1913, and title III of the Transportation Act, 1920, respectively.

§ 164. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section, act Feb. 11, 1927, ch. 104, §1, 44 Stat. 1072, related to advertisements for proposals for purchases or services rendered for Board of Mediation, including arbitration boards. See section 5 of Title 41, Public Contracts.

SUBCHAPTER II-CARRIERS BY AIR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 26 section 410; title 29 section 213; title 49 App. section 1371.

§ 181. Application of subchapter I to carriers by air

All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

(May 20, 1926, ch. 347, §201, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 182. Duties, penalties, benefits, and privileges of subchapter I applicable

The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of subchapter I of this chapter except section 153 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

(May 20, 1926, ch. 347, § 202, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 183. Disputes within jurisdiction of Mediation Board

The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this subchapter in the same manner and to the same extent as are the disputes covered by section 155 of this title.

(May 20, 1926, ch. 347, §203, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this subchapter, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this chapter shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this subchapter, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(May 20, 1926, ch. 347, § 204, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 185. National Air Transport Adjustment Board

When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is empowered and

such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this chapter, to select and designate four representatives who shall constitute a board which shall be known as the "National Air Transport Adjustment Board." Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this subchapter. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or

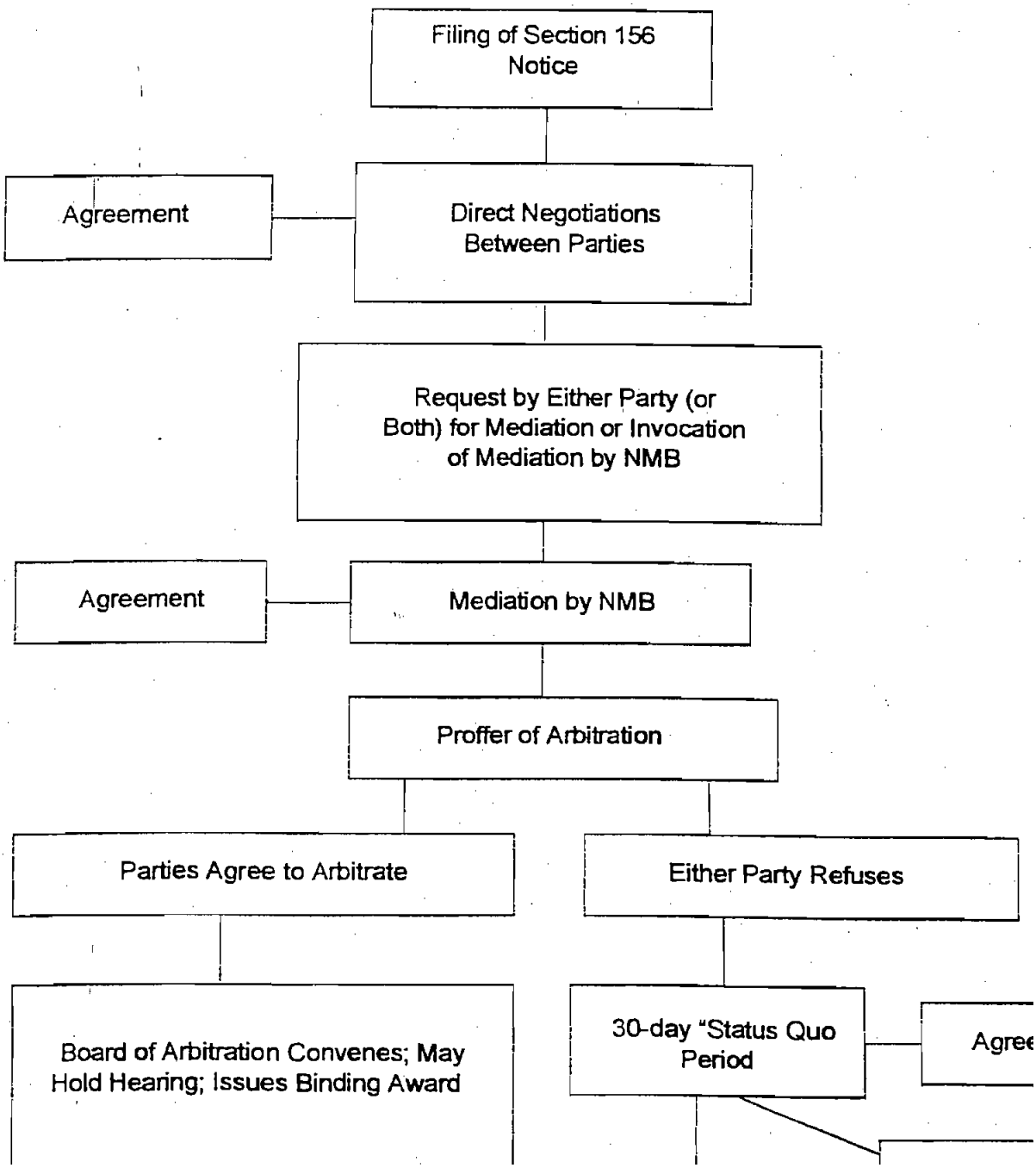
SECTION 9 (b)

Collective Bargaining Process Flow Chart

Section 9 (b)

Collective Bargaining Process Flow Chart

Collective Bargaining Process Under the Railway Labor Act



SECTION 9 (c)

Presidential Emergency Board Process Flow Chart
Freight Railroads and Amtrak

Section 9 (c)

Presidential Emergency Board Process Flow Chart

Freight Railroads and Amtrak

SECTION 9 (d)

Presidential Emergency Board
Process Flow Chart Commuter Railroads

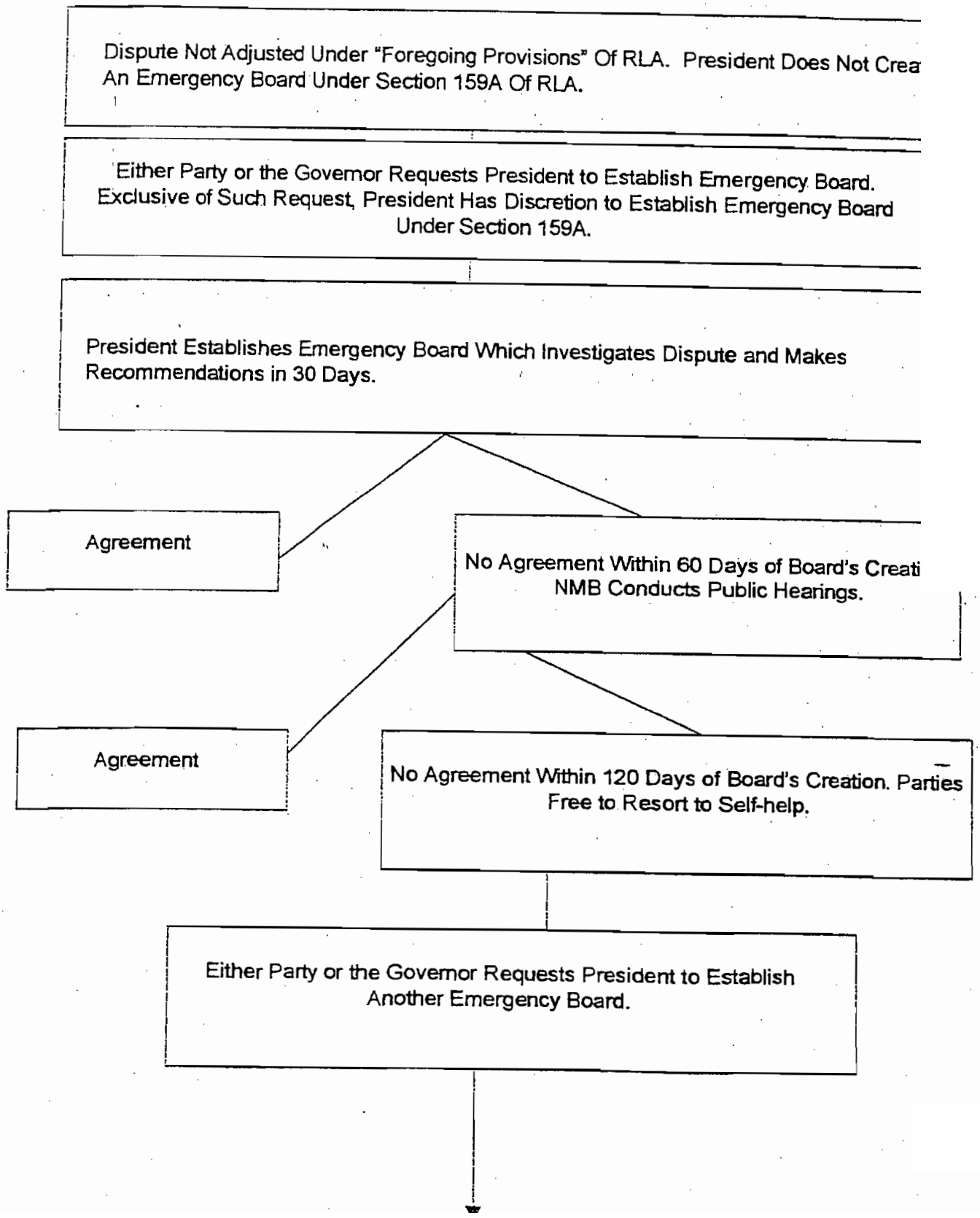
Section 9 (d)

Presidential Emergency Board Process Flow Chart

Commuter Railroads

Chart C

(Commuter Railroads)
PEB Process Under Section 9a



SECTION 9 (e)

Grievance Procedure Flow Chart

Section 9 (e)

Grievance Procedure Flow Chart

SECTION 9 (f)

Representation Procedure Flow Chart

Section 9 (f)

Representation Procedure Flow Chart

SECTION 10

Guide for the Local Committee Chairman

1991 Imposed National Agreement

Section 10

Guide for the Local Committee Chairman

1991 IMPOSED NATIONAL AGREEMENT

IMPOSED AGREEMENT

THIS IMPOSED AGREEMENT, made this 27th day of November, 1991, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Brotherhood of Electrical Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

Each employee subject to this Imposed Agreement who qualified for an annual vacation in the calendar year 1991 will be paid $2,000. Those employees who during the calendar year 1990 failed to qualify for an annual vacation in the calendar year 1991 will be paid a proportional share of that amount, based on the percentage of the qualifying period satisfied. This Section shall be applicable solely to those employees subject to this Imposed Agreement who had an employment relationship as of July 29, 1991 or who have retired or died subsequent to January 1, 1990. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section 2 - First General Wage Increase

Effective July 1, 1991, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 1991 for employees covered by this Imposed Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied as follows:

a) Hourly Rates -

Add 3 percent to the existing hourly rates of pay.

b) Daily Rates -

Add 3 percent to the existing daily rates of pay.

c) Weekly Rates -

Add 3 percent to the existing weekly rates of pay.

d) Monthly Rates -

Add 3 percent to the existing monthly rates of pay.

(e) Disposition of Fractions

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 2 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 3 - Second General Wage Increase

Effective July 1, 1993, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1993 for employees covered by this Imposed Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 2 hereof.

Section 4 - Third General Wage Increase

Effective July 1, 1994, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1994 for employees covered by this Imposed Agreement shall be increased in the amount of four (4) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 2 hereof.

ARTICLE II - COST-OF-LIVING PAYMENTS

PART A - Cost-of-Living Lump Sum Payments Through January 1, 1995

Section 1 - First Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1991 through March 31, 1992, will receive a lump sum payment on July 1, 1992 of $1,019.00.

Section 2 - Second Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 1,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1992 through September 30, 1992, will receive a lump sum payment on January 1, 1993 equal to the difference between (i) $1,019.00, and (ii) the lesser of $510.00 and one quarter of the amount, if any, by which the carriers' 1993 payment rate for foreign-to-occupation health benefits under the Railroad Employees National Health and Welfare Plan (the "Plan") exceeds the sum of (a) the amount of such payment rate for 1992 and (b) the amount per covered employee that will be taken during 1993 from that certain special account maintained at The Travelers Insurance Company known as the "Special Account Held in Connection with the Amount for the Close-Out Period" (the "Special Account") to pay or provide for Plan foreign-to-occupation health benefits.

Section 3 - Third Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1992 through September 30, 1993, will receive a lump sum payment on January 1, 1994 equal to the difference between (i) $1,049.00, and (ii) the lesser of $525.00 and one quarter of the amount, if any, by which the carriers' 1994 payment rate for foreign-to-occupation health benefits under the Plan exceeds the sum of (a) the amount of such payment rate for 1993 and (b) the amount per covered employee that will be taken during 1994 from the Special Account to pay or provide for Plan foreign-to-occupation health benefits.

Section 4 - Fourth Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1993 through September 30, 1994, will receive a lump sum payment on January 1, 1995 equal to the difference between (i) $727.00, and (ii) the lesser of $364.00 and one quarter of the amount, if any, by which the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan exceeds the amount of such payment rate for 1994.

Section 5 - Definition of Payment Rate for Foreign-to-Occupation Health Benefits

The carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan

enefits, or any amounts paid by remaining carriers to make up the unpa
ontributions of terminating carriers pursuant to Article III, Part A, Sectic
hereof.

ection 6 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for
ny of the respective periods described in Sections 1 through 4 than the minimu
umber set forth therein, the dollar amounts specified in Section 1 and claus
i) of Sections 2-4 thereof shall be adjusted by multiplying such amounts by th
umber of straight time hours (including vacations, holidays, paid sick leave ar
uarantees in protective agreements or arrangements) for which the employee wa
aid during the applicable measurement period divided by the defined minimu
ours. For any such employee, the dollar amounts described in clause (ii) o
ections 2-4 shall not exceed one-half of the dollar amounts specified in claus
i) thereof, as adjusted pursuant to this Section.

ection 7 - Lump Sum Proration

In the case of any employee subject to wage progression or entry rates, th
ollar amounts specified in Section 1 and clause (i) of Sections 2 through
hall be adjusted by multiplying such amounts by the weighted average entry rat
ercentage applicable to wages earned during the specified determination period
or any such employee, the dollar amounts described in clause (ii) of Section
through 4 shall not exceed one-half of the dollar amounts specified in claus
) thereof, as adjusted pursuant to this Section.

ction 8 - Eligibility for Receipt of Lump Sum Payments

The lump sum cost-of-living payments provided for in this Article will b
yable to each employee subject to this Imposed Agreement who has an employmen
lationship as of the dates such payments are made or has retired or die
bsequent to the beginning of the applicable base period used to determine th
ount of such payments. There shall be no duplication of lump sum payments b
rtue of employment under an agreement with another organization.

RT B - Cost-of-Living Allowance and Adjustments Thereto After January 1, 199

ction 1 - Cost-of-Living Allowance and Effective Dates of Adjustments Thereto

(a) A cost of living allowance will be payable in the manner set forth ir
and subject to the provisions of this Part, on the basis of the "Consume
Price Index for Urban Wage Earners and Clerical Workers (Revised Series)
(CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by
the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter
referred to as the BLS CPI. The first such cost-of-living allowance shall
be payable effective July 1, 1995 based, subject to paragraph (d), on the
BLS CPI for September 1994 as compared with the BLS CPI for March 1995.
Such allowance, and further cost-of-living adjustments thereto which will
become effective as described below, will be based on the change in the
BLS CPI during the respective measurement periods shown in the following

table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment
September 1994	March 1995	July 1, 1995
March 1995	September 1995	January 1, 1996

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d) (i) Cap. In calculations under paragraph (e), the maximum increase in the BLS CPI that will be taken into account will be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 1995	3% of September 1994 CPI
January 1, 1996	6% of September 1994 CPI, less the increase from September 1994 to March 1995

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the BLS CPI in any measurement period shall be considered.

(iii) If the increase in the BLS CPI from the base month of September 1994 to the measurement month of March 1995 exceeds 3% of the September

base index, the measurement period that will be used for determining t cost-of-living adjustment to be effective the following January will the 12-month period from such base month of September; the increase in t index that will be taken into account will be limited to that portion the increase that is in excess of 3% of such September base index; and t maximum increase in that portion of the index that may be taken in account will be 6% of such September base index less the 3% mentioned the preceding clause, to which will be added any residual tenths of poir which had been dropped under paragraph (e) below in calculation of t cost-of-living adjustment which will have become effective July 1, 19 during such measurement period.

(iv) Any increase in the BLS CPI from the base month of Septemb 1994 to the measurement month of September 1995 in excess of 6% of t September 1994 base index will not be taken into account in t determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will applicable to all subsequent periods during which this Article is effect.

(e) Formula. The number of points change in the BLS CPI during measurement period, as limited by paragraph (d), will be converted in cents on the basis of one cent equals 0.3 full points. (By "0.3 fu points" it is intended that any remainder of 0.1 point or 0.2 point change after the conversion will not be counted.)

The cost-of-living allowance in effect on December 31, 1995 will adjusted (increased or decreased) effective January 1, 1996 by the who number of cents produced by dividing by 0.3 the number of poin (including tenths of points) change, as limited by paragraph (d), in t BLS CPI during the applicable measurement period. Any residual tenths a point resulting from such division will be dropped. The result of su division will be added to the amount of the cost-of-living allowance effect on December 31, 1995 if the BLS CPI will have been higher at t end than at the beginning of the measurement period, and subtract therefrom only if the index will have been lower at the end than at t beginning of the measurement period and then, only, to the extent that t allowance remains above zero. The same procedure will be followed applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustmen thereto provided herein is dependent upon the availability of the offici monthly BLS Consumer Price Index (CPI-W) calculated on the same basis such Index, except that, if the Bureau of Labor Statistics, U.S Department of Labor should, during the effective period of this Articl revise or change the methods or basic data used in calculating such Ind in such a way as to affect the direct comparability of such revised changed index with the CPI-W Index during a measurement period, then th Bureau shall be requested to furnish a conversion factor designed adjust the newly revised index to the basis of the CPI-W Index during su measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 1995 shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1994, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above. For the purpose of the foregoing calculation, the amount of any increase described in clause (ii) that has been taken into account in determining the amount received by the employee as a lump sum payment on January 1, 1995 shall not be taken into account.

(b) The cost-of-living allowance payable to each employee effective January 1, 1996, shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1996 payment rate for foreign-to-occupation health benefits under the Plan over the amount of such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above.

(c) The procedure specified in paragraph (b) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(d) The definition of the carriers' payment rate for foreign-to-occupation health benefits under the Plan set forth in Section 5 of Part A shall apply with respect to any year covered by this Section.

(e) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

ection 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for in this Part will not become part f basic rates of pay. Such allowance will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing t established daily rate by the number of hours comprehended by the dai rate. The amount of the cost-of-living allowance multiplied by the numb of hours comprehended by the daily rate shall be added to the daily ra produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing t established weekly rate by the number of hours comprehended by the week rate. The amount of the cost-of-living allowance multiplied by the numb of hours comprehended by the weekly rate shall be added to the weekly ra produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing th established monthly rate by the number of hours comprehended by th monthly rate. The amount of the cost-of-living allowance multiplied b the number of hours comprehended by the monthly rate shall be added to th monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described i paragraphs (a) through (d), inclusive, shall be not less than eight time the applicable increase per hour for each full time day of eight hours required to be paid for by the rules agreement. In instances where unde the existing rules agreement an employee is worked less than eight hour per day, the increase will be determined by the number of hours require to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced b application of the cost-of-living allowances shall be applied i accordance with the wage or working conditions agreement in effect betwee each carrier and its employees represented by the Organization signator to this Imposed Agreement. Special allowances not included in said rate and arbitraries representing duplicate time payments will not b increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effec according to the terms thereof until revised by the parties pursuant to th Railway Labor Act.

ARTICLE III - HEALTH AND WELFARE PLAN AND EARLY RETIREMENT MAJOR MEDICAL BENEFIT PLAN

Part A - Health and Welfare Plan

Section 1 - Continuation of Plan

The Railroad Employees National Health and Welfare Plan (the "Plan") modified as provided in this Part, will be continued subject to the provision of the Railway Labor Act, as amended. Contributions to the Plan will be offse by the expeditious use of such amounts as may at any time be in Special Accoun

A or in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with the Plan and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in that certain special account maintained at The Travelers Insurance Company, known as the "Special Account Held in Connection with the Amount for the Close-Out Period," relating to the obligations of the Plan to pay, among other things, benefits incurred but not paid at the time of termination of the Plan in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $25 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $25 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

In the event that a carrier participating in the Plan defaults for any reason, including but not limited to bankruptcy, on its obligation to contribute to the Plan, and the carrier's participation in the Plan terminates, the carriers remaining in the Plan shall be liable for any Plan contribution that was required of the terminating carrier prior to the effective date of its termination, but not paid by it. The remaining carriers shall be obligated to make up in a timely fashion such unpaid contribution of the terminating carrier in pro rated amounts based upon their shares of Plan contributions for the month immediately prior to such default.

Section 2 - Change to Self-Insurance

Except for life insurance, accidental death and dismemberment insurance, and all benefits for residents of Canada, the Plan will be wholly self-insured and administered, under an administrative services only arrangement, by an insurance company or third party administrator.

ection 3 - Joint Plan Committee

The Joint Policyholder Committee shall be renamed the Joint Plan Committee. his change in name shall not in any way change the functions and esponsibilities of the Committee.

A neutral shall be retained by and at the expense of the Plan for the uration of this Imposed Agreement to consider and vote on any matter brought efore the Joint Plan Committee (formerly the Joint Policyholder Committee), rising out of the interpretation, application or administration (including nvestment policy) of the Plan, but only if the Committee is deadlocked with espect to the matter. A deadlock shall occur whenever the carrier members of he Committee, who shall have a total of one vote regardless of their number, and he organization members of the Committee, who shall also have a total of one

vote regardless of their number, do not resolve a matter by a vote of two to ni and either side declares a deadlock.

If the members of the Joint Plan Committee cannot agree upon a neutra within 30 days of the date this Imposed Agreement becomes effective, either sid may request the National Mediation Board to provide a list of seven persons fro which the neutral shall be selected by the procedure of alternate striking Joint Plan Committee members and the neutral shall, to the extent required b ERISA, be bonded at the expense of the Plan. The Joint Plan Committee shall hav the power to create such subcommittees as it deems appropriate and to choose neutral chairman for such subcommittees, if desired.

Section 4 - Managed Care

Managed care networks that meet standards developed by the Joint Pla Committee, or a subcommittee thereof, concerning quality of care, access t health care providers, and cost-effectiveness, shall be established whereve feasible as soon as practicable. Until a managed care network is established i a given geographical area, individuals in that area who are covered by the Pla will have the comprehensive health care benefit coverage described in Section of this Part A. Each employee in a given geographical area who is a Pla participant at the time a managed care network is established in that area wil be enrolled in the network (along with his or her covered dependents) unless th employee provides timely written notice to his or her employer of an election t have (along with his or her covered dependents) the comprehensive health car benefit coverage rather than to be enrolled in the network. Any such employe who provides such timely written notice shall have an annual opportunity t revoke his or her election by providing a written notice of revocation to his o her employer at least sixty days prior to January 1 of the calendar year fo which such revocation shall first become effective. Similarly, each employee i a given geographical area who is a Plan participant at the time a managed car network is established in that area and is thereafter enrolled in the networ (along with his or her covered dependents) shall have an annual opportunity t elect to have (along with his or her covered dependents) the comprehensive healt care benefit coverage rather than continue to be enrolled in the network. Thi election may be made by such an employee by providing written notice thereof t his or her employer at least sixty days prior to January 1 of the calendar yea for which the election shall first become effective. Each employee hired after a managed care network is established in his or her geographic area (and his o her covered dependents) will be enrolled in the network and may not thereafter elect to be covered by the comprehensive benefits until the January 1 which falls on or after the first anniversary of his or her initial date of eligibility for Plan coverage. Employees who return to eligibility for Plan coverage within 2 months of loss of eligibility for Plan coverage and whose employment relationshi

Plan when a service is performed by an in-network provider and the provided by the Plan when the service is performed by an out-of-network will be as described in the table below:

PLAN FEATURE	IN-NETWORK	OUT-OF-NETWORK†
Primary Care Physician Required	Yes	No
Annual Deductible		
Individual	None	$100
Family	None	$300
		Deductible appli to all covered expenses
Plan/Employee Coinsurance	100%/0%	75%/25%
Annual Out-of-Pocket Maximum (exclusive of deductible)		
Individual	None	$1,500
Family	None	$3,000
Maximum Lifetime Benefit	None	$1,000,000 ($5,0 annual restorati
Special Maximum Lifetime Benefit for Mental Health	None	$100,000 lifetim ($500 annual rest
Hospital Charges (inpatient and outpatient)	100%	75%*
Ambulatory Surgery	100%	75%*
Emergency Room	100% after $15 employee copayment	75%

Inpatient Mental Health & Substance Abuse		
Benefit		
Hospital	100%	75%◆
Alternative Care — Residential Treatment Center Inpatient or Partial Hospitalization/ Day Treatment	100%	75%◆
Outpatient Mental Health & Substance Abuse	100% after $15 employee copayment per visit	75%◆
Physician Services		
Surgery/Anesthesia	100%	75%*
Hospital Visits	100%	75%*
Office Visits	100% after $15 employee copayment	75%**
Diagnostic Tests	100%	75%*
Routine Physical	100% after $15 employee copayment	Not Covered
Well Baby Care	100% after $15 employee copayment	Not Covered
Skilled Nursing Facility Care	100%	75%*
Hospice Care	100%	75%*
Home Health Care	100%	75%*
Temporomandibular Joint Syndrome	100%	75%*
Birth Center	100%	75%*
Prescription Drugs (other than by mail order)	100% after $5 employee copayment for brand name ($3 for generic)	75%**

Mail Order Prescription Drugs (60-90 day supply of maintenance drugs only)	100% after $5 employee copayment	100% (not subject to regular deductible) after $5 employee co-payment (not counted toward regular deductible)**
Claim System	Paperless	Forms Required
Approval by Utilization Review/Large Case Management	Physician-initiated; included in network management	Required. If approval not given, benefits reduced by 20% (except for mental health and substance abuse care where benefits reduced by 50%) both before and after annual out-of-pocket maximum is reached, and amount of reduction is not counted toward that maximum.

† The medically necessary health care services for which out-of-network benefits will be paid are those listed in subparagraphs 1 through 7 of Part A, Section 5, of this Imposed Agreement.

* Benefits reduced by 20% if care is not approved by utilization review program.

♦ Benefits reduced by 50% if care is not approved by utilization review program.

** Benefits not generally subject to utilization review program but may be reviewable in specific circumstances with advance notice to the employee; in such cases, benefits reduced by 20% if care not approved by utilization review program.

At any time after the expiration of two years from the effective date of implementation of the first managed care network, either the carriers or the organizations may bring before the Joint Plan Committee for consideration a proposal to change the Plan's in-network or out-of-network benefits for the purpose of promoting an increase in the use of in-network providers by Plan participants.

Section 5 - Comprehensive Health Care Benefits

The comprehensive health care benefits provided under the Plan in geographical areas where managed care networks are not available to Plan participants and their dependents, and in cases where a Plan participant has elected to be covered, along with his or her dependents, by such comprehensive benefits rather than to be enrolled in a managed care network, shall be as

described below. Terms used in such description shall have the same meaning a they have in the Plan.

After satisfaction of an annual deductible of $100 per covered individua or $300 per family unit of three or more, the Plan will pay 85%, and the covere individual 15%, of certain health care expenses, up to an annual out-of-pocke maximum (which shall not include the deductible) of $1,500 per covered individua or $3,000 per family. The expenses counted toward the $3,000 annual family out-of-pocket maximum will include those, which are otherwise eligible, incurred or behalf of a covered employee and each of his or her covered dependents regardless of whether the employee or dependent has reached the $1,500 individual annual out-of-pocket maximum. Once the applicable annual out-of-pocket maximum has beer reached, the Plan will pay 100% of such reasonable charges up to an overall lifetime maximum of $1 million per covered individual, restorable at a rate of $5,000 per year; provided, however, that there shall be a separate lifetime maximum of $100,000 per covered individual, restorable at a rate of $500 per year, for Plan benefits for the treatment of mental and/or nervous conditions and substance abuse. (Benefits counted for purposes of determining whether or not a lifetime maximum has been reached are all benefits paid under the Plan as amended by this Imposed Agreement and all Major Medical Expense Benefits paid under the Plan prior to such amendments.) The Plan will pay 85% of the reasonable charges for medically necessary health care services as follows:

1. All expenses that are "Covered Expenses" (as defined in the Plan) at any time under the current major medical expense benefits provisions of the Plan, and not within any exclusion from or limitation upon them, except that the exclusion for treatment of polio will be removed.

2. Expenses for mammograms described in American Cancer Society guidelines, childhood disease immunization, pap smears and colorectal cancer screening.

3. Donor expense benefits as now defined.

4. Jaw joint disorder benefits as now defined, and subject to the current exclusions from and limitation on them, except that the $50 separate lifetime cash deductible will be removed.

5. Home health care expense benefits as now defined, subject to the current exclusions from and limitation on them, except that the exclusion that governs if polio benefits are payable will be removed.

6. Treatment center expense benefits, subject to the current exclusions from and limitation on them, except that

   a. the separate $100 cash deductible per confinement will be removed in connection with benefits for transportation to a treatment center, and

   b. the separate $100 cash deductible per benefit period and the $40 maximum limitation on benefits per episode of treatment — all with regard to outpatient benefits — will be removed.

7. Expenses for the services of psychologists if benefits would be paid for such services had they been rendered by a physician.

The Plan will provide the same benefits to all employees eligible for Plan coverage, including those in their first year of such eligibility and those eligible for extended Plan coverage because of disability.

The Plan's comprehensive health care benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5.00 per prescription, 100% of the cost of prescriptions covering a 60-to-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100/$300 deductible and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Strengthened Utilization Review and Case Management

The Plan's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under the Plan: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where, pursuant to standards developed by the Joint Plan Committee, prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by the Plan incurs expenses without the requisite approval of the Plan's utilization review/case management contractor, such benefits as the Plan would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as the Plan would otherwise pay will be reduced by one-half. These reductions will continue to apply after the out-of-pocket maximum is reached, i.e., the 100% benefit will become 80% (or 50%, as the case may be) if approval by the utilization review/case management contractor is not obtained.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by the Joint Plan Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

Section 7 - Coordination of Benefits

The Plan's coordination of benefit rules shall be changed so that the Pl will pay no benefit to any covered individual that would cause the sum of t benefits paid by the Plan and by any other plan with which the Plan coordinat benefits to exceed (a) the maximum benefit available under the more generous the Plan and such other plan, or (b) with respect only to spouses who are bo covered as employees under the Plan (and the Dependents of such spouses), and spouses one of whom is covered as an employee under the Plan and the other as retired railroad employee under the Railroad Employees National Early Retireme Major Medical Benefit Plan (and the Dependents of such spouses), 100% of t reasonable charges for services the expense of which is covered by the Plan.

Section 8 - Medicare Part B Premiums

Active employees currently covered by Medicare Part B and those who ele to enroll in Medicare Part B when they become eligible shall not be reimburs for premiums they pay for such Part B Medicare participation unless Medicare their primary payor of medical benefits.

Section 9 - Solicitation of Bids

As promptly as practicable, the Joint Plan Committee will solicit bids fr qualified entities for the performance of (a) all managed care functions und the Plan, including without limitation the establishing and/or arranging for t use by individuals covered by the Plan of managed networks of health car providers in those geographical areas where it is feasible to do so, and (b) a utilization review/case management functions under the Plan, includi specialized utilization review/case management functions for mental health a substance abuse to assure expert determination of medical necessity a appropriateness of treatment and provider. The Committee will select one or mor contractors, from among those that the Committee determines are likely to provid high-quality, cost-effective services, to perform such functions on behalf of t Plan. In the meantime, the Plan's current utilization review/case managemen contractor will continue to perform those functions. Hospital associations shal be incorporated into the managed care networks wherever appropriate.

Upon the expiration of three years from the effective date of this Impose Agreement, the Joint Plan Committee will solicit bids for all of the service involved in the administration of the Plan, including the utilization review/cas management and/or managed care functions, unless the Committee unanimousl determines not to seek bids for any one or more of the services involved in th administration of the Plan.

Part B - Early Retirement Major Medical Benefit Plan

Section 1 - Continuation of Plan

The Railroad Employees Early Retirement Major Medical Benefit Pla ("ERMA"), modified as provided in this Part, will be continued subject to th provisions of the Railway Labor Act, as amended. Contributions to ERMA will b

offset by the expeditious use of such amounts as may at any time be in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with ERMA and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in the special account maintained at The Travelers Insurance Company in connection with the obligations of ERMA to pay benefits incurred but not paid at the time of termination of ERMA, in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $1 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $1 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

Section 2 - Change to Self-Insurance

ERMA will be wholly self-insured. It will be administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Coordination of Benefits

ERMA's coordination of benefit rules shall be changed so that ERMA will pay no benefit to any covered individual that would cause the sum of the benefits paid by ERMA and by any other plan with which ERMA coordinates benefits to exceed (a) the maximum benefit available under the more generous of ERMA and such other plan, or (b) with respect only to spouses who are both covered as retired railroad employees under ERMA (and the Dependents of such spouses), and to spouses one of whom is covered as a retired railroad employee under ERMA and the other as an employee under the Railroad Employees National Health and Welfare Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by ERMA.

Section 4 - Strengthened Utilization Review and Case Management

ERMA's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under ERMA: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by ERMA incurs expenses without the requisite approval of ERMA's utilization review/case management contractor, such benefits

as ERMA would otherwise pay will be reduced by one-fifth; provided, however, th if such unapproved expenses are incurred for the treatment of mental or nervo conditions or substance abuse, such benefits as ERMA would otherwise pay will reduced by one-half.

When there is disagreement between an attending physician and t utilization review/case management contractor, the patient and/or attendi physician, after all opportunities for appeal have been exhausted within t utilization review/case management contractor's organization, shall be afford an opportunity to obtain a review (including if necessary, an examination) by independent specialist physician. This independent physician, who shall conveniently located and board certified in the appropriate specialty, shall designated by a physician appointed for this purpose by mutual agreement betwe the Chairman of the Health and Welfare Committee, Cooperating Railway Lab Organization and of the National Carriers' Conference Committee. Neith physician may be an employee of or under contract to the utilization review/ca management contractor. In the event of an appeal to a specialist describ above, the utilization review/case management contractor shall bear the burd of convincing the specialist that the utilization review/case manageme contractor's determination was correct.

The standards developed by the Joint Plan Committee for determining whethe or not prior approval is feasible and cost-efficient under the Health and Welfa Plan shall be applied by the National Carriers' Conference Committee under ERM and the utilization review/case management contractor(s) selected by the Joi Plan Committee under the Health and Welfare Plan shall be selected by th National Carriers' Conference Committee under ERMA.

Section 5 - Mail Order Prescription Drug Benefit

The Plan's benefits will include, where permissible under applicable la a mail order prescription drug benefit that will reimburse a covered individual after he or she pays $5 per prescription, 100% of the cost of each prescriptio covering a 60-90 day supply of maintenance drugs for such individual. Thi benefit will not be subject to, and the covered individual's $5.00 co-paymer will not be counted against, the Plan's regular $100 deductible, and will b included only upon execution of appropriate contracts with vendors.

Section 6 - Solicitation of Bids

As promptly as practicable, the National Carriers' Conference Committe will solicit bids from qualified entities for the performance of all utilizatio review/case management functions under the Plan, including specialize utilization review/case management functions for mental health and substanc abuse to assure expert determination of medical necessity and appropriateness o treatment and provider. The Committee will select one or more contractors, fro among those that the Committee determines are likely to provide high-quality cost-effective services to perform such functions on behalf of the Plan. In th

Upon the expiration of three years from the date of this Imposed Agreement, ıe National Carriers' Conference Committee will solicit bids for all of the rvices involved in the administration of the Plan, including the utilization view/case management function, unless the Committee determines not to seek bids ır any one or more of the services involved in the administration of the Plan.

TICLE IV - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended fective January 1, 1982 (Sickness Agreement), shall be further amended as ovided in this Article for periods of disability commencing on or after July 1991.

ction 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the ckness Agreement shall be adjusted as provided in paragraph (b) so as to store the same ratio of benefits to rates of pay as existed on January 1, 1982 der the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
ıss I Employees Earning	$13.95 or more	$2,427 or more
ıss II Employees Earning	$11.40 or more but less than $13.95	$1,984 or more but less than $2,427
ıss III Employees Earning	Less than $11.40	Less than $1,984

Basic and Maximum Amount Per Month

ıssification	Basic	RUIA	Maximum
ıss I	$926	$674	$1,600
ıss II	$749	$674	$1,423
ıss III	$595	$674	$1,269

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,716
Class II	$1,525
Class III	$1,361

Section 2 - Plan Benefits During Initial Registration Period

An employee who is eligible to receive Plan benefits during his initi RUIA registration period shall receive from the Plan, for the fifth through t fourteenth days of disability in that period, the Basic Benefit specified in t Plan plus an amount equal to the total RUIA benefit that would have been payab to him for days of sickness in that period but for application of the initi waiting period mandated by existing law.

Section 3 - Adjustment of Plan Benefits During Imposed Agreement Term

Effective December 31, 1994, the benefits provided under the Plan shall adjusted so as to restore the same ratio of benefits to rates of pay as exist on the effective date of this Article.

Section 4 - Administrative and Procedural Improvements

The parties have selected and established a subcommittee for the purpo of reviewing and making recommendations with respect to administrative a procedural improvements that would expedite the handling and disposition of Pl claims without affecting the integrity of the Plan. The parties shall consid the subcommittee's recommendations at the earliest opportunity, but no later th sixty (60) days after the effective date of this Article, and shall use the best efforts to reach agreement on implementing such recommendations.

ARTICLE V - INCIDENTAL WORK RULE

Section 1

The coverage of the Incidental Work Rule is expanded to include a shopcraft employees represented by the organization party hereto and shall re as follows:

> Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incicental" when it

involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a "preponderant part of the assignment."

If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.

on 2

Nothing in this Article is intended to restrict any of the existing rights carrier.

on 3

This Article shall become effective ten (10) days after the date of this ed Agreement except on such carriers as may elect to preserve existing rules actices and so notify the authorized employee representative on or before effective date.

E VI - SUBCONTRACTING

Article II, Subcontracting, of the September 25, 1964 National Agreement, ended, is further amended as follows to implement the report and mendations of Presidential Emergency Board No. 219, as interpreted and fied by Special Board 102-29, and that report and recommendations as well e questions and answers that interpret and clarify them are specifically porated herein by reference:

Article II - Subcontracting

The work set forth in the classification of work rules of the crafts

classification of work rule, and all other work historically performed
generally recognized as work of the crafts pursuant to such classificati
of work rules or scope rules where applicable, will not be contract
except in accordance with the provisions of Sections 1 through 4 of th
Article II. The maintenance and repair of equipment which has be
historically (not necessarily exclusively) maintained and repaired by
carrier's own employees, no matter how purchased or made available to t
carrier, shall not be contracted out by the carrier except in the manr
specified. In determining whether work falls within either of t
preceding sentences, the practices at the facility involved will gover

Section 1 - Applicable Criteria

Subcontracting of work, including unit exchange, will be done on
when genuinely unavoidable because (1) managerial skills are not availab
on the property but this criterion is not intended to perm
subcontracting on the ground that there are not available a sufficie
number of supervisory personnel possessing the skills normally held
such personnel; or (2) skilled manpower is not available on the proper
from active or furloughed employees; or (3) essential equipment is n
available on the property; or (4) the required time of completion of t
work cannot be met with the skills, personnel or equipment available
the property; or (5) such work cannot be performed by the carrier exce
at a significantly greater cost, provided the cost advantage enjoyed
the subcontractor is not based on a standard of wages below that of t
prevailing wages paid in the area for the type of work being performed a
provided further that if work which is being performed by railro
employees in a railroad facility is subcontracted under this criterion,
employees regularly assigned at that facility at the time of t
subcontracting will be furloughed as a result of such subcontractin
Unit exchange as used herein means the trading in of old or worn equipme
or component parts, receiving in exchange new, upgraded or rebuilt part
but does not include the purchase of new equipment or component parts.
to the purchase of component parts which a carrier had been manufacturi
to a significant extent, such purchases will be subject to the terms a
conditions of this Article II.

Section 2 - Advance Notice - Submission of Data - Conference

If the carrier decides that in the light of the criteria specifi
above it is necessary to subcontract work of a type currently performed
the employees, it shall give the General Chairman of the craft or craf
involved notice of intent to contract out and the reasons therefo
together with supporting data sufficient to enable the General Chairman
determine whether the contract is consistent with the criteria set for
above.

Advance notice shall not be required concerning minor transaction
A minor transaction is defined for purposes of notice as an item of repa
requiring eight man-hours or less to perform (unless the parties agree
a different definition) and which occurs at a location where mechanics

he affected craft, specialized equipment, spare units or parts are not vailable or cannot be made available within a reasonable time.

The General Chairman or his designated representative will notify he carrier within ten days from the postmarked date of the notice of any esire to discuss the proposed action. Upon receipt of such notice the arrier shall give such representative of the organization at least ten ays advance notice of a conference to discuss the proposed action.

If no agreement is reached at the conference following the otification, either party may submit a demand for an expedited rbitration within five working days of the conference. Except in nergencies, the carrier shall not consummate a binding subcontract until he expedited procedures have been implemented and the arbitrator has etermined that the subcontract is permissible, unless the parties agree therwise. For this purpose, an "emergency" means an unforeseen ombination of circumstances, or the resulting state, which calls for rompt or immediate action involving safety of the public, employees, and arriers' property or avoidance of unnecessary delay to carriers' perations.

ection 3 - Request for Information When No Advance Notice Given

If the General Chairman of a craft requests the reasons and upporting data for the subcontracting of work for which no notice of tent has been given, in order to determine whether the contract is nsistent with the criteria set forth above, such information shall be rnished him promptly. If a conference is requested by the General airman or his designated representative, it shall be arranged at a tually acceptable time and place. Any dispute as to whether the ntract is consistent with the criteria set forth in Section 1 may be ocessed to a conclusion as hereinafter provided.

Disputes concerning a carrier's alleged failure to provide notice of tent or to provide sufficient supporting data in a timely manner in der that the general chairman may reasonably determine whether the iteria for subcontracting have been met, also may be submitted to a mber of the arbitration panel, but not necessarily on an expedited sis. In the event the parties are unable to agree on a schedule for solving such a dispute, the arbitrator shall establish the schedule.

ction 4 - Establishment of Subcontracting Expedited Arbitration Panels

The parties shall establish expedited panels of neutral arbitrators strategic locations throughout the United States, either by carrier or gion. Each such panel shall have exclusive jurisdiction of disputes on e carrier's system or in the applicable geographical region, as the case y be, under the provisions of Article II, Subcontracting, as amended by is Imposed Agreement. The members of each of those panels shall hear ses or a group of cases on a rotating basis. Arbitrators appointed to id panels shall serve for terms of two years provided they adhere to the escribed time requirements concerning their responsibilities. These

arbitrators shall be compensated for their services directly by t parties.

Section 5 - Consist

Six neutral arbitrators shall be selected for each subcontracti expedited arbitration panel, unless the parties shall agree to a differe number.

Section 6 - Location

Hearings and other meetings of arbitrators from the subcontracti expedited arbitration panels shall be at strategic locations.

Section 7 - Referees

If the parties are unable to agree on the selection of all of th arbitrators making up a panel within 30 days from the date the partie establish a panel of neutral arbitrators, the NMB shall be requested t supply a list of 12 arbitrators within 5 days after the receipt of suc request. By alternate striking of names, the parties shall reduce th list to six arbitrators who shall constitute the panel. Neither part shall oppose or make any objection to the NMB concerning a request fo such a panel.

Section 8 - Filling Vacancies

Vacancies for subcontracting expedited arbitration panels shall b filled by following the same procedures as contained in Section 7 above

Section 9 - Content of Presentations

The arbitrator shall not consider any evidence not exchanged by th parties at least 48 hours before the commencement of the hearing. Othe rules governing the scope and content of the presentations to the Panel shall be established by further agreement of the parties or by th arbitrator if the parties fail to reach an agreement.

Section 10 - Procedure at Board Meetings

Upon receipt of a demand under Section 2 of this Article, th arbitrator shall schedule a hearing within three working days and conduc a hearing within five working days thereafter. The arbitrator shal conclude the hearing not more than 48 hours after it has commenced. Th arbitrator shall issue an oral or written decision within two working day of the conclusion of the hearing. An oral decision shall be supplemente by a written one within two weeks of the conclusion of the hearing unles the parties waive that time requirement. Any of these time limits may b extended by mutual agreement of the parties. Procedural rules governin the record and hearings before the Panels shall be determined by furthe agreement of the parties or by the arbitrator if the parties fail to reac an agreement.

Section 11 - Remedy

(a) If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of this Article, which is sustained, the arbitrator's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

(b) If the arbitrator finds that the carrier violated the advance notice requirements of Section 2 [in non-emergency situations], the arbitrator shall award an amount equal to that produced by multiplying 50% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the carrier who would have done the work, provided however that where the carrier is found to have both failed to consult and wrongfully contracted out work, the multiplier shall be 10% rather than 50%. The amounts awarded in accordance with this paragraph shall be divided equally among the claimants, or otherwise distributed upon an equitable basis, as determined by the arbitrator.

Section 12 - Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination. The carrier agrees to apply the decision of an arbitrator in a case arising on the carrier's property which sustains a grievance to all substantially similar situations and the Organization agrees not to bring any grievance which is substantially similar to a grievance denied on the carrier's property by the decision of the arbitrator.

Decisions of arbitrators rendered under this Article shall be subject to judicial enforcement and review in the same manner and subject to the same provisions which apply to awards of the National Railroad Adjustment Board.

Section 13 - Disputes Referred to Other Boards

Disputes arising under Article I, Employee Protection, Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing shall not be subject to the jurisdiction of any Subcontracting Expedited Arbitration Panel.

Disputes under Article II need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but can be handled directly with the highest officer in the interest of expeditious handling. This Article sets up special time limits to govern the handling of cases before the expedited arbitration panels, thus providing special procedures which are intended to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion

through the expedited arbitration panels are not subject to the provisions of the standard Time Limit Rule.

If there should be any claims filed for wage loss on behalf on a named claimant arising out of an alleged violations of Article II - Subcontracting, such claims for wage loss should be filed promptly and within sixty days of the filing of the alleged violation of Article II - Subcontracting, with the same carrier officer as to whom such violation of Article II was directed by the General Chairman of the craft or crafts involved, or his representative. If such claim is a continuous one, it cannot begin to run prior to the date the claim is presented.

Failure to handle as set forth in the preceding paragraph shall not be considered as a precedent or waiver of the contentions of the carriers or employees as to other similar claims.

* * * *

Article VI of the September 25, 1964 Agreement, as amended, is further amended to delete (a) all references to Article II - Subcontracting, and (b) Section 14 - Remedy (and to renumber the subsequent sections accordingly).

ARTICLE VII - JOINT SKILL ADJUSTMENT STUDY COMMITTEE

Section 1 - Upon notification by the organization of its intention to proceed, a Joint Skill Adjustment Study Committee shall be established within thirty (30) days, consisting of four partisan members--two representing the carriers and two representing the organization--and one neutral, who shall be Chairman. The parties shall jointly share the compensation and expenses of the neutral. The neutral shall be selected by the partisan members jointly or from a list supplied by the National Mediation Board within 30 days from this date.

Section 2 - The Committee will engage in a joint study and reach a determination of the need to adjust wages based upon skill and pay for similar work in other occupations. The Committee will be charged with the responsibility of determining if skill adjustments are appropriate for the following positions and/or functions: all journeymen electricians and above (mechanical, engineering and communications). If the determination is in the affirmative the Committee will render findings in accordance with its determinations that will be binding upon the parties and implemented.

Section 3 - The Committee shall promptly establish its operating procedures, which will include the formulation of a schedule designed to expedite and enhance the opportunity to reach a final conclusion, at the earliest possible date, but not exceeding six (6) months, unless otherwise determined by the Committee. The Committee shall determine the procedures under which it will operate, schedule meetings and resolve any other questions that may arise. The Chairman shall have discretion to act as mediator at any time during these proceedings prior to the issuance of his findings. In the event the neutral is unable to continue or the

partisan members unanimously concur that a successor should be appointed, the procedures set forth above shall be followed in selecting a replacement.

Section 4 - In the event the Chairman determines that the parties are unable to reach final conclusion the Chairman in consultation with the members shall promptly convene formal hearings on the matter. Thereafter, the neutral shall make final and binding findings for disposition of the issue.

Section 5 - The Committee shall terminate unless otherwise agreed to by the parties thirty (30) days from the date the findings have been made.

Section 6 - The parties recognize and agree that the information developed by the Committee will only be used for the purpose for which it was developed (i.e. The joint study) and that it will not be used by either party in handling claims or grievances.

ARTICLE VIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Imposed Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Imposed Agreement

(a) The purpose of this Imposed Agreement is to fix the general level of compensation during the period of the Imposed Agreement, and to settle the disputes growing out of the notices served upon the carriers listed in Exhibit A by the organization signatory hereto dated on or about January 20, 1988 and April 18, 1988, and proposals served on or about April 9, 1984 and March 10, 1989 by the carriers for concurrent handling therewith. This Imposed Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1994 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Imposed Agreement shall serve, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal for the purpose of changing the subject matter of the provisions of this Imposed Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Article, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Imposed Agreement shall serve or progress, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal which might properly have been served when the last moratorium ended on July 1, 1988.

FOR THE PARTICIPATING CARRIERS
LISTED IN EXHIBIT A:

Chairman

FOR THE EMPLOYEES REPRESENTED BY
THE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS:

International Vice President

November 27, 1991

#1

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to the $2,000 lump sum payment provided for in Article I, Section 1 of this Imposed Agreement. In the case of an employee who was recalled from reserve status and performed active military service during 1990 as a result of the Persian Gulf crisis, such employee will be credited with 40 hours of compensated service (48 hours in the case of a monthly rated employee whose rate is predicated on an all-service performed basis) for each week of such military service for purposes of calculating eligibility for the lump sum amount provided he would otherwise have been in active service for the carrier.

Very truly yours,

C. I. Hopkins, Jr.

November 27, 1991

#2

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to the Lump Sum Payment provided in Article I, Section 1 of the Imposed Agreement of this date.

This confirms our understanding that days during the year 1990 for which employees in a furloughed status received compensation pursuant to guarantees in protective agreements or arrangements shall be included in determining qualifications for the Lump Sum Payment.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

November 27, 1991

#3

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to the increase in wages provided for in Section 2 of Article I of the Imposed Agreement of this date.

It is understood that the retroactive portion of that wage increase will be paid within 60 days from the date of this Imposed Agreement. It is further understood that it shall be applied only to employees who continued their employment relationship under an agreement with the International Brotherhood of Electrical Workers up to July 29, 1991 or who retired or died subsequent to July 1, 1991.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#4

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to the Lump Sum Payments provided in Articles I and II of the Imposed Agreement of this date.

All of the lump sum payments provided for in Article II are based in part on the number of straight time hours paid for that are credited to an employee for a particular period. However, the number of straight time hours so credited does not include any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements.

The inclusion of the term "guarantees in protective agreements or arrangements" in Article II means that an employee receiving such a guarantee will have included in the straight time hours used in calculating his lump sum payments under this Article all such hours paid for under any protective agreement or allowance provided, however, that in order to receive credit for such hours an employee must not be voluntarily absent from work, meaning that hours are not counted if an employee does not accept calls to report for work.

It is understood that any lump sum payment provided in Articles I and II of the Imposed Agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#4A

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to the lump sum payments provided for in Article II of this Imposed Agreement.

Sections 1 to 4, inclusive, of Part A of Article II - Cost-of-Living Payments are structured so as to provide lump sum payments that are essentially based on the number of straight time hours credited to an employee during a specified 12-month base period. Section 8 provides that all of these lump sum payments are payable to an employee who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payment. Thus, for example, under Section 1 of Part A of Article II, except for an employee who has retired or died, the agreement requires that an employee have an employment relationship as of July 1, 1992 in order to receive a lump sum payment which will be based essentially on the number of straight time hours credited to such employee during a period running from April 1, 1991 through March 31, 1992.

The intervals between the close of the measurement periods and the actual payments established in the 1985-86 National Agreements were in large part a convenience to the carriers in order that there be adequate time to make the necessary calculations.

In recognition of this, we again confirm the understanding that an individual having an employment relationship with a carrier on the last day of a particular measurement period will not be disqualified from receiving the lump sum (or portion thereof) provided for in the event his employment relationship is terminated following the last day of the measurement period but prior to the payment due date.

Very truly yours,

C.I. Hopkins, Jr.

November 27, 1991

#5

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to Article III Part A of this Imposed Agreement dealing with the Railroad Employees National Health and Welfare Plan (the "Plan"), and in particular to one facet of the arrangements for funding the benefits provided for under the Plan.

It is understood that, insofar as carriers represented by the National Carriers' Conference Committee in connection with health and welfare matters but

counsel or other designated representative. The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#6

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#7

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This is to confirm our understanding regarding the resolution of disputes under Article II of the September 25, 1964 Agreement, as amended by Article VI of this Imposed Agreement.

If the parties have not established a forum or forums for before-the-fact arbitration of contracting out disputes by July 29, 1991, any such dispute will proceed on an after-the-fact basis, i.e., the carrier will be free to proceed forthwith with the contracting-out and any dispute may be progressed to a Public Law Board on an expedited basis, or any other forum on which the parties may mutually agree.

The parties shall meet promptly to reach agreement on language to implement the recommendations of Presidential Emergency Board 219, as interpreted and clarified by Special Board 102-29, on the procedures for arbitrating contracting-out disputes. If complete agreement on language is not reached by the parties by December 15, 1991, the parties shall refer any areas of disagreement to Special Board 102-29 for resolution.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

#8

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to Article VI, Subcontracting, of the Imposed Agreement of this date and our understanding with respect to disputes arising on the former Southern Railway Company under the provisions of Articles I and II of the January 27, 1965 Agreement.

This will confirm our understanding that Article II of the January 27, 1965 Agreement is amended to read identical to Article VI of the Imposed Agreement of this date and that Special Board of Adjustment No. 570 shall have exclusive authority to resolve all disputes arising under the terms of Article I of the January 27, 1965 Agreement.

It is further agreed that a single system subcontracting expedited arbitration panel shall be established in accordance with Article VI of the Imposed Agreement of this date, and such panel shall have exclusive jurisdiction of disputes arising on the former Southern Railway Company under the provisions of Article II of the January 27, 1965 Agreement, as amended by the Imposed Agreement of this date, and on Norfolk and Western Railway Company under the provisions of Article II of the September 25, 1964 Agreement, as amended by the Imposed Agreement of this date.

November 27, 1991

#9

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This is to confirm our understanding that a synthesis of the September 25, 1964 Agreement, as amended, showing all changes made during this round of bargaining and all changes made in the past which remain in effect after this bargaining round shall be prepared by the parties as soon as possible.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

November 27, 1991

#10

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This is to confirm our understanding that the changes to Article VI of the September 25, 1964 Agreement, as amended, which result from the Imposed Agreement effective this date are accurately reflected in Exhibit A to this side letter.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

EXHIBIT A

ARTICLE VI - RESOLUTION OF DISPUTES

Section 1 - Establishment of Shop Craft Special Board of Adjustment

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as "Board" is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, of this agreement. The parties agree that such Board shall have exclusive authority to resolve all disputes arising under the terms of Article I of this Agreement. Awards of the Board shall be subject to judicial review by proceedings in the United States District Court in the same manner and subject to the same provisions that apply to awards of the National Railroad Adjustment Board.

(ARTICLE VI - RESOLUTION OF DISPUTES - Section 1 as amended by ARTICLE VIII - Part B. of December 4, 1975 Agreement)

Section 2 - Consist of Board

Whereas, Article VI of the September 25, 1964 Agreement provides for the resolution of disputes arising under Article I of said Agreement and Section 2 of Article VI sets forth the procedure for the composition of the Board established for the purpose of resolving such disputes; and under the terms of said section the Board is to consist of two members appointed by the organizations party to the Agreement, two members appointed by the carriers party to the Agreement and a fifth member, a referee, appointed from a panel of referees; and

Whereas, in November of 1964 following an exchange of letters it was further agreed by the parties to the Agreement to modify the terms of Section 2 of Article VI by providing that instead of two members each party would appoint three members with the understanding that in any function, two of three members thus appointed would serve; and

Whereas, in the Memorandum of Agreement dated May 31, 1974 and Mediation Agreement dated December 4, 1978, it was agreed by the parties to the Agreement to further modify the appointment and functioning of partisan members by providing that instead of three members each party would appoint six members; two of the six persons designated to represent the organizations party to the Agreement would be appointed by International Association of Machinists and Aerospace Workers and Sheet Metal Workers' International Association respectively and the remaining four members would be appointed on behalf of the other four organizations party to the Agreement by the Railway Employes' Department, AFL-CIO; and whereas, on October 1, 1980, the Railway Employe's Department, AFL-CIO, has dissolved by appropriate action and ceased to have any status as an affiliation of Shop Craft Organizations or to have any authority to speak for or represent any organization or brotherhood; and

Whereas, the parties understand the importance of maintain grievance machinery for the handling of disputes arising under the September 2 1964 National Agreement in order to provide a means for the peaceful resolut of minor grievances under the Railway Labor Act; and

Whereas, in view of these considerations the organizations party the Agreement have agreed upon a temporary procedure which is acceptable to t carriers party to the Agreement, for the appointment and functioning of partis members of the Board under Section 2 of VI.

NOW, THEREFORE, it is agreed that effective October 1, 1980, partis members of the Board under Section 2 of Article VI shall be appointed a function as follows:

1. Six members shall be appointed by the organizations party to t Agreement and six members shall be appointed by the carriers party to t Agreement. Of the six persons designated to represent the organizations par to the Agreement one shall be appointed by each of the following signatorie International Association of Machinists and Aerospace Workers; Sheet Met Workers International Association; International Brotherhood of Boilermaker Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carm of the United States and Canada; International Brotherhood of Electrical Worker and International Brotherhood of Firemen and Oilers.

2. Each of the twelve partisan members of the Board so appoint shall have the right to sit in all proceedings of the Board. The organizatio and the carriers party to the Agreement further agree, however, that in t handling of dispute cases before the Board a smaller panel of the twelve membe may function and constitute a quorum for the resolution of such dispute provided first, that at least one organization and one carrier member shall s and function in all dispute cases before the Board; second, that regardless the number of members sitting and functioning in dispute cases, the unit meth of voting shall prevail and six votes shall be cast on behalf of the carrier a organization members respectively; third, that in any dispute involving employe represented by one of the signatory organizations, the appointee of th organization shall sit and function as a member of the Board.

It is agreed further that all disputes and grievances arising und Article I of the September 25, 1964 Agreement shall be handled on appeal from t property in accordance with the terms of this Agreement while it is in effe including those presently pending before Special Board of Adjustment 570, as we as any subsequently appealed to the Board.

This Memorandum of Agreement is a temporary measure intended provide the parties with a continuing means for the peaceful resolution of su minor grievances under the Railway Labor Act pending further consideration matters arising from the dissolution of Railway Employes Department.

(Section 2 of ARTICLE VI - RESOLUTION OF DISPUTES -
from MEMORANDUM OF AGREEMENT dated November 17, 1980)

ction 3 - Appointment of Board Members

Appointment of the members of the Board shall be made by the spective parties within thirty days from the date of the signing of this reement.

ction 4 - Location of Board Office

The Board shall have offices in the City of Chicago, Illinois.

ction 5 - Referees - Employee Protection

The parties agree to select a panel of six potential referees for the rpose of disposing of disputes before the Board arising under Article I of this reement. Such selections shall be made within thirty (30) days from the date the signing of this agreement. If the parties are unable to agree upon the lection of the panel of potential referees within the 30 days specified, the tional Mediation Board shall be requested to name such referees as are cessary to fill the panel within 5 days after the receipt of such request.

ction 6 - Term of Office of Referees

The parties shall advise the National Mediation Board of the names the potential referees selected, and the National Mediation Board shall notify ose selected, and their successors, of their selection, informing them of the ture of their duties, the parties to the agreement and such information as it deem advisable, and shall obtain their consent to serve as a panel member. ch panel member selected shall serve as a member until January 1, 1966, and til each succeeding January 1 thereafter unless written notice is served by the ganizations or the carriers parties to the agreement, at least 60 days prior January 1 in any year that he is no longer acceptable. Such notice shall be rved by the moving parties upon the other parties to the agreement, the members the Board and the National Mediation Board. If the referee in question shall en be acting as a referee in any case pending before the Board, he shall serve a member of the Board until the completion of such case.

tion 7 - Filling Vacancies - Referees

In the event any panel member refuses to accept such appointment, s, or becomes disabled so as to be unable to serve, is terminated in tenure hereinabove provided, or a vacancy occurs in panel membership for any other son, his name shall immediately be stricken from the list of potential erees. The members of the Board shall, within thirty days after a vacancy urs, meet and select a successor for each member as may be necessary to tore the panel to full membership. If they are unable to agree upon a cessor within thirty days after such meeting, he shall be appointed by the ional Mediation Board.

The Board shall have exclusive jurisdiction over disputes between th parties growing out of grievances concerning the interpretation or applicatio of Article I, Employee Protection.

Section 9 - Submission of Dispute

Any dispute arising under Article I, Employee Protection, of this agreement, not settled in direct negotiations may be submitted to the Board by either party, by notice to the other party and to the Board.

(Sections 3, 4, 5, 6, 7, 8, and 9 of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Section 10 - Time Limits for Submission

Within 60 days of the postmarked date of such notice, both parties shall send 15 copies of a written submission to their respective members of the Board. Copies of such submissions shall be exchanged at the initial meeting of the Board to consider the dispute.

(Section 10 of ARTICLE VI - RESOLUTION OF DISPUTES - from ARTICLE VIII - Part B. of December 4, 1975 Agreement)

Section 11 - Content of Submission

Each written submission shall be limited to the material submitted by the parties to the dispute on the property and shall include:

(a) The question or questions in issue;

(b) Statement of facts;

(c) Position of employee or employees and relief requested;

(d) Position of company and relief requested.

Section 12 - Failure of Agreement - Appointment of Referees

If the members of the Board are unable to resolve the dispute within twenty days from the postmarked date of such submission, either member of the Board may request the National Mediation Board to appoint a member of the panel of potential referees to sit with the Board. The National Mediation Board shall make the appointment within five days after receipt of such request and notify the members of the Board of such appointment promptly after it is made. Copies

Section 13 - Procedure at Board Meetings

The referee selected shall preside at meetings of the Board and shall be designated for the purpose of a case as the Chairman of the Board. The Board shall hold a meeting for the purpose of deciding the dispute within 15 days after the appointment of a referee. The Board shall consider the written submission and relevant agreements, and no oral testimony or other written material will be received. A majority vote of all members of the Board shall be required for a decision of the Board. A partisan member of the Board may in the absence of his partisan colleague vote on behalf of both. Decisions shall be made within thirty days from the date of such meeting.

(Sections 11, 12, and 13 of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Section 14 - Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include in order to the employee or employees stating such determination.

(Section 14 of ARTICLE VI - RESOLUTION OF DISPUTES from ARTICLE VIII - Part B. of December 4, 1975 Agreement)

Section 15 - Extension of Time Limits

The time limits specified in this Article may be extended only by mutual agreement of the parties.

Section 16 - Records

The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

Section 17 - Payment of Compensation

Railway Labor Act, as amended.

(Sections 15, 16, 17, and the first paragraph of Section 18
of ARTICLE VI - RESOLUTION OF DISPUTES -
from September 25, 1964 Agreement)

Under the provisions of Article VI, Section 18, disputes arisir under Article III - Assignment of Work, Article IV - Outlying Points, and Artic V - Coupling, Inspection and Testing, are to be handled in accordance wi Section 3 of the Railway Labor Act. It is clear that with respect to suc disputes subject to handling under Section 3 of the Act any claim or grievanc is subject to the time limits and procedural requirements of the Time Limit c Claims Rule.

A different situation exists with respect to disputes arising under Artic I - Employee Protection. Article VI provides a "Shopcraft Special Board c Adjustment" for the purpose of adjusting and deciding disputes arising out c that Article (Article VI, Section 1), and specifically provides (Article VI Section 8) that the Board shall have exclusive jurisdiction over disputes betwee the parties growing out of grievances concerning the interpretation c application of that Article.

During our negotiations, it was understood by both parties that dispute under Article I need not be progressed in the "usual manner" as required unde Section 3 of the Railway Labor Act, but could be handled directly with th highest officer in the interest of expeditious handling. Sections 10 through 1 set up special time limits to govern the handling of submissions to the Specia Board, thus providing special procedures which are intended to supersede th provisions of the standard Time Limit Rule. Therefore, such disputes bein processed to a conclusion through the Shop Craft Special Board are not subjec to the provisions of the standard Time Limit Rule.

This understanding is a supplement to Article VI of the September 25, 196 Agreement and will become effective as of this date.

November 27, 1991

#11

r. E. P. McEntee, Int'l. Vice President
nternational Bro. of Electrical Workers
)400 W. Higgins Road, Suite 720
)semont, Illinois 60018

ear Mr. McEntee:

This is to confirm our understanding that carriers not participating in
ational handling and therefore not subject to the revisions to the September 25,
)64 Agreement, as amended, shall continue to be bound by that Agreement as it
isted prior to changes effectuated by the Imposed Agreement of this date.

Subcontracting disputes arising prior to the effective date of this Imposed
greement shall continue to be handled in accordance with the dispute resolution
ocedures at the time the dispute arose.

Please indicate your agreement by signing your name in the space provided
low.

Very truly yours,

C. I. Hopkins, Jr.

agree:

November 27, 199

#1

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to Article VI, Subcontracting, of the Imposed Agreement of this date and will confirm our understanding that Electrical Power Purchase Agreements (EPPAs) and similar arrangements are within the scope of the September 25, 1964 Agreement, as amended.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#12A

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This refers to Article VI, Subcontracting, of the Imposed Agreement of this date and will confirm our understanding that the question of whether work on TTX cars by TTX employees should be allowed on tracks leased from a carrier is to be treated in the same manner as EPPAs.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

agree:

#1

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This confirms our understanding with respect to the Imposed Agreement c this date.

The parties exchanged various proposals and drafts antecedent to adoptic of the various Articles that appear in this Imposed Agreement. It is our mutua understanding that none of such antecedent proposals and drafts will be used b any party for any purpose and that the provisions of this Imposed Agreement wil be interpreted and applied as though such proposals and drafts had not been use or exchanged in the negotiation. This shall not be construed to preclude an party from relying on the Proceedings and Report of Presidential Emergency Boar 219 and/or the Proceedings and Reports of Special Board 102-29.

Please indicate your agreement by signing your name in the space provide below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#14

Mr. E. P. McEntee, Int'l. Vice President
International Bro. of Electrical Workers
10400 W. Higgins Road, Suite 720
Rosemont, Illinois 60018

Dear Mr. McEntee:

This is to confirm our understanding that the changes to the incidental work rule resulting from the Imposed Agreement shall not be applied to assign work of employees represented by your organization to employees of any organization not a party to the same or substantially similar changes in the rule or rules governing assignment of mechanical and shop craft work, and vice-versa.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

agree:

SECTION 11

Guide for the Local Committee Chairman

1996 Mediated National Agreement

Section 11

Guide for the Local Committee Chairman

1996 MEDIATED NATIONAL AGREEMENT

IBEW
September 16, 1996

MEDIATION AGREEMENT, CASE A-12771

DATED SEPTEMBER 16, 1996

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

MEDIATION AGREEMENT

THIS AGREEMENT, made this 16th day of September, 1996, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Brotherhood of Electrical Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On December 1, 1995, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 3-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3-1/2 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3-1/2 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3-1/2 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Signing Bonus

Subject to Sections 9 and 10, each employee with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period January 1, 1995 through December 31, 1995 will be paid, on the date of this Agreement, a Signing Bonus of four hundred dollars ($400.00).

Section 3 - Second General Wage Increase

Effective July 1, 1996, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1996 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1996, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1-3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by dividing $76.68 by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 4 - Third General Wage Increase

Effective July 1, 1997 all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1997 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 3) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 1 hereof.

Section 5 - Fourth General Wage Increase

Effective July 1, 1998, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1998 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1998, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1-3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by the following computation: one-quarter of the amount, if any, by which the carriers' payment rate for 1998 for foreign-to-occupation health benefits exceeds such payment rate for 1995, multiplied by one-and-one half, and then divided by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 6 - Fifth General Wage Increase

Effective July 1, 1999, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1999 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 5) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 6 shall be applied in the same manner as provided for in Section 1 hereof.

Section 7 - Definitions

The carriers' payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve (12) times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1, of the Imposed Agreement made November 27, 1991.

Section 8 - Eligibility for Receipt of Signing Bonus

The Signing Bonus provided for in this Article will be payable to each employee subject to this Agreement who has an employment relationship as of the date such payment is payable,

or has retired or died subsequent to the beginning of the applicable calendar year used to determine the amount of such payment. There shall be no duplication of the Signing Bonus by virtue of employment under another agreement nor will such payments be used to offset, construct or increase guarantees in protective agreements or arrangements.

Section 9 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in the period described in Section 2 than the minimum number set forth therein, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during such period divided by the defined minimum hours.

Section 10 - Signing Bonus Proration

In the case of any employee subject to wage progression or entry rates, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the weighted average entry rate percentage applicable to wages earned during the specified determination period.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under National Agreement, Dated November 27, 1991

The nine-cent cost-of-living allowance in effect beginning July 1, 1995 pursuant to Article II, Part B of the Imposed Agreement made November 27, 1991 shall be rolled in to basic rates of pay on November 30, 1995 and such Article II, Part B shall be eliminated at that time.

Part B - Cost-of-Living Allowance Through June 30, 2000 and Effective Date of Adjustment

(a) A cost-of-living allowance, calculated and applied in accordance with the provisions of Part C of this Article except as otherwise provided in this Part, shall be payable and rolled in to basic rates of pay on July 1, 2000.

(b) The measurement periods shall be as follows:

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment

The number of points change in the CPI during each of these measurement periods shall be added together before making the calculation described in Part C, Section 1(e) of this Article.

(c)(i) Floor. The minimum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Minimum CPI Increase That Shall Be Taken Into Account
July 1, 2000	4% of March 1995 CPI plus 4% of March 1997 CPI

(ii) Cap. The maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That Shall Be Taken Into Account
July 1, 2000	6% of March 1995 CPI plus 6% of March 1997 CPI

(d) The cost-of-living allowance payable to each employee and rolled in to basic rates of pay on July 1, 2000 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1998 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one half of the cost-of-living allowance effective on July 1, 2000 pursuant to this Part.

Part C - Cost of Living Allowance and Adjustments Thereto After July 1, 2000

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective January 1, 2001 based, subject to

aragraph (d), on the CPI for March 2000 as compared with the CPI or September 1999 plus the CPI for September 2000 as compared ith the CPI for March 2000. Such allowance, and further cost- f-living adjustments thereto which shall become effective as escribed below, shall be based on the change in the CPI during he respective measurement periods shown in the following table, ubject to the exception provided in paragraph (d)(iii), ccording to the formula set forth in paragraph (e).

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
September 1999 plus March 2000	September 2000*	January 1, 2001
September 2000	March 2001	July 1, 2001

*The calculation described in Section 1(e) of this Section shall be made individually for each of these measurement periods and the resulting cents added together for the January 1, 2001 adjustment.

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost- f-living allowance will apply to straight time, overtime, rotected rates, vacations, holidays and personal leave days in the ame manner as basic wage adjustments have been applied in the ast, except that such allowance shall not apply to special llowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that ill be effective from one adjustment date to the next may be equal o, or greater or less than, the cost-of-living allowance in effect n the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum ncrease in the CPI that shall be taken into account shall be as ollows:

January 1, 2001	6% of September 1999 CPI
July 1, 2001	3% of September 2000 CPI
January 1, 2002	6% of September 2000 CPI less the increase from September 2000 to March 2001

Effective Dates of Adjustment and Maximum CPI Increases conforming to the July 1, 2001 and January 1, 2002 Adjustments in the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2000 to the measurement month of March 2001 exceeds 3% of the September 2000 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment based on the increase in the CPI from the base month of September 2000 to the measurement month of March 2001.

(iv) Any increase in the CPI from the base month of September 1999 to the measurement month of September 2000 in excess of 6% of the September 1999 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance in effect on June 30, 2001 will be adjusted (increased or decreased) effective July 1, 2001 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on June 30, 2001 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective January 1, 2001 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1999 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1998, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance based on the increase in the CPI from the base month of September 1999 to the measurement month of March 2000.

(b) The increase in the cost-of-living allowance effective July 1, 2001 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(c) The increase in the cost-of-living allowance effective January 1, 2002 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living

allowances payable in subsequent years during which this Article is in effect.

(e) The definition of the carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan set forth in Section 7 of Article I shall apply with respect to any year covered by this Section.

(f) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part C will be payable as provided in Section 2 of this Part and will not become part of basic rates of pay. Such allowance shall be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase

shall be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part C

The arrangements set forth in Part C of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - DENTAL BENEFITS

Section 1 - Continuation of Plan

The benefits now provided under the Railroad Employees National Dental Plan (Dental Plan), modified as provided in Section 2 below, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

The following changes will be made effective as of January 1, 1999.

(a) The maximum benefit (exclusive of any benefits for orthodonture) which may be paid with respect to a covered employee or dependent in any calendar year beginning with calendar year 1999 will be increased from $1,000 to $1,500.

(b) The lifetime aggregate benefits payable for all orthodontic treatment rendered to a covered dependent, regardless of any interruption in service, will be increased from $750 to $1,000.

(c) The exclusion from coverage for implantology (including synthetic grafting) services will be deleted and dental implants and related services will be added to the list of Type C dental services for which the Plan pays benefits.

(d) Repair of existing dental implants will be added to the list of Type B dental services for which the Plan pays benefits.

(e) One application of sealants in any calendar year for dependent children under 14 years of age will be added to the list of Type A dental services for which the Plan pays benefits.

(f) The Plan will pay 80%, rather than 75%, of covered expenses for Type B dental services.

(g) The Plan will establish and maintain an 800 telephone number that employees and dependents may use to make inquiries regarding the Plan.

ARTICLE IV - VISION CARE

Section 1 - Establishment and Effective Date

The railroads will establish a Vision Care Plan to provide specified vision care benefits to employees and their dependents, to become effective January 1, 1999 and to continue thereafter subject to provisions of the Railway Labor Act, as amended, according to the following provisions:

(a) Eligibility and Coverage. Employees and their dependents will be eligible for coverage under the Plan beginning on the first day of the calendar month after the employee has completed a year of service for a participating railroad, but no earlier than the first day of January 1999. An eligible employee, along with his eligible dependents, will become covered under the Plan on the first day of the calendar month after he or she first renders compensated service, and will continue to be covered during the month following each month in which he or she renders compensated service or receives vacation pay.

(b) Managed Care. Managed vision care networks that meet standards developed by the National Carriers' Conference Committee concerning quality of care, access to providers and cost effectiveness shall be established wherever feasible. Employees who live in a geographical area where a managed vision care network has been established will be enrolled in the network along with their covered dependents. Employees enrolled in a managed vision care network will have a point-of-service option allowing them to choose an out-of-network provider to perform any vision care service covered by the Plan that they need. The benefits provided by the Plan when services are performed by in-network providers will be greater than the benefits provided by the Plan when the providers, including providers in geographic areas where a managed vision care network has not been established. These two sets of benefits will be as described in the table below.

One vision examination per 12-month period.	100% of reasonable and customary charges	100% of reasonable and customary charges up to a $35 maximum
One set of frames of any kind per 24-month period	100% of reasonable and customary charges[1]	100% of reasonable and customary charges up to a $35 maximum
One set of two lenses of any kind, including contact lenses, per 24-month period.	100% of reasonable and customary charges[2]	100% of reasonable and customary charges up to the following maximums: up to $25 for single vision lenses up to $40 for bifocals up to $55 for trifocals up to $80 for lenticulars up to $210 for medically necessary contact lenses up to $105 for contact lenses that are not medically necessary
Where the employee or dependent requires only one lens	100% of reasonable and customary charges 2/	100% of reasonable and customary charges up to a maximum of one-half of the maximum benefit payable for a set of two lenses of the same kind

[1] Patients who select frames that exceed a wholesale allowance established under the program may be required to pay part of the cost of the frames selected.

[2] Patients may be required to pay part of the cost of spectacle lenses or lens characteristics that are not necessary for the patient's visual welfare.

Section 2 - Administration

The Vision Care Plan will be administered by the National Carriers' Conference Committee, which will bear the same responsibilities and perform the same functions as it does with respect to The Railroad Employees National Dental Plan, including the development of detailed plan language describing the Plan's eligibility, coverage, benefit and other provisions.

ARTICLE V - HEALTH AND WELFARE PLAN

Section 1 - Continuation of Health and Welfare Plan

The Railroad Employees National Health and Welfare Plan ("the Plan") modified as provided in this Article with respect to the employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

(a) The Comprehensive Health Care Benefit is amended to include one routine physical examination (including diagnostic testing and immunizations in connection with such examination) each calendar year for covered employees and their eligible dependents. Such CHCB benefit shall cover 100% of the Covered Expenses involved up to $150, and 75% of such Covered Expenses in excess of $150.

(b) Routine childhood (up to age 18) immunizations, including boosters, for Diphtheria, Pertussis or Tetanus (DPT), measles, mumps, rubella and polio shall be provided under the CHCB. This benefit is subject to the applicable deductible and percentage of covered expenses payable.

(c) Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(d) This Section shall become effective on January 1, 1999.

ARTICLE VI - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article IV of the November 27, 1991 Imposed Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant

ıragraph (b) so as to restore the same ratio of benefits to rates
: pay as existed for the period July 1, 1991 through December 31,
)94 under the terms of that Agreement. Enactment of the agreed-
)on RUIA legislation shall not cause the ratio of benefits to
ıtes of pay to differ from that which existed for the period July
1991 through December 31, 1994.

(b) Section 4 of the Sickness Agreement shall be revised as
)llows:

	Per Hour	Per Month
.ass I Employees Earning ıs of 12/31/94)	$15.39 or more	$2,678 or more
.ass II Employees Earning ıs of 12/31/94)	$12.57 or more but less than $15.39	$2,187 or more but less than $2,678
.ass III Employees Earning ıs of 12/31/94)	Less than $12.57	Less than $2,187

Basic and Maximum Benefit Amount Per Month

assification	Basic	RUIA	Maximum
ass I	$982	$783	$1,765
ass II	$786	$783	$1,569
ass III	$617	$783	$1,400

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,893
Class II	$1,681
Class III	$1,500

ction 2 - Further Adjustment of Plan Benefits

Effective December 31, 1999, the benefits provided under the
an shall be adjusted so as to restore the same ratio of benefits to

Section 1

The letter agreement dated December 20, 1993 implementin Article VII of the November 27, 1991 Imposed Agreement is amended a provided below effective October 1, 1996:

(a) Paragraph 1 of that letter is amended as follows:

(1) The phrase "work listed in paragraphs (a) and (b) below" i amended to read "work listed in paragraphs (a), (b), and (c) below"

(2) the following provision is added:

"(c) a differential of 25 cents per hour shall be paid t journeymen electricians with a valid EPA certification who remov ozone-depleting chemicals from air conditioning systems."

(b) Paragraph 2 of that letter agreement is amended to read a follows:

> "Journeymen electricians directly engaged in performing work on energized high voltage alternating current utility transmission or distribution lines shall receive a differential of 65 cents per hour for each hour actually spent performing such work. Such differential shall be increased to 85 cents per hour for each hour actually spent performing such work effective January 1, 2000. For the purposes of this paragraph, such high voltage lines shall mean those carrying in excess of 2400 volts."

(c) Paragraph 4 of that letter agreement is amended to read a follows:

> "Communications electronic technicians (or equivalent maintainers) with a valid FCC license (or equivalent) who regularly perform repairs and adjustments on electronic equipment shall receive a differential of 65 cents per hour for all hours worked. Such differential shall be increased to 85 cents per hour for all hours worked effective January 1, 2000. This differential shall not be applicable to any employee(s) assigned to perform any gang type work such as construction, pole line, tower, and underground cable."

Section 2

This Article is not intended to restrict any of the existin

Section 3

On a carrier where a differential in excess of 25 cents per hour is currently being paid to journeymen electricians for the work described in Section 1(a)(2) of this Article, the General Chairman may elect to preserve such existing differential by written notification to the appropriate carrier official within thirty (30) days after the date of this Agreement.

ARTICLE VIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1994 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1994, served by the organization upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1999 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal which might properly have been served when the last moratorium ended on January 1, 1995.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

J. B Dagnon

Kenneth L. Peiffer

Hugh F. Salmon

FOR THE EMPLOYEES REPRESENTED B THE INTERNATIONAL BROTHERHOOD O ELECTRICAL WORKERS:

Norman D Schwitalla
International Vice President

September 16, 1996
#1

r. N. D. Schwitalla
nternational Vice President
nternational Brotherhood of
Electrical Workers
0400 W. Higgins Road, Suite 110
osemont, IL 60018

ear Mr. Schwitalla:

This confirms our understanding with respect to the general wage ncreases provided for in Article I, Sections 1 and 3, and the igning bonus provided for in Article I, Section 2, of the Agreement f this date.

The carriers will make all reasonable efforts to pay the etroactive portion of such general wage increases and the signing onus as soon as possible and no later than sixty (60) days after the ate of this Agreement, such payments to be made (on a property by roperty basis) in either two checks (one for the signing bonus and ne other covering the retroactive portion of the general wage ncreases) or a single check with the amounts of the signing bonus nd retroactive wage increase separately identified.

If a carrier finds it impossible to make such payments within

September 16, 1996
#2

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

This refers to the increase in wages provided for in Sections and 3 of Article I of the Agreement of this date.

It is understood that the retroactive portion of those wag increases shall be applied only to employees who have an employmen relationship with a carrier on the date of this Agreement or wh retired or died subsequent to December 1, 1995.

Please acknowledge your agreement by signing your name in th space provided below.

Yours very truly,

Robert F. Allen

I agree:

Norman D Schwitalla
N. D. Schwitalla

September 16, 1996
#3

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

This confirms our understanding with respect to the withdrawal by employees of a hospital association railroad represented by the organization signatory hereto from their hospital association.

1. Employees of a carrier working in any class or craft represented by the organization, and retirees who worked in such a class or craft immediately prior to their retirement and who are eligible for coverage under The Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA") but who are covered by a hospital association in lieu of coverage under ERMA pursuant to a commitment given to the railroad from which the retirees retired by the hospital association pursuant to Article IV, Part B, Section 3, of the Mediation Agreement dated December 6, 1978, between railroads represented by the National Carriers' Conference Committee ("NCCC") and employees of such railroad represented by the organization, may transfer, as a group, from Hospital Association coverage to coverage under The Railroad Employees National Health & Welfare Plan (Plan) and ERMA upon written notice as provided herein, subject to satisfaction of the terms and conditions set forth in Attachment A hereto.

first day of a calendar month and cannot be less than thirty (30) days after the date such notice is received by the JPC.

4. The Joint Plan Committee shall see to it that such employees shall, as of such effective date, be covered under the Plan as employees of a non-hospital association railroad. The NCCC shall see to it that such retirees shall, as of such effective date, be covered under ERMA as retirees from a non-hospital association railroad.

5. The Labor Organizations currently offer the benefits of Metra Health Group Policy No. 23111 to their members who have retired from railroad service and their dependents. If, following the withdrawal from a hospital association, as provided herein, of employees only or, where ERMA-eligible retires are covered by the hospital association, of both employees and ERMA-eligible retirees, the hospital association terminates coverage that it had been providing at the time of such withdrawal to other former railroad craft employees, coverage under Policy No. 23111 will be offered to such other former railroad craft employees and their dependents.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Norman D Schwitalla

N. D. Schwitalla

To effectuate a transfer from hospital association coverage to overage under The Railroad Employees National Health and Welfare lan (the "Plan") and The Railroad Employees National Early etirement Major Medical Benefit Plan ("ERMA") pursuant to the side etter to which this Attachment is appended, the following terms and onditions must be satisfied:

1. The application to transfer to coverage under the Plan must e approved by the Joint Plan Committee.

2. The application to transfer to coverage under ERMA must be pproved by the National Carriers' Conference Committee.

3. At least ten (10) days prior to the effective date of the ransfer, the railroad that employs, or had employed at the time of heir retirement, the employees and retirees to be transferred to overage under the Plan and ERMA shall have received from each active mployee, and from each furloughed employee drawing protection, epresented by the labor organization involved written authorization llowing and instructing the railroad to deduct in substantially qual installments from two consecutive payroll periods beginning ith the first payroll period ending after the effective date of ransfer, as reimbursement to the railroad for transmittals made by to the Plan and to ERMA in connection with the transfer of the mployees and retirees to Plan and ERMA coverage, an amount equal to ne quotient of (i) the sum of all of the money to be transmitted by ne railroad to the Plan as "pickup" contributions for active and urloughed employees, other than the amount of such contributions ade in connection with coverage for on-duty injuries, plus all of ne money transmitted by the railroad to ERMA with respect to pickup" contributions applicable to ERMA coverage for transferred etirees, divided by (ii) the number of active employees, and urloughed employees drawing protection, represented by the labor rganization involved who will be transferred from hospital ssociation to Plan coverage.

September 16, 1996
#4

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

This will confirm our understanding reached in connection wi the Agreement of this date.

Signal maintainers in the C&S Department of the Norfolk Southe Railway Company represented by the organization and working under t agreement between the former Norfolk Southern Railway Company and t organization shall receive a differential of $.65 per hour for a hours worked. Such differential shall be increased to $.85 cents p hour for all hours worked effective January 1, 2000.

Please indicate your agreement by signing your name in the spa provided below.

Very truly yours,

Robert F. Allen

I agree:

N. D. Schwitalla

Attachment to Side Letter # 5

ARTICLE I - EMPLOYEE PROTECTION
of the September 25, 1964 National Agreement
(reprinted in its entirety)

- - - - -

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

d. Lease or purchase of equipment or component parts thereof, the installation operation, servicing or repairing of which is to be performed by the lessor c seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes; and,

g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse positio with respect to his compensation and rules governing working conditions in case of hi resignation, death, retirement, dismissal for cause in accordance with existing agreements, c failure to work due to disability or discipline, or failure to obtain a position available to him i the exercise of his seniority rights in accordance with existing rules or agreements, or reduction in forces due to seasonal requirements, the layoff of temporary employees or a decline in carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute ove whether an employee is deprived of employment or placed in a worse position with respect t his compensation and rules governing working conditions due to causes listed in Section 2 herec or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on th carrier.

Section 4 -

The carrier shall give at least sixty (60) days (ninety (90) days in cases that will requir a change of employee's residence) written notice of the abolition of jobs as a result of change in operations for any of the reasons set forth in Section 2 hereof, by posting a notice on bulleti boards convenient to the interested employees and by sending certified mail notice to the Genera Chairmen of such interested employees. Such notice shall contain a full and adequate statemer of the proposed changes in operations, including an estimate of the number of employees of eac class affected by the intended changes, and a full disclosure of all facts and circumstance bearing on the proposed discontinuance of positions. The date and place of a conferenc between representatives of the carrier and the General Chairman or his representative, at hi option, to discuss the manner in which and the extent to which employees may be affected b the changes involved, shall be agreed upon within ten (10) days after the receipt of said notice and conference shall commence within thirty (30) days from the date of such notice.

ection 5 -

Any employee who is continued in service, but who is placed, as a result of a change in erations for any of the reasons set forth in Section 2 hereof, in a worse position with respect compensation and rules governing working conditions, shall be accorded the benefits set forth Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading follows:

Section 6(a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposed of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period

Any employee who is deprived of employment as a result of a change in oper any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal in accordance with the terms and conditions set forth in Section 7(a) through Washington Job Protection Agreement of May, 1936, reading as follows:

Section 7(a). Any employee of any of the carriers participating in particular coordination who is deprived of employment as a result of su coordination shall be accorded an allowance (hereinafter termed a coordinati allowance), based on length of service, which (except in the case of an employ with less than one year of service) shall be a monthly allowance equivalent each instance to sixty per cent (60%) of the average monthly compensation of t employee in question during the last twelve months of his employment in whi he earned compensation prior to the date he is first deprived of employment a result of the coordination. This coordination allowance will be made to ea eligible employee while unemployed by his home road or in the coordinat operation during a period beginning at the date he is first deprived of employme as a result of the coordination and extending in each instance for a length of tir determined and limited by the following schedule:

Length of Service	Period of Payment
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the to coordination allowance shall be a lump sum payment in an amount, equivalent sixty (60) days pay at the straight time daily rate of the last position held by hi at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of t employee shall be determined from the date he last acquired an employment stat with the employing carrier and he shall be given credit for one month's servi for each month in which he performed any service (in any capacity whatsoev and twelve such months shall be credited as one year's service. The employme status of an employee shall not be interrupted by furlough in instances where t employee has a right to and does return to service when called. In determini length of service of an employee acting as an officer or other offic representative of an employee organization he will be given credit for performi

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 7 -

Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 8 -

Any employee affected by a change in operations for any of the reasons set forth in Section 2 hereof shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees of the carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may obtained.

Section 9 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence,

Section 10(a). Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

ction 10 -

Any employee who is retained in the service of the carrier, or who is later restor rvice after being eligible to receive a monthly dismissal allowance, who is required to cl e point of his employment as a result of a change in the carrier's operations for any asons set forth in Section 2 hereof, and is, therefore, required to move his place of resid all be accorded the protective benefits set forth in Section 11 of the Washington Job Prote greement of May, 1936, reading as follows:

Section 11(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss

party incurring them, including the salary of the appraiser selected by such party.

Section 11 -

When positions are abolished as a result of changes in the carrier's operations for any of the reasons set forth in Section 2 hereof, and all or part of the work of the abolished positions is transferred to another location or locations, the selection and assignment of forces to perform the work in question shall be provided for by agreement of the General Chairman of the craft or crafts involved and the carrier establishing provisions appropriate for application in the particular case; provided however, that under the terms of the agreement sufficient employees will be required to accept employment within their classification so as to insure a force adequate to meet the carrier's requirements. In the event of failure to reach such agreement, the dispute may be submitted by either party for settlement as hereinafter provided.

Section 12 -

Any dispute with respect to the interpretation or application of the foregoing provisions of Sections 1 through 11 of this Article (except as defined in Section 10) with respect to job protection, including disputes as to whether a change in the carrier's operations is caused by one of the reasons set forth in Section 2 hereof, or is due to causes set forth in Section 3 hereof, and disputes as to the protective benefits to which an employee or employees may be entitled, need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

September 16, 1996
#5

N. D. Schwitalla
ernational Vice President
ernational Brotherhood of
lectrical Workers
)0 W. Higgins Road, Suite 110
emont, IL 60018

r Mr. Schwitalla:

This will confirm our understanding reached in connection with Agreement of this date to implement the recommendations of sidential Emergency Board No. 230.

The parties agree that Article I of the September 25, 1964 eement (as attached hereto) applies to shopcraft employees on rail. Naturally, Conrail has the right to exclude shopcraft loyees from the protective program it introduced. Shopcraft loyees may not pyramid protective benefits provided by Conrail on protection afforded by the aforementioned Article I.

Disputes arising under such Article I need not be progressed in "usual manner" but can be handled directly with the highest lgnated carrier officer. If such a dispute is not settled in ect negotiations, it shall be handled in accordance with the visions of Section 3 of the Railway Labor Act, as amended.

Conrail and the organization will commence negotiations with pect to their differences regarding the application of the racraft assignment rules governing electricians. If the parties l to reach an agreement, the matter shall be submitted to binding itration.

Please indicate your agreement by signing your name in the space

#6

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

This will confirm our understanding reached in connection w
the Agreement of this date.

The parties shall meet nationally at a mutually agreed upon d
to discuss matters related to enhanced employment opportunities
employees represented by the organization who may be deprived
employment with a carrier as a result of a transaction authori
under 49 U.S.C. §10901 (or any successor provision) as to which la
protective conditions have not been imposed by any governmen
authority.

Please indicate your agreement by signing your name in the s
provided below.

Very truly yours,

Robert F. Allen

I agree:

Norman D Schwitalla
N. D. Schwitalla

September 16, 1996
#7

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

In regard to our Agreement of this date in settlement of our respective Section 6 Notices of November 1994, this will confirm our understanding on the issue of subcontracting.

Pursuant to your request, the National Carriers' Conference Committee will meet with your designated representative(s) on an on-going basis for the purpose of finding new ways to enhance opportunities for performing electrician's work within the rail industry in lieu of subcontracting such work to non-railroad vendors and/or suppliers.

The carriers signatory to this Agreement recognize that as a result of recent mergers and other activities within the rail industry, it makes sense to review current subcontracting practices and policies and to work with their employees in discussing new and mutually satisfactory approaches to this issue.

Conferences to begin such discussions will commence no later than January 15, 1997. Such meetings will be held no less than once every three (3) months thereafter unless otherwise agreed.

If this reflects our understanding, please indicate your concurrence in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Norman D Schwitalla
N. D. Schwitalla

September 16, 1996
#8

Mr. N. D. Schwitalla
International Vice President
International Brotherhood of
Electrical Workers
10400 W. Higgins Road, Suite 110
Rosemont, IL 60018

Dear Mr. Schwitalla:

This will confirm our understanding with respect to the subjec of shift premiums.

1. Upon request of the organization, the parties shall mee nationally for the purpose of forming a Study Committee on thi matter.

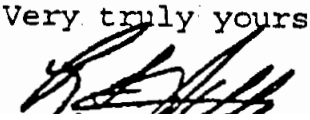
2. The Study Committee shall consist of three partisan member representing the carriers and three partisan members representing th organization. The parties shall assume the compensation and expense of their respective partisan members.

3. The Study Committee shall meet promptly after its formatio to establish its operating procedures and periodically thereafter.

4. The Study Committee shall comprehensively review th pertinent facts and issues and attempt to develop joint voluntar recommendations to the parties with regard to the propriety of shif premiums in the future.

Please indicate your agreement by signing your name in the spac provided below.

Very truly yours,



September 16, 1996
#9

. N. D. Schwitalla
:ternational Vice President
:ternational Brotherhood of
Electrical Workers
100 W. Higgins Road, Suite 110
semont, IL 60018

ar Mr. Schwitalla:

This confirms our understanding with respect to the Agreement of is date.

The parties exchanged various proposals and drafts antecedent to option of the various Articles that appear in this Agreement. It our mutual understanding that none of such antecedent proposals d drafts will be used by any party for any purpose and that the ovisions of this Agreement will be interpreted and applied as ough such proposals and drafts had not been used or exchanged in e negotiation.

Please acknowledge your agreement by signing your name in the ace provided below.

Yours very truly,

Robert F. Allen

agree:

Norman D. Schwitalla
N. D. Schwitalla

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1994 OF DESI TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWI SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE INTERNATION BROTHERHOOD OF ELECTRICAL WORKERS, AND NOTICES DATED ON OR SUBSEQUE TO NOVEMBER 1, 1994 AND SERVED ON SUCH CARRIERS BY THE GENER CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE INTERNATION BROTHERHOOD OF ELECTRICAL WORKERS FOR CONCURRENT HANDLING THEREWI

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Brotherhood of Electrical Workers.

Alameda Belt Line
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company - 1
The Belt Railway Company of Chicago - 1
Burlington Northern Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
- The Baltimore and Ohio Chicago Terminal R.R. Co.
- The Baltimore and Ohio Railroad Company (former)
- The Chesapeake and Ohio Railway Company (former)
- Clinchfield Railroad (former)
- Louisville and Nashville Railroad Company (former)
- Pere Marquette Railway Company (former)
- Seaboard Coast Line Railroad Company (former)
- Western Maryland Railway Company (former)

Galveston, Houston & Henderson Railway
Houston Belt and Terminal Railway Company
The Kansas City Southern Railway Company

SECTION 12

Guide for the Local Committee Chairman

2004 Arbitrated National Agreement

Section 12

Guide for the Local Committee Chairman

2004 ARBITRATED NATIONAL AGREEMENT

ARBITRATED AGREEMENT

THIS ARBITRATED AGREEMENT, effective November 5, 2004 pursuant to the Award of Arbitration Board No. 582, by and between the participating carriers listed in Exhibit A attached hereto and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Brotherhood of Electrical Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On June 30, 2002, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two-and-one-half (2-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 2-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 2-1/2 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 2-1/2 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 2-1/2 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Second General Wage Increase

Effective July 1, 2002, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2002 for employees covered by this Agreement shall be increased by three-and-one-half (3-1/2) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 3 - Third General Wage Increase

Effective July 1, 2003, all hourly, daily, weekly and monthly rates of

pay in effect on June 30, 2003 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 4 - Fourth General Wage Increase

Effective July 1, 2004, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2004 for employees covered by this Agreement shall be increased in the amount of three-and-one-quarter (3-1/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment

ARTICLE II - OPTIONAL ALTERNATIVE COMPENSATION PROGRAM

Section 1

A carrier, at its discretion, may offer employees alternative compensation arrangements in lieu of the general wage increases provided in Article I (in whole or part). Such arrangements may include, for example, stock options, stock grants (including restricted stock), bonus programs based on carrier performance, and 401(k) plans.

Section 2

(a) The following conditions shall govern implementation of alternative compensation arrangements pursuant to this Article:

(1) Carrier shall notify the appropriate organization representative(s) regarding its proposed alternative compensation arrangement(s). The parties shall meet promptly on such proposal and use their best efforts to reach agreement on implementation;

(2) The proposed arrangement(s) may be implemented only by mutual agreement of the carrier and the appropriate organization representative(s);

(3) The proposed arrangement(s) must be made available to the smallest employee grouping that can be reasonably administered.

(b) Nothing herein shall be construed to bar the parties from reaching mutual agreement on different terms or conditions pertaining to implementation of this Article.

ARTICLE III - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Article II, Part C of Agreement dated September 16, 1996

On October 1, 2001, twenty-seven (27) cents-per hour of the cost-of-living allowance payable pursuant to Article II, Part C of the Agreement dated September 16, 1996 ("Article II, Part C") shall be rolled into basic rates of pay. Article II, Part C shall be eliminated effective June 30, 2002. Cost-of-living allowance payments made to employees for periods on or before June 30, 2002 shall be retained. Any cost-of-living allowance payments made to employees for periods on and after July 1, 2002 shall be recovered from any retroactive wage increase payments made under Article I.

Part B - Cost of Living Allowance and Adjustments Thereto After January 1, 2005

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as

hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective July 1, 2005 based, subject to paragraph (b), on the CPI for March 2005 as compared with the CPI for September 2004. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (b)(iii), according to the formula set forth in paragraph (c).

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
September 2004	March 2005	July 1, 2005
March 2005	September 2005	January 1, 2006

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b)(i) Cap. In calculations under paragraph (c), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 2005	3% of September 2004 CPI
January 1, 2006	6% of September 2004 CPI, less the increase from September 2004 to March 2005

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (c), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2004 to the measurement month of March 2005 exceeds 3% of the September 2004 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (c) below in calculation of the cost-of-living adjustment which shall have become effective July 1, 2005 during such measurement period.

(iv) Any increase in the CPI from the base month of September 2004 to the measurement month of September 2005 in excess of 6% of the September 2004 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(c) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (b), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the

The cost-of-living allowance effective January 1, 2006 shall be the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (b), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December 31, 2005 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period, but in no event shall basic rates of pay be reduced below the levels in effect on June 30, 2005. If the result of such division requires a subtraction from basic rates of pay in effect on December 31, 2005, the employee cost-sharing contribution amount in effect on that date pursuant to Article IV, Part B, Section 1(e) of this Agreement shall be adjusted effective January 1, 2006 as appropriate to reflect such subtraction. The same procedure will be followed in applying subsequent adjustments.

(d) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance that becomes effective July 1, 2005 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(b) The increase in the cost-of-living allowance effective January 1, 2006 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(c) The increase in the cost-of-living allowance effective July 1, 2006 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part B will be payable as provided in Section 2 of this Part and will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing

the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase shall be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE IV - HEALTH AND WELFARE

Part A - Plan Changes

Section 1 - Continuation of Health and Welfare Plan

The Railroad Employees National Health and Welfare Plan ("the Plan"), modified as provided in this Article with respect to employees

represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act.

Section 2 - Plan Benefit Changes

(a) In addition to the Plan's existing coverage for speech therapy, such therapy will be a Covered Health Service under the CHCB and the Plan's Managed Medical Care Program ("MMCP"), when given to children under three years of age as part of a treatment for infantile autism, development delay, cerebral palsy, hearing impairment, or major congenital anomalies that affect speech.

(b) Phenylketonurial blood tests ("PKU") will be a Covered Health Service under the MMCP and the CHCB when given to infants under the age of one in a hospital or on an out-patient basis.

(c) The MMCP will continue to require a co-payment with respect to the first office visit by a participant or beneficiary to her obstetrician or gynecologist for treatment of a pregnancy but will not require a co-payment with respect to any subsequent visit to that obstetrician or gynecologist for treatment of the same pregnancy.

(d) The MMCP will not require a co-payment on behalf of a participant or beneficiary with respect to any visit to a physician's office solely for the administration of an allergy shot.

(e) A Hearing Benefit will be provided. Such arrangement shall provide a Maximum Benefit of $600.00 annually for each covered person for covered expenses. Covered expenses shall consist of charges for medically necessary tests and examinations to establish whether and to what extent there is a hearing loss and charges for a permanent hearing aid that is medically necessary to restore lost hearing or help impaired hearing. Such Benefit may, at the carriers' option, be administered through the Plan or as a separate arrangement administered by the National Carriers' Conference Committee, and will include standard limitations, conditions and exclusions.

(f) The Plan life insurance benefit for active employees shall be increased to $20,000, and the Plan's maximum accidental death and dismemberment benefit for active employees shall be increased to $16,000.

(g) All of the benefits as changed herein will be subject to the Plan's generally applicable limitations, conditions, and exclusions. Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(h) Each of the changes contained in this Section shall be implemented as soon as practicable.

Section 3 - Vision Care

The benefits provided under the Vision Care Plan shall be changed from the Select to the Standard arrangement as soon as practicable.

Section 4 - Plan Design Changes To Contain Costs

(a) The parties will promptly solicit bids from interested companies to provide those services to the Plan involving the Managed Medical Care Program ("MMCP") that are currently provided by Aetna U.S. Healthcare. The parties will evaluate the bids received and the capabilities of the companies making those bids and will accept such of them (or enter into negotiations with the bidding company or companies) as the parties deem appropriate.

(b) The parties will promptly research the existence, costs, benefits and services provided, outcomes and other relevant statistics of regional health maintenance organizations, and shall make participation in such of those organizations as the parties deem appropriate available as an option to individuals covered by the Plan.

(c) With respect to geographic areas where the Plan's MMCP is not

currently available but where companies capable of administering the MMCP provide such services, the parties will solicit proposals from such companies to administer the MMCP, and will evaluate the proposals they receive and accept such of them (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(d) The parties will solicit proposals from pharmacy benefit managers who specialize in filling prescriptions for injectable medications and will accept one or more of such proposals (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(e) With respect to Plan participants and their beneficiaries who live in an area where they may choose between CHCB and MMCP coverage, such Plan's participants and their beneficiaries shall no longer have a choice but shall be enrolled in the MMCP.

(f) The Individual and Family Out-of-Network Deductibles under the Plan's MMCP will be increased to $200 and $600, respectively.

(g) During a prescribed election period preceding the first day of the fourth full calendar month following the date of this Agreement and preceding each January 1 thereafter, employees may certify to the Plan or its designee in writing that they have health care coverage (which includes medical, prescription drug, and mental health/substance abuse benefits) under another group health plan or health insurance policy that they identify by name and, where applicable, by group number, and for that reason they elect to forego coverage for foreign-to-occupation health benefits for themselves and their dependents under the Plan and under any Hospital Association plan in which they participate. Such election is hereafter referred to as an "Opt-Out Election" and, where exercised, will eliminate an employer's obligation to make a contribution to the Plan and/or dues offset payment to a Hospital Association for foreign-to-occupation health benefits for the employee and his dependents.

Each employee who makes an Opt-Out Election will be paid by his

employer $100 for each month that his employer is required to make a contribution to the Plan on his behalf for life insurance and accidental death and dismemberment benefits as a result of compensated service rendered, or vacation pay received, by the employee during the prior month; provided, however, that the employee's Opt-Out Election is in effect for the entire month.

If an event described below in the final paragraph of this subsection (g) occurs subsequent to an employee's Opt-Out Election, the employee may, upon providing the Plan or its designee with proof satisfactory to it of the occurrence of such event, revoke his or her Opt-Out Election. An employee may also revoke his or her Opt-Out Election by providing the Plan or its designee with proof satisfactory to it that, after the employee made the Opt-Out Election, a person became a dependent of the employee through a marriage, birth, or adoption or placement for adoption. An employee who revokes an Opt-Out Election will, along with his or her dependents, be once again covered (effective the first day of the first month following such revocation that the employee and/or his dependents would have been covered but for the Opt-Out Election the employee had previously made) for foreign-to-occupation health benefits under the Plan or, in the case of an employee who is a member of a Hospital Association, by the Plan (for dependent coverage) and by the Hospital Association (for employee coverage). See Side Letter No. 7.

The following events are the events referred to in the immediately preceding paragraph:

(i) the employee loses eligibility under, or there is a termination of employer contributions for, the other coverage that allowed the employee to make the Opt-Out Election, or

(ii) if COBRA was the source of such other coverage, that COBRA coverage is exhausted.

(h) The Plan's Prescription Drug Card Program co-payments per

Name Drug - $10.00. The Plan's Mail Order Prescription Drug Program co-payment per prescription is revised as follows: (i) Generic Drug - $10.00; (ii) Brand Name Drug - $15.00.

(i) The parties shall establish a new benefit package denominated as the Basic Health Care Benefit ("BHCB") that will be administered by one or more vendors. Participation in that arrangement shall be made available as an option to individuals covered by the Plan. The plan design for the BHCB shall be as provided in Attachment A hereto.

(j) Blue Cross Blue Shield programs selected by the parties will be made available for selection by employees choosing coverage under the MMCP in all areas where the MMCP is made available under the Plan and throughout the United States for selection by employees choosing coverage under the CHCB.

(k) Each of the Plan design changes contained in this Section shall be implemented as soon as practicable except as otherwise provided.

Part B - Employee Cost Sharing of Plan Cost Increases

Section 1 - Employee Cost-Sharing Contributions

(a) Effective July 1, 2001, each employee covered by this Agreement shall contribute $33.39 per month to the Plan for each month that his employer is required to make a contribution to the Plan on his behalf for foreign-to-occupation health benefits coverage for himself and/or his dependents.

(b) Effective July 1, 2002, the per month employee cost-sharing contribution amount set forth in subsection (a) shall be changed to $81.18.

(c) Effective July 1, 2003, the per month employee cost-sharing contribution amount set forth in subsection (b) shall be changed to $91.38.

(d) Effective July 1, 2004, the per month employee cost-sharing contribution amount set forth in subsection (c) shall be increased by the lesser of (x) thirty (30) percent of the increase, if any, in the carriers' 2004 monthly payment rate over such payment rate for 2003, and (y) $8.62.

(e) Effective July 1, 2005, the per month employee cost-sharing contribution amount set forth in subsection (d) shall be increased by the lesser of (x) one-half of the increase, if any, in the carriers' 2005 monthly payment rate over such payment rate for 2004, and (y) one-half of the cost-of-living allowance effective July 1, 2005 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the average straight-time equivalent hours ("ASTE Hours") for calendar year 2003.

(f) Effective January 1, 2006, the per month employee cost-sharing contribution amount in effect on December 31, 2005 shall be increased by the lesser of (x) the sum of (i) one-half of the increase, if any, in the carriers' 2006 monthly payment rate over such payment rate for 2005, plus (ii) the amount (if any) by which the number described in part (x) of subsection (e) of this Section exceeds the product described in part (y) of such subsection (e), and (y) one-half of the cost-of-living allowance effective January 1, 2006 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2004.

(g) Effective July 1, 2006, the per month employee cost-sharing contribution amount in effect on June 30, 2006 shall be increased by the lesser of (x) the amount (if any) by which the number described in part (x) of subsection (f) of this Section exceeds the product described in part (y) of such subsection (f), and (y) one-half of the cost-of-living allowance effective July 1, 2006 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2004.

(h) Effective January 1, 2007, the per month employee cost-sharing contribution amount in effect on December 31, 2006 shall be increased by the lesser of (x) the sum of (i) one-half of the increase, if any, in the carriers'

2007 monthly payment rate over such payment rate for 2006, plus (ii) the amount (if any) by which the number described in part (x) of subsection (g) of this Section exceeds the product described in part (y) of such subsection (g), and (y) one-half of the cost-of-living allowance effective January 1, 2007 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2005.

(i) The pattern specified in subsections (g), and (h) above shall be followed with respect to computation of adjustments to the amount of the employee cost sharing contribution in subsequent periods during which this Part is in effect.

(j) The carriers' payment rate for any year shall mean twelve times the sum of what the carriers' payments to the Plan would have been, in the absence of any employee contributions to the Plan, for foreign-to-occupation health benefits under the Plan per month (in such year) per employee. The carriers' monthly payment rate for any year shall mean the carriers' payment rate for that year divided by 12. An "employee" for these purposes is any employee who either (i) is fully covered for employee benefits under the Plan or (ii) has elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which he participates. Carrier payments to the Plan for these purposes (x) shall include amounts paid pursuant to Section 3(f) of Part A of this Article III to employees who elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which they participate, but (y) shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 of the November 1, 1991 National Agreement between the organization signatory hereto and the carriers represented by the National Carriers' Conference Committee.

(k) For the purpose of this Section, the ASTE Hours to be used shall be

based on all such hours for individuals who are employed by Class One carriers that are participating in national bargaining in the round of negotiations that commenced January 1, 2000 and are working in crafts and classes represented by the International Brotherhood of Electrical Workers.

(l) If the per month employee cost-sharing contribution amount ("cost-sharing amount") is increased for the period July 2005 through December 2005 or any subsequent periods and if a lower payment rate is established for the calendar year that immediately follows, then the cost-sharing amount shall be adjusted as appropriate to reflect such decreased benefit costs. Such adjustment shall be made effective January 1 of the calendar year for which such payment rate decrease is applicable and in no event shall take into account any portion of a payment rate below the payment rate level established for calendar year 2004. The cost-sharing amount shall also be subject to adjustment as provided in Article III, Part B, Section 1(c) of this Agreement.

Section 2 - Pre-Tax Contributions

Employee cost-sharing contributions made pursuant to this Part shall be on a pre-tax basis, and in that connection a Section 125 cafeteria plan will be established pursuant to this Agreement.

Section 3 - Retroactive Contributions

Retroactive employee cost-sharing contributions payable for the period on and after July 1, 2001 shall be offset against any retroactive wage payments provided to the employee under Article I, Sections 1, 2, 3 and 4 of this Agreement.

Section 4 - Prospective Contributions

the employer shall then deduct the amount of such employee contributions from the employee's wages and retain the amounts so deducted as reimbursement for the employee contributions that the employer had made for the employee.

ARTICLE V - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article VI of the September 16, 1996 National Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on December 31, 1999 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/99)	$17.77 or more	$3,092 or more
Class II Employees Earning (as of 12/31/99)	$14.53 or more but less than $17.77	$2,528 or more but less than $3,092
Class III Employees Earning (as of 12/31/99)	Less than $14.53	Less than $2,528

	Basic and Maximum Benefit Amount Per Month		
Classification	Basic	RUIA	Maximum
Class I	$1,101.50	$1,000.50	$2,102
Class II	$ 875.50	$1,000.50	$1,876
Class III	$ 679.50	$1,000.50	$1,680

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$2,255
Class II	$2,009
Class III	$1,801

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 2004, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE VI - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article IV of the October 7, 1971 RED National Agreement, as amended by Article VII of the December 6, 1978 RED National Agreement, is further amended as follows effective the first day of the calendar month

Paragraph(b)(1) - Accidental Death or Dismemberment of the above-ferenced Agreement provisions is amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident."

ction 2

Paragraph (b)(3) - Time Loss of the above-referenced Agreement ovisions is amended to read as follows:

"(3) Time Loss

The carrier will provide an employee who is injured as a result an accident covered under paragraph (a) commencing within 30 da after such accident 80% of the employee's basic full-time week compensation from the carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a peri of 156 continuous weeks following such accident provided, howev that such weekly payment shall be reduced by such amounts as t employee is entitled to receive as sickness benefits under provisions the Railroad Unemployment Insurance Act."

Section 3

Paragraph(b)(4) - Aggregate Limit of the above-referenced Agreeme provisions is amended by raising such limit to $10,000,000.

ARTICLE VII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level compensation during the period of the Agreement, and to settle the disput

in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 2004 (not to become effective before January 1, 2005), any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 2004 (not to become effective before January 1, 2005), any notice or proposal.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., THIS 5 DAY OF NOVEMBER, 2004.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS:

President

November 5, 2004
#1

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1, 2, 3 and 4 of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases as soon as possible and no later than sixty (60) days after the date of this Agreement.

If a carrier finds it impossible to make such payments by that date, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

November 5, 2004
#2

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This refers to the increase in wages provided for in Sections 1, 2, 3 and 4 of Article I of the Agreement of this date.

It is understood that (i) the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to June 30, 2002, and (ii) for the purposes of computing retroactive pay, the First General Wage Increase provided for in Section 1 shall be deemed to become effective at midnight on June 30, 2002.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036
Dear Mr. Hill:

This will confirm our understanding with respect to the Agreement of this date (Agreement).

For the purpose of computation and application of the employee cost-sharing provisions contained in Article IV, Part B of the Agreement, for the period July 2004 through June 2005 and all subsequent periods, the payment rate used shall (i) be based on the costs of the Plan with respect to the employees covered by this Agreement (and employees who are (a) entitled to the same benefits (at the same levels), and (b) subject to the Plan design changes set forth in Article IV of this Agreement), and (ii) be established for a calendar year on or before December 31 of the immediately preceding year and may be changed during such calendar year only if additional contributions are needed to fund Plan benefits and expenses with respect to IBEW-represented employees that must be paid during such year.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

November 5, 2004
#4

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This confirms our understanding regarding the Agreement of this date.

Beginning with the first full calendar month immediately following the date of this Agreement in which an active employee receives his or her FO healthcare benefits from a Hospital Association and not from the National Health & Welfare Plan and makes a prospective Plan contribution pursuant to Article IV, Part B, Section 4, then, at the carrier's option, either:

(1) Such employee's monthly "cost-sharing contribution amount" referred to in Article IV, Part B Section 1 shall be reduced by the Reduction Factor; or

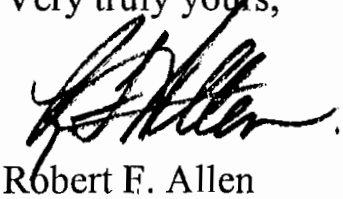
(i) the monthly dues amount in effect on January 1, 2003 that was established by the Hospital Association for payment by an active employee,

(ii) the "cost-sharing contribution amount" for the month referred to in Article IV, Part B, Section 1, or

(iii) the monthly dues amount established by the Hospital Association for payment by an active employee in that month.

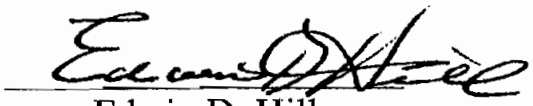
Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,



Robert F. Allen

I agree:



Edwin D. Hill

#5

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This will confirm our understanding with respect to the Agreement of this date (Agreement).

The provisions of Article IV, Part A, Section 4(g) (Opt-Outs) and Part B (Employee Cost Sharing of Plan Cost Increases) are not applicable to employees covered by the Agreement who reside in Canada.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

November 5, 2004
#6

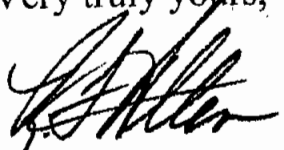
Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

Article IV, Part A, Section 4(g) of the Agreement of this date (Agreement) provides employees with an option to opt out of

Please acknowledge your agreement by signing your [illegible] provided below.

Very truly yours,



Robert F. Allen

I agree:

Edwin D. Hill

November 5, 2004
#7

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

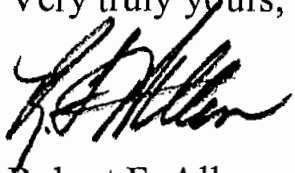
This confirms our understanding with respect to the opt-out provision, Article IV, Part A, Section 4(g) of our Agreement of this date.

It is understood that for purposes of Section 9801(f) of the Internal Revenue Code, (i) any opt-out election shall be treated as a declination of coverage, or a failure to enroll, for foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which the employee making the election may participate, (ii) that the provisions of Section 9801(f) and the regulations thereunder shall govern how any individual covered by an election to opt-out may nonetheless become covered for foreign-to-occupation health benefits under the Plan or any Hospital

of his or her family. In such a case, and only to the extent permissible under Section 125 of the Internal Revenue Code: (a) the employee may ask his/her employer that his or her opt-out election be revoked; (b) the employer involved may in its discretion grant the request in the interest of fairness and equity; and (c) if the request is granted, the employee's opt-out election shall be treated as revoked as of the day the employer received the request.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,



Robert F. Allen

I agree:

Edwin D. Hill

November 5, 2004
#8

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This confirms our understandi[illegible]

provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

November 5, 2004
#9

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This refers to the IBEW's letter dated June 1, 2001 expressing concern about the efforts of one organization to claim work that falls under the jurisdiction of the IBEW.

Please be advised that it is not the intention of the carriers to negotiate agreements during this round of national bargaining that would assign work within the jurisdiction of IBEW to any other organization.

I trust that this satisfies the concern expressed in your letter.

Very truly yours,

Robert F. Allen

November 3, 2004
#10

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

During the negotiations leading to our National Agreement of this date, the organization sought an opportunity to pursue peaceful discussions locally during the term of this Agreement with respect to arrangements under which covered employees would be allowed to take a portion of their vacation in single day increments. This will confirm our understanding with respect to this matter.

At the request of the organization's designated representative(s), carrier officials shall meet at such times and locations as mutually agreed to discuss appropriate arrangements under which single day vacations would be authorized. It is expressly understood that existing rules, if any, pertaining to single day vacations shall be preserved except as otherwise altered by mutual agreement of the parties pursuant to the discussions contemplated by this Letter.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

November 5, 2004
#11

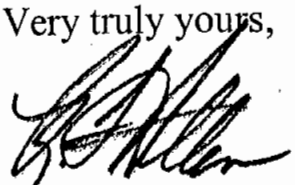
Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
1125 Fifteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hill:

This refers to our discussions in connection with our National A

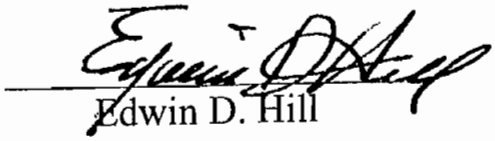
If this reflects our understanding, please indicate your concurrence in the space provided below.

Very truly yours,



Robert F. Allen

I agree:



Edwin D. Hill

EXHIBIT A
(IBEW)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1999 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1999 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Brotherhood of Electrical Workers.

The Belt Railway Company of Chicago - 2
Bessemer and Lake Erie Railroad - 1
The Burlington Northern and Santa Fe Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
Elgin, Joliet and Eastern Railway Company - 3
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company
Lake Superior & Ishpeming Railroad Company - 4
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic & East Carolina Railway Company

Northeast Illinois Regional Commuter RR Corp (METRA) - 2
Northern Indiana Commuter Transportation District - 2
Peoria and Pekin Union Railway Company
Terminal Railroad Association of St. Louis
The Texas Mexican Railway Company
Union Pacific Railroad

* * * * *

NOTES:

1 - Wages and Rules only

2 - Health and Welfare and Supplemental Sickness only

3 - Wages and Rules and Health and Welfare only

4 - Wages and Rules and Supplemental Sickness only

FOR THE CARRIERS:

FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS:

SECTION 13

Guide for the Local Committee Chairman

2007 Mediated National Agreement

MEDIATION AGREEMENT

THIS AGREEMENT, effective October 1, 2007, by and between the participating carriers listed in Exhibit A attached hereto and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Brotherhood of Electrical Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On July 1, 2005, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two-and-one-half (2-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) **Hourly Rates** -

Add 2-1/2 percent to the existing hourly rates of pay.

(b) **Daily Rates** -

Add 2-1/2 percent to the existing daily rates of pay.

(c) **Weekly Rates –**

Add 2-1/2 percent to the existing weekly rates of pay.

(d) **Monthly Rates** -

Add 2-1/2 percent to the existing monthly rates of pay.

(e) **Disposition of Fractions** -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) **Application of Wage Increase** -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly, or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

(g) **COLA Payments**

Any cost-of-living allowance amounts rolled in to basic rates of pay on or after July 1, 2005 pursuant to Article III, Part B of the National Arbitrated IBEW Agreement effective November 5, 2004 pursuant to the Award of Arbitration Board No. 582 (or any local counterpart agreement) shall be excluded before application of the

general wage increases provided for in this Section 1 and eliminated from basic rates of pay after application of such increases.

Section 2 - Second General Wage Increase

Effective July 1, 2006, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2006 for employees covered by this Agreement shall be increased by three (3) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 3 - Third General Wage Increase

Effective July 1, 2007, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 2007 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase irrespective of the method of payment.

Section 4 - Fourth General Wage Increase

Effective July 1, 2008, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 2008 for employees covered by this Agreement shall be increased in the amount of four (4) percent applied so as to give effect to this increase irrespective of the method of payment.

Section 5 - Fifth General Wage Increase

Effective July 1, 2009, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 2009 for employees covered by this Agreement shall be increased in the amount of four-and-one-half (4-1/2) percent applied so as to give effect to this increase irrespective of the method of payment.

ARTICLE II – OPTIONAL ALTERNATIVE COMPENSATION PROGRAM

Section 1

A carrier or organization may propose alternative compensation arrangements for consideration by the other party. Such arrangements may include, for example, stock options, stock grants (including restricted stock), bonus programs based on carrier performance, and 401(k) plans. The proposed arrangement(s) may be implemented only by mutual agreement of the carrier and the appropriate representatives.

Section 2

The parties understand that neither the carrier nor the organization may be compelled to offer any alternative compensation arrangement, and, conversely, neither the carrier nor the organization may be compelled to agree to any proposal made under this Article.

ARTICLE III - COST-OF-LIVING PAYMENTS

Cost-of-Living Payments Under National Arbitrated Agreement Effective November 5, 2004

Section 1

Article III, Part B, of the National IBEW Arbitrated Agreement effective November 5, 2004 pursuant to the Award of Arbitration Board No. 582 shall be eliminated effective on the date of this Agreement. All cost-of-living allowance payments made under that 2004 Arbitrated Agreement to employees for periods on and after July 1, 2005 shall be recovered from any retroactive wage increase payments made under Article I of this Agreement.

Section 2

Any local counterpart to the above-referenced Article III, Part B that is in effect on a carrier party to this Agreement shall be amended in the same manner as provided in Section 1.

ARTICLE IV - HEALTH AND WELFARE

Part A - Plan Changes

Section 1 - Continuation of Plans

The Railroad Employees National Health and Welfare Plan ("the Plan"), the Railroad Employees National Dental Plan ("the Dental Plan") , and the Railroad Employees National Vision Plan ("the Vision Plan"), modified as provided in this Article with respect to employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act.

Section 2 – Plan Benefit Changes

(a) The Plan's Managed Medical Care Program ("MMCP") will be offered to all employees in any geographic area where the MMCP is not currently offered and United Healthcare, Aetna, or Highmark BlueCross Blue Shield has a medical care network ("white space"). For purposes of this subsection, such "network" shall mean a "point-of-service" network in the case of United Healthcare and Aetna, and a preferred provider network in the case of Highmark BlueCross BlueShield. Employees who live in a white space may choose between coverage under MMCP or the Comprehensive Health Care Benefit, subject to subsection (b) below.

(b) The parties may, by mutual agreement and subject to such evaluation and conditions as they may deem appropriate, designate specific geographic areas within the white space as mandatory MMCP locations.

Employees who live in mandatory MMCP locations shall not have a choice between CHCB and MMCP coverage, but shall be enrolled in the MMCP.

(c) United Healthcare and Aetna, respectively, shall apply "nationwide market reciprocity" to employees and their dependents who are enrolled in MMCP. The term "nationwide market reciprocity" is intended to mean, by way of example, that a person enrolled in MMCP with UHC in market A is permitted to get in-network MMCP benefits from a UHC point-of-service network provider in market B.

(d) The Basic Health Care Benefit shall be eliminated as an option for employees covered by this Agreement and their dependents.

(e) In addition to the Plan's existing coverage for cochlear implants, such implants for diagnosis or treatment of hearing loss will be a Covered Health Service under the CHCB and MMCP.

(f) This Section shall become effective with respect to employees covered by this Agreement as soon as practicable.

Section 3 - Design Changes To Contain Costs

(a) The Plan's MMCP shall be revised as follows:

(1) The Office Visit Co-Payment for In-Network Services shall be increased to $20.00 for each office visit to a provider in general practice or who specializes in pediatrics, obstetrics-gynecology, family practice or internal medicine, and $35.00 for each office visit to any other provider;

(2) The Urgent Care Center Co-Payment for In-Network Services shall be increased to $25.00 for each visit;

(3) The Emergency Room Co-Payment for In-Network Services shall be increased to at least $50.00 for each visit, but if the care received meets the applicable Plan definition of an Emergency, the Plan will reimburse the employee for the full amount paid for such care, except for $25.00 if the visit does not result in hospital admission. For purposes of this Paragraph, the phrase "at least" shall be interpreted and applied consistent with practice under the Plan preceding the date of this Agreement.

(4) The Annual Deductible for Out-of-Network Services shall be increased to $300.00 per individual and $900.00 per family;

(5) The Annual Out-of-Pocket Maximum for Out-of-Network Services shall be increased to $2,000 per individual and $4,000 per family.

(b) The Plan's Comprehensive Health Care Benefit shall be revised as follows:

(1) The Annual Deductible shall be increased to $200.00 per individual and $400.00 per family;

(2) The Annual Out-of-Pocket Maximum shall be increased to $2,000 per individual and $4,000 per family.

(c) The Plan's Prescription Drug Card Program co-payments to In-Network Pharmacies per prescription are revised as follows:

(1) Generic Drug – increase to $10.00;

(2) Brand Name (Non-Generic) Drug On Program Administrator's Formulary – increase to $20.00;

(3) Brand Name (Non-Generic) Drug Not On Program Administrator's Formulary – increase to $30.00;

(4) Brand Name (Non-Generic) Drug on Program Administrator's Formulary that is not ordered by the patient's physician by writing "Dispense as Written" on the prescription and there is an equivalent Generic Drug- increase to $20.00 plus the difference between the Generic Drug and the Brand Name (Non-Generic) Drug;

(5) Brand Name (Non-Generic) Drug Not On Program Administrator's Formulary that is not ordered by the patient's physician by writing "Dispense as Written" on the prescription and there is an equivalent Generic Drug- increase to $30.00 plus the difference between the Generic Drug and the Brand Name (Non-Generic) Drug.

(d) The Plan's Mail Order Prescription Drug Program co-payments per prescription are revised as follows:

(1) Generic Drug – increase to $20.00;

(2) Brand Name (Non-Generic) Drug On Program Administrator's Formulary – increase to $30.00;

(3) Brand Name (Non-Generic) Drug Not on Program Administrator's Formulary – increase to $60.00.

(e) For purposes of the Plan, the term "children" as used in connection with determining "Eligible Dependents" under the Plan, shall be defined as follows:

"Children include:

- o natural children,
- o stepchildren,
- o adopted children (including children placed with you for adoption), and
- o your grandchildren, provided they have their legal residence with you and are dependent for care and support mainly upon you and wholly, in the aggregate, upon themselves, you, your spouse, scholarships and the like, and governmental disability benefits and the like."

(f) The definition of the term "children", as used in connection with determinations of "Eligible Dependents" under the terms of the Dental Plan and the Vision Plan, respectively, shall be revised as provided in subsection (e) above.

(g) Blue Cross Blue Shield programs that are currently available under the Plan will be made available for selection by employees covered by this Agreement who choose coverage under the MMCP in all areas where the MMCP is made available under the Plan and throughout the United States for selection by such employees who choose coverage under the CHCB.

(h) The design changes contained in this Section shall become effective on October 1, 2007.

Part B - Employee Sharing of Cost of H&W Plans

Section 1 – Monthly Employee Cost-Sharing Contributions

(a) Effective January 1, 2007, each employee covered by this Agreement shall contribute to the Plan, for each month that his employer is required to make a contribution to the Plan on his behalf for foreign-to-occupation health benefits coverage for himself and/or his dependents, a monthly cost-sharing contribution in an amount equal to 15% of the Carriers' Monthly Payment Rate for 2007.

(b) The employee monthly cost-sharing contribution amount shall be adjusted, effective January 1, 2008, so as to equal 15% of the Carriers' Monthly Payment Rate for 2008 and, effective January 1, 2009, so as to equal 15% of the Carriers' Monthly Payment Rate for 2009.

(c) Effective January 1, 2010, the employee monthly cost-sharing contribution amount shall be adjusted to be the lesser of:

(1) 15% of the Carrier's Monthly Payment Rate for 2010, or

(2) $200.00 or the January 1, 2009 employee monthly cost-sharing contribution amount, whichever is greater.

(d) For purposes of subsections (a) through (c) above, the "Carriers' Monthly Payment Rate" for any year shall mean the sum of what the carriers' monthly payments to —

(1) the Plan for foreign-to-occupation employee and dependent health benefits, employee life insurance benefits and employee accidental death and dismemberment insurance benefits,

(2) the Dental Plan for employee and dependent dental benefits, and

(3) the Vision Plan for employee and dependent vision benefits,

would have been during that year, per non-hospital association road employee, in the absence of any employee contributions to such Plans.

(e) The Carriers' Monthly Payment Rate for 2007 has been determined to be $1,108.34 and the Employee Monthly Cost-Sharing Contribution Amount for 2007 has been determined to be $166.25.

Section 2 - Pre-Tax Contributions

Employee cost-sharing contributions made pursuant to this Part shall be made on a pre-tax basis pursuant to the existing Section 125 cafeteria plan to the extent applicable.

Section 3 - Retroactive Contributions

Retroactive employee cost-sharing contributions payable for the period on and after January 1, 2007 shall be offset against any retroactive wage payments provided to the affected employee under Article I, Sections 1, 2 and 3 of this Agreement, provided, however, there shall be no such offset for any month for which the affected employee was not obligated to make a cost-sharing contribution.

Section 4 – Prospective Contributions

For months subsequent to the retroactive period covered by Section 3, employee cost-sharing contributions will be made for the employee by the employee's employer. The employer shall deduct the amount of such employee contributions from the employee's wages and retain the amounts so deducted as reimbursement for the employee contributions that the employer had made for the employee.

ARTICLE V - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article V of the November 5, 2004 Arbitrated IBEWAgreement pursuant to the Award of Arbitration Board No. 582 (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement ("SSB Plan") shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on December 31, 2004 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/04)	$20.99 or more	$3,652 or more
Class II Employees Earning (as of 12/31/04)	$17.33 or more but less than $20.99	$3,015 or more but less than $3,652
Class III Employees Earning (as of 12/31/04)	Less than $17.33	Less than $3,015

	Basic and Maximum Benefit Amount Per Month		
Classification	Basic	RUIA	Maximum
Class I	$1,189.00	$1,218.00	$2,407

Class II	$ 932.00	$1,218.00	$2,150
Class III	$ 712.00	$1,218.00	$1,930

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$2,582
Class II	$2,304
Class III	$2,068

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 2009, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

Part B – Notice of Disability

Existing agreements and practices regarding the time within which notices of disability must be filed under the SSB Plan, and the consequences of failure to file within that time period, shall be modified as set forth below.

Section 1 – Notification

A SSB Plan participant shall give the vendor administering claims under the Plan notice of disability, solely with respect to disabilities beginning on or after the date of this Agreement, within sixty (60) days after the start of the disability, unless failure to do so is due to a serious physical or mental injury or illness suffered by the participant, in which case the notice of disability must be given to the vendor as soon as amelioration of such serious physical or mental illness or injury reasonably permits. All claims with regard to which a notice of disability is not given in compliance with this time limitation shall be denied whether or not the SSB Plan has been prejudiced by such noncompliance or the claim is otherwise valid and payable.

Section 2 – Appeals

All final (second-level) appeals from claim denials under the SSB Plan that are pending on the date of this Agreement or are thereafter filed, where disposition of the claim required medical judgment that involved the participant's eligibility for SSB Plan benefits, his or her physical condition, the cause of his or her disability, or the date his or her disability started, will be considered and determined by a Disputes Committee consisting of one or more individuals selected by MCMC, LLC, an independent review entity, or such successor as may be mutually selected by the parties. In the event of a disagreement between the parties regarding selection of a successor, such dispute shall be resolved in the same manner as provided for in the existing arrangements governing disposition of deadlocks on matters brought before the Joint Plan Committee of the National H&W Plan.

ARTICLE VI - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to settle the disputes growing out of the notices served upon the organization by the carriers listed in Exhibit A on or subsequent to November 1, 2004 (including any notices outstanding as of that date), and the notices served by the organization signatory hereto upon such carriers on or subsequent to November 1, 2004 (including any notices outstanding as of that date).

(b) This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 2009 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(c) No party to this Agreement shall serve or progress, prior to November 1, 2009 (not to become effective before January 1, 2010), any notice or proposal.

(d) This Article will not bar management and the organization on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., THIS 1st DAY OF OCTOBER, 2007.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS:

President

October 1, 2007
#1

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

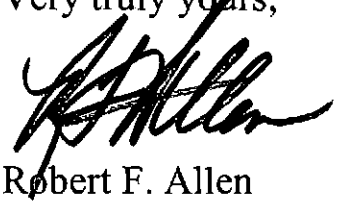
Dear Mr. Hill:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1, 2 and 3 of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases as soon as possible and no later than sixty (60) days after the date of this Agreement.

If a carrier finds it impossible to make such payments by that date, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,



Robert F. Allen

October 1, 2007
#2

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This refers to the increase in wages provided for in Sections 1, 2 and 3 of Article I of the Agreement of this date.

It is understood that the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to June 30, 2005.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

October 1, 2007
#3

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This will confirm our understanding with respect to the Agreement of this date.

The provisions of Article IV, Part B (Employee Sharing of Cost of H&W Plans) are not applicable to employees covered by the Agreement who reside in Canada.

This will also confirm that existing contractual arrangements concerning Opt-Outs are not applicable to employees covered by the Agreement who reside in Canada.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

October 1, 2007
#4

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This confirms our understanding regarding the Agreement of this date.

In any month in which an active employee receives his or her FO healthcare benefits from a Hospital Association and not from the National Health & Welfare Plan and makes a Plan contribution pursuant to Article IV, Part B, the carrier shall pay the Hospital Association each month an amount equal to the Reduction Factor, provided that the Hospital Association that receives such payment has agreed to decrease the employee's dues by the same amount.

For purposes of this Side Letter, the term "Reduction Factor" means with respect to any given month, the smallest of:

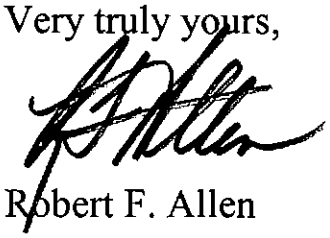
(i) the monthly dues amount in effect on January 1, 2003 that was established by the Hospital Association for payment by an active employee,

(ii) the "cost-sharing contribution amount" for the month referred to in Article IV, Part B, Section 1, or

(iii) the monthly dues amount established by the Hospital Association for payment by an active employee in that month.

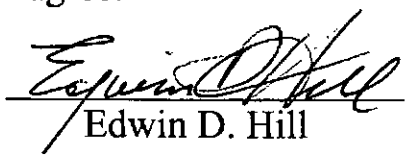
Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,



Robert F. Allen

I agree:



Edwin D. Hill

October 1, 2007
#5

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This confirms our understanding regarding Article IV, Part B of the Agreement of this date.

If the initial deduction from an employee's wages for his monthly cost-sharing contribution pursuant to Article IV, Part B, Section 4 is scheduled to be made at the same time as the payroll deduction for the employee's union dues, the union dues deduction may be made on a subsequent date mutually agreeable to the parties.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

October 1, 2007
#5A

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

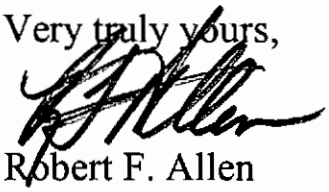
This confirms our understanding regarding Article IV, Part B of the Agreement of this date.

The joint Health and Welfare Subcommittee shall meet promptly to consider and evaluate all issues related to the feasibility of arrangements whereby an employee's monthly cost-sharing contribution would be paid through two equal payroll deductions from the employee's wages. If the Subcommittee jointly determines that such arrangements are feasible, it shall mutually develop all terms and conditions reasonably necessary for implementation. The Subcommittee shall complete its tasks under this Letter by no later than December 31, 2007.

The Subcommittee's joint recommendations shall be implemented by each carrier party to this Agreement within a reasonable period and subject to such modifications as may be mutually agreed by the affected parties to facilitate implementation.

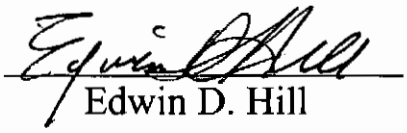
Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,



Robert F. Allen

I agree:



Edwin D. Hill

October 1, 2007
#6

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This confirms our understanding regarding Article V, Part B of the Agreement of this date.

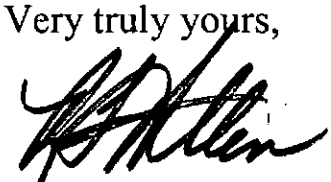
All claims for SSB Plan benefits (a) for disabilities beginning before the date of this Agreement, (b) that were denied for failure to provide timely notice of disability, and (c) appeal from the denial of which is now pending, shall be promptly reevaluated.

1. If the vendor administering claims under the Plan determines through that reevaluation that, apart from when the notice of disability was given, the claim is otherwise valid and payable, the claim shall be allowed and processed.

2. If the vendor determines that the claim should be denied for reasons other than a failure to give timely notice of disability, the claim shall be denied, which denial shall be treated as an initial denial of the claim that may be appealed in accordance with Plan procedures.

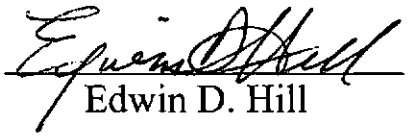
Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,



Robert F. Allen

I agree:



Edwin D. Hill

October 1, 2007
#7

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This confirms our understanding regarding the Agreement of this date.

The parties concur that the hypothetical example set forth in Attachment A to this letter describes the methodology concerning the (i) computation of gross retroactive pay and retroactive H&W cost-sharing that shall be utilized by the railroads in determining the net retroactive amount payable to a covered employee under the terms of this Agreement, and (ii) determination of the hourly rate of pay produced by application of the general wage increases provided for in Article I of this Agreement.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

ATTACHMENT A

IBEW Retroactive Pay, H&W Cost-Sharing, Hourly Rate

ASSUMPTIONS:

Effective date of new agreement is October 1, 2007.
Employee's hourly rate as of 6/30/05 is $21.00.
Employee works 198 hours per month (2376/year), all at straight time
Following GWI's are applicable:

7/1/05	2.5%
7/1/06	3.0%
7/1/07	3.0%

Employee is obligated to make a cost-sharing contribution for each month during period 1/1/07 through 9/30/07.

1. Gross Retroactive Pay

Employee would be due the following in retroactive pay:

a. For period 7/1/05 through 6/30/06:

$0.53* x 2376 hours = $1,259.28

* $21.00/hr x 1.025 = $21.53

b. For period 7/1/06 through 6/30/07:

$1.18* x 2376 hours = $2,803.68

* $21.53 x 1.03 = $22.18

c. For period 7/1/07 through 9/30/07:

$1.85* x 594 hours = $1,098.90

* $22.18 x 1.03 = $22.85

d. Total gross retroactive pay of $5,161.86

2. <u>COLA Credit (1/1/05 through 9/30/07)</u>

a. For period 7/1/05 through 12/31/05:

$0.15 x 198 x 6 = $178.20

b. For period 1/1/06 through 6/30/06:

$0.46 x 198 x 6 = $546.48

c. For period 7/1/06 through 12/31/06:

$0.47 x 198 x 6 = $558.36

d. For period 1/1/07 through 6/30/07:

$0.62 x 198 x 6 = $736.56

e. For period 7/1/07 through 9/30/07:

$0.72 x 198 x 3 = $427.68

f. Total COLA credit = $2,447.28

3. Retroactive H &W Cost-Sharing (1/1/07 through 9/30/07)

Employee would owe the following in retroactive H&W cost-shar (to recover employee share of yearly Plan cost increases for period in excess of cost-sharing amounts already paid):

a. For period 1/1/07 through 6/30/07:

$19.28* x 6 = $115.68

* $166.25 (cost-sharing amount effective 1/1/07) - $146.97 (cost-sharing amount actually paid effective 1/1/07) = $19.28

b. For period 7/1/07 through 9/30/07:

$9.28* x 3 = $27.84

* $166.25 - $156.97 (cost-sharing amount effective 7/1/07) = $9.28

c. Total Retroactive H&W Cost Sharing: $143.52

4. Net retroactive payment

Gross Retroactive Pay:	$5,161.86
Subtract COLA Credit:	2,447.28
	$2,714.58
Subtract Retroactive H&W Cost-Sharing	$ 143.52
Net Retroactive Pay:	$2,571.06

5. Hourly Rate Effective 10/1/07

$21.00* x 1.025 x 1.03 x 1.03 = $22.85 (rounded)

* Hourly Rate on 6/30/05

October 1, 2007
#8

Mr. Edwin D. Hill
President
International Brotherhood of
Electrical Workers
900 Seventh Street, N.W.
Washington, D.C. 20001

Dear Mr. Hill:

This confirms our understanding regarding Article VI – General Provisions of the Agreement of this date.

Notwithstanding any provisions to the contrary set forth in Article VI, notices served by the organization on or after November 1, 2004 on carriers party to this Agreement that concern "local" issues (matters unique and specific to the carrier involved, generally identified as Attachment C to the organization's national notice), and which are pending on the date of this Agreement, may continue to be progressed within the peaceful procedures of the Railway Labor Act through December 31, 2007. Any such notice that is not resolved by mutual agreement by that date, unless otherwise mutually agreed by the parties, shall be deemed withdrawn.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Edwin D. Hill

EXHIBIT A
(IBEW)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES SERVED ON OR SUBSEQUENT TO NOVEMBER 1, 2004 BY AND ON BEHALF OF SUCH CARRIERS UPON THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND NOTICES SERVED ON OR SUBSEQUENT TO NOVEMBER 1, 2004 BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UPON SUCH CARRIERS.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Brotherhood of Electrical Workers.

Alameda Belt Line
The Belt Railway Company of Chicago
BNSF Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
Elgin, Joliet and Eastern Railway Company - 1
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company
- Kansas City Southern Railway
- Gateway Western Railway
- Joint Agency
- Louisiana and Arkansas Railway
- Mid Louisiana Rail Corporation
- MidSouth Rail Corporation
- SouthRail Corporation

TennRail Corporation
The Texas and Mexican Railway Company
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Northeast Illinois Regional Commuter Railroad Corporation (METRA) - 2
Portland Terminal Railroad Company
Terminal Railroad Association of St. Louis
Union Pacific Railroad Company

* * * * *

Notes:

1 - Wages and Rules and Health and Welfare only

2 - Health and Welfare (except Article IV, Part B) and Supplemental Sickness only

- - - - -

FOR THE CARRIERS:

FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS:

October 1, 2007

SECTION 14

July 2007 Tentative IBEW/National Railroads Agreement Summary

JULY 2007

TENTATIVE IBEW / NATIONAL RAILROADS

AGREEMENT SUMMARY

WAGES & RULES:

This proposed agreement will provide for 17% increases in general wages over the five year contract period – which runs from January 1, 2005 through December 31, 2009. When this rate is compounded, the base wage increases a total of 18.2%.

Wage increases are as listed below:

July 1, 2005: 2.5%
July 1, 2006: 3.0%
July 1, 2007: 3.0%
July 1, 2008: 4.0%
July 1, 2009: 4.5%

These increases would be reflected in the current wages as follows:

Average Electrician's Hourly Rate On:

June 30, 2005:	$21.25
July 1, 2005:	$21.78
July 1, 2006:	$22.43
July 1, 2007:	$23.10
July 1, 2008:	$24.02
July 1, 2009:	$25.10

The average hourly Electrician's wages on June 30, 2005 of $21.25 will rise to $25.10 by July 1, 2009. Over the entire length of the contract, the agreement will generate on average an additional $18, 500 per member, even after the increases in employee health and welfare contributions are subtracted out.

COLAs that were previously paid since January 1, 2005 will be deducted from any retroactive pay. There will be no post-contract COLAs in 2010; however, there will also be no increases in employee health and welfare contributions after January 1, 2010.

There are **no** work rule changes!

HEALTH & WELFARE CHANGES:

- Employee health and welfare contributions will be set at 15% of the carriers' insurance costs. The 2007 employee monthly cost-share amount will be $166.25, retroactive to January 1, 2007. Based on current inflation trends to medical plan rates, the employees' monthly contribution is *estimated* to be $177 in 2008 and $192 in 2009. The employees' contribution amount can rise no higher than $200 in 2010 (or the 2009 rate, whichever is greater), and it will remain there unless changed in the next agreement. The Managed Medical Care Program (MMCP) will be expanded to new areas so that the vast majority of our members will have access to the richer benefits of the MMCP plan. Members who currently reside in MMCP network areas will be required to enroll in MMCP.

- Co-payments for office visits to in-network doctors (General Practice, Family Practice, Internal Medicine, Pediatrics, or OB-GYN) will change from $15 to $20 and to $35 for visits to specialists. Co-payments for in-network urgent care will be $25. Emergency room co-payments are $50, but the participant will be reimbursed $25 for genuine emergencies.

- Under the MMCP, the individual out-of-network deductible will change from $200 to $300 per year. The family out-of-network deductible will change from $600 to $900 annually. Under the Comprehensive Health Care Benefit (CHCB), the individual deductible will increase from $100 to $200 per year, and the family deductible will increase from $300 to $400 annually.

- Under both the MMCP (out-of-network) and the CHCB, the out-of-pocket maximums will increase from $1,500 per person per year to $2,000. The family out-of-pocket maximum will increase from $3,000 to $4,000. Any amounts already applied towards the deductible and/or out-of-pocket maximums in 2007 will be applied towards these new maximums.

- Prescription drug co-payments will increase to $10 for generic; $20 for brand name; and $30 non-formulary brand at retail pharmacies. A 90-day mail order supply will cost $20 for generic; $30 for brand name; and $60 for non-formulary brand.

- The medical plan will provide coverage for cochlear implants for treatment of hearing loss.

- Supplemental sickness benefits will be adjusted upward to reflect increased pay rates, and the time limit for submitting benefit claims will be extended to sixty (60) days from the current twenty (20) days.